

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1805**

NORTHWEST AND INTERMOUNTAIN )	
POWER PRODUCERS COALITION, )	
COMMUNITY RENEWABLE ENERGY )	
ASSOCIATION and RENEWABLE )	
ENERGY COALITION, )	
Complainants, )	
v. )	
PORTLAND GENERAL ELECTRIC )	<b>RESPONSE OF NORTHWEST AND</b>
COMPANY, )	<b>INTERMOUNTAIN POWER</b>
Defendant. )	<b>PRODUCERS COALITION,</b>
_____ )	<b>COMMUNITY RENEWABLE</b>
	<b>ENERGY ASSOCIATION and</b>
	<b>RENEWABLE ENERGY COALITION</b>
	<b>TO PORTLAND GENERAL</b>
	<b>ELECTRIC COMPANY’S MOTION</b>
	<b>FOR SUMMARY JUDGMENT</b>

**I. INTRODUCTION**

Northwest and Intermountain Power Producers Coalition (“NIPPC”), Community Renewable Energy Association (“CREA”), and Renewable Energy Coalition (“Coalition”) (collectively “Complainants”) respectfully request that Oregon Public Utility Commission (“Commission”) Administrative Law Judge (“ALJ”) Allan Arlow deny Portland General Electric’s (“PGE’s”) motion for summary judgment. To prevail on its motion, PGE must demonstrate not only that there are no genuine issues of material fact, but also that it is entitled to judgment as a matter of law.<sup>1</sup> The Commission views the record in the light most favorable to the non-moving party, in this case Complainants. Although the material facts concerning this Complaint are undisputed, PGE has

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<sup>1</sup> ORCP 47.

mischaracterized and misapplied those facts, failed to demonstrate that it is entitled to judgment as a matter of law, and raised inaccurate (but non-material) factual allegations not necessary for disposition of the two limited issues raised by Complainants.

Accordingly, PGE's motion for summary judgment should be denied, and the Commission should issue a final ruling that confirms: 1) the Commission's policy requires 15 years of fixed prices from the time of power deliveries; and 2) PGE's standard contracts comply with that policy.

PGE's entire motion for summary judgment rests on the misguided premise that the plain meaning of the Commission's orders permitting qualifying facilities ("QFs") to receive 15 years of fixed payments have been designed so that in practice almost no QFs can actually obtain a full 15 years of fixed-price payments. PGE's motion has failed to demonstrate that the Commission has ever considered PGE's unique interpretation that fixed-price "payments" begin at contract execution.

Moreover, PGE's position is not reasonable in the regulatory context from which the Commission's orders arose. Both Idaho Power Company ("Idaho Power") and PacifiCorp interpreted Order No. 05-584 as requiring utilities to offer a full 15-year period of fixed payments beginning from commercial operation or power deliveries.<sup>2</sup>

This fact is significant because it undermines PGE's claim that its unique interpretation is

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<sup>2</sup> Complainants use the term "commercial operation" as shorthand to mean when power deliveries begin, are scheduled to begin, or possible rather than to suggest that the Commission require that the 15-year fixed-price period to begin upon that precise date. See PGE's Motion at 2 (citing Complaint at ¶¶ 47, 55). Depending on the specific contract provisions, a QF that begins commercial operations on a date later than its scheduled commercial operation date may receive less than 15 years of payments, be subject to penalties, and/or termination.

both more natural and necessary to limit long-term price risk. Idaho Power's and PacifiCorp's interpretation of Order No. 05-584 is also significant because, unlike PGE, those two utilities had numerous Public Utilities Regulatory Policies Act ("PURPA") power purchase agreements ("PPAs") in effect prior to Order No. 05-584, and their understanding is therefore based in experience and trade usage of a term of years for a PPA.

In addition, PGE's own non-PUPRA PPAs and trade use and custom beyond Oregon contradict PGE's interpretation of Order No. 05-584. Allowing PGE's standard contracts to be implemented unlike other PURPA and non-PURPA PPAs undermines the Commission's express statutory goals of establishing a settled and uniform institutional climate for QFs.<sup>3</sup>

The Commission is now presented with a straightforward legal issue: whether PGE's interpretation and current business practices give effect to the Commission's directive and purpose. In Order 05-584, the Commission explained its policy as a compromise that balanced twin goals: 1) providing most QFs with the opportunity to obtain adequate financing; and 2) limiting price divergence associated with locking in long-term rates. Accepting PGE's theory would eviscerate one of those goals—allowing most QFs to secure adequate financing. The only way to harmonize both of the Commission's goals is to begin the 15 years of fixed prices at the time of power deliveries. In the end, Complainants have presented the only legally-sustainable

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<sup>3</sup> ORS 758.515(2)&(3).

resolution for this dispute and PGE's motion should be denied because it has failed to meet its burden of demonstrating that it is entitled to judgment as a matter of law.

## II. ARGUMENT

### A. **Starting the 15-Year Fixed-Price Term at the Time of Power Deliveries Is Consistent with the “Plain Meaning” of Order No. 05-584, But Plain Meaning Is the Wrong Test Because the Controlling Meaning is What Is Understood in the Regulated Energy Industry**

The most natural meaning of the 15-year fixed-price period would require fixed prices to begin at the time power deliveries begin. Despite PGE's claims, this is consistent with the plain meaning of a contract's effective date and term. Connecting the PPA's 15-year fixed-price period to power sales and payments is also compatible with QF developers' normal routine and maintains the status quo in the industry. In addition, this interpretation matches with a utility-owned plant approved to be placed in rates for a specified period of depreciable life.

#### 1. **Legal Standard**

Even assuming *arguendo* that rules of statutory interpretation apply, PGE's motion misapplies Oregon's statutory construction methodology by focusing on a “4-corners” approach while ignoring the broader context. PGE v. Bureau of Labor and Industries, 317 Or. 606, 610-12, 859 P.2d 1143 (1993), set out a three-part test, which was statutorily superseded by ORS 174.020, as confirmed in State v. Gaines, 347 Or. 160, 164, 206 P.3d 1042 (2009). In short, Oregon courts: 1) examine the text and context of the statute; 2) consider legislative history, if helpful (and regardless of any ambiguity determination during step one); and 3) if legislative intent is unclear after examining text, context, and legislative history, then the court may result to general maxims of statutory

construction.

Under Gaines, the plain meaning of the words in Order No. 05-584 would not necessarily control. Instead, the order's language regarding the 15-year fixed-price period would be considered within the regulatory context to understand its *intended* meaning, which requires considering any pleadings and testimony the Commission deems helpful to ascertain the technical meaning as understood in the industry. If the Commission determines its intent is unclear after examining the text and context of its orders and the supporting testimony that it relied upon, then the Commission could result to general maxims of construction. For example, the Commission could consider that PGE's interpretation means that portions of the Commission's orders would not make sense, and that PGE's interpretation suggests that the Commission read in portions of the order which are not there. Even though the general maxims of construction support the Complainants' interpretation, they are not necessary, because the meaning of the Commission's orders are sufficiently clear to those in the electric industry.

**2. The Plain Meaning and Trade Custom and Usage Support a 15-Year Term that Begins at Power Deliveries or Commercial Operation**

The plain or ordinary meaning of the Commission's orders supports the conclusion that the 15-year term means the term of fixed prices. When adopting the requirement in Order 05-584, the Commission concluded that "standard contract prices should be fixed for only the first 15 years",<sup>4</sup> and then when reaffirming this conclusion the Commission explained that "we adopted a 10 MW size threshold for standard

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<sup>4</sup> Re Investigation Relating to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 05-584 at 20 (May 13, 2005).

contracts, 20-year standard contracts with 15-year fixed prices,”<sup>5</sup> and that it adopted standard contracts with “with 15-year fixed prices.”<sup>6</sup> As repeatedly explained by the Complainants in their own Motion for Summary Judgment and this response, the plain or ordinary meaning of “15-year fixed prices” that those prices will be fixed for 15 years of payments. Otherwise, there will be no prices paid and the words will not have any relevant meaning to a QF.

Even more importantly, PGE’s analysis of the plain meaning of Order No. 05-584 fails to consider PPA custom and trade usage, which is well established in the energy industry. In addition to the numerous PURPA and non-PURPA industry examples referred to in Complainants’ Motion for Summary Judgment, a cursory internet search is sufficient to understand that these agreements are typically meant to set out all of the commercial terms for power sales that cannot possibly begin until the project comes on line.<sup>7</sup> It is important to distinguish between the contract’s effective date (“[t]he PPA is considered contractually binding on the date that it is signed”) and the commercial operation date (“the date after which all testing and commissioning has been completed and the initiation date to which the seller can start producing electricity for sale”).<sup>8</sup> Even Wikipedia understands that the latter of these dates typically sets the contract term (“[t]he

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<sup>5</sup> Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 4 (Feb. 24, 2014).

<sup>6</sup> Re Idaho Power Co. Applications to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, Docket No. UM 1725, Order No. 15-199 at 2 (June 23, 2015).

<sup>7</sup> Power Purchase Agreement, WIKIPEDIA, [https://en.wikipedia.org/wiki/Power\\_purchase\\_agreement#Effective\\_date](https://en.wikipedia.org/wiki/Power_purchase_agreement#Effective_date) (last visited May 4, 2017).

<sup>8</sup> Id.

commercial operation date also specifies the period of operation, including an end date that is contractually agreed upon”) and notes the distinction between the effective date and commercial operation is important, because until a project is operational there are no sales (“[o]nce the project has been built, the effective date ensures that the purchaser will buy the electricity that will be generated and that the supplier will not sell its output to anyone else”).<sup>9</sup> PGE’s interpretation of Order No. 05-584 offers fixed-price payments to QFs during a multi-year period where the entire energy industry understands that payments are typically not even possible.

Notwithstanding the fact that the plain meaning supports Complainants’ position, the plain meaning test is the wrong test. PGE relies upon PGE v. BOLI, which may not necessarily apply because Complainants have asked the Commission to interpret its own orders and policy, not a statute. It does not make sense for the Commission to undergo a plain meaning analysis for what a lay person understands, because in this case the Commission is interpreting its own policy and orders directed at a regulated utility, and must ascertain the meaning used in the power industry and in the Commission’s own proceedings. Applying the “plain dictionary meaning” to the Commission’s orders would often lead to absurd or confusing results because the energy industry is replete with industry jargon and terms of specialized meaning to industry participants.

Should the Commission decide to apply Oregon’s statutory construction methodology, it should apply In re Nuss, 335 Or. 367, 372, 67 P.3d 386 (2003), which requires courts to consider terms of art with special technical meaning that are different

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<sup>9</sup> Id.

from their common meaning. Courts must consider all or part of a technical definition to discern legislative intent, and should rely upon authoritative resources from the relevant professional discipline to give the technical meaning priority over the plain meaning.<sup>10</sup> As explained in Complainants' own Motion for Summary Judgement, these documents and orders mean that the Commission should interpret the 15-year fixed-price period to mean the period of years running from a project's in-service date or power deliveries.

**B. The Purpose of Order No. 05-584 Centers On Both Establishing Adequate Financing and Limiting Price Deviations**

PGE argues that the 15-year period is intended “to limit the divergence between forecasted costs and actual avoided costs to 15 years,”<sup>11</sup> but that interpretation is one sided. The Commission expressly explained its purpose as balancing two goals: facilitating the financing of QF projects while sufficiently protecting ratepayers.<sup>12</sup> The best reading of Order No. 05-584 should effectuate both of these goals. PGE's interpretation tips the Commission's balance and undermines the QF's ability to adequately establish financing. Complainant's interpretation gives meaning to both of the Commission's goals.

The crux of PGE's position is that rates become outdated and stale after 15 years, and its interpretation is the only way to ensure that ratepayers are not exposed to more than 15 years of fixed-price risk. As noted above, PGE argues that Order No. 05-584

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<sup>10</sup> See Tharp v. Psychiatric Sec. Review Bd., 388 Or. 413, 423, 110 P.3d 103 (2005) (interpreting the term personality disorder); DeBoer v. Dep't of Revenue, 2014 WL 4783255 (Or. Tax Sept. 25, 2014) (interpreting the meaning of words “falsely” and “intent” in the context of tax fraud).

<sup>11</sup> PGE's Motion at 11.

<sup>12</sup> Docket No. UM 1129, Order No. 05-584 at 8.



sought to “limit the divergence between forecasted costs and actual avoided costs to 15 years.”<sup>13</sup> However, PGE’s own position contradicts its draconian reading of Order No. 05-584. Under PGE’s approach, there would always be more than 15 years of price divergence because prices start to diverge immediately after a utility files its avoided cost rates for Commission approval. Yet the parties execute a PPA containing those rates months to years later.<sup>14</sup> For example, if a QF signs a PPA one year after the Commission approves PGE’s avoided cost rate schedule, the QF would be entitled to 15 years of fixed-prices from the date the contract is executed under PGE’s application of Order No. 05-584, but the rates themselves would “diverge” for a total of 16 years. Thus, the Commission’s Order No. 05-584 could only ensure that there were only 15 years of price divergence if the 15-year period of fixed prices runs from the date the Commission approved the rate schedule, not the date of contract execution.

PGE’s interpretation also undermines the Commission’s goal of allowing adequate financing, because the only way to allow 15 years of fixed-price payments is to allow the fixed-price period to begin when power deliveries begin. Despite the Commission expressly relying upon the financing needs of QFs when setting the fixed price term, PGE never directly addresses that its interpretation precludes QFs from obtaining a full 15 years of fixed-price payments. Under PGE’s rule, QFs that are not yet operational would never receive a full 15 years of fixed-price payments, because any months and years that precede operation would effectively be subtracted from the 15-year

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<sup>13</sup> PGE’s Motion at 11.

<sup>14</sup> At the time the Commission originally adopted the 15-year term, rates remained in effect for up to two years, and now they are adjusted annually.

period. Even QFs that were operational at the time of contract execution may not receive a full 15 years of fixed-price payments from PGE because QFs generally need to sign PPAs well in advance of contract expiration.

The testimony on the 15-year fixed price period supports Complainants' position by reiterating the need for long-term fixed-price payments to establish financing.

Whether 15 or 20 years of fixed-price payments would be sufficient to establish adequate financing was thoroughly addressed before the Commission.<sup>15</sup> PGE supported the 15-year fixed-price term, along with the other utilities and Staff.<sup>16</sup> PGE's interpretation of that term, however, results in less than or "up to" 15 years of fixed payments.

Complainants are unaware of any reference in the record that suggests the fixed-price period would be anything less than a full 15 years.<sup>17</sup> Given that even PGE has agreed to

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<sup>15</sup> See Re Investigation Relating to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Oral Arguments Transcript at 142 (Feb. 7, 2005) (comparing ODOE's previous endorsement of a 15-year term to its current recommendation of a 20-year term); Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, ODOE's Post Hearing Brief at 16-17 (June 17, 2013) (ODOE "may require that the loan term not exceed the fixed-price portion of the contract term"); Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, PacifiCorp's Post-Hearing Brief at 33-35 (June 17, 2013) ("In terms of balancing interests, it is important that the Commission adopt a fixed-price term that is no longer than necessary to allow a QF to obtain financing."); Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Staff's Response Testimony at Staff/100, Bless/40-41 (Mar. 18, 2013) (explaining that project investors seek long periods of "bond like" revenue certainty); see also Complainants' Motion for Summary Judgment at 11-15.

<sup>16</sup> See e.g., Re Investigation Relating to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, PGE's Reply Brief at 8 (Jan. 28, 2005).

<sup>17</sup> Conversely, the market-price period is often referred to as the "remaining years" rather than the last five years. See e.g., Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Reply Testimony of Bruce W.

allow up to three years as a matter of right to cover the extensive multi-year process generally required for newly proposed and existing projects to complete construction, upgrades and interconnection process and agreement(s), the availability of fixed prices under PGE's approach would often be as short as 12 years.

PGE's assertion that its interpretation is the only way to give effect to the Commission's goal of limiting price divergence to 15 years is to find that the contract term "must begin" when the contract becomes effective is inconsistent with its concession that it is fine for the other utilities to begin their contract terms when power deliveries begin.<sup>18</sup> PacifiCorp and Idaho Power also limit divergence by beginning payments at the time of power deliveries, which gives effect to the Commission's goal of limiting risk to ratepayers.

In the end, the Complainants' interpretation is the only way to harmonize both of the Commission's goals, because it allows for a full 15 years of fixed-price payments while limiting price divergence. This interpretation is also in harmony with other policies and testimony throughout the industry in favor of the 15-year term. For example, ORS 758.515(3)(b) requires the Commission to create a settled and uniform institutional climate for QFs in Oregon. Many other states have discussed why QFs need 15 years of fixed-price payments to secure financing,<sup>19</sup> and the Complainants are not aware of any of

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Griswold at PAC/400, Griswold/26-29 (Apr. 29, 2013) ("The remaining years of the PPA would be the Electric Market Option").

<sup>18</sup> PGE's Motion at 13.

<sup>19</sup> E.g., to be paid for capacity (only way to be paid for capacity when long resource sufficiency periods, like PGE's current non-renewable rates), for existing QFs to get over the hurdle of long periods of initial low prices, rejecting levelized rates, places more risk on ratepayer for default.

those states interpreting the term necessary for financing to start at contract execution rather than power deliveries.<sup>20</sup>

**C. Regardless Which Legal Standard is Applied to Interpret Order No. 05-584, the 15-Year Period Centers On Payments, Which Requires Power Purchases**

The Commission's 15-year policy notably focuses on pricing and payments between the parties, which informs its meaning.<sup>21</sup> Pricing and payment terms most naturally begin when power sales begin, not before. Both Order No. 05-584 and all three initial compliance filings used the same shorthand to describe the 15-year term without spelling out that it commences when sales commence. But the series of years specified in the order nevertheless runs from the date of power deliveries, and PGE's reliance on its compliance tariff and standard contracts is unpersuasive.

**1. All Three Utilities' Tariffs Use Similar Shorthand Language to Describe the Contract Terms**

Aside from its misreading of Order No. 05-584, the linchpin of PGE's argument is the description of the contract term in PGE's PURPA tariff, Schedule 201. PGE quotes from a shorthand description of the fixed-price term in that Schedule 201, and argues that the ordinary meaning of it supports PGE's position.<sup>22</sup> However, PacifiCorp and Idaho Power have used substantively identical shorthand descriptions of the fixed-price and/or maximum contract term in tariffs, even though both of those utilities unambiguously understand the fixed-price term to run from the operation date of the facility, not the date of contract execution. These undisputable facts seriously undermine PGE's reliance on

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<sup>20</sup> Complainants' Motion for Summary Judgment at 20-25.

<sup>21</sup> Docket No. UM 1129, Order No. 05-584 at 1.

<sup>22</sup> PGE's Motion at 19.

language in its Schedule 201.

Specifically, PGE quotes at length from its Schedule 201, which states in pertinent part:

The Fixed Price Option ... is available for a maximum term of 15 years. Sellers with contracts exceeding 15 years will make a one time election at execution to select a market-based option for all years up to five in excess of the initial 15.<sup>23</sup>

This is the same basic description of the “term” as used in Order No. 05-584. PGE argues that the ordinary meaning of this language conclusively establishes that 15 years of fixed prices begins at contract execution because an ordinary person would understand a contract term to begin on the day the contract is signed.

However, PGE fails to mention that PacifiCorp used (and still uses) substantively identical shorthand in its compliance tariff. PacifiCorp’s initial Schedule 37 filing provided, in pertinent part:

Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under either Banded Gas Market Indexed Avoided Cost Prices or Gas Market Indexed Avoided Cost Prices.<sup>24</sup>

Yet, as noted previously, PacifiCorp’s original standard contract unambiguously allowed the 15-year fixed-price period to begin from the Scheduled Initial Delivery date. That PacifiCorp contract stated, “[i]n the event Seller elects the Fixed Price payment method,

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<sup>23</sup> Re Investigation Related to Electric Utility Purchases From Qualifying Facilities, Docket No. UM 1129, PGE’s Compliance Filing, Schedule No. 201 at 201-4, (July 12, 2005).

<sup>24</sup> Attachment A at 38 (Re Investigation Related to Electric Utility Purchases From Qualifying Facilities, Docket No. UM 1129, PacifiCorp’s Compliance Filing, Power Purchase Agreement, Ex. F, Schedule No. 37 at page 2 (July 12, 2005)).

PacifiCorp shall pay Seller ... during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates . . . .”<sup>25</sup> This language remains in PacifiCorp’s tariff and standard contract today.<sup>26</sup>

Similarly, Idaho Power’s original compliance standard contract uses nearly identical language and is consistent with PacifiCorp’s standard contract.<sup>27</sup> Although Idaho Power’s initial 2005 compliance filing tariff, Schedule 85, did not discuss the available term of fixed prices or the maximum contract term, its currently effect avoided cost schedule uses the same type of shorthand as in Order No. 05-584 and PGE’s Schedule 201 to express the maximum contract term available for non-standard contracts. It provides: “QFs have the unilateral right to select a contract length of up to 20 years for a PURPA contract.”<sup>28</sup> The shorthand language states the contract length or contract term, but these terms of art are understood in the context of a PPA to mean the length of time of power deliveries.

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<sup>25</sup> Id. at 16.

<sup>26</sup> See PacifiCorp’s current Schedule 37 at 4, available at <https://www.pacificpower.net/env/nmcg/qf.html> (“Standard Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price. . . . Renewable Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price.”).

<sup>27</sup> Attachment B at 18 (Re Investigation Related to Electric Utility Purchases From Qualifying Facilities, Docket No. UM 1129, Idaho Power’s Compliance Filing, Schedule No. 85 at Article 7.1 (July 12, 2005)) (allowing fixed prices “for the first 15 Contract Years” and defining Contract Year as “[t]he period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter”).

<sup>28</sup> Idaho Power’s Schedule 85 was most recently approved in UM 1610. See Attachment C at 17 (Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Idaho Power’s Compliance Filing at Schedule 85 Revised Sheet 85-11 (Apr. 25, 2014)).

Thus, the seemingly clear description of the 15-year term of fixed prices in PGE's Schedule 201 proves far less plain than PGE argues. PacifiCorp and Idaho Power understand that their use of Order No. 05-584's shorthand in their tariffs (Schedule 37 and Schedule 85, respectively) did not mean that the 15 years of fixed prices would begin at contract execution. The fact that all three utilities use the same language in their tariffs seriously undermines PGE's reliance on that language in its tariff as a basis for different treatment. The only material difference between the three utilities is that PGE has recently begun mis-interpreting that shorthand language. For the Commission to agree with PGE in this case, it would need to conclude that the Commission itself intended this nearly identical language in three separate utility filings to have radically different meanings.

**2. PGE's Reliance on Section 5 of its 2007 Standard Contract Contradicts PGE's Other Arguments**

Next, PGE quotes at length from Section 5 of its 2007 standard contract form to argue that it "unambiguously limits fixed prices to the first 15 years of the contract Term."<sup>29</sup> But in fact PGE's interpretation of Section 5 of this contract form only provides a QF with fixed prices for the first 15 years of the contract if the contract is signed on January 1. Thus, PGE's interpretation should be rejected because it produces an illogical result that would even further limit the availability of fixed prices to those few QFs that happen to execute a PPA at the start of the year.

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<sup>29</sup> PGE's Motion at 20-21.

According to PGE, Section 5 “required [the QF] to select a market-based price for all Contract Years in excess of 15 until the remainder of Term.”<sup>30</sup> But the words “Contract Year” were defined as each 12-month period commencing on January 1 and “falling at least partially in the Term of this Agreement.”<sup>31</sup> Therefore, under PGE’s interpretation of this contract form, the 15-year period of fixed prices begins running on January 1st of the calendar year that the QF signs the contract, and the only way to obtain 15 years of fixed prices is if the QF signs the contract on January 1st. If the QF signs the contract any later in the year than January 1st, PGE’s interpretation would *not* provide the QF with fixed prices for the first 15 years of the contract.

PGE’s own discussion of the Section 5 language in OneEnergy’s PPA demonstrates how this works.<sup>32</sup> PGE states that Section 5 of the contract terminates OneEnergy’s fixed prices immediately after the 15<sup>th</sup> Contract Year, on January 1, 2029. But the contract was executed (the “Effective Date”) on February 19, 2014, and 15 years after that date is February 19, 2029, which is one month and 19 days after PGE asserts the fixed pricing ends. Thus, PGE’s interpretation deprives OneEnergy of 15 years of fixed prices from the date of contract execution (the “Effective Date”) because One Energy did not sign the contract on January 1st.<sup>33</sup>

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<sup>30</sup> Id. at 21.

<sup>31</sup> Id. (citing Re Investigation Related to Electric Utility Purchases From Qualifying Facilities, Docket No. UM 1129, PGE’s Compliance Filing, Schedule No. 201 at Section 1.7 (Jan. 23, 2007)).

<sup>32</sup> PGE’s Motion at 31-33.

<sup>33</sup> Complainants are not requesting that the Commission interpret the OneEnergy contract, but use this example to illustrate how PGE’s position could lead to absurd results.



Thus, PGE's interpretation of the generic 2007 contract form contradicts its overall theory of Order No. 05-584. Recall that PGE argues that Order No. 05-584 requires PGE to offer fixed prices for 15 years from the day the contract is signed. In other words, under PGE's interpretation, PGE would be in non-compliance if it offered fixed prices for a period shorter than 15 years after the date of contract execution. But that is exactly what PGE's 2007 contract form does because it requires fixed prices to begin on January 1, at least according to PGE's arguments.

In short, PGE's own arguments cannot be squared with each other. If the Commission accepts all of PGE's arguments, PGE's 2007 contract form violated the directive in Order No. 05-584, except for the rare QF that signed a contract on January 1. Instead, the Commission should reject PGE's arguments and conclude that, like its Schedule 201, PGE's older 2007 contract form is not as clear as PGE insists, and it allows the 15 years to begin on the QF's operation date. Or, the Commission simply need not interpret this older contract form in this proceeding, but focus on interpreting its overall policy and current contract forms to find that QFs are entitled to 15 years of actual fixed-price payments.

**3. The Utilities' Standard Contracts Demonstrate That QFs Will Receive a Full 15-Year Fixed-Price Period for Payments**

PGE argues that the plain meaning of the language from one of its former standard contracts supports its assertions regarding the plain meaning of Order No. 05-584. PGE points out that two years after its original compliance filing, PGE updated its standard contracts to define "Term" and "Effective Date" in conjunction with language in Section 2.1 in a way that limited the total contract term to 20 years from contract

execution.<sup>34</sup> This argument misses the forest for the trees. First, PGE is relying upon an issue that both parties agree has not been placed before the Commission, which is whether PGE's standard contract allow for twenty years of payments.<sup>35</sup> Second, PGE ignores the broader context in the industry. Third, PGE relies upon a lay-person's interpretation rather than a technical one. Fourth, PGE seems to argue that one inartful example of contract language could override the Commission's policy or its own course of dealings, particularly where PGE has allowed developers to write in dates that exceeded 20 years from the Effective Date and signed the PPA with such an insertion. Finally, this language is in neither PGE's original compliance filing nor its current standard form contracts and therefore has very limited value in the broader context.<sup>36</sup>

PGE's argument is that its 2007 standard contract language limits contracts to twenty years (and thus also limits fixed prices to fifteen years) from contract execution. But this argument is undermined by various other examples where PGE allowed QFs to

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<sup>34</sup> PGE's Motion at 20 ("Specifically, Section 1.30 defined 'Term' as meaning 'the period beginning on the Effective Date and ending on the Termination Date.' Section 1.8 defined 'Effective Date' as having 'the meaning set forth in Section 2.1.' Section 2.1 stated: 'This Agreement shall become effective upon execution by both Parties ('Effective Date').' Finally Section 2.3 defined 'Termination Date' by stating: 'This Agreement shall terminate on \_\_\_\_, \_\_ [*date to be chosen by Seller*], up to 20 years from the Effective Date . . . .").

<sup>35</sup> PGE has conceded that the Commission has not clarified when a contract term must start. The 20-year contract term issue has not been raised by the Complainants, and need not be decided to determine whether the Commission requires 15 years of fixed-price payments.

<sup>36</sup> If the Commission is going to look at language from PGE's former PPA, it should also consider Section 4.5 of PGE's 2014 Renewable PPA which expressly references the fixed-price period as being 15 years following commercial operation. See Re Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-435 (Dec. 16, 2014). See also supra text accompanying note 23; Complainants' Motion for Summary Judgment at 26-30.

fill in the form with handwritten completion of its blank spaces, including the OneEnergy and PaTu contracts, that avoids the alleged difficulty identified by PGE. It is a basic tenet of contract law that the hand-written insertions into a form agreement control over the printed language of the form where the two contradict each other.<sup>37</sup> That basic rule serves to allow PGE’s form contract to be completed and implemented in a manner that is consistent with those of PacifiCorp and Idaho Power.

Complainants reiterate that they do not believe that any of PGE’s older form PPAs or executed contracts need to be interpreted to resolve this case. However, those executed contracts are publicly available to QF developers who could reasonably conclude that PGE was willing to clarify matters in the way the blank spaces are completed and would offer fixed prices for periods longer than 15 years from the contract execution date, under its Schedule 201. At minimum, the OneEnergy contract shows that developers expect 15 years of fixed prices to begin upon commercial operation.<sup>38</sup> PGE’s suggestion that the OneEnergy contract is merely reflective of a negotiated contract or a mistake is unconvincing.<sup>39</sup> The PaTu contract likewise demonstrates that developers

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<sup>37</sup> ORS 42.270 (“When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls.”).

<sup>38</sup> The OneEnergy PPA has notations that indicate the Seller selected “Fixed Price (for the first 15 years following the Commercial Operation Date) and market prices “(for the 16<sup>th</sup> year following the Commercial Operation Date)”, which suggests to other QFs that OneEnergy expected to receive fixed prices from the first 15 years of its power sales (from 8/19/2015 to 8/19/2030) and market prices for the last years of its power sales (from 8/20/2030 to 2/19/2034). Re PGE Information of QF Contracts or Summaries per OAR 860-029-0020(1), Docket No. RE 143 at OneEnergy PPA.

<sup>39</sup> PGE argues that the parentheticals are not part of its standard form contract and that the OneEnergy contract is better understood as a negotiated contract under

expect 15 years of fixed pricing to begin upon commercial operation.<sup>40</sup> PGE’s analysis of the PaTu contract ignores the hand-written termination date inserted into the blank in the form, which controls over PGE’s interpretation of the boilerplate printed language in the form.<sup>41</sup> Additional examples are publicly available where developers have selected a 15-year fixed-price term that begins upon commercial operation.<sup>42</sup> These examples

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Schedule 202, but the executed contract is publicly available in Docket No. RE 143 and is marked as a Schedule 201.

<sup>40</sup> The PaTu PPA has an Effective Date of 4/29/2010, a Commercial Operation Date of 5/31/2011, and a Termination Date of 5/31/2031, which suggests to other QFs that PaTu expected to receive fixed prices for the first 15 years of its power sales (from 5/31/11 to 5/31/2026) and market prices for the last 5 years of its power sales (from 6/1/2026 to 5/31/2031). Re PGE Information of QF Contracts or Summaries per OAR 860-029-0020(1), Docket No. RE 143 at PaTu PPA.

<sup>41</sup> ORS 42.270; Emmert v. O’Brien, 72 Or. App. 752, 755, 697 P.2d 222 (1985) (indicating that hand-written words are controlling in a printed form where the written words are inconsistent with the handwritten words).

<sup>42</sup> PGE’s motion also appears to rely upon a new claim that is false. Compare Declaration of Shawn Davis in Support of PGE’s Motion for Summary Judgment at 2-3 (“PGE has entered into more than 90 standard contracts with QFs. The OneEnergy Contract is the only contract in which PGE has agreed to a modification of Section 5.1 and 5.2. **The remainder of PGE’s more than 90 executed standard contracts limit fixed prices to the first 15 years for the standard contract term, which begins when the contract is fully executed.**”) (emphasis added) with Re PGE Information of QF Contracts or Summaries per OAR 860-029-0020(1), Docket No. RE 143 at City of Gresham PPA (allowing fixed prices until 11/30/32 with an execution date of 1/11/13), Power Resources Cooperative PPA (allowing fixed prices until 9/30/2027 with an execution date of 7/2/2012), Port of Tillamook Bay PPA (allowing fixed prices until 12/31/2028 with an execution date of 9/20/2013), and Minikahda Hydropower PPA (allowing fixed prices until 2/20/2029 with an execution date of 2/14/13). The termination dates for these three contracts are more than 15 years from the execution date and the only price option selected was the fixed-price option. See also Re PGE Information of QF Contracts or Summaries per OAR 860-029-0020(1), Docket No. RE 143 at SORT Bioenergy, LLC PPA, Morrow Solar LLC PPA, OE Solar 1 PPA, OE Solar 2 PPA, OE Solar 3 PPA, OE Solar 4, NorWest Energy 14 PPA, NorWest Energy 16 PPA, Energy Partners I PPA, and Energy Partners II PPA (allowing 15 years of fixed pricing from the commercial operation date rather than the contract execution date).

illustrate that PGE's interpretation is difficult to square with its own business practices and, if approved by the Commission, could produce unintended consequences and additional litigation.

Finally, PGE undercuts its own 2007 standard-contract argument by conceding that other Commission-approved standard contracts unambiguously require PacifiCorp and Idaho Power to provide 15 years of fixed prices. The fact that PGE submitted a poorly drafted form with at best latent ambiguity does not override the intent of the Commission's orders and other contractual provisions. PGE does not (and cannot) argue that Idaho Power and PacifiCorp are required to offer 15 years of fixed prices from contract execution. Instead, PGE attempts to argue that they are permitted to do so, and that PGE's unique interpretation is the only one that offers the plain meaning of the Commission's orders.

**D. The Meaning of 20-Year Term Need Not Be Determined in This Proceeding**

PGE's motion relies heavily upon its interpretation that a PPA's 20-year term more naturally begins at the time of contract execution rather than upon power deliveries, but plainly concedes that Order No. 05-584 "does not specify when the 20-year contract term begins."<sup>43</sup> PGE suggests there is no Commission "policy" with respect to when the contract term begins.<sup>44</sup> PGE acknowledges, however, that the Commission's orders allow a PPA contract to become effective upon execution while deferring the start of the contract term (and the first 15 years of fixed prices) to begin upon power deliveries, as is

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<sup>43</sup> PGE's Motion at 26.

<sup>44</sup> Id. at 27.

the case with PacifiCorp and Idaho Power. And PGE expressly states that PacifiCorp and Idaho Power's tariffs and contract forms are consistent with Order No. 05-584.<sup>45</sup> The other utility's interpretation is the most natural way to understand the Commission's directive in Order No. 05-584, because it allows for a full 15 years of fixed prices and provides the option to select a full 20-year contract with five years of market prices.

That said, Complainants have not placed this issue before the Commission. Thus, although the most natural meaning of the 20-year term in Order No. 05-584 would begin at power deliveries, this issue need not be decided to determine whether Order No. 05-584 requires utilities to offer a full 15 years of fixed prices.

### **III. CONCLUSION**

PGE has failed to meet its burden of demonstrating that it is entitled to judgment as a matter of law. PGE relies heavily upon the "ordinary meaning" of the Commission's language while simultaneously conceding that the Commission never directed the 20-year contract term to begin upon contract execution, and has repeatedly authorized PacifiCorp and Idaho Power to unambiguously begin the 15-year fixed-price period upon commercial operation rather than upon contract execution. PGE's arguments are unconvincing. For these reasons, the Commission should deny PGE's motion for summary judgment.

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<sup>45</sup> Id. at 25.

Dated this 8th day of May 2017.

Respectfully submitted,



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Irion Sanger  
Sidney Villanueva  
Sanger Law, PC  
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Telephone: 503-747-7533  
Fax: 503-334-2235  
irion@sanger-law.com

Of Attorneys for Northwest and Intermountain  
Power Producers Coalition

Of Attorneys for Community Renewable Energy  
Association

Of Attorneys for Renewable Energy Coalition

## **Attachment A**

**PacifiCorp's Order No. 05-584 Compliance Filing,  
Tariff Schedule No. 37  
(filed July 12, 2005)**



July 12, 2005

**VIA ELECTRONIC FILING**

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

Attention: Vikie Bailey-Goggins, Administrator  
Regulatory and Technical Support

**Re: Docket UM 1129**

Pursuant to Commission Order No. 05-584 issued in UM-1129, enclosed for filing are an original and five (5) copies of PacifiCorp's Application for approval of its proposed tariff Schedule No. 37, Avoided Cost Purchases From Qualifying Facilities Of 10,000 kW Or Less, Schedule No. 38, Avoided Cost Purchases From Qualifying Facilities Of Greater Than 10,000 kW, as well as PacifiCorp's proposed standard form power purchase agreements for new and existing qualifying facilities contracting under Schedule No. 37.

A CD containing the filing in both pdf and original formats will be provided. Copies of this filing have been served on all parties of record as noted in the attached certificate of service.

It is respectfully requested that all formal correspondence and staff requests regarding this matter be addressed to:

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

By Fax: (503) 813-6060

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 800  
Portland, OR 97232

With copies to:

John M. Eriksson  
James F. Fell  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268  
Tel. (503) 294-9343  
Fax (503) 220-2480  
[jmeriksson@stoel.com](mailto:jmeriksson@stoel.com)

[jffell@stoel.com](mailto:jffell@stoel.com)

Informal inquiries may be directed to Laura Beane, Regulatory Manager at (503) 813-5542.

Sincerely yours,

D Douglas Larson  
Vice President, Regulation

Attachments

cc: UM 1129 Service List

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

DOCKET NO. \_\_\_\_\_

In the Matter of the Application of  
PACIFICORP for Approval of Proposed  
Schedule Nos. 37 and 38 and Standard Form  
Power Purchase Agreements for Qualifying  
Facilities up to 10 MW.

APPLICATION OF PACIFICORP

In accordance with Order No. 05-584, issued by the Oregon Public Utility Commission (the "Commission") in Docket No. UM 1129, ORS 756.040 and 758.525, and OAR 860-013-0010, PacifiCorp seeks approval from the Commission of (1) PacifiCorp's proposed Schedule No. 37, Avoided Cost Purchases From Qualifying Facilities of 10,000 kW or Less ("Schedule 37"), and (2) PacifiCorp's proposed standard form contracts for qualifying facilities of 10,000 kW or less. In support of its application, PacifiCorp states as follows:

**A. Address**

The applicant's exact name and business address are:

PacifiCorp  
Lloyd Center Tower  
825 NE Multnomah Blvd.  
Portland, OR 97232

**B. Communications and Notices**

All notices and communications with respect to this application should be addressed to:

Jeff Larsen  
Director of Regulatory Policy  
PacifiCorp  
825 NE Multnomah Blvd., Suite 800  
Portland, OR 97232  
Tel. (503) 813-6092  
Fax (503) 813-6060  
[christy.omohundro@pacificorp.com](mailto:christy.omohundro@pacificorp.com)

John M. Eriksson  
James F. Fell  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268  
Tel. (503) 294-9343  
Fax (503) 220-2480  
[jmeriksson@stoel.com](mailto:jmeriksson@stoel.com)  
[jfell@stoel.com](mailto:jfell@stoel.com)

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

3 By e-mail (**preferred**) : datarequest@pacificorp.com  
4 By regular mail : Data Request Response Center  
5 PacifiCorp  
6 825 NE Multnomah, Suite 800  
7 Portland, Oregon, 97232  
8 By facsimile : (503) 813-6060

8 Informal inquiries may also be directed to Laura Beane, Manager, Regulation at  
9 (503) 813-5542.

10 **C. Schedules 37 and 38**

11 Presently, PacifiCorp's standard avoided cost rates for purchases in Oregon from  
12 qualifying facilities ("QFs") are published in its Schedule No. 5. Schedule 37 is designed to  
13 replace PacifiCorp's Schedule No. 5 and be consistent with the Commission's determinations in  
14 Order No. 05-584 (the "Order"). In particular, Schedule 37 is applicable to QF's with total  
15 nameplate capacity of no greater than 10,000 kW, and incorporates the pricing options ordered  
16 by the Commission, utilizing avoided cost determination methodologies adopted by the  
17 Commission. Further, Schedule 37 includes a description of the process for QFs to follow to  
18 enter into a standard form agreement. Proposed Schedule 38 describes the process for QFs larger  
19 than 10 MW to enter into a negotiated power purchase agreement.

20 **D. Standard Form Power Purchase Agreements**

21 Appended to Schedule 37 are PacifiCorp's proposed standard form Power Purchase  
22 Agreements for use with new and existing QFs with a Facility Capacity Rating of 10,000 kW or  
23 less (the "PPAs"). PacifiCorp has drafted the PPAs to conform with the requirements adopted by  
24 the Commission in the Order. The PPAs are also drafted in a manner that will allow their use  
25 with a variety of projects, whether on- or off-system. The proposed PPA for existing QFs is  
26 based on the PPA for new QFs, modified mainly by the deletion of a number of inapplicable

1 provisions. PacifiCorp submits that the PPAs reasonably incorporate the Commission's  
2 determinations and should be approved as the form agreements for use with eligible QFs.

3 PacifiCorp has met with Commission Staff regarding drafts of Schedules 37 and 38, and  
4 the PPA for new QFs, and has made modifications in an effort to address concerns raised by  
5 Staff and reflect suggested changes.

6 WHEREFORE, for the reasons set forth above, PacifiCorp respectfully requests that the  
7 Commission issue an order approving Schedules 37 and 38 and the PPAs submitted herewith.

8 DATED: July 12, 2005.

9 STOEL RIVES LLP

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James F. Fell

12 Attorneys for PacifiCorp  
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**POWER PURCHASE AGREEMENT**

**BETWEEN**

**[a Qualifying Facility with 10MW Design Capacity, or Less]**

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is between \_\_\_\_\_, "Seller" and PacifiCorp, an Oregon corporation acting in its regulated utility capacity, "PacifiCorp." (Seller and PacifiCorp are referred to individually as a "Party" or collectively as the "Parties").

### RECITALS

A. Seller intends to construct, own, operate and maintain a \_\_\_\_\_ [state type of facility] facility for the generation of electric power, including interconnection facilities, located in \_\_\_\_\_ [City, County, State] with a Facility Capacity Rating of \_\_\_\_\_ -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B ("Facility")**; and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on \_\_\_\_\_, 20\_\_\_\_ ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on \_\_\_\_\_, 20\_\_\_\_ ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is \_\_\_\_\_ kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall sell and PacifiCorp shall purchase all Net Output from the Facility in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## 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:

1.1 **“As-built Supplement”** shall be a supplement to **Exhibit A**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **“Average Annual Generation”** shall have the meaning set forth in Section 4.2.

1.3 **“Billing Period”** means the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 **“Commercial Operation Date”** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.4.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.4.2 The Facility has completed Start-Up Testing;

1.4.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), 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 PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;

1.4.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).

1.4.5 Seller has complied with the security requirements of Section 10.



1.5 “**Commission**” means the Oregon Public Utilities Commission.

1.6 “**Contract Price**” means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1 and 5.2.

1.7 “**Contract Year**” means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Expiration Date.

1.8 “**Credit Requirements**” means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.

1.9 “**Default Security**”, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replacetwelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at [specify POD] (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.

1.10 “**Effective Date**” shall have the meaning set forth in Section 2.1.

1.11 “**Energy Delivery Schedule**” shall have the meaning set forth in Section 4.5.

1.12 “**Excess Output**” shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity.

1.13 “**Facility**” shall have the meaning set forth in Recital A.

1.14 “**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.15 “**FERC**” means the Federal Energy Regulatory Commission, or its successor.

1.16 “**Generation Interconnection Agreement**” means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp’s interconnection facilities required to accommodate deliveries of Seller’s Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.17 **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.18 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, 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.

1.19 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.20 **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.21 **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.22 **“Nameplate Capacity Rating”** means the maximum generating capacity, as provided by the manufacturer, in kW, of any qualifying small power or cogeneration unit supplying all or part of the Facility’s Net Output. Voluntary curtailment by Seller of a generating unit cannot reduce the Nameplate Capacity Rating of that unit.

1.23 **“Net Energy”** means the energy component, in kWh, of Net Output.

1.24 **“Net Output”** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.25 **“Net Replacement Power Costs”** shall have the meaning set forth in Section 11.3.1.

1.26 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.27 **“On-Peak Hours”** means the hours between 6 a.m. Pacific Prevailing Time (“PPT”) and 10 p.m. PPT, Mondays through Fridays, excluding all hours occurring on holidays as provided in Schedule 37.

1.28 **“Point of Delivery”** means the high side of the Seller’s step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp’s distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.29 “**Prime Rate**” means the publicly announced prime 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 for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.30 “**Prudent Electrical Practices**” means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.31 “**QF**” means “**Qualifying Facility**,” as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.32 “**Replacement Price**” means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.33 “**Required Facility Documents**” means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.34 “**Schedule 37**” means the Schedule 37 of Pacific Power & Light Company’s Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit F**.

1.35 “**Scheduled Commercial Operation Date**” shall have the meaning set forth in Recital C.

1.36 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.37 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.38 “**Termination Date**” shall have the meaning set forth in Section 2.4.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

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

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By \_\_\_\_\_, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 By \_\_\_\_\_, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on \_\_\_\_\_ [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] (“**Termination Date**”).

## **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 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 PacifiCorp or any valid order of any

court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of \_\_\_\_\_.

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Seller's shareholders, directors and officers have taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 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.

3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status,

a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
- (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations.
- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3 MW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

\_\_\_\_\_ Seller affirms and adopts all warranties of this Section 3.2.7, and therefore is not required to post security under Section 10; or

\_\_\_\_\_ Seller does not affirm and adopt all warranties of this Section 3.2.7, and therefore Seller elects to post the security specified in Section 10 .

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall

provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase all Net Output from the Facility.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, \_\_\_\_\_ kWh per Contract Year (“**Average Annual Generation**”). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of \_\_\_\_\_ kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of \_\_\_\_\_ kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

#### **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of three pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

- \_\_\_\_\_ Fixed Price
- \_\_\_\_\_ Gas Market
- \_\_\_\_\_ Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit F**.

5.2 (Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

- \_\_\_\_\_ Gas Market
- \_\_\_\_\_ Banded Gas Market

- 5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.
- 5.4 PacifiCorp shall pay Seller the Off-peak Price for all Excess Output and for all Net Output delivered prior to the Commercial Operation Date. Such payment will be accomplished by adjustments pursuant to Section 9.2.

## **SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed. Seller shall not increase the Facility 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 Facility Capacity Rating through any means including, but not limited to, replacement of, modification of, or addition of existing equipment, except with the written consent of PacifiCorp.

6.2 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp'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 non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.2 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp 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.

6.3 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably



accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.4 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

#### **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

#### **SECTION 8: METERING**

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy 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 energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests disclose an error exceeding two percent (2%), 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) Billing Periods, 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 following the repair of the meter.

**SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller’s deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller’s future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 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 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.7, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- \_\_\_\_\_ Cash Escrow
- \_\_\_\_\_ Letter of Credit
- \_\_\_\_\_ Senior Lien
- \_\_\_\_\_ Step-in Rights
- \_\_\_\_\_ Seller has adopted the Creditworthiness Warranties of Section 3.2.7.

**[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, 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 posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]**

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

- (a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.
- (b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

10.5 As a condition to providing a Senior Lien or Step-in Rights, Seller shall, before the Scheduled Commercial Operation Date, post and maintain, in an amount reasonably determined by PacifiCorp, a Letter of Credit in favor of PacifiCorp, which PacifiCorp, during the term of this Agreement, can draw upon to satisfy amounts PacifiCorp might reasonably incur in order to satisfy environmental remediation requirements.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

- 11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or

breach by a Party of a representation or warranty set forth in this Agreement.

- 11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;
- 11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.
- 11.1.6 Underdelivery. Seller's failure to satisfy the minimum delivery obligation of Section 4.3.

11.2 Notice; Opportunity to Cure.

- 11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.
- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or

instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

### 11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; provided, however that PacifiCorp shall not terminate for a default under Section 11.1.6 unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

11.3.2 Seller Disqualification. If this Agreement is terminated because of Seller's default, Seller may not require PacifiCorp to purchase energy or capacity from the Facility prior to the Termination Date, and Seller hereby waives its rights to require PacifiCorp to do so. This subsection shall survive the termination of this Agreement.

11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

### 11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated to provide during the period of default ("**Net Replacement Power Costs**"). Amounts owed by Seller pursuant to this

paragraph shall be due within fifteen (15) days after any invoice from PacifiCorp for the same.

11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

**SECTION 12: INDEMNIFICATION AND LIABILITY**

12.1 Indemnities.

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, 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 (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from 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 PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, 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 the energy delivered by Seller under this Agreement after the Point of Delivery, 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, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. 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 PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL NOT BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-:VII" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting



guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

#### **SECTION 14: FORCE MAJEURE**

14.1 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 PacifiCorp 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 fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. 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 event of Force Majeure, after which such Party shall re-commence performance of such obligation, provided that:

14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

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

14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

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

14.3 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.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

#### **SECTION 15: 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 16: 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 17: PARTIAL INVALIDITY**

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.

#### **SECTION 18: 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 19: GOVERNMENTAL JURISDICTIONS 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 PacifiCorp.

**SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

**SECTION 21: SUCCESSORS AND ASSIGNS**

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, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or 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.

**SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp'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.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

**SECTION 23: NOTICES**

23.1 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.

Notices	PacifiCorp	Seller
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232  Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 600 Phone: (503) 813 - 5585	

Notices	PacifiCorp	Seller
	Facsimile: (503) 813 – 5580	
<b>Scheduling:</b>	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 – 6265	
<b>Payments:</b>	(same as street address above) Attn: Back Office, Suite 600 Phone: (503) 813 - 5585 Facsimile: (503) 813 – 5580	
<b>Wire Transfer:</b>	Bank One N.A. ABA: 071000013 ACCT: 55-44688  NAME: PacifiCorp Wholesale	
<b>Credit and Collections:</b>	(same as street address above) Attn: Credit Manager, Suite 1800 Phone: (503) 813 - 5684 Facsimile: (503) 813 – 5609	
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above) Attn: General Counsel. and Legal Counsel Phone: (503) 813-6266 and (801) 220-4568 Facsimile: (503) 813-7262 and (801) 220-3299	

23.2 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 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp

Seller

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A  
DESCRIPTION OF SELLER'S FACILITY  
[Seller to Complete]

Seller's Facility consists of \_\_\_\_\_ generators manufactured by \_\_\_\_\_ . More specifically, each generator at the Facility is described as:

**Type (synchronous or inductive):**

**Model:**

**Number of Phases:**

**Rated Output (kW):**

**Rated Output (kVA):**

**Rated Voltage (line to line):**

**Rated Current (A):** Stator: \_\_\_\_\_ A; Rotor: \_\_\_\_\_ A

**Maximum kW Output:** \_\_\_\_\_ kW      **Maximum kVA Output:** \_\_\_\_\_ kVA

**Minimum kW Output:** \_\_\_\_\_ kW

**Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:**

**Facility Capacity Rating:** \_\_\_\_\_ kW at \_\_\_\_\_

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Location of the Facility:** The Facility is to be constructed in the vicinity of \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_. The location is more particularly described as follows:

[legal description of parcel]

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR):

EXHIBIT B

SELLER'S INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

**POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.

EXHIBIT C  
REQUIRED FACILITY DOCUMENTS

Interconnection Agreement, Wheeling Agreement [if applicable], and [others to be identified]



**EXHIBIT D-1  
SELLER'S MOTIVE FORCE PLAN**

**A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account maintenance and Seller's load (if any).

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate.

**EXHIBIT D-2  
ENGINEER'S CERTIFICATION  
OF  
MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*

## EXHIBIT E

### START-UP TESTING

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable): **[Seller identify appropriate tests]**

1. Pressure tests of all steam system equipment;
2. Calibration of all pressure, level, flow, temperature and monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Insulation resistance and point-to-point continuity tests;
6. Bench tests of all protective devices;
7. Tests required by manufacturer of equipment; and
8. Complete pre-parallel checks with PacifiCorp.

Required start-up tests are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PacifiCorp's electrical system, which may include but are not limited to (as applicable):

1. Turbine/generator mechanical runs including shaft, vibration, and bearing temperature measurements;
2. Running tests to establish tolerances and inspections for final adjustment of bearings, shaft run-outs;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Stator windings dielectric test;
7. Armature and field windings resistance tests;
8. Load rejection tests in incremental stages from 5, 25, 50, 75 and 100 percent load;
9. Heat runs;
10. Tests required by manufacturer of equipment;
11. Excitation and voltage regulation operation tests;
12. Open circuit and short circuit; saturation tests;
13. Governor system steady state stability test;
14. Phase angle and magnitude of all PT and CT secondary voltages and currents to protective relays, indicating instruments and metering;
15. Auto stop/start sequence;
16. Level control system tests; and
17. Completion of all state and federal environmental testing requirements.

**EXHIBIT F**  
**SCHEDULE 37 and PRICING SUMMARY TABLE**

**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF 10,000 KW OR LESS**

**OREGON**  
**SCHEDULE 37**

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

For power purchased from Qualifying Facilities with a nameplate capacity of 10,000 kW or less. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

**Definitions****Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

**On-Peak Hours or Peak Hours**

On-peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Holidays include only New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be the holiday and will be Off-peak.

**Off-Peak Hours**

All hours other than On-Peak.

**Opal Gas Market Index**

The monthly indexed gas price shall be from Platts "Gas Daily Price Guide" for gas deliveries to Northwest Pipeline Corp at the Rocky Mountains.

**Excess Output**

Excess output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-peak Price for all Excess Output.

(Continued)

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**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF 10,000 KW OR LESS**

**OREGON**  
**SCHEDULE 37**  
Page 2

**Pricing Options**

**1. Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under either Banded Gas Market Indexed Avoided Cost Prices or Gas Market Indexed Avoided Cost Prices.

**2. Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2005 through 2009), thereafter a portion of avoided cost prices are indexed to actual Opal monthly gas market index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Prices are available for a term of up to 20 years.

**3. Banded Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2005 through 2009), thereafter a portion of avoided cost prices are indexed to actual Opal monthly gas market index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. The gas indexed portion of the avoided cost prices are banded to limit the amount that prices can vary with changes in gas prices. Prices are available for a term of up to 20 years.

**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of three Pricing Options as specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the fixed prices as provided in this tariff. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

**Gas Market Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the Opal Gas Market Index price in \$/MMBtu by 0.76 to get actual gas price in cents/kWh. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

(Continued)

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**PACIFIC POWER & LIGHT COMPANY**  
AVOIDED COST PURCHASES FROM QUALIFYING  
FACILITIES OF 10,000 KW OR LESS

Attachment A  
Page 39  
**OREGON**  
**SCHEDULE 37**  
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**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF 10,000 KW OR LESS**

**OREGON**  
**SCHEDULE 37**

**Monthly Payments (Continued)****Banded Gas Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the Opal Gas Market Index price in \$/MMBtu by 0.76 to get actual gas price in cents/kWh. This price is banded such that the actual gas price shall be no lower than the Gas Market Index Floor nor greater than the Gas Market Index Ceiling as listed in the price section of this tariff. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Avoided Cost Prices****Pricing Option 1 – Fixed Avoided cost Prices ¢/kWh**

Deliveries During Calendar Year	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)
2005	7.13	5.98
2006	6.36	5.27
2007	5.96	4.87
2008	5.58	4.63
2009	5.26	4.33
2010	6.21	4.30
2011	6.54	4.57
2012	7.13	5.11
2013	7.43	5.35
2014	7.52	5.37
2015	7.66	5.45
2016	7.86	5.59
2017	8.07	5.73
2018	8.27	5.86
2019	8.50	6.02
2020	8.72	6.17
2021	8.97	6.33
2022	9.23	6.49
2023	9.49	6.66
2024	9.75	6.82
2025	10.03	7.00
2026	10.31	7.18
2027	10.60	7.36
2028	10.90	7.55

(Continued)

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Advice No. 05-006

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**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF 10,000 KW OR LESS**

**OREGON**  
**SCHEDULE 37**

**Avoided Cost Prices (Continued)****Pricing Option 2 – Gas Market Indexed Avoided Cost Prices ¢/kWh**

(N)

Deliveries During Calendar Year	Fixed Prices		Gas Market Index		Forecast Opal Gas Index Price (2) \$/MMBtu	Estimated Prices (3)	
	On-Peak Energy Price (a)	Off-Peak Energy Price (b)	On-Peak Capacity Adder (1) (c)	Off-Peak Energy Adder (d)		On-Peak Energy Price (f)	Off-Peak Energy Price (g)
			Avoided Firm Capacity Costs / (0.876 * 84.2% * 57%)	Total Avoided Energy Costs - ((e) * 0.76)		(g) + (c)	((e) * 0.76) + (d)
2005	7.13	5.98					
2006	6.36	5.27					
2007	5.96	4.87					
2008	5.58	4.63					
2009	5.26	4.33					
			Market Based Prices 2005 through 2009				
2010			1.91	0.38	\$5.16	6.21	4.30
2011			1.97	0.40	\$5.49	6.54	4.57
2012			2.02	0.42	\$6.17	7.13	5.11
2013			2.08	0.42	\$6.48	7.43	5.35
2014			2.14	0.42	\$6.51	7.52	5.37
2015			2.21	0.44	\$6.60	7.66	5.45
2016			2.27	0.45	\$6.77	7.86	5.59
2017			2.34	0.45	\$6.95	8.07	5.73
2018			2.41	0.45	\$7.12	8.27	5.86
2019			2.48	0.46	\$7.31	8.50	6.02
2020			2.55	0.47	\$7.50	8.72	6.17
2021			2.64	0.48	\$7.70	8.97	6.33
2022			2.73	0.49	\$7.90	9.23	6.49
2023			2.83	0.50	\$8.10	9.49	6.66
2024			2.93	0.51	\$8.31	9.75	6.82
2025			3.03	0.52	\$8.53	10.03	7.00
2026			3.13	0.53	\$8.75	10.31	7.18
2027			3.24	0.54	\$8.98	10.60	7.36
2028			3.35	0.55	\$9.21	10.90	7.55

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2004 IRP.  
(2) A heat rate of 0.76 is used to adjust gas prices from \$/MMBtu to ¢/kWh  
(3) Estimated avoided cost prices based upon forecast Opal Gas Market Index prices.  
Actual prices will be calculated each month using actual Opal Gas Market Index prices.

(Continued)

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**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF 10,000 KW OR LESS**

**OREGON**  
**SCHEDULE 37**  
 Page 5

**Avoided Cost Prices (Continued)**

**Pricing Option 3 – Banded Gas Market Indexed Avoided Cost Prices ¢/kWh**

(N)

Deliveries During Calendar Year	Fixed Prices		Banded Gas Market Index				Forecast	Estimated Prices (3)	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Capacity Adder (1)	Off-Peak Energy Adder	Gas Market Index		Opal Gas Index Price (2) \$/MMBtu	On-Peak Energy Price	Off-Peak Energy Price
					Floor 90%	Ceiling 110%			
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Avoided Firm Capacity Costs /(0.876 * 84.2% * 57%)			Total Avoided Energy Costs - ((e) * 0.76)		(g) * 0.76 * 90%	(g) * 0.76 * 110%	(i) + (c)	MIN(MAX(((g) * 0.76), (e)), (f)) + (d)	

2005	7.13	5.98	Market Based Prices 2005 through 2009							
2006	6.36	5.27								
2007	5.96	4.87								
2008	5.58	4.63								
2009	5.26	4.33								
2010			1.91	0.38	3.53	4.31	\$5.16	6.21	4.30	
2011			1.97	0.40	3.75	4.59	\$5.49	6.54	4.57	
2012			2.02	0.42	4.22	5.16	\$6.17	7.13	5.11	
2013			2.08	0.42	4.43	5.42	\$6.48	7.43	5.35	
2014			2.14	0.42	4.45	5.44	\$6.51	7.52	5.37	
2015			2.21	0.44	4.51	5.51	\$6.60	7.66	5.45	
2016			2.27	0.45	4.63	5.66	\$6.77	7.86	5.59	
2017			2.34	0.45	4.75	5.81	\$6.95	8.07	5.73	
2018			2.41	0.45	4.87	5.96	\$7.12	8.27	5.86	
2019			2.48	0.46	5.00	6.11	\$7.31	8.50	6.02	
2020			2.55	0.47	5.13	6.27	\$7.50	8.72	6.17	
2021			2.64	0.48	5.27	6.44	\$7.70	8.97	6.33	
2022			2.73	0.49	5.40	6.60	\$7.90	9.23	6.49	
2023			2.83	0.50	5.54	6.77	\$8.10	9.49	6.66	
2024			2.93	0.51	5.69	6.95	\$8.31	9.75	6.82	
2025			3.03	0.52	5.83	7.13	\$8.53	10.03	7.00	
2026			3.13	0.53	5.99	7.32	\$8.75	10.31	7.18	
2027			3.24	0.54	6.14	7.51	\$8.98	10.60	7.36	
2028			3.35	0.55	6.30	7.70	\$9.21	10.90	7.55	

(1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2004 IRP.

(2) A heat rate of 0.76 is used to adjust gas prices from \$/MMBtu to ¢/kWh

(3) Estimated avoided cost prices based upon forecast Opal Gas Market Index prices.

Actual prices will be calculated each month using actual Opal Gas Market Index prices.

(Continued)

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**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF 10,000 KW OR LESS**

**Example of Pricing Options available to the Qualifying Facility**

An example of the three pricing options using different assumed gas prices is available at the Company web site.

**Qualifying Facilities Contracting Procedure**

**1. Qualifying Facilities up to 10,000 kW**

**APPLICATION:** To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement**

**A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

Pacific Power & Light Company  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - a) demonstration of ability to obtain QF status;

(Continued)

Issued:	July 12, 2005	P.U.C. OR No. 35
Effective:	With service rendered on and after August 11, 2005	Original Sheet No. 37-6

Issued By  
D. Douglas Larson, Vice President, Regulation

(N)

(N)

**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF 10,000 KW OR LESS**

**B. Procedures (Continued)**

- b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - c) generation technology and other related technology applicable to the site;
  - d) proposed site location;
  - e) schedule of monthly power deliveries;
  - f) calculation or determination of minimum and maximum annual deliveries;
  - g) motive force or fuel plan;
  - h) proposed on-line date and other significant dates required to complete the milestones;
  - i) proposed contract term and pricing provisions (i.e., fixed, deadband, gas indexed);
  - j) status of interconnection or transmission arrangements;
  - k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Oregon Public Utilities Commission in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement.
5. After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 14 days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase

(N)

(N)

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D. Douglas Larson, Vice President, Regulation

**PACIFIC POWER & LIGHT COMPANY**  
AVOIDED COST PURCHASES FROM QUALIFYING  
FACILITIES OF 10,000 KW OR LESS

Attachment A  
Page 45  
**OREGON**  
**SCHEDULE 37**  
Page 7

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agreement will not be final and binding until the power purchase agreement has been executed by both parties.

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TF1 37-7.NEW

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D. Douglas Larson, Vice President, Regulation

Advice No. 05-006

**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF GREATER THAN 10,000 KW**

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

For power purchased from Qualifying Facilities with a nameplate capacity greater than 10,000 kW. Owners of these Qualifying Facilities will be required to enter into a negotiated written power purchase agreement with the Company. Pursuant to Order No. 05-584, the pricing options specified in Schedule 37 should serve as a starting point for prices under a negotiated power purchase agreement.

**Definitions**

**Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

**On-Peak Hours or Peak Hours**

On-peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Holidays include only New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be the holiday and will be Off-peak.

**Off-Peak Hours**

All hours other than On-Peak.

**Excess Output**

Excess output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-peak Price for all Excess Output.

(Continued)

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(N)

(N)

**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF GREATER THAN 10,000 KW**

**OREGON**  
**SCHEDULE 38**  
Page 2

**Qualifying Facilities Contracting Procedure**

**A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

Pacific Power & Light Company  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

**B. Procedures**

1. The Company's proposed generic power purchase agreement may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request."
2. To obtain an indicative pricing proposal with respect to a proposed project, the owner must provide in writing to the Company, general project information reasonably required for the development of indicative pricing, including, but not limited to:
  - a) generation technology and other related technology applicable to the site
  - b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system
  - c) quantity and timing of monthly power deliveries (including project ability to respond to dispatch orders from the Company)
  - d) proposed site location and electrical interconnection point
  - e) proposed on-line date and outstanding permitting requirements
  - f) demonstration of ability to obtain QF status
  - g) fuel type (s) and source (s)
  - h) plans for fuel and transportation agreements
  - i) proposed contract term and pricing provisions (i.e., fixed, deadband, gas indexed)
  - j) status of interconnection arrangements

(Continued)

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D. Douglas Larson, Vice President, Regulation

**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF GREATER THAN 10,000 KW**

**OREGON**  
**SCHEDULE 38**  
Page 3

**B. Procedures (Continued)**

3. The Company shall not be obligated to provide an indicative pricing proposal until all information described in Paragraph 2 has been received in writing from the QF owner. Within 30 days following receipt of all information required in Paragraph 2, the Company will provide the owner with an indicative pricing proposal, which may include other indicative terms and conditions, tailored to the individual characteristics of the proposed project. Such proposal may be used by the owner to make determinations regarding project planning, financing and feasibility. However, such prices are merely indicative and are not final and binding. Prices and other terms and conditions are only final and binding to the extent contained in a power purchase agreement executed by both parties. The Company will provide with the indicative prices a description of the methodology used to develop the prices. Prices specified in Schedule 37 will provide a starting point for negotiated prices, and will be modified to address specific factors mandated by federal and state law, including the following factors, to the extent practicable:
- a) The data provided pursuant to 18 CFR § 292.302(b), (c), or (d), including State review of any such data;
  - b) The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:
    - i. The ability of PacifiCorp to dispatch the qualifying facility;
    - ii. The expected or demonstrated reliability of the qualifying facility;
    - iii. The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non-compliance;
    - iv. The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of PacifiCorp's facilities;
    - v. The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;
    - vi. The individual and aggregate value of energy and capacity from qualifying facilities on PacifiCorp's system; and
    - vii. The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities; and
  - c) The relationship of the availability of energy or capacity from the qualifying facility as derived in part (3) (b) of this Paragraph, to the ability of PacifiCorp to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and
  - d) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if PacifiCorp generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

(Continued)

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D. Douglas Larson, Vice President, Regulation



**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF GREATER THAN 10,000 KW**

**OREGON**  
**SCHEDULE 38**  
Page 4

**B. Procedures (Continued)**

4. If the owner desires to proceed forward with the project after reviewing the Company's indicative proposal, it may request in writing that the Company prepare a draft power purchase agreement to serve as the basis for negotiations between the parties. In connection with such request, the owner must provide the Company with any additional project information that the Company reasonably determines to be necessary for the preparation of a draft power purchase agreement, which may include, but shall not be limited to:
- a) updated information of the categories described in Paragraph B.2,
  - b) evidence of adequate control of proposed site
  - c) identification of, and timelines for obtaining any necessary governmental permits, approvals or authorizations
  - d) assurance of fuel supply or motive force
  - e) anticipated timelines for completion of key project milestones
  - f) evidence that any necessary interconnection studies have been completed and assurance that the necessary interconnection arrangements are being made in accordance with Part II.
5. The Company shall not be obligated to provide the owner with a draft power purchase agreement until all information required pursuant to Paragraph 4 has been received by the Company in writing. Within 30 days following receipt of all information required pursuant to paragraph 4, the Company shall provide the owner with a draft power purchase agreement containing a comprehensive set of proposed terms and conditions, including a specific pricing proposal for purchases from the project. Such draft shall serve as the basis for subsequent negotiations between the parties and, unless clearly indicated, shall not be construed as a binding proposal by the Company.
6. After reviewing the draft power purchase agreement, the owner may prepare an initial set of written comments and proposals regarding the draft power purchase agreement and forward such comments and proposals to the Company. The Company shall not be obligated to commence negotiations with a QF owner until the Company has received an initial set of written comments and proposals from the QF owner. Following the Company's receipt of such comments and proposals, the owner may contact the Company to schedule contract negotiations at such times and places as are mutually agreeable to the parties. In connection with such negotiations, the Company:
- a) will not unreasonably delay negotiations and will respond in good faith to any additions, deletions or modifications to the draft power purchase agreement that are proposed by the owner
  - b) may request to visit the site of the proposed project if such a visit has not previously occurred

(Continued)

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Issued By  
D. Douglas Larson, Vice President, Regulation

**PACIFIC POWER & LIGHT COMPANY**  
**AVOIDED COST PURCHASES FROM QUALIFYING**  
**FACILITIES OF GREATER THAN 10,000 KW**

**B. Procedures (Continued)**

- c) will update its pricing proposals at appropriate intervals to accommodate any changes to the Company's avoided-cost calculations, the proposed project or proposed terms of the draft power purchase agreement
- d) may request any additional information from the owner necessary to finalize the terms of the power purchase agreement and satisfy the Company's due diligence with respect to the project.

7. When both parties are in full agreement as to all terms and conditions of the power purchase agreement, the Company will prepare and forward to the owner a final, executable version of the agreement. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

(N)

(N)

Issued: July 12, 2005

P.U.C. OR No. 35

Effective: With service rendered on and after August 11, 2005

Original Sheet No. 38-5

Issued By

D. Douglas Larson, Vice President, Regulation

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July, 2005, I caused to be served, via US Mail or email to those with an email address, a true and correct copy of PacifiCorp's filing in Docket No. UM-1129.

R THOMAS BEACH -- <b>CONFIDENTIAL</b> CROSSBORDER ENERGY 2560 NINTH ST, STE 316 BERKELEY CA 94710 tomb@crossborderenergy.com	JIM FELL STOEL RIVES 900 SW FIFTH AVENUE, SUITE 2600 PORTLAND OR 97204 jrboose@stoel.com
JACK BREEN PUBLIC UTILITY COMMISSION PO BOX 2148 SALEM OR 97308-2148 jack.breen@state.or.us	BRIAN COLE SYMBIOTICS, LLC PO BOX 1088 BAKER CITY OR 97814 bc@orbisgroup.org
BRUCE CRAIG ASCENERGY CORP 440 BENMAR DR STE 2230 HOUSTON TX 77060 bcraig@asc-co.com	CHRIS CROWLEY COLUMBIA ENERGY PARTNERS PO BOX 1000 LA CENTER WA 98629 ccrowley@columbiaep.com
CAREL DE WINKEL OREGON DEPARTMENT OF ENERGY 625 MARION STREET NE SALEM OR 97301 carel.dewinkel@state.or.us	CRAIG DEHART MIDDLEFORK IRRIGATION DISTRICT PO BOX 291 PARKDALE OR 97041 mfidcraig@hoodriverelectric.net
ELIZABETH DICKSON HURLEY, LYNCH & RE, PC 747 SW MILL VIEW WAY BEND OR 97702 eadickson@hlr-law.com	J RICHARD GEORGE -- <b>CONFIDENTIAL</b> PORTLAND GENERAL ELECTRIC COMPANY 121 SW SALMON ST PORTLAND OR 97204 richard.george@pgn.com
THOMAS M GRIM CABLE HUSTON BENEDICT ET AL 1001 SW FIFTH AVE STE 2000 PORTLAND OR 97204-1136 tgrim@chbh.com	DAVID HAWK J R SIMPLOT COMPANY PO BOX 27 BOISE ID 83707 david.hawk@simplot.com
STEVEN C JOHNSON CENTRAL OREGON IRRIGATION DISTRICT 2598 NORTH HIGHWAY 97 REDMOND OR 97756 stevej@coid.org	BARTON L KLINE IDAHO POWER COMPANY PO BOX 70 BOISE ID 83707-0070 bkline@idahopower.com
DOUG KUNS -- <b>CONFIDENTIAL</b> PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTCO702 PORTLAND OR 97204 doug.kuns@pgn.com	ALAN MEYER -- <b>CONFIDENTIAL</b> WEYERHAEUSER COMPANY 698 12TH STREET, SUITE 220 SALEM OR 97301-4010 alan.meyer@weyerhaeuser.com
MONICA B MOEN IDAHO POWER COMPANY PO BOX 70 BOISE ID 83707-0070 mmoen@idahopower.com	JANET L PREWITT DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM OR 97301-4096 janet.prewitt@doj.state.or.us
PETER J RICHARDSON RICHARDSON & O'LEARY PO BOX 7218 BOISE ID 83707 peter@richardsonandoleary.com	IRION SANGER -- <b>CONFIDENTIAL</b> DAVISON VAN CLEVE 333 SW TAYLOR, STE 400 PORTLAND OR 97204 ias@dvclaw.com

DONALD W SCHOENBECK -- <b>CONFIDENTIAL</b> REGULATORY & COGENERATION SERVICES INC 900 WASHINGTON ST STE 780 VANCOUVER WA 98660-3455 dws@r-c-s-inc.com	MARK TALLMAN PACIFICORP 825 MULTNOMAH STE 800 PORTLAND OR 97232-2153 mark.tallman@pacificcorp.com
S BRADLEY VAN CLEVE -- <b>CONFIDENTIAL</b> DAVISON VAN CLEVE PC 333 SW TAYLOR, STE 400 PORTLAND OR 97204 mail@dvclaw.com	MICHAEL T WEIRICH -- <b>CONFIDENTIAL</b> DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 michael.weirich@state.or.us
LINDA K WILLIAMS KAFOURY & MCDUGAL 10266 SW LANCASTER RD PORTLAND OR 97219-6305 linda@lindawilliams.net	PAUL WOODIN WESTERN WIND POWER 282 LARGENT LN GOLDENDALE WA 98620 pwoodin@gorge.net
LAURA BEANE PACIFIC POWER & LIGHT 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 paul.wrigley@pacificcorp.com	

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Debbie DePetris  
Regulatory Operations Coordinator

## **Attachment B**

**Idaho Power's Order No. 05-584 Compliance Filing,  
Tariff Schedule No. 85  
(filed July 12, 2005)**



IDAHO POWER COMPANY  
P.O. BOX 70  
BOISE, IDAHO 83707

Attachment B  
Page 1  
**MONICA B. MOEN**  
Senior Attorney

July 12, 2005

Public Utility Commission of Oregon  
Attn: Filing Center  
550 Capitol Street NE, Suite 215  
P.O. Box 2148  
Salem, OR 97308-2148

Re: Docket No. UM 1129

Dear Sir or Madam:

Enclosed please find Idaho Power Company's Application regarding the above-described docket.

Very truly yours,

Monica B. Moen

MBM:jb  
Enclosure

c: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket No. UM 1129**

In the Matter of	)	
	)	
PUBLIC UTILITY COMMISSION	)	APPLICATION OF
OF OREGON	)	IDAHO POWER COMPANY
	)	
Staff's Investigation Relating to	)	Advice No. 05-06
Electric Utility Purchases from	)	
Qualifying Facilities	)	
_____	)	

Idaho Power Company ("Idaho Power" or "Company"), in accordance with the provisions of OAR 860-013-0010 and Order No. 05-584 entered by the Public Utility Commission of Oregon ("Commission") on May 13, 2005, hereby submits its Standard Contract setting forth the standard rates, terms and conditions consistent with the policy decisions made in Order No. 05-584 as well as Idaho Power's Schedule 85, Cogeneration and Small Power Production Standard Contract Rates." This filing implements the resolutions made in Order No. 05-584.

By way of this Application, Idaho Power also respectfully requests that the Commission cancel Idaho Power's Schedule 86, "Cogeneration and Small Power Production Non-Firm Energy."

### NOTICES

In accordance with OAR 860-013-0070, Idaho Power waives service by means other than by electronic mail. Consistent with that waiver, Idaho Power requests that the following receive notices and communications in respect to this Application:

Barton L. Kline  
Senior Attorney  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707-0070  
[bkline@idahopower.com](mailto:bkline@idahopower.com)

Randy Allphin  
Contract Administrator  
Power Supply Planning  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707-0070  
[rallphin@idahopower.com](mailto:rallphin@idahopower.com)

Lisa F. Rackner  
Ater Wynne LLP  
222 S.W. Columbia  
Suite 1800  
Portland, OR 97201-6618  
[lfr@aterwynne.com](mailto:lfr@aterwynne.com)

Karl Bokenkamp  
General Manager  
Power Supply Planning  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707-0070  
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Joanne M. Butler  
Legal Administrative Assistant  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707-0070  
[jbutler@idahopower.com](mailto:jbutler@idahopower.com)

Michael Youngblood  
Regulatory Affairs Representative  
Pricing and Regulatory Dept.  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707-0070  
[myoungblood@idahopower.com](mailto:myoungblood@idahopower.com)

WHEREFORE, Idaho Power respectfully requests that, (1) consistent with the terms of Order No. 05-584, the Standard Contract and Schedule 85, attached hereto as Attachments 1 and 2, respectively, become effective thirty (30) days after the date of



filing, unless otherwise suspended by the Commission and (2) Schedule 86, attached hereto as Attachment 3, be canceled by the Commission.

Respectfully submitted this 12<sup>th</sup> day of July 2005.



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Monica B. Moen  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, ID 83701  
(208) 388-2682  
(208) 388-6936 (FAX)  
[BKline@idahopower.com](mailto:BKline@idahopower.com)

Lisa F. Rackner  
Ater Wynne LLP  
222 S.W. Columbia Street, Suite 1800  
Portland, OR 97201-6618  
(503) 226-8693  
(503) 226-0079 (FAX)  
[lfr@aterwynne.com](mailto:lfr@aterwynne.com)  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of July 2005, I served a true and correct copy of the within and foregoing Application upon the following named parties by the method(s) indicated below, and addressed to the following:

R. THOMAS BEACH – <b>CONFIDENTIAL</b>	<input type="checkbox"/>	Hand Delivered
CROSSBORDER ENERGY	<input checked="" type="checkbox"/>	U.S. Mail
2560 NINTH ST, STE 316	<input type="checkbox"/>	Overnight Mail
BERKELEY CA 94710	<input type="checkbox"/>	FAX
<a href="mailto:tomb@crossborderenergy.com">tomb@crossborderenergy.com</a>	<input checked="" type="checkbox"/>	E-mail
JUSTIN BOOSE	<input type="checkbox"/>	Hand Delivered
STOEL RIVES	<input checked="" type="checkbox"/>	U.S. Mail
900 SW FIFTH AVENUE, SUITE 2600	<input type="checkbox"/>	Overnight Mail
PORTLAND OR 97204	<input type="checkbox"/>	FAX
<a href="mailto:jrboose@stoel.com">jrboose@stoel.com</a>	<input checked="" type="checkbox"/>	E-mail
JACK BREEN	<input type="checkbox"/>	Hand Delivered
PUBLIC UTILITY COMMISSION	<input checked="" type="checkbox"/>	U.S. Mail
PO BOX 2148	<input type="checkbox"/>	Overnight Mail
SALEM OR 97308-2148	<input type="checkbox"/>	FAX
<a href="mailto:jack.breen@state.or.us">jack.breen@state.or.us</a>	<input checked="" type="checkbox"/>	E-mail
BRIAN COLE	<input type="checkbox"/>	Hand Delivered
SYMBIOTICS, LLC	<input checked="" type="checkbox"/>	U.S. Mail
PO BOX 1088	<input type="checkbox"/>	Overnight Mail
BAKER CITY OR 97814	<input type="checkbox"/>	FAX
<a href="mailto:bc@orbisgroup.org">bc@orbisgroup.org</a>	<input checked="" type="checkbox"/>	E-mail
BRUCE CRAIG	<input type="checkbox"/>	Hand Delivered
ASCENTERGY CORP	<input checked="" type="checkbox"/>	U.S. Mail
440 BENMAR DR STE 2230	<input type="checkbox"/>	Overnight Mail
HOUSTON TX 77060	<input type="checkbox"/>	FAX
<a href="mailto:bcraig@asc-co.com">bcraig@asc-co.com</a>	<input checked="" type="checkbox"/>	E-mail
CHRIS CROWLEY	<input type="checkbox"/>	Hand Delivered
COLUMBIA ENERGY PARTNERS	<input checked="" type="checkbox"/>	U.S. Mail
PO BOX 1000	<input type="checkbox"/>	Overnight Mail
LA CENTER WA 98629	<input type="checkbox"/>	FAX
<a href="mailto:ccrowley@columbiaep.com">ccrowley@columbiaep.com</a>	<input checked="" type="checkbox"/>	E-mail
CAREL DE WINKEL	<input type="checkbox"/>	Hand Delivered
OREGON DEPARTMENT OF ENERGY	<input checked="" type="checkbox"/>	U.S. Mail
625 MARION STREET NE	<input type="checkbox"/>	Overnight Mail
SALEM OR 97301	<input type="checkbox"/>	FAX
<a href="mailto:carel.dewinkel@state.or.us">carel.dewinkel@state.or.us</a>	<input checked="" type="checkbox"/>	E-mail
CRAIG DEHART	<input type="checkbox"/>	Hand Delivered

MIDDLEFORK IRRIGATION DISTRICT PO BOX 291 PARKDALE OR 97041 <a href="mailto:mfidcraig@hoodriverelectric.net">mfidcraig@hoodriverelectric.net</a>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail Overnight Mail FAX E-mail
ELIZABETH DICKSON HURLEY, LYNCH & RE, PC 747 SW MILL VIEW WAY BEND OR 97702 <a href="mailto:eadickson@hlr-law.com">eadickson@hlr-law.com</a>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	Hand Delivered U.S. Mail Overnight Mail FAX E-mail
J RICHARD GEORGE -- <b>CONFIDENTIAL</b> PORTLAND GENERAL ELECTRIC COMPANY 121 SW SALMON ST PORTLAND OR 97204 <a href="mailto:richard.george@pgn.com">richard.george@pgn.com</a>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	Hand Delivered U.S. Mail Overnight Mail FAX E-mail
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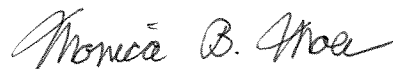
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MONICA B. MOEN  
Attorney for Idaho Power Company

# **ATTACHMENT 1**

ENERGY SALES AGREEMENT  
BETWEEN  
IDAHO POWER COMPANY  
AND

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ENERGY SALES AGREEMENT  
(10 MW or Less)

Project Number: \_\_\_\_\_

THIS AGREEMENT, entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ between \_\_\_\_\_, a \_\_\_\_\_ company (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

WITNESSETH:

WHEREAS, Seller will design, construct, own, maintain and operate an electric generation facility; and

WHEREAS, Seller wishes to sell, and Idaho Power is willing to purchase, electric energy produced by the Seller's Facility.

THEREFORE, In consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

ARTICLE I: DEFINITIONS

As used in this Agreement and the appendices attached hereto, the following terms shall have the following meanings:

- 1.1 "Commission" - The Oregon Public Utility Commission.
- 1.2 "Contract Year" - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.
- 1.3 "Designated Dispatch Facility" - Idaho Power's Systems Operations Group, or any subsequent group designated by Idaho Power.
- 1.4 "Facility" - That electric generation facility described in Appendix B of this Agreement.
- 1.5 "First Energy Date" - The day commencing at 0001 hours, Mountain Time, following the day that Seller has satisfied the requirements of Article IV and the Seller begins delivering energy to Idaho Power's system at the Point of Delivery.



- 1.6 “Generation Interconnection Process” – Idaho Power’s generation interconnection application and engineering review process developed to ensure a safe and reliable generation interconnection in compliance with all applicable regulatory requirements, Prudent Electrical Practices and national safety standards.
- 1.7 “Losses” – The loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the point where the Facility’s energy is metered and the point the Facility’s energy is delivered to the Idaho Power electrical system. The loss calculation formula will be as specified in Appendix B of this Agreement.
- 1.8 “Market Energy Cost” – Eighty-five percent (85%) of the weighted average of the daily on-peak and off-peak Dow Jones Mid-Columbia Index (Dow Jones Mid-C Index) prices for non-firm energy. If the Dow Jones Mid-Columbia Index price is discontinued by the reporting agency, both Parties will mutually agree upon a replacement index, which is similar to the Dow Jones Mid-Columbia Index. The selected replacement index will be consistent with other similar agreements and a commonly used index by the electrical industry.
- 1.9 “Material Breach” – A Default (paragraph 18.2.1) subject to paragraph 18.2.2.
- 1.10 “Nameplate Capacity” – The generation capacity (MW) of the Facility as rated by the manufacturer and verified in accordance with paragraph 4.1.2. The Nameplate Capacity may not exceed 10 MW.
- 1.11 “Net Energy” – Electric energy produced by the Facility, less Station Use and Losses, expressed in kilowatt hours (kWh) that is less than or equal to the Nameplate Capacity that Seller commits to deliver to Idaho Power at the Point of Delivery for the full term of the Agreement.
- 1.12 “Net Energy Amounts” – Monthly Net Energy amounts that the Seller estimates the Facility will deliver to Idaho Power at the Point of Delivery. The Seller shall use all available information (equipment characteristics, resource characteristics and data, Facility design, etc) to accurately estimate the Monthly Net Energy Amounts. These Net Energy Amounts as specified in paragraph 6.2.1 will be used to calculate the monthly Shortfall Energy quantities within this Agreement.

- 1.13 “Operation Date” – The day commencing at 0001 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed.
- 1.14 “Point of Delivery” – The location specified in Appendix B, where Idaho Power’s and the Seller’s electrical facilities are interconnected.
- 1.15 “Prudent Electrical Practices” – Those practices, methods and equipment that are commonly and ordinarily used in electrical engineering and operations to operate electric equipment lawfully, safely, dependably, efficiently and economically.
- 1.16 “Schedule 85” – Idaho Power’s Oregon Tariff No E-25, Schedule 85, dated *mm/dd/yy* or its successor schedules as approved by the Commission.
- 1.17 “Scheduled Operation Date” – The date specified in Appendix B when Seller anticipates achieving the Operation Date.
- 1.18 “Season” – The three periods identified in Schedule 85.
- 1.19 “Shortfall Energy” – The difference (kWh) between the monthly actual Net Energy delivered to Idaho Power and the Monthly Net Energy Amounts specified in paragraph 6.2 of this Agreement.
- 1.20 “Station Use” – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.
- 1.21 “Surplus Energy” – (1) All Net Energy produced by the Seller’s Facility and delivered by the Facility to the Idaho Power electrical system that exceeds the Nameplate Capacity of the Facility but is less than the Maximum Capacity of the Facility or (2) All Net Energy produced by the Seller’s Facility and delivered by the Facility to the Idaho Power electrical system prior to the Operation Date and is less than the Maximum Capacity of the Facility.
- 1.22 “Total Cost of the Facility” - The total cost of structures, equipment and appurtenances.

## ARTICLE II: NO RELIANCE ON IDAHO POWER

- 2.1 Seller Independent Investigation - Seller warrants and represents to Idaho Power that in entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon

the advice, experience or expertise of Idaho Power in connection with the transactions contemplated by this Agreement.

- 2.2 Seller Independent Experts - All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

### ARTICLE III: WARRANTIES

- 3.1 No Warranty by Idaho Power - Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Idaho Power and Idaho Power makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.
- 3.2 Qualifying Facility Status - Seller warrants that the Facility is a "Qualifying Facility," as that term is used and defined in 18 CFR §292.207. Seller's failure to maintain the Facility and operations of the Facility in a manner consistent with the initial Qualifying Facility certificate will be a Material Breach of this Agreement. Idaho Power reserves the right to review the Seller's Qualifying Facility status and associated support and compliance documents at anytime during the term of this Agreement.
- 3.3 FERC License (*only applies to hydro projects*)- Seller warrants that Seller possesses a valid license or exemption from licensing from the Federal Energy Regulatory Commission ("FERC") for the Facility. Seller recognizes that Seller's possession and retention of a valid FERC license or exemption is a material part of the consideration for Idaho Power's execution of this Agreement. Seller will take such steps as may be required to maintain a valid FERC license or exemption for the Facility during the term of this Agreement, and Seller's failure to maintain a valid FERC license or exemption will be a material breach of this Agreement.

ARTICLE IV: CONDITIONS TO ACCEPTANCE OF ENERGY

- 4.1 Prior to the First Energy Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller, Seller shall:
- 4.1.1 Submit proof to Idaho Power that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 CFR 292.207.
- 4.1.2 Nameplate Capacity Determination - Submit to Idaho Power such data as Idaho Power may reasonably require to confirm the manufacturer's Nameplate Capacity rating of the Facility. Such data will include but not be limited to, equipment specifications, power factor assumptions, and any other data that would allow Idaho Power to verify the manufacturer's nameplate rating of this Facility. Upon receipt of this information, Idaho Power will review the provided data and if necessary, request additional data to complete the verification process within a reasonable time.
- 4.1.3 Engineer's Certifications - Submit an executed Engineer's Certification of Design & Construction Adequacy and an Engineer's Certification of Operations and Maintenance (O&M) Policy. These certificates will be in the form specified in Appendix C but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.
- 4.1.4 Insurance - Submit written proof to Idaho Power of all insurance required in Article XI.
- 4.1.5 Interconnection – Provide written proof to Idaho Power that all Generation Interconnection Process requirements have been completed. The entire completed Generation Interconnection Process, including, but not limited to, the equipment specifications and requirements will be included by reference in this Agreement.
- 4.1.6 Security Requirements – Provide Idaho Power with commercially reasonable representations and warranties and other documentation to determine the Seller's creditworthiness. Such documentation would include, at a minimum, that the Seller is current on existing debt obligations and has not been a debtor in a bankruptcy preceding

within the preceding two years. Upon receipt of this information, Idaho Power will review the provided data and, if necessary, request additional data and/or will provide written confirmation or rejection of the provided data within a reasonable time. In lieu of providing evidence of acceptable creditworthiness, the Seller may provide Idaho Power with commercially reasonable security instruments such as letter of credit, senior lien rights, step-in-rights, escrow accounts or other forms of liquid financial security that would provide readily available cash to Idaho Power in the Event of a Default under this Agreement.

- 4.1.7 Written Acceptance – Request and obtain written confirmation from Idaho Power that all conditions to acceptance of energy have been fulfilled. Such written confirmation shall be provided within a commercially reasonable time following the Seller’s request and will not be unreasonably withheld by Idaho Power.

#### ARTICLE V: TERM AND OPERATION DATE

- 5.1 Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the date first written and shall continue in full force and effect for a period of \_\_\_\_\_ (*not to exceed 20 years*) Contract Years from the Operation Date.
- 5.2 Operation Date - The Operation Date may occur only after the Facility has achieved all of the following:
- a) Achieved the First Energy Date.
  - b) Seller has demonstrated to Idaho Power's satisfaction that the Facility is complete and able to provide energy in a consistent, reliable and safe manner.
  - c) Seller has requested an Operation Date from Idaho Power in a written format.
  - d) Seller has received written confirmation from Idaho Power of the Operation Date.

This confirmation will not be unreasonably withheld by Idaho Power.

- 5.3 If the Seller fails to achieve the Operation Date within 30 days of the Scheduled Operation Date, Seller will reimburse Idaho Power for any Shortfall Energy Repayment Amount accruing from 30

days following the Scheduled Operation Date until the Seller achieves the Operation Date. Such reimbursement shall be determined in the manner described in paragraph 7.3, 7.4 and 7.5 of this Agreement.

- 5.4 Seller's failure to achieve the Operation Date within ten (10) months of the Scheduled Operation Date will be an Event of Default.

#### ARTICLE VI: PURCHASE AND SALE OF NET ENERGY

- 6.1 Delivery and Acceptance of Net Energy - Except when either Party's performance is excused as provided herein, Idaho Power will purchase and Seller will sell all of the Net Energy to Idaho Power at the Point of Delivery.

- 6.2 Net Energy Amounts - Seller intends to produce and deliver Net Energy in the following monthly amounts:

6.2.1 Monthly Net Energy Amounts:

	<u>Month</u>	<u>kWh</u>
Season 1	March	XXXXXX
	April	XXXXXX
	May	XXXXXX
Season 2	July	XXXXXX
	August	XXXXXX
	November	XXXXXX
	December	XXXXXX
Season 3	June	XXXXXX
	September	XXXXXX
	October	XXXXXX
	January	XXXXXX
	February	XXXXXX

6.2.2 Seller's Adjustment of Monthly Net Energy Amounts –

- 6.2.2.1 No later than the Operation Date, by written notice given to Idaho Power in accordance with paragraph 23.1, the Seller may revise all of the previously provided Monthly Net Energy Amounts.

6.2.2.2 At any time, by written notice given to Idaho Power in accordance with paragraph 23.1, Seller may revise all of the previously provided Monthly Net Energy Amounts, beginning with the next calendar year for the remaining term of the agreement.

6.3 Unless excused by an event of Force Majeure, Seller's failure to deliver Net Energy in any Contract Year in an amount equal to at least ten percent (10%) of the sum of the Net Energy Amounts as specified in paragraph 6.2 shall constitute an Event of Default and may result in termination of this Agreement.

#### ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

7.1 Net Energy Purchase Price – The Seller has selected option \_\_\_\_\_ from Schedule 85 as the purchase price for the first 15 Contract Years of this Agreement. For all Net Energy delivered to Idaho Power after the first 15 Contract Years and for the remaining term of this Agreement, the Seller has selected option \_\_\_\_\_ from Schedule 85 as the purchase price. The Seller may not select Option 1, Fixed Price Method, for any Contract Years past the first 15 Contract Years. The Net Energy Purchase Price shall be calculated as specified in Schedule 85 for the option(s) selected by the Seller resulting in an on-peak and off-peak Net Energy Purchase Price which will be applied to the applicable energy deliveries during on-peak and off-peak hours as defined by the North American Electric Reliability Council (NERC).

7.2 Surplus Energy Price - For all Surplus Energy, Idaho Power shall pay to the Seller the current month's Schedule 85, Option 1 (Fixed Price Method), Off-peak energy price.

7.3 Shortfall Energy Repayment Price – If the current month's Market Energy Cost is greater than the current month's Net Energy Purchase Price, the Shortfall Energy Repayment Price will be determined by subtracting the current month's Market Energy Cost from the current month's Net Energy Purchase Price. If the result of this subtraction is less than 0, then the Shortfall Energy Repayment Price is 0.

- 7.4 Shortfall Energy Repayment Amount – Current month’s Shortfall Energy multiplied by the Shortfall Energy Repayment Price.
- 7.5 Shortfall Energy Repayment Schedule – By January 31 of the following calendar year, Idaho Power will accumulate all of the previous year’s monthly Shortfall Energy Repayment Amounts. The accumulated Shortfall Energy Repayment Amount will then be offset in equal monthly amounts against the next 36 monthly Net Energy payments to the Seller. An annual interest rate of 7.8% will be applied to the unamortized balance of the accumulated Shortfall Energy Repayment Amount at the end of each month. The Seller may at any time pay Idaho Power the outstanding balance of the accumulated Shortfall Energy Repayment Amount, including any interest that has accumulated.
- 7.6 Payment Due Date – Energy payments to the Seller will be disbursed within 30 days of the date which Idaho Power receives and accepts the documentation of the monthly Net Energy actually produced by the Seller’s Facility and delivered to Idaho Power as specified in Appendix A.

#### ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

- 8.1 Idaho Power waives any claim to ownership of Environmental Attributes. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) directly associated with the production of energy from the Seller’s Facility.

#### ARTICLE IX - RECORDS

- 9.1 Maintenance of Records - Seller shall maintain at the Facility or such other location mutually acceptable to the Parties adequate total generation, Net Energy, Station Use and maximum generation (kW) records in a form and content recommended by Idaho Power.
- 9.2 Inspection - Either Party, after reasonable notice to the other Party, shall have the right, during normal business hours, to inspect and audit any or all generation, Net Energy, Station Use and maximum generation (kW) records pertaining to the Seller's Facility.



ARTICLE X - OPERATIONS

10.1 Communications - Idaho Power and the Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility in accordance with Appendix A of this Agreement.

10.2 Energy Acceptance –

10.2.1 Idaho Power shall be excused from accepting and paying for Net Energy produced by the Facility and delivered by the Seller to the Point of Delivery, if it is prevented from doing so by an event of Force Majeure, or if Idaho Power determines that curtailment, interruption or reduction of Net Energy deliveries is necessary because of line construction or maintenance requirements, emergencies, electrical system operating conditions on its system or as otherwise required by Prudent Electrical Practices. If, for reasons other than an event of Force Majeure, Idaho Power requires such a curtailment, interruption or reduction of Net Energy deliveries for a period that exceeds twenty (20) days, beginning with the twenty-first day of such interruption, curtailment or reduction, Seller will be deemed to be delivering Net Energy at a rate equivalent to the pro rata daily average of the amounts specified for the applicable month in paragraph 6.2. Idaho Power will notify Seller when the interruption, curtailment or reduction is terminated.

10.2.2 If, in the reasonable opinion of Idaho Power, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho Power's equipment, personnel or service to its customers, Idaho Power may physically interrupt the flow of energy from the Facility as specified within the Generation Interconnection Process or take such other reasonable steps as Idaho Power deems appropriate.

10.3 Scheduled Maintenance – On or before January 31 of each calendar year, Seller shall submit a written proposed maintenance schedule of significant Facility maintenance for that calendar year and Idaho Power and Seller shall mutually agree as to the acceptability of the proposed schedule. The Parties' determination as to the acceptability of the Seller's timetable for scheduled

maintenance will take into consideration Prudent Electrical Practices, Idaho Power system requirements and the Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed maintenance schedule.

- 10.4 Maintenance Coordination - The Seller and Idaho Power shall, to the extent practical, coordinate their respective line and Facility maintenance schedules such that they occur simultaneously.
- 10.5 Contact Prior to Curtailment - Idaho Power will make a reasonable attempt to contact the Seller prior to exercising its rights to curtail, interrupt or reduce deliveries from the Seller's Facility. Seller understands that, in the case of emergency circumstances, real time operations of the electrical system, and/or unplanned events Idaho Power may not be able to provide notice to the Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Idaho Power.

#### ARTICLE XI: INDEMNIFICATION AND INSURANCE

- 11.1 Indemnification - Each Party shall agree to hold harmless and to indemnify the other Party, its officers, directors, agents, affiliates, subsidiaries, parent company and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs, including reasonable attorney fees, that may be incurred by the other Party in enforcing this indemnity.
- 11.2 Insurance -
- 11.2.1 If the Facility's Nameplate Capacity as determined in paragraph 1.10 of this Agreement is greater than 200 kW, the Seller shall secure and continuously carry the following insurance coverage:
- 11.2.1.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to \$1,000,000, each occurrence, combined single limit.

The deductible for such insurance shall be consistent with current Insurance Industry Utility practices for similar property.

11.2.1.2 The above insurance coverage shall be placed with an insurance company with an A.M. Best Company rating of A- or better and shall include:

- (a) An endorsement naming Idaho Power as an additional insured and loss payee as applicable; and
- (b) A provision stating that such policy shall not be canceled or the limits of liability reduced without sixty (60) days' prior written notice to Idaho Power.

11.2.1.3 Seller to Provide Certificate of Insurance - As required in paragraph 4.1.4 herein and annually thereafter, Seller shall furnish Idaho Power a certificate of insurance, together with the endorsements required therein, evidencing the coverage as set forth above.

11.2.1.4 Seller to Notify Idaho Power of Loss of Coverage - If the insurance coverage required by paragraph 11.2 shall lapse for any reason, Seller will immediately notify Idaho Power in writing. The notice will advise Idaho Power of the specific reason for the lapse and the steps Seller is taking to reinstate the coverage. Failure to provide this notice and to expeditiously reinstate or replace the coverage will constitute a Material Breach of this Agreement.

## ARTICLE XII. FORCE MAJEURE

12.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party is unable to prevent or overcome. Force Majeure includes, 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, or changes in law or regulation occurring after the Operation Date, 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. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

- (1) The non-performing Party shall, as soon as is reasonably possible after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence.
- (2) The suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure.
- (3) No obligations of either Party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

#### ARTICLE XIII: LAND RIGHTS

13.1 Seller to Provide Access - Seller hereby grants to Idaho Power for the term of this Agreement all necessary rights-of-way and easements to install, operate, maintain, replace and remove Idaho Power's Metering Equipment, Interconnection Equipment, Disconnection Equipment, Protection Equipment and other Special Facilities necessary or useful to this Agreement, including adequate and continuing access rights on property of Seller. Seller warrants that it has procured sufficient easements and rights-of-way from third parties so as to provide Idaho Power with the access described above. All documents granting such easements or rights-of-way shall be subject to Idaho Power's approval and in recordable form.

13.2 Use of Public Rights-of-Way - The Parties agree that it is necessary to avoid the adverse environmental and operating impacts that would occur as a result of duplicate electric lines being constructed in close proximity. Therefore, subject to Idaho Power's compliance with paragraph 13.4, Seller agrees that should Seller seek and receive from any local, state or federal

governmental body the right to erect, construct and maintain Seller-furnished Interconnection Facilities upon, along and over any and all public roads, streets and highways, then the use by Seller of such public right-of-way shall be subordinate to any future use by Idaho Power of such public right-of-way for construction and/or maintenance of electric distribution and transmission facilities and Idaho Power may claim use of such public right-of-way for such purposes at any time. Except as required by paragraph 13.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 13.2.

13.3 Joint Use of Facilities - Subject to Idaho Power's compliance with paragraph 13.4, Idaho Power may use and attach its distribution and/or transmission facilities to Seller's Interconnection Facilities, may reconstruct Seller's Interconnection Facilities to accommodate Idaho Power's usage or Idaho Power may construct its own distribution or transmission facilities along, over and above any public right-of-way acquired from Seller pursuant to paragraph 13.2, attaching Seller's Interconnection Facilities to such newly constructed facilities. Except as required by paragraph 13.4, Idaho Power shall not be required to compensate Seller for exercising its rights under this paragraph 13.3.

13.4 Conditions of Use - It is the intention of the Parties that the Seller be left in substantially the same condition, both financially and electrically, as Seller existed prior to Idaho Power's exercising its rights under this Article XIII. Therefore, the Parties agree that the exercise by Idaho Power of any of the rights enumerated in paragraphs 13.2 and 13.3 shall: (1) comply with all applicable laws, codes and Prudent Electrical Practices, (2) equitably share the costs of installing, owning and operating jointly used facilities and rights-of-way. If the Parties are unable to agree on the method of apportioning these costs, the dispute will be submitted to the Commission for resolution and the decision of the Commission will be binding on the Parties, and (3) shall provide Seller with an interconnection to Idaho Power's system of equal capacity and durability as existed prior to Idaho Power exercising its rights under this Article XIII.

ARTICLE XIV: LIABILITY; DEDICATION

- 14.1 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 or affect the status of Idaho Power as an independent public utility corporation or Seller as an independent individual or entity.

ARTICLE XV: SEVERAL OBLIGATIONS

- 15.1 Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

ARTICLE XVI: WAIVER

- 16.1 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 shall not be deemed a waiver with respect to any subsequent Default or other matter.

ARTICLE XVII: CHOICE OF LAWS AND VENUE

- 17.1 This Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon without reference to its choice of law provisions.
- 17.2 Venue for any litigation arising out of or related to this Agreement will lie in the District Court of the Ninth Judicial District of Oregon in and for the County of Malheur.

ARTICLE XVIII: DISPUTES AND DEFAULT

- 18.1 Disputes - All disputes related to or arising under this Agreement, including, but not limited to, the interpretation of the terms and conditions of this Agreement, will be submitted to the Commission for resolution.
- 18.2 Notice of Default -
- 18.2.1 Defaults. If either Party fails to perform any of the terms or conditions of this Agreement (an “Event of Default” or “Default”), the nondefaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such Default occurred. If the defaulting Party shall fail to cure such Default within the sixty (60) days after service of such notice, or if the defaulting Party reasonably demonstrates to the other Party that the Default can be cured within a commercially reasonable time but not within such sixty (60) day period and then fails to diligently pursue such cure, then, the nondefaulting Party may, at its option, terminate this Agreement and/or pursue its legal or equitable remedies.
- 18.2.2 Material Breaches – The notice and cure provisions in paragraph 18.2.1 do not apply to Defaults identified in this Agreement as Material Breaches. Material Breaches must be cured as expeditiously as possible following occurrence of the breach.
- 18.3 Security for Performance - Prior to the Operation Date and thereafter for the full term of this Agreement, Seller will provide Idaho Power with the following:
- 18.3.1 Insurance - Evidence of compliance with the provisions of paragraph 11.2. If Seller fails to comply, such failure will be a Material Breach and may only be cured by Seller supplying evidence that the required insurance coverage has been replaced or reinstated;
- 18.3.2 Engineer’s Certifications - Every three (3) years after the Operation Date, Seller will supply Idaho Power with a Certification of Ongoing Operations and Maintenance (O & M) from a Registered Professional Engineer licensed in the State of Oregon, which Certification of Ongoing O & M shall be in the form specified in Appendix C. Seller’s failure to supply the required certificate will be an Event of Default. Such a Default may

only be cured by Seller providing the required certificate; and

18.3.3 Licenses and Permits - During the full term of this Agreement, Seller shall maintain compliance with all permits and licenses described in paragraph 4.1.1 of this Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits or licenses. At least every fifth Contract Year, Seller will update the documentation described in paragraph 4.1.1. If at any time Seller fails to maintain compliance with the permits and licenses described in paragraph 4.1.1 or to provide the documentation required by this paragraph, such failure will be an Event of Default and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

18.3.4 Security Requirements – During the full term of this Agreement, Seller shall maintain the Security Requirements established in accordance to paragraph 4.1.6. Failure to maintain these Security Requirements will be a Material Breach of this Agreement.

#### ARTICLE XIX: GOVERNMENTAL AUTHORIZATION

19.1 This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party of this Agreement.

#### ARTICLE XX: SUCCESSORS AND ASSIGNS

20.1 This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no assignment hereof by either Party shall become effective without the written consent of both Parties being first obtained. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, any party which Idaho Power may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of Idaho Power's rights, obligations and interests under this Agreement. This article shall not prevent a financing entity



with recorded or secured rights from exercising all rights and remedies available to it under law or contract. Idaho Power shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

ARTICLE XXI: MODIFICATION

21.1 No modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.

ARTICLE XXII: TAXES

22.1 Each Party shall pay before delinquency all taxes and other governmental charges which, if failed to be paid when due, could result in a lien upon the Facility or the Interconnection Facilities.

ARTICLE XXIII: NOTICES

23.1 All written notices under this agreement shall be directed as follows and shall be considered delivered when deposited in the U. S. Mail, first-class postage prepaid, as follows:

To Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Idaho Power:

Original document to:

Vice President, Power Supply  
Idaho Power Company  
P. O. Box 70  
Boise, Idaho 83707

Copy of document to:

Cogeneration and Small Power Production  
Idaho Power Company  
P. O. Box 70  
Boise, Idaho 83707

ARTICLE XXIV: ADDITIONAL TERMS AND CONDITIONS

24.1 This Agreement includes the following appendices, which are attached hereto and included by reference:

Appendix A	-	Generation Scheduling and Reporting
Appendix B	-	Facility and Point of Delivery
Appendix C	-	Engineer's Certifications

ARTICLE XXV: SEVERABILITY

25.1 The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other terms or provisions and this Agreement shall be construed in all other respects as if the invalid or unenforceable term or provision were omitted.

ARTICLE XXVI: COUNTERPARTS

26.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

ARTICLE XXVII: ENTIRE AGREEMENT

27.1 This Agreement constitutes the entire Agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the Parties concerning the subject matter hereof.

IN WITNESS WHEREOF, The Parties hereto have caused this Agreement to be executed

in their respective names on the dates set forth below:

Idaho Power Company

\_\_\_\_\_

By

\_\_\_\_\_

By

\_\_\_\_\_

Dated

\_\_\_\_\_

“Idaho Power”

Dated

\_\_\_\_\_

“Seller”

APPENDIX A

A –1 MONTHLY POWER PRODUCTION AND SWITCHING REPORT

At the end of each month, the following required documentation will be submitted to:

Idaho Power Company  
Attn: Cogeneration and Small Power Production  
P. O. Box 70  
Boise, Idaho 83707

The Meter readings required on this report will be the reading on the Idaho Power Meter Equipment measuring the Facility's total energy production and Station Use delivered to Idaho Power and the maximum generated energy (kW) as recorded on the Meter Equipment and/or any other required energy measurements to adequately administer this Agreement.

Idaho Power Company

Cogeneration and Small Power Production

MONTHLY POWER PRODUCTION AND SWITCHING REPORT

Month \_\_\_\_\_ Year \_\_\_\_\_

Project Name \_\_\_\_\_ Project Number: \_\_\_\_\_  
 Address \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

	Facility <u>Output</u>	Station <u>Usage</u>	Station <u>Usage</u>	Metered <u>Maximum Generation</u>
Meter Number:	_____	_____	_____	kW
End of Month kWh Meter Reading:	_____	_____	_____	
Beginning of Month kWh Meter:	_____	_____	_____	
Difference:	_____	_____	_____	<u>Net Generation</u>
Times Meter Constant:	_____	_____	_____	
kWh for the Month:	_____ - _____ - _____ =			
Metered Demand:	_____	_____	_____	

Breaker Opening Record

<u>Date</u>	<u>Time</u>	<u>Meter</u>

* <u>Reason</u>

Breaker Closing Record

<u>Date</u>	<u>Time</u>	<u>Meter</u>

- \* **Breaker Opening Reason Codes**
- 1 Lack of Adequate Prime Mover
  - 2 Forced Outage of Facility
  - 3 Disturbance of IPCo System
  - 4 Scheduled Maintenance
  - 5 Testing of Protection Systems
  - 6 Cause Unknown
  - 7 Other (Explain)

I hereby certify that the above meter readings are true and correct as of Midnight on the last day of the above month and that the switching record is accurate and complete as required by the Energy Sales Agreement to which I am a Party.

\_\_\_\_\_  
Signature Date

A-2 ROUTINE REPORTING

Idaho Power Designated Dispatch Facility contact information

Daily Energy Production Reporting

All projects with a Nameplate Capacity of 1 MW or greater shall:

Call daily by 10 a.m., 1-800-356-4328 or 1-800-635-1093 and leave the following information:

- Project Identification - Project Name and Project Number
- Current Meter Reading
- Estimated Generation for the current day
- Estimated Generation for the next day

If Idaho Power determines that adequate generation data is available for this Facility's daily generation, Idaho Power may modify these reporting requirements

Planned and Unplanned Project outages

Call 1-800-345-1319 and leave the following information:

- Project Identification - Project Name and Project Number
- Approximate time outage occurred
- Estimated day and time of project coming back online

Seller's Contact Information

24-Hour Project Operational Contact

Name: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_

Project On-site Contact information

Telephone Number: \_\_\_\_\_

APPENDIX B

FACILITY AND POINT OF DELIVERY

PROJECT NO. \_\_\_\_\_  
\_\_\_\_\_

B-1 DESCRIPTION OF FACILITY

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B-2 LOCATION OF FACILITY

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B-3 SCHEDULED FIRST ENERGY AND OPERATION DATE

Seller has selected \_\_\_\_\_ as the estimated Scheduled First Energy Date.

Seller has selected \_\_\_\_\_ as the estimated Scheduled Operation Date.

In making these selections, Seller recognizes that adequate testing of the Facility and completion of all requirements in paragraph 5.2 of this Agreement must be completed prior to the project being granted an Operation Date.

B-5 POINT OF DELIVERY

\_\_\_\_\_ the point on the Idaho Power electrical system where the Sellers Facility's energy is delivered to the Idaho Power. This point shall be a point on the Idaho Power electrical system that is able to accept the Seller's energy and Idaho Power is able to disburse the energy to local Idaho Power load requirements or available capacity exists on the Idaho Power electrical system to allow transporting the Seller's energy to areas within the Idaho Power system that is capable of consuming the Seller's energy deliveries.

B-6 LOSSES

If the Idaho Power Metering equipment is capable of measuring the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, no Losses will be calculated for this Facility. If the Idaho Power Metering is unable to measure the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, a Losses calculation will be established to measure the energy losses (kWh) between the Seller's Facility and the Idaho Power Point of Delivery. This loss calculation will be initially set at 2% of the kWh energy production recorded on the Facility generation metering equipment. At such time as Seller provides Idaho Power with the electrical equipment specifications (transformer loss specifications, conductor sizes, etc) of all of the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power will configure a revised loss calculation formula to be agreed to by both parties and used to calculate the kWh Losses for the remaining term of the Agreement. If at anytime during the term of this Agreement, Idaho Power determines that the loss calculation does not correctly reflect the actual kWh losses attributed to the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power may adjust the calculation and retroactively adjust the previous months kWh loss calculations.

B-7 METERING AND TELEMETRY

At the minimum the Metering Equipment and Telemetry equipment must be able to provide and record hourly energy deliveries to the Point of Delivery and any other energy measurements required to administer this Agreement.



APPENDIX C

ENGINEER'S CERTIFICATION  
OF  
OPERATIONS & MAINTENANCE POLICY

The undersigned \_\_\_\_\_, on behalf of himself and \_\_\_\_\_, hereinafter collectively referred to as "Engineer," hereby states and certifies to the Seller as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Oregon.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No. \_\_\_\_\_ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the \_\_\_\_\_, is located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for period of \_\_\_\_\_ years.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, provided said Project has been designed and built to appropriate standards, adherence to said O&M Policy will result in the

Project's producing at or near the design electrical output, efficiency and plant factor for a period of \_\_\_\_\_years.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

10. That Engineer certifies that the above statements are complete, true and accurate to the best of his knowledge and therefore sets his hand and seal below.

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

APPENDIX C  
ENGINEER'S CERTIFICATION  
OF  
ONGOING OPERATIONS AND MAINTENANCE

The undersigned \_\_\_\_\_, on behalf of himself and \_\_\_\_\_ hereinafter collectively referred to as "Engineer," hereby states and certifies to the Seller as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Oregon.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement," between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as IPCo Facility No. \_\_\_\_\_ and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the \_\_\_\_\_, is located at \_\_\_\_\_.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a period of \_\_\_\_\_ years.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has made a physical inspection of said Project, its operations and maintenance records since the last previous certified inspection. It is Engineer's professional opinion, based on the Project's appearance, that its ongoing O&M has been substantially in accordance with said O&M Policy; that it is in reasonably good operating condition; and that if adherence to said O&M Policy continues, the Project will continue producing at or near its design electrical output, efficiency and plant factor for the remaining \_\_\_\_\_ years of the Agreement.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

10. That Engineer certifies that the above statements are complete, true and accurate to the best of his knowledge and therefore sets his hand and seal below.

By \_\_\_\_\_

(P.E. Stamp)

Date \_\_\_\_\_

APPENDIX C  
ENGINEER'S CERTIFICATION  
OF  
DESIGN & CONSTRUCTION ADEQUACY

The undersigned \_\_\_\_\_, on behalf of himself and \_\_\_\_\_, hereinafter collectively referred to as "Engineer", hereby states and certifies to Idaho Power as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Oregon.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter "Agreement", between Idaho Power as Buyer, and \_\_\_\_\_ as Seller, dated \_\_\_\_\_.
3. That the cogeneration or small power production project, which is the subject of the Agreement and this Statement, is identified as IPCo Facility No \_\_\_\_\_ and is hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the \_\_\_\_\_ Project, is located in Section \_\_\_\_ Township \_\_\_\_\_, Range \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a \_\_\_\_\_ (\_\_\_\_) year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.
8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.

9. That the Project has been constructed in accordance with said plans and specifications, all applicable codes and consistent with Prudent Electrical Practices as that term is described in the Agreement.

10. That the design and construction of the Project is such that with reasonable and prudent operation and maintenance practices by Seller, the Project is capable of performing in accordance with the terms of the Agreement and with Prudent Electrical Practices for a \_\_\_\_\_ (\_\_\_\_\_) year period.

11. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, in interconnecting the Project with its system, is relying on Engineer's representations and opinions contained in this Statement.

12. That Engineer certifies that the above statements are complete, true and accurate to the best of his knowledge and therefore sets his hand and seal below.

By \_\_\_\_\_  
(P.E. Stamp)

Date \_\_\_\_\_

# **ATTACHMENT 2**

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES

AVAILABILITY

Service under this schedule is available throughout the Company's service territory within the State of Oregon.

APPLICABILITY

Service under this schedule is applicable to any Seller that:

- 1) Owns or operates a Qualifying Facility with a nameplate capacity rating of 10 MW or less and desires to sell Energy generated by the Qualifying Facility to the Company in compliance with all the terms and conditions of the Standard Contract;
- 2) Meets all applicable requirements of the Company's Generation Interconnection Process.

For Qualifying Facilities with a nameplate capacity rating greater than 10 MW, a negotiated Non-Standard Contract between the Seller and the Company is required.

DEFINITIONS

Energy means the electric energy, expressed in kWh, generated by the Qualifying Facility and delivered by the Seller to the Company in accordance with the conditions of this schedule and the Standard Contract. Energy is measured net of Losses and Station Use.

Generation Interconnection Process is the Company's generation interconnection application and engineering review process developed to ensure a safe and reliable generation interconnection in compliance with all applicable regulatory requirements, Prudent Electrical Practices and national safety standards.

Heat Rate Conversion Factor is 7,100 MMBTU divided by 1000.

Losses are the loss of electric energy occurring as a result of the transformation and transmission of electric energy from the Qualifying Facility to the Point of Delivery.



SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

DEFINITIONS (Continued)

Non-Standard Contract is a negotiated contract between any Seller that owns or operates a Qualifying Facility with a nameplate capacity rating greater than 10 MW and desires to sell Energy generated by the Qualifying Facility to the Company. The starting point for negotiation of price is the Avoided Cost Components established in this schedule and may be modified to address specific factors mandated by federal and state law, including

- 1) The utility's system cost data;
- 2) The availability of capacity or energy from a Qualifying Facility during the system daily and seasonal peak periods, including:
  - a. The ability of the utility to dispatch the qualifying facility;
  - b. The expected or demonstrated reliability of the qualifying facility;
  - c. The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non-compliance;
  - d. The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;
  - e. The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;
  - f. The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and
  - g. The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities; and
- 3) The relationship of the availability of energy or capacity from the Qualifying Facility to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and
- 4) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a Qualifying Facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

DEFINITIONS (Continued)

Point of Delivery is the location where the Company's and the Seller's electrical facilities are interconnected.

Prudent Electrical Practices are those practices, methods and equipment that are commonly used in prudent electrical engineering and operations to operate electric equipment lawfully and with safety, dependability, efficiency and economy.

PURPA means the Public Utility Regulatory Policies Act of 1978.

Qualifying Facility is a cogeneration facility or a small power production facility which meets the PURPA criteria for qualification set forth in Subpart B of Part 292, Subchapter K, Chapter I, Title 18, of the Code of Federal Regulations.

Seasonality Factor is the factor used in determining the seasonal purchase price of energy. The applicable factors are:

- 73.50% for Season 1 (March, April, May);
- 120.00% for Season 2 (July, August, November, December);
- 100.00% for Season 3 (June, September, October, January, February).

Seller is any entity that owns or operates a Qualifying Facility and desires to sell Energy to the Company.

Standard Contract is the Company's Energy Sales Agreement (10 MW or less) filed with the Public Utility Commission of Oregon.

Station Use is electric energy used to operate the Qualifying Facility which is auxiliary to or directly related to the generation of electricity and which, but for the generation of electricity, would not be consumed by the Seller.

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
 (Continued)

QUALIFYING FACILITY INFORMATION INQUIRY PROCESS

There are two separate processes required for a Seller to deliver and sell energy from a Qualifying Facility to the Company. These processes may be completed separately or simultaneously.

1) Generation Interconnection Process

All generation projects physically interconnecting to the Company's electrical system, regardless of size, location or ownership, must successfully complete the Generation Interconnection Process prior to the project delivering energy to the Company. A complete description, application and Company contact information is maintained on the Idaho Power website at [www.idahopower.com](http://www.idahopower.com), or Seller may contact the Company's Customer Service Center at 1-800-488-6151 for further information.

2) Energy Sales Agreement

To begin the process of completing a Standard Contract or negotiating a Non-Standard Contract, for a proposed project, the Seller must submit in written form to the Company a request for an Energy Sales Agreement. This request, at the minimum, should contain:

- a. Date of request
- b. Description of the proposed project
- c. Type of project (wind, hydro, geothermal etc)
- d. Nameplate capacity of the proposed project
- e. Estimated monthly generation (kWh)
- f. Estimated on-line date of the proposed project
- g. Location of the proposed project
- h. Company / Organization that will be the contracting party
- i. Contact information including name, address and telephone number

All requests will be processed in the order of receipt by the Company. The request should be submitted to:

Idaho Power Company  
 Cogeneration and Small Power Production  
 P O Box 70  
 Boise, Idaho 83707

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

AVOIDED COST COMPONENTS

The Avoided Cost Components are calculated based upon the Surrogate Avoided Resource methodology (SAR) for determining the Company's standard avoided costs.

<u>Year</u>	<u>Capacity Cost</u> <u>(mills/kWh)</u>	<u>Fuel Cost</u> <u>(mills/kWh)</u>
2005	23.96	43.67
2006	24.52	43.45
2007	25.08	42.67
2008	25.66	41.46
2009	26.25	40.33
2010	26.86	39.19
2011	27.50	39.90
2012	28.13	40.54
2013	28.77	41.25
2014	29.44	41.96
2015	30.13	42.67
2016	30.83	44.02
2017	31.55	45.44
2018	32.27	47.00
2019	33.03	48.49
2020	33.78	50.06
2021	34.58	51.69
2022	35.39	53.32
2023	36.20	55.17
2024	37.05	56.94
2025	37.91	58.72
2026	38.79	60.63
2027	39.69	62.62
2028	40.61	64.61
2029	41.57	66.74
2030	42.54	68.87

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

NET ENERGY PURCHASE PRICE

The Company will pay the Seller monthly, for each kWh of Energy delivered and accepted at the Point of Delivery during the preceding calendar month, in accordance with the Standard Contract, an amount determined by the Seller's choice of one of the following options:

Option 1 - Fixed Price Method

Net Energy Purchase Price =

On-peak = (Fuel Cost + Capacity Cost) X Seasonality Factor

Off-peak = Fuel Cost X Seasonality Factor

where

Fuel Cost and Capacity Cost are the Avoided Cost Components established in this schedule for the applicable calendar year of the actual Net Energy deliveries to the Company.

Option 2 – Dead Band Method

Net Energy Purchase Price =

On-peak = (AGPU + Capacity Cost) X Seasonality Factor

Off-peak = AGPU X Seasonality Factor

Actual Gas Price Used (AGPU) =

90% of Fuel Cost if

Indexed Fuel Cost is less than 90% Fuel Cost; else

110% of Fuel Cost if

Indexed Fuel Cost is greater than 110% Fuel Cost; else

Indexed Fuel Cost

where

Fuel Cost and Capacity Cost are the Avoided Cost Components established in this schedule for the applicable calendar year of the actual Net Energy deliveries to the Company, and

Indexed Fuel Cost is the applicable weighted monthly average index price of natural gas at Sumas multiplied by the Heat Rate Conversion Factor.

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

NET ENERGY PURCHASE PRICE (Continued)

Option 3 – Gas Market Method

Net Energy Purchase Price =

On-peak = (AGPU + Capacity Cost) X Seasonality Factor

Off-peak = AGPU X Seasonality Factor

Actual Gas Price Used (AGPU) = Indexed Fuel Cost

where

Capacity Cost is the Avoided Cost Component established in this schedule for the applicable calendar year of the actual Net Energy deliveries to the Company, and

Indexed Fuel Cost is the applicable weighted monthly average index price of natural gas at Sumas multiplied by the Heat Rate Conversion Factor.

# **ATTACHMENT 3**

SCHEDULE 86  
COGENERATION AND SMALL POWER PRODUCTION  
STANDARD RATES

SERVICE DISCONTINUED

(D)(N)



SCHEDULE 86  
COGENERATION AND SMALL POWER PRODUCTION  
STANDARD RATES  
(Continued)

SERVICE DISCONTINUED

(D)(N)

SCHEDULE 86  
COGENERATION AND SMALL POWER PRODUCTION  
STANDARD RATES  
(Continued)

SERVICE DISCONTINUED

(D)(N)

SCHEDULE 86  
COGENERATION AND SMALL POWER PRODUCTION  
STANDARD RATES  
(Continued)

SERVICE DISCONTINUED

(D)(N)

SCHEDULE 86  
COGENERATION AND SMALL POWER PRODUCTION  
STANDARD RATES  
(Continued)

SERVICE DISCONTINUED

(D)(N)

SCHEDULE 86  
COGENERATION AND SMALL POWER PRODUCTION  
STANDARD RATES  
(Continued)

SERVICE DISCONTINUED

(D)(N)

# **Attachment C**

**Excerpts From  
Idaho Power's Order No. 14-058 Compliance Filing,  
including Tariff Schedule No. 85  
(filed April 25, 2014)**



**LISA D. NORDSTROM**  
 Lead Counsel  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)

April 25, 2014

**VIA ELECTRONIC FILING AND U.S. MAIL**

Attention: Filing Center  
 Public Utility Commission of Oregon  
 3930 Fairview Industrial Drive SE  
 P.O. Box 1088  
 Salem, Oregon 97308-1088

Re: Docket UM 1610  
 Investigation into Qualifying Facility Contracting and Pricing – Idaho  
 Power Company's Application in Compliance with Order No. 14-058

Dear Filing Center:

In compliance with ORS 757.205, ORS 758.525 and Order No. 14-058 of Docket UM 1610, Idaho Power Company ("Idaho Power" or "Company") hereby submits for filing an original and three (3) copies of the following: (1) Idaho Power's Application for Approval of Avoided Cost Rates, Schedule 85, and Standard Contracts in Compliance with Order No. 14-058; (2) Idaho Power's revised Schedule 85, P.U.C. ORE. No. E-27, Cogeneration and Small Power Production Standard Contract Rates, in both clean and redlined formats; and (3) Idaho Power's revised standard qualifying facilities (QF) energy sales agreements in both clean and redline formats. The Company's filing includes updates to Idaho Power's standard energy sales agreements, its standard avoided cost schedule (Schedule 85), and its standard avoided costs. Copies of the Application and its attachments have been served on all parties to this proceeding as indicated in the Certificate of Service.

The Company respectfully requests and effective date of May 27, 2014.

Third Revised Sheet No. 85-1	Schedule 85	Cogeneration and Small Power Production Standard Contract Rates
Third Revised Sheet No. 85-2	Schedule 85	Cogeneration and Small Power Production Standard Contract Rates
Third Revised Sheet No. 85-6	Schedule 85	Cogeneration and Small Power Production Standard Contract Rates

Second Revised Sheet No. 85-7	Schedule 85	Cogeneration and Small Power Production Standard Contract Rates
First Revised Sheet No. 85-8	Schedule 85	Cogeneration and Small Power Production Standard Contract Rates
First Revised Sheet No. 85-9	Schedule 85	Cogeneration and Small Power Production Standard Contract Rates
First Revised Sheet No. 85-10	Schedule 85	Cogeneration and Small Power Production Standard Contract Rates
First Revised Sheet No. 85-11	Schedule 85	Cogeneration and Small Power Production Standard Contract Rates
Original Sheet No. 85-12	Schedule 85	Cogeneration and Small Power Production Standard Contract Rates
Original Sheet No. 85-13	Schedule 85	Cogeneration and Small Power Production Standard Contract Rates

Also enclosed herein are four (4) copies of Idaho Power's workpapers used to prepare this filing.

If you have any questions, please do not hesitate to contact Donovan E. Walker at (208) 388-5317.

Sincerely,

  
Lisa D. Nordstrom

LDN:csb  
Enclosures



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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1610**

In the Matter of	)	<b>IDAHO POWER COMPANY'S APPLICATION FOR APPROVAL OF AVOIDED COST RATES, SCHEDULE 85, AND STANDARD CONTRACTS IN COMPLIANCE WITH ORDER NO. 14-058</b>
PUBLIC UTILITY COMMISSION OF OREGON,	)	
Investigation into Qualifying Facility Contracting and Pricing.	)	
_____	)	

9

**I. INTRODUCTION**

10 Idaho Power Company ("Idaho Power" or "Company") hereby submits this  
11 Application for Approval of Avoided Cost Rates, Schedule 85, and Standard Contracts in  
12 Compliance with Order No. 14-058 (the "Order") issued February 24, 2014, and Errata  
13 Order No. 14-114 issued April 7, 2014. The Order directed Idaho Power to file by  
14 application revised avoided cost prices and revised standard contract forms in compliance  
15 with the directives from the Order. Idaho Power submits herewith revised avoided cost  
16 prices in its revised Schedule 85, Cogeneration and Small Power Production Standard  
17 Contract Rates, as well as revised standard contracts that conform with the Order. Idaho  
18 Power last updated its avoided cost rates for Oregon effective on April 25, 2012. Order  
19 No. 12-146, Case Nos. UM 1590 and UM 1593.

20

**II. DISCUSSION**

21 Order No. 14-058 directed that: the existing methodology for calculating standard  
22 avoided cost prices be modified to account for the capacity contribution of different  
23 qualifying facility ("QF") resources and for wind integration costs; certain QF standard  
24 avoided cost pricing options be eliminated; the criteria for a "single project" be modified to  
25 limit the passive investor exemption to independent family or community based projects;  
26 and revised mechanical availability language be adopted for use in standard contracts.

1 The Order also directed annual updates on May 1 to four factors utilized to calculate  
2 standard avoided cost rates: updated natural gas prices; on- and off-peak forward-looking  
3 electricity market prices; changes to the status of the Production Tax Credit; and any other  
4 action or change in an acknowledged Integrated Resource Plan (“IRP”) update relevant to  
5 the calculation of avoided costs. Errata Order No. 14-114 clarified that the utilities are to  
6 file rates and contracts in compliance with the Order on April 25, 2014, and initiate May 1  
7 updates in each subsequent year.

8 Idaho Power has modified its Schedule 85, Cogeneration and Small Power  
9 Production Standard Contract Rates, as well as its standard contracts to account for the  
10 Public Utility Commission of Oregon’s directives from Order No. 14-058. Submitted  
11 herewith, in both clean and redline format, are Idaho Power’s revised Schedule 85 setting  
12 forth revised avoided cost rates and six revised standard contracts consisting of: Oregon  
13 Standard Energy Sales Agreement for Intermittent Resource; Oregon Standard Energy  
14 Sales Agreement for Intermittent Resource Out of Service Territory; Oregon Standard  
15 Energy Sales Agreement for Non-Intermittent Resource; Oregon Standard Energy Sales  
16 Agreement for Non-Intermittent Resource Out of Service Territory; Oregon Standard  
17 Energy Sales Agreement for Wind Resource; Oregon Standard Energy Sales Agreement  
18 for Wind Resource Out of Service Territory. Idaho Power also submits herewith  
19 workpapers, consisting of the model used to calculate the rates contained in Schedule 85.  
20 Idaho Power started with its existing Schedule 85, Intermittent, Non-Intermittent, and Out  
21 of Service Territory standard contracts and made the changes necessary to comply with  
22 the Order. A separate standard contract for Wind resources was created from the existing  
23 Intermittent standard contract to incorporate provisions for wind integration costs. Avoided  
24 cost prices utilize inputs from Idaho Power’s 2013 IRP.

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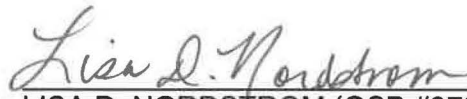
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**III. CONCLUSION**

Idaho Power respectfully requests that the Commission find that the Company's revised avoided cost prices, revised standard contract forms, and revised Schedule 85 comply with Order No. 14-058 and Order No. 14-114 and approve them as filed.

Respectfully submitted this 25<sup>th</sup> day of April 2014.

**IDAHO POWER COMPANY**



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**CERTIFICATE OF SERVICE**

**Docket No. UM 1610**

I hereby certify that on April 25, 2014, I served IDAHO POWER COMPANY'S APPLICATION FOR APPROVAL OF AVOIDED COST RATES, SCHEDULE 85, AND STANDARD CONTRACTS IN COMPLIANCE WITH ORDER NO. 14-058 upon all parties of record in this proceeding by electronic mail only as all parties have waived paper service.

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# **SCHEDULE 85**

## **COGENERATION AND SMALL POWER PRODUCTION STANDARD CONTRACT RATES**

### **CLEAN FORMAT**

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES

AVAILABILITY

Service under this schedule is available for power delivered to the Company's control area within the State of Oregon.

APPLICABILITY

Service under this schedule is applicable to any Seller that:

1. Owns or operates a Qualifying Facility with a Nameplate Capacity rating of 10 MW or less and desires to sell Energy generated by the Qualifying Facility to the Company in compliance with all the terms and conditions of the Standard Contract;
2. Meets all applicable requirements of the Company's Generation Interconnection Process.

For Qualifying Facilities with a Nameplate Capacity rating greater than 10 MW, a negotiated Non-Standard Contract between the Seller and the Company is required.

DEFINITIONS

Energy means the electric energy, expressed in kWh, generated by the Qualifying Facility and delivered by the Seller to the Company in accordance with the conditions of this schedule and the Standard Contract. Energy is measured net of Losses and Station Use.

Generation Interconnection Process is the Company's generation interconnection application and engineering review process developed to ensure a safe and reliable generation interconnection in compliance with all applicable regulatory requirements, Prudent Electrical Practices and national safety standards. The Generation Interconnection Process is managed by the Company's Delivery Business Unit.

Heat Rate Conversion Factor is 7,100 MMBTU divided by 1,000.

Heavy Load (HL) Hours are the daily hours from hour ending 0700-2200 Mountain Time, (16 hours) excluding all hours on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. (N)  
|  
(N)

Intermittent describes a Qualifying Facility that produces electrical energy from the use of wind, solar or run of river hydro as the prime mover.

Light Load (LL) Hours are the daily hours from hour ending 2300-0600 Mountain Time (8 hours), plus all other hours on all Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. (N)  
|  
(N)

Losses are the loss of electric energy occurring as a result of the transformation and transmission of electric energy from the Qualifying Facility to the Point of Delivery.

Nameplate Capacity means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovolt amperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

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SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

DEFINITIONS (Continued)

Non-Standard Contract is a negotiated contract between any Seller that owns or operates a Qualifying Facility with a nameplate capacity rating greater than 10 MW and desires to sell Energy generated by the Qualifying Facility to the Company. The starting point for negotiation of price is the Avoided Cost Components established in this schedule and may be modified to address specific factors mandated by federal and state law, including

(M)  
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(M)

1. The utility's system cost data;
2. The availability of capacity or energy from a Qualifying Facility during the system daily and seasonal peak periods, including:
  - a. The ability of the utility to dispatch the qualifying facility;
  - b. The expected or demonstrated reliability of the qualifying facility;
  - c. The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non-compliance;
  - d. The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;
  - e. The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;
  - f. The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and
  - g. The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities; and
3. The relationship of the availability of energy or capacity from the Qualifying Facility to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and
4. The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a Qualifying Facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

Non-Standard Contract is a negotiated contract between any Seller that owns or operates a Qualifying Facility with a Nameplate Capacity rating greater than 10 MW and desires to sell Energy generated by the Qualifying Facility to the Company. The guidelines for negotiating a Non-Standard Contract are more specifically described later in this schedule in Guidelines for Negotiation of Power Purchase Agreements for Qualifying Facilities with Nameplate Capacity of 10 MW or Larger.

Point of Delivery is the location where the Company's and the Seller's electrical facilities are inter-connected or where the Company's and the Seller's host transmission provider's electrical facilities are interconnected.

Prudent Electrical Practices are those practices, methods and equipment that are commonly used in prudent electrical engineering and operations to operate electric equipment lawfully and with safety, dependability, efficiency and economy.

PURPA means the Public Utility Regulatory Policies Act of 1978.

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

AVOIDED COST PRICE

Standard Avoided Cost Prices for Baseload QF

Year	Capacity Price	Capacity Cost Allocated to On-Peak Hours	Energy Only Price	On-Peak	Off-Peak
	\$/kW-yr	(\$/MWh)	\$/MWh	\$/MWh	\$/MWh
	(a)	(b)	(c)	(d)	(e)
2014	Market Based Prices			\$42.25	\$29.50
2015	2014 through 2015			\$39.75	\$29.09
2016	\$66.20	\$13.62	\$43.16	\$56.78	\$43.16
2017	\$68.19	\$14.03	\$44.82	\$58.85	\$44.82
2018	\$70.24	\$14.45	\$46.72	\$61.17	\$46.72
2019	\$72.34	\$14.88	\$49.30	\$64.18	\$49.30
2020	\$74.51	\$15.33	\$51.98	\$67.31	\$51.98
2021	\$76.75	\$15.79	\$55.90	\$71.69	\$55.90
2022	\$79.05	\$16.26	\$60.49	\$76.75	\$60.49
2023	\$81.42	\$16.75	\$64.48	\$81.23	\$64.48
2024	\$83.86	\$17.25	\$67.94	\$85.19	\$67.94
2025	\$86.37	\$17.77	\$71.86	\$89.63	\$71.86
2026	\$88.96	\$18.30	\$75.63	\$93.93	\$75.63
2027	\$91.63	\$18.85	\$79.88	\$98.73	\$79.88
2028	\$94.38	\$19.41	\$83.40	\$102.81	\$83.40
2029	\$97.22	\$20.00	\$87.39	\$107.39	\$87.39
2030	\$100.13	\$20.60	\$91.79	\$112.39	\$91.79
2031	\$103.14	\$21.21	\$96.25	\$117.46	\$96.25
2032	\$106.23	\$21.85	\$101.27	\$123.12	\$101.27
2033	\$109.41	\$22.50	\$106.00	\$128.50	\$106.00
2034	\$112.70	\$23.18	\$114.03	\$137.21	\$114.03
2035	\$116.08	\$23.88	\$121.87	\$145.75	\$121.87
2036	\$119.56	\$24.59	\$124.93	\$149.52	\$124.93
2037	\$123.15	\$25.33	\$130.92	\$156.25	\$130.92
2038	\$126.84	\$26.09	\$137.10	\$163.19	\$137.10
2039	\$130.64	\$26.87	\$143.47	\$170.34	\$143.47
2040	\$134.56	\$27.68	\$149.99	\$177.67	\$149.99

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SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

AVOIDED COST PRICE (CONTINUED)

Standard Avoided Cost Prices for Wind QF

Year	Capacity Price	Capacity Cost Allocated to On-Peak Hours	Energy Only Price	Capacity Contribution	Capacity Payment On-Peak Hours	Wind Integration Charge	On-Peak	Off-Peak
	\$/kW-yr	(\$/MWh)	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
2014	Market Based Prices 2014 through 2015					\$6.50	\$35.75	\$23.00
2015	Less Wind Integration Charge					\$6.50	\$33.25	\$22.59
2016	\$66.20	\$13.62	\$43.16	3.9%	\$0.53	\$6.50	\$37.19	\$36.66
2017	\$68.19	\$14.03	\$44.82	3.9%	\$0.55	\$6.50	\$38.87	\$38.32
2018	\$70.24	\$14.45	\$46.72	3.9%	\$0.56	\$6.50	\$40.78	\$40.22
2019	\$72.34	\$14.88	\$49.30	3.9%	\$0.58	\$6.50	\$43.38	\$42.80
2020	\$74.51	\$15.33	\$51.98	3.9%	\$0.60	\$6.50	\$46.08	\$45.48
2021	\$76.75	\$15.79	\$55.90	3.9%	\$0.62	\$6.50	\$50.02	\$49.40
2022	\$79.05	\$16.26	\$60.49	3.9%	\$0.63	\$6.50	\$54.62	\$53.99
2023	\$81.42	\$16.75	\$64.48	3.9%	\$0.65	\$6.50	\$58.63	\$57.98
2024	\$83.86	\$17.25	\$67.94	3.9%	\$0.67	\$6.50	\$62.11	\$61.44
2025	\$86.37	\$17.77	\$71.86	3.9%	\$0.69	\$6.50	\$66.05	\$65.36
2026	\$88.96	\$18.30	\$75.63	3.9%	\$0.71	\$6.50	\$69.84	\$69.13
2027	\$91.63	\$18.85	\$79.88	3.9%	\$0.74	\$6.50	\$74.12	\$73.38
2028	\$94.38	\$19.41	\$83.40	3.9%	\$0.76	\$6.50	\$77.66	\$76.90
2029	\$97.22	\$20.00	\$87.39	3.9%	\$0.78	\$6.50	\$81.67	\$80.89
2030	\$100.13	\$20.60	\$91.79	3.9%	\$0.80	\$6.50	\$86.09	\$85.29
2031	\$103.14	\$21.21	\$96.25	3.9%	\$0.83	\$6.50	\$90.58	\$89.75
2032	\$106.23	\$21.85	\$101.27	3.9%	\$0.85	\$6.50	\$95.62	\$94.77
2033	\$109.41	\$22.50	\$106.00	3.9%	\$0.88	\$6.50	\$100.38	\$99.50
2034	\$112.70	\$23.18	\$114.03	3.9%	\$0.90	\$6.50	\$108.43	\$107.53
2035	\$116.08	\$23.88	\$121.87	3.9%	\$0.93	\$6.50	\$116.30	\$115.37
2036	\$119.56	\$24.59	\$124.93	3.9%	\$0.96	\$6.50	\$119.39	\$118.43
2037	\$123.15	\$25.33	\$130.92	3.9%	\$0.99	\$6.50	\$125.41	\$124.42
2038	\$126.84	\$26.09	\$137.10	3.9%	\$1.02	\$6.50	\$131.62	\$130.60
2039	\$130.64	\$26.87	\$143.47	3.9%	\$1.05	\$6.50	\$138.02	\$136.97
2040	\$134.56	\$27.68	\$149.99	3.9%	\$1.08	\$6.50	\$144.57	\$143.49

(N)

(N)

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

AVOIDED COST PRICE (CONTINUED)

Standard Avoided Cost Prices for PV Solar QF

Year	Capacity Price	Capacity Cost Allocated to On-Peak Hours	Energy Only Price	Capacity Contribution	Capacity Payment On-Peak Hours	On-Peak	Off-Peak
	\$/kW-yr	(\$/MWh)	\$/MWh		\$/MWh	\$/MWh	\$/MWh
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
2014	Market Based Prices 2014 through 2015					\$42.25	\$29.50
2015	Less Wind Integration Charge					\$39.75	\$29.09
2016	\$66.20	\$13.62	\$43.16	32.0%	\$4.36	\$47.52	\$43.16
2017	\$68.19	\$14.03	\$44.82	32.0%	\$4.49	\$49.31	\$44.82
2018	\$70.24	\$14.45	\$46.72	32.0%	\$4.62	\$51.34	\$46.72
2019	\$72.34	\$14.88	\$49.30	32.0%	\$4.76	\$54.06	\$49.30
2020	\$74.51	\$15.33	\$51.98	32.0%	\$4.91	\$56.89	\$51.98
2021	\$76.75	\$15.79	\$55.90	32.0%	\$5.05	\$60.95	\$55.90
2022	\$79.05	\$16.26	\$60.49	32.0%	\$5.20	\$65.69	\$60.49
2023	\$81.42	\$16.75	\$64.48	32.0%	\$5.36	\$69.84	\$64.48
2024	\$83.86	\$17.25	\$67.94	32.0%	\$5.52	\$73.46	\$67.94
2025	\$86.37	\$17.77	\$71.86	32.0%	\$5.69	\$77.55	\$71.86
2026	\$88.96	\$18.30	\$75.63	32.0%	\$5.86	\$81.49	\$75.63
2027	\$91.63	\$18.85	\$79.88	32.0%	\$6.03	\$85.91	\$79.88
2028	\$94.38	\$19.41	\$83.40	32.0%	\$6.21	\$89.61	\$83.40
2029	\$97.22	\$20.00	\$87.39	32.0%	\$6.40	\$93.79	\$87.39
2030	\$100.13	\$20.60	\$91.79	32.0%	\$6.59	\$98.38	\$91.79
2031	\$103.14	\$21.21	\$96.25	32.0%	\$6.79	\$103.04	\$96.25
2032	\$106.23	\$21.85	\$101.27	32.0%	\$6.99	\$108.26	\$101.27
2033	\$109.41	\$22.50	\$106.00	32.0%	\$7.20	\$113.20	\$106.00
2034	\$112.70	\$23.18	\$114.03	32.0%	\$7.42	\$121.45	\$114.03
2035	\$116.08	\$23.88	\$121.87	32.0%	\$7.64	\$129.51	\$121.87
2036	\$119.56	\$24.59	\$124.93	32.0%	\$7.87	\$132.80	\$124.93
2037	\$123.15	\$25.33	\$130.92	32.0%	\$8.11	\$139.03	\$130.92
2038	\$126.84	\$26.09	\$137.10	32.0%	\$8.35	\$145.45	\$137.10
2039	\$130.64	\$26.87	\$143.47	32.0%	\$8.60	\$152.07	\$143.47
2040	\$134.56	\$27.68	\$149.99	32.0%	\$8.86	\$158.85	\$149.99

(N)

(N)

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

NET ENERGY PURCHASE PRICE

For contract years one (1) through (15) fifteen, the monthly Net Energy Purchase Price will be calculated as follows:

(D)(M)  
(N)

For all Energy delivered to the Company on a monthly basis during HL hours the Net Energy Purchase Price will be:

The On-Peak price from the preceding applicable Standard Avoided Cost Price tables multiplied by the appropriate Seasonality Factor.

For all Energy delivered to the Company on a monthly basis during LL hours the Net Energy Purchase Price will be:

The Off-Peak price from the preceding applicable Standard Avoided Cost Price tables multiplied by the appropriate Seasonality Factor.

(N)

For all periods after the end of the fifteenth (15<sup>th</sup>) contract year, the Company will pay the Seller monthly, for Energy delivered and accepted at the Point of Delivery in accordance with the Seller's election of the following options:

(C)  
(C)

Option 1 – Dead Band Method

(D)  
(T)

Net Energy Purchase Price =

On-Peak = (AGPU + Capacity Payment On-Peak Hours) X Seasonality Factor

(C)

Off-Peak = AGPU X Seasonality Factor

(T)

Actual Gas Price Used (AGPU) =

90% of Fuel Cost if

Indexed Fuel Cost is less than 90% Fuel Cost; else

110% of Fuel Cost if

Indexed Fuel Cost is greater than 110% Fuel Cost; else

Indexed Fuel Cost

where

On-Peak and Off-Peak are established in this schedule by QF resource type for the applicable calendar year of the actual Net Energy deliveries to the Company, and

(C)

Indexed Fuel Cost is the applicable weighted monthly average index price of natural gas at Sumas multiplied by the Heat Rate Conversion Factor.

(M)

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

NET ENERGY PURCHASE PRICE (Continued)

Option 2 – Gas Market Method

(M)  
(T)

Net Energy Purchase Price =

On-Peak = (AGPU + Capacity Payment On-Peak Hours) X Seasonality Factor

(C)

Off-Peak = AGPU X Seasonality Factor

(T)

Actual Gas Price Used (AGPU) = Indexed Fuel Cost

where

On-Peak and Off-Peak are established in this schedule by QF resource type for the applicable calendar year of the actual Net Energy deliveries to the Company, and

(C)

Indexed Fuel Cost is the applicable weighted monthly average index price of natural gas at Sumas multiplied by the Heat Rate Conversion Factor.

MISCELLANEOUS PROVISIONS

Insurance

Qualifying Facilities with a Nameplate Capacity of 200 kilowatts or smaller are not required to provide evidence of liability insurance.

GUIDELINES FOR NEGOTIATION OF POWER PURCHASE AGREEMENTS FOR QFS WITH A NAMEPLATE CAPACITY OF 10 MW OR LARGER

1. The Company will not impose terms and conditions beyond what is standard practice. The Edison Electric Institute master agreement and the Company's Standard Contracts are useful starting points in negotiating QF agreements.
2. The Company will provide an indicative pricing proposal for a QF that plans to provide firm energy or capacity and chooses avoided cost rates calculated at the time of the obligation. The Company will provide an indicative pricing proposal within 30 days of receipt of the information the Company requires from the QF. The proposal may include other terms and conditions, tailored to the individual characteristics of the proposed project. The avoided cost rates in the indicative pricing proposal will be based on the following:
  - a. The starting point for negotiations is the avoided cost calculated under the modeling methodology approved by the Idaho Public Utilities Commission for QFs over 10 MW, as refined by the Oregon Public Utility Commission to incorporate stochastic analyses of electric and natural gas prices, loads, hydro and unplanned outages.
  - b. The prospective QF may request in writing that the Company prepare a draft power purchase agreement to serve as the basis for negotiations. The Company may require additional information from the QF necessary to prepare a draft agreement.

(M)

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

GUIDELINES FOR NEGOTIATION OF POWER PURCHASE AGREEMENTS  
FOR QFS WITH A NAMEPLATE CAPACITY OF 10 MW OR LARGER (Continued)

- (M)
- c. Within 30 days of receiving the required information, the Company will provide a draft power purchase agreement containing a comprehensive set of proposed terms and conditions.
  - d. The QF must submit in writing a statement of its intention to begin negotiations with the Company and may include written comments and proposals. The Company is not obligated to begin negotiations until it receives written notification from the QF. The Company will not unreasonably delay negotiations and will respond in good faith to all proposals by the QF.
  - e. When the parties have agreed, the Company will prepare a final version of the contract within 15 business days. A contract is not final and binding until signed by both parties.
  - f. At any time after 60 days from the date the QF has provided its written notification pursuant to paragraph d., the QF may file a complaint with the Oregon Public Utility Commission asking the Commission to adjudicate any unresolved contract terms and conditions.
3. QFs have the unilateral right to select a contract length of up to 20 years for a PURPA contract. The contract length selected by the QF may impact other contractual issues including, but not limited to, the avoided cost determination with respect to that QF.\
  4. The Company should consider the QF to be providing firm energy or capacity if the contract requires delivery of a specified amount of energy or capacity over a specified term and includes sanctions for non-compliance under a legally enforceable obligation. The Company shall not determine that a QF provides no capacity value simply because the Company did not select it through a competitive bidding process. For a QF providing firm energy or capacity:
    - a. The Company and the QF should negotiate the time periods when the QF may schedule outages and the advance notification requirement for such outages, using provisions in the Company's partial requirements tariffs as guidance.
    - b. The QF should be required to make best efforts to meet its capacity obligations during Company system emergencies.
    - c. The Company and the QF should negotiate security, default, damage and termination provisions that keep the Company and its ratepayers whole in the event the QF fails to meet obligations under the contract.
    - d. Delay of commercial operation should not be a cause of termination if the Company determines at the time of contract execution that it will be resource-sufficient as of the QF on-line date specified in the contract; however, damages may be appropriate.
    - e. Lack of natural motive force for testing to prove commercial operation should not be a cause of termination.
    - f. The Company should include a provision in the contract that states the Company may require a QF terminated due to its default and wishing to resume selling to the Company be subject to the terms of the original contract until its end date.
- (M)

SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

GUIDELINES FOR NEGOTIATION OF POWER PURCHASE AGREEMENTS  
FOR QFS WITH A NAMEPLATE CAPACITY OF 10 MW OR LARGER (Continued)

5. An “as available” obligation for delivery of energy, including deliveries in excess of Nameplate Capacity or the amount committed in the QF contract, should be treated as a non-firm commitment. Non-firm commitments should not be subject to minimum delivery requirements, default damages for construction delay or under-delivery, default damages for the QF choosing to terminate the contract early, or default security for these purposes.
6. For QFs unable to establish creditworthiness, the Company must at a minimum allow the QF to choose either a letter of credit or cash escrow for providing default security. When determining security requirements, the Company should take into account the risk associated with the QF based on such factors as its size and type of supply commitments.
7. When QF rates are based on avoided costs calculated at the time of delivery, the Company should use day-ahead on- and off-peak market index prices at the appropriate market hub(s).
  - a. For QFs providing firm energy or capacity that choose this option, avoided cost rates should be based on day-ahead market index prices for firm purchases.
  - b. For QFs providing energy on an “as available” basis, avoided cost rates should be based on day-ahead market index prices for non-firm purchases.
8. The Company should not make adjustments to standard avoided cost rates other than those approved by the Oregon Public Utility Commission and consistent with these guidelines.
9. The Company should make adjustments to avoided costs for reliability on an expected forward-looking basis. The Company should design QF rates to provide an incentive for the QF to achieve the contracted level and timing of energy deliveries.
10. The Company should make adjustments to avoided costs for dispatchability on a probabilistic, forward-looking basis.
11. If avoided cost rates for a QF are calculated at the time of the obligation and the Company’s avoided resource is a fossil fuel plant, the Company should adjust avoided cost rates for the resource deficiency period to take into account avoided fossil fuel price risk.
12. Avoided cost rates for wind QFs should be adjusted for integration cost estimates based on studies conducted for the Company’s system, unless the QF contracts for integration services with a third party.
  - a. The Company should use the most recent integration cost data available, consistent with its evaluation of competitively bid and self-build wind resources.
  - b. The portion of integration costs attributable to reserves costs should be based on the difference in such costs between the wind QF and the Company proxy plant.



SCHEDULE 85  
COGENERATION AND SMALL POWER  
PRODUCTION STANDARD  
CONTRACT RATES  
(Continued)

GUIDELINES FOR NEGOTIATION OF POWER PURCHASE AGREEMENTS  
FOR QFS WITH A NAMEPLATE CAPACITY OF 10 MW OR LARGER (Continued)

- c. The Company should base first-year integration costs on the actual level of wind resources in the control area, plus the proposed QF. Integration costs for years two through five of the contract should be based on the expected level of wind resources in the control area each year, including the new resources the Company expects to add. Integration costs should be fixed at the year-five level, adjusted for inflation, for the remainder of the life of the wind projects in the control area.
  - d. The Company is prohibited from using a long-range planning target for wind resources as the basis for integration costs. However, if the Company is subject to near-term targets under a mandatory Renewable Portfolio Standard, the Company may base its integration costs on the level of renewable resources it must acquire over the next 10 years.
  - e. In determining integration costs, the Company should make reasonable estimates regarding the portion of renewable resources to be acquired that will be intermittent resources.
13. The Company should adjust avoided cost rates for QF line losses relative to the Company proxy plant based on a proximity-based approach.
14. The Company should evaluate whether there are potential savings due to transmission and distribution system upgrades that can be avoided or deferred as a result of the QFs location relative to the Company proxy plant and adjust avoided cost rates accordingly.
15. The Company should not adjust avoided cost rates for any distribution or transmission system upgrades needed to accept QF power. Such costs should be separately charged as part of the interconnection process.
16. The Company should not adjust avoided cost rates based on its determination of the additional cost it might incur for any debt imputation by a credit rating agency.
17. Regarding Surplus Sale and Simultaneous Purchase and Sale:
- a. QFs may either contract with the Company for a “surplus sale” or for a “simultaneous purchase and sale” provided, however, that the QFs selection of either such contractual arrangement shall not be inconsistent with any retail tariff provision of the Company then in effect or any agreement between the QF and the Company;
  - b. The two sale/purchase arrangements described in paragraph 17. a will be available to QFs regardless of whether they qualify for standard contracts and rates or non-standard contracts and rates, however the “simultaneous purchase and sale” is not available to QFs not directly connected to the Company’s electrical system;
  - c. The negotiation parameters and guidelines should be the same for both sale/purchase arrangements described in paragraph 17. a; and
  - d. The avoided cost calculations by the Company do not require adjustment solely as a result of the selection of one of the sale/purchase arrangements described in paragraph 17.a., rather than the other.