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REPORT NAME: Report of a Major Resource Acquisition Pursuant to Order No. 06-446 (Guideline 2a)

COMPANY NAME: Portland General Electric Company

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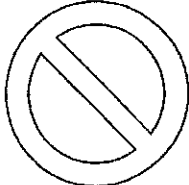
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[X]Order 06-446 (Guideline 2a)
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Portland General Electric Company
Legal Department
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V. Denise Saunders
Associate General Counsel

April 21, 2014

Via Electronic Filing
Oregon Public Utility Commission
Attention: Filing Center
PO Box 1088
Salem OR 97308-1088

Re: Portland General Electric Company's Report of a Major Resource Acquisition

Attention Filing Center:

Pursuant to Order No. 06-446 (Guideline 2a), Portland General Electric Company ("PGE") is submitting this report to inform the Commission that it has entered into a contract to continue to purchase the output from the Confederated Tribes of the Warm Springs Reservation of Oregon's (Tribes) 33.33 percent ownership share of the Pelton and Round Butte plants (PRB) and all of the net output of the Tribes' Re-regulation plant (Re-reg).

As discussed below, PGE does not believe that the Commission's Request for Proposal ("RFP") requirements apply to this transaction, because PGE will continue to purchase the same amount of energy from the Tribes that it has purchased over the previous twelve years and would have continued to purchase under the terms of the 2002 Ownership and Operation Agreement between PGE and the Tribes ("O & O"). Out of an abundance of caution however, PGE is submitting this report to the Commission under Competitive Bidding Guideline 2a to explain how the requisite conditions have been met for acting outside of the RFP requirement, if such requirement is applicable. To the extent that the Commission believes a waiver of the RFP requirement is necessary then PGE requests that the Commission grant such a waiver on the grounds that the arrangement provides a significant and unique value to customers that would have been lost had PGE been required to issue an RFP.

Background

PGE and the Tribes are co-owners of the PRB, with PGE acting as operator. The Tribes have a 33.33% ownership share in PRB and are the sole owner of the Re-reg generation facility. Under the O & O, the Tribes are obligated to sell to PGE and PGE is obligated to purchase the full output from the Tribes' share of PRB and the entire net output from Re-reg ("the output") at the Dow Jones Mid-Columbia (Mid-C) Electricity Price Index, or an alternative index agreed to by the parties. The O & O is attached hereto as Appendix A. Under Articles 5.7 and 5.9 of the O & O, the Tribes also have a one-time right to elect to sell their share of the output to a third party,

provided they give PGE notice by April 1 of the prior year. Once the Tribes give notice of this election, for the remainder of the life of the PRB license, they are no longer obligated to sell their share of the output to PGE and PGE is no longer obligated to purchase it.

Warm Springs Power and Water Enterprises (WSPWE), the entity that manages the Tribes' shares and interest in PRB and Re-reg, informed PGE during the summer of 2013 of their intention to explore their rights under the O & O to sell their share of the output to a third party beginning in 2015 via an auction process. Due to the longstanding relationship between PGE and the Tribes and the joint ownership structure, both PGE and WSPWE agreed to explore the possibility of preserving the Tribes exclusive sale obligations to PGE for a fixed time period. Because of the April 1, 2014 deadline for the Tribes' notice of their election to sell to a third party to be received by PGE, the Tribes asked for an accelerated negotiation process. PGE and WSPWE reached an agreement on price, terms, and conditions and executed a new contract on March 21, 2014. PGE has submitted the agreement and testimony describing the transaction in its general rate case. *See In the Matter Portland General Electric Company's General Rate Revision*, Docket No. UE 283, PGE's Supplemental Testimony and Exhibits of Maria Pope and Alex Tooman, Exhibit PGE/1503 (April 21, 2014).

Contract Terms

The contract is for the ten year period January 1, 2015 through December 31, 2024. Under the contract, the Tribes will agree to forego their right under the O & O to sell the output to a third party, and agree to continue to sell the output exclusively to PGE for a ten year term. PGE will purchase project energy, capacity and all other generation attributes at a price that includes a fixed payment component plus a variable payment component. The variable payment is based on actual generation and priced at the day-ahead Intercontinental Exchange (ICE) on- and off-peak price for Mid-C physical power.

PGE also has the right to operate the plants as desired to meet system needs and will have the flexibility to optimize the project for energy production as well as for providing capacity and ancillary services (e.g., PGE is not obligated to maximize on-peak energy production). This allows PGE to take full advantage of the plants' flexibility by using the plants for balancing, ancillary services, and other uses that do not necessarily maximize the variable payments made. In exchange for this additional ability and the Tribes foregoing the right to sell to a third party, PGE will pay the Tribes a fixed monthly payment. If the Tribes elect to exercise their right to purchase an additional 16.66% ownership share of PRB in 2023, the fixed and expected variable payments would increase proportionately to represent the Tribes' increased ownership share of PRB. If the Tribes exercise the 2022 option to increase their ownership share, PGE will continue to retain rights to purchase the Tribes' full share of the output of PRB and the net output of the Re-reg through the term of the contract.

The RFP Requirement

The Commission's RFP Guidelines require utilities to issue an RFP for the acquisition of Major Resources, which are defined as resources with durations greater than 5 years and

quantities greater than 100 MW. Guideline 1. A utility is not required to issue an RFP for the acquisition of a Major Resource where there is a time-limited resource opportunity of unique value to customers. Guideline 2a. In such a case, the utility must, within 30 days, file a report with the Commission explaining how the requisite conditions have been met for acting outside of the RFP requirement. The Guidelines also allow the Commission to waive the RFP requirements on a case-by-case basis. Guideline 2c.

PGE believes that the RFP requirement does not apply in this case, since PGE is not acquiring a new resource. Under the new agreement with the Tribes, PGE is not purchasing any more energy for any greater length of time than it was already committed to under the O & O Agreement. Nonetheless, out of an abundance of caution, PGE is submitting this report under Guideline 2a as the transaction presented a time-limited opportunity to secure certainty of long-term access to an existing resource that provides unique value to PGE customers.¹ To the extent that the Commission believes a waiver of the RFP requirement is necessary, then PGE requests that the Commission grant such a waiver on the grounds that the arrangement provides a significant and unique value to customers that would have been lost had PGE been required to issue an RFP.

Time-Limited Opportunity

Under the O&O, the Tribes had to provide formal notice to PGE by April 1, 2014, if they were going to exercise their right to sell their output to a third party in 2015. The Tribes first informed PGE during the summer of 2013 that they wanted to explore this possibility. PGE and the Tribes then undertook an accelerated negotiation process to define terms under which the Tribes might continue to sell their output from PRB and the Re-reg to PGE on an exclusive basis. The nature and time frame of the transaction did not allow for the development, issuance and conduct of a RFP. Until the terms of the arrangement were settled in March of this year, it was unclear whether PGE would be losing any energy supplied by the Tribes under the O&O. Moreover, under the O&O, PGE was not at liberty to walk away from its obligation to purchase from the Tribes so long as the Tribes were willing to sell to PGE.

Unique Value to PGE's Customers

The continuation of PGE's purchases from the Tribes represents significant and unique value for PGE's customers. PGE's contracts for highly flexible Mid-C hydro have diminished over time and will continue to expire in the future. PRB is the only PGE-owned resource that provides usable reservoir storage and shaping capabilities. PGE relies on PRB to provide regulation and load following services, spinning, and operating reserves. As the amount of PGE generation being provided by variable energy resources (VERs) increases, PGE will require firm access to flexible capacity resources, like PRB, to cost-effectively manage the variability of increasing wind, solar, and other VERs. The project also provides an increasingly unique source of dispatchable, non-emitting electric generation. The new agreement with the Tribes provides certainty that PGE will continue to purchase the Tribes' output of PRB for the next ten years. Thus, it will allow PGE to continue to serve load and meet reliability for this time period with

¹ PGE has also presented this transaction as an alternative acquisition method in its 2013 IRP.

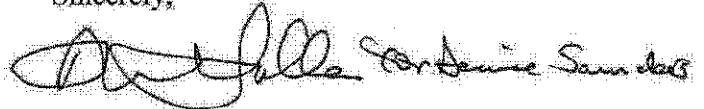
competitively priced power that is system delivered, highly flexible, and produces zero carbon emissions.

In order to ensure that the terms of the agreement represented good value to PGE and its customers, PGE compared the contract terms to three market references: (1) recent hydro auctions conducted in the Northwest for projects similar to PRB; (2) market indications from PGE's recently concluded Requests for Proposals; and, (3) an internally developed financial model used to determine the value of the contract in terms of the benefits to PGE's portfolio. PGE's analysis showed that the contract terms are competitively priced when compared to the market references, are beneficial for both parties, and offer benefits to PGE's portfolio.

Conclusion

As discussed above, PGE does not believe the RFP requirement is applicable to its new agreement with the Tribes. Nonetheless, out of an abundance of caution, PGE is submitting this report under RFP Guideline 2a because the agreement offers a time-limited resource value of unique value to customers. We believe that no additional action is required under the RFP Guidelines by either PGE or the Commission. However, to the extent that the Commission believes a waiver of the RFP requirement is necessary, then PGE requests that the Commission grant such a waiver on the grounds that the agreement provides a significant and unique value to customers that would have been lost had PGE been required to issue an RFP.

Sincerely,



V. DENISE SAUNDERS
Associate General Counsel

VDS:qal

Enclosures

cc: UE 283 – Service List (with attachment)
LC 56 – Service List (with attachment)
UM 1535 – Service List (with attachment)

OWNERSHIP AND OPERATION AGREEMENT
FOR THE
PELTON AND ROUND BUTTE DAMS
AND GENERATING FACILITIES
BY
THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF OREGON
AND
PORTLAND GENERAL ELECTRIC COMPANY

Dated as of January 1, 2002
12:15 a.m.

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	2
1.1 Definitions.....	2
1.2 Interpretations	7
ARTICLE II OWNERSHIP.....	8
2.1 Initial Ownership.	8
2.2 Options of the Tribes to Increase Ownership Share.	8
2.3 Changes in Ownership Share.....	8
2.4 Miscellaneous Ownership Rights and Obligations.....	8
2.5 Round Butte Switching Station 230 kV Main Bus.....	9
ARTICLE III OPERATION.....	9
3.1 Operator.	9
3.2 Operating Committee and Operating Decisions.	17
3.3 Operating Trust Account and Payment of Costs of Operation.	21
3.4 Reimbursement for Advances.....	22
3.5 Taxes.....	22
3.6 Operations and Capital Additions Budgets.....	22
3.7 Accounting.....	23
3.8 Certain Costs and Claims Treated as Costs of Operation.....	23
3.9 Elective Capital Additions.....	24
ARTICLE IV ALLOCATION OF PROJECT RIGHTS; SCHEDULING.....	24
4.1 Allocation of Project Rights.....	24
4.2 Scheduling Project Rights.....	25
ARTICLE V USE OF THE TRIBES' ALLOCATION AND RIGHTS TO SCHEDULE PROJECT RIGHTS; SALE OF REREGULATING DAM NET OUTPUT TO PGE	27
5.1 Sale of the Tribes' Allocation and the Tribes' Rights to schedule Project Rights.	27
5.2 Price.	27
5.3 Taxes.....	27
5.4 Determination of Index Value to be Used to Calculate Market Value.....	27
5.5 Determination of Timing of PGE Purchases from the Tribes.....	28
5.6 Determination of Market Value by Application of Index Values to PGE Purchases from The Tribes.....	29
5.7 Election of Tribes Not to Sell Tribes' Allocation to PGE.....	29
5.8 Sale by the Tribes to PGE of Pelton Reregulating Dam Net Output.....	29
5.9 Election of Tribes Not to Sell PRD Net Output to PGE.....	29
5.10 No Prohibition of Alternative Sales of Tribes' Allocation and PRD Net Output to PGE. 30	
5.11 Power Purchase Agreements.....	30
5.12 Acquisition Loan.....	30
5.13 Repayment of Acquisition Loan.....	30
5.14 Reserve Account.....	31
ARTICLE VI MUTUAL INDEMNIFICATION; LIMITATION OF OWNERS' LIABILITY..	31
6.1 Mutual Indemnification by Owners.....	31
6.2 Exclusion of Liability for Certain Categories of Damages.....	32
ARTICLE VII WAIVER OF IMMUNITY; DISPUTES	33

7.1	Waiver of Immunity.....	33
7.2	Choice of Laws.....	34
7.3	Dispute Resolution.....	34
7.4	Limitations on Recourse.....	35
	ARTICLE VIII DAMAGE TO PROJECT; END OF PROJECT.....	36
8.1	Damage to the Project.....	36
8.2	End of the Project.....	37
	ARTICLE IX TERM AND TERMINATION.....	37
9.1	Term.....	37
9.2	Termination.....	37
	ARTICLE X DEFAULT AND REMEDIES.....	38
10.1	Default.....	38
10.2	Remedies.....	38
	ARTICLE XI INSURANCE.....	39
11.1	Project Property and Equipment.....	39
11.2	Workers' Compensation, General Liability and Automobile Liability.....	39
11.3	Consequential Damages.....	40
11.4	Primary Insurance.....	40
11.5	Costs of Operation.....	40
11.6	Coverage to be Maintained by Owners.....	40
11.7	Waiver of Subrogation.....	41
11.8	Status of Insurance.....	41
11.9	Supplemental Insurance.....	41
11.10	Election to Purchase Separate Coverage.....	41
	ARTICLE XII ASSIGNMENTS AND TRANSFERS.....	42
12.1	Assignments and Transfers.....	42
12.2	Right of First Refusal Upon Sale by PGE.....	43
12.3	Acceleration of Tribes' First Purchase Option and Second Purchase Option.....	45
	ARTICLE XIII MISCELLANEOUS.....	47
13.1	Effect of Force Majeure.....	47
13.2	Mutual Covenants to Perform under Long-Term Global Settlement Compensation Agreement.....	47
13.3	Attorney Fees and Litigation Expenses.....	47
13.4	Notices.....	47
13.5	Waivers.....	48
13.6	No Reliance.....	49
13.7	Assumption of Risk.....	49
13.8	Waiver of Defenses.....	49
13.9	No Third-Party Beneficiaries.....	49
13.10	Severability.....	49
13.11	Independent Counsel.....	49
13.12	Entire Agreement.....	50

Exhibit A	Operating Guidelines
Exhibit B:	Administrative and General Costs
Exhibit C:	Sample Calculations for Determination of Reconciliation Payments

1 This OWNERSHIP AND OPERATION AGREEMENT is dated as of January 1, 2002
2 12:15 a.m. (this "Agreement") and is by and between The Confederated Tribes of the Warm
3 Springs Reservation of Oregon, a federally recognized Indian tribe having a Constitution and
4 Bylaws and Corporate Charter adopted pursuant to the terms of the Indian Reorganization Act
5 including its governing body the Tribal Council (the "Tribes"), and Portland General Electric
6 Company, an Oregon corporation ("PGE"). (The Tribes and PGE are each referred to
7 individually herein as a "Party" and collectively as the "Parties").

8 RECITALS
9

10 WHEREAS, the Tribes are a federally recognized Indian tribe organized under a
11 constitution and bylaws ratified by the members of the Tribes on December 18, 1937, and
12 approved by the Assistant Secretary of Interior of the United States on February 14, 1938,
13 pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of
14 June 15, 1935 (49 Stat. 378);

15 WHEREAS, the Tribes ratified on April 23, 1938 a corporate charter issued to them by
16 Interior pursuant to Section 17 of such Act of June 18, 1934;

17 WHEREAS, pursuant to the foregoing authorities the Tribes exercise governmental and
18 corporate powers over tribal lands within the boundaries of the Warm Springs Indian
19 Reservation of Oregon (the "Tribal Lands") as such reservation is described in that certain Treaty
20 between the United States of America and the Tribes and Bands of the Middle Oregon executed
21 June 25, 1855 (12 Stat. 963);

22 WHEREAS, PGE is an electric utility engaged in generating, transmitting and
23 distributing electric energy;

24 WHEREAS, the Tribes and PGE were parties to the 1955 Agreement pursuant to which
25 (a) the Tribes granted PGE certain easements and rights necessary to the construction and
26 operation of (i) the Pelton Dam and the Round Butte Dam and the generation and transmission
27 facilities associated with such dams and (ii) the Pelton Reregulating Dam, and (b) (i) the
28 compensation to be paid to the Tribes by PGE for such easements and rights was established and
29 (ii) certain rights of the Tribes, including the right of the Tribes to construct, operate and
30 maintain generation facilities in the Pelton Reregulating Dam were also established or affirmed;

31 WHEREAS, pursuant to the 1955 Agreement and Project License No. 2030 granted by
32 the Federal Power Commission (now FERC), (a) PGE constructed, operates and maintains (i) the
33 Pelton Dam and the Round Butte Dam and the generation and transmission facilities associated
34 therewith and (ii) the Pelton Reregulating Dam, and (b) the Tribes constructed, operate and
35 maintain the generation facilities in the Pelton Reregulating Dam;

36 WHEREAS, the Tribes and PGE entered into a Long-Term Global Settlement and
37 Compensation Agreement, dated as of April 12, 2000, among themselves and Interior (the
38 "Long-Term Global Settlement and Compensation Agreement") in order to establish their
39 respective rights with respect to Project No. 2030 and their activities related thereto, including
40 but not limited to all Compensation payable to the Tribes in connection therewith;

1 WHEREAS, pursuant to the Long-Term Global Settlement and Compensation
2 Agreement the Tribes have purchased from PGE an Undivided 33.33% Interest in the Pelton and
3 Round Butte Facilities;

4 WHEREAS, the Tribes and PGE desire to enter into a long-term agreement regarding the
5 ownership and operation of the Project which helps them mutually achieve long-term economic
6 benefits from the Project while addressing appropriately natural resources impacted by the
7 Project;

8 WHEREAS, the Tribes and PGE desire that such ownership and operation agreement
9 foster close working relationships and cooperation between them, and sound decision-making by
10 them, relative to the Project; and

11 WHEREAS, entering into this Agreement is required by the terms of the Long-Term
12 Global Settlement and Compensation Agreement.

13 NOW THEREFORE, in consideration of the premises and the representations,
14 warranties, covenants and agreements contained herein, the Parties hereto, intending to be legally
15 bound, hereby agree as follows:

16 **ARTICLE I**
17 **DEFINITIONS**

18 1.1 Definitions.

19 (1) Unless otherwise defined in this Agreement, terms defined in the Long-Term Global
20 Settlement and Compensation Agreement shall have the same meanings when used herein as in
21 such agreement. As used in this Agreement, the following terms shall have the meanings
22 specified in this Section 1.1:

23 (2) "Acquisition Loan" has the meaning set forth in Section 5.12.

24 (3) "Adjustment Amount" has the meaning assigned to that term in the Asset Purchase
25 Agreement.

26 (4) "Agreement" has the meaning set forth in the introductory paragraph hereof.

27 (5) "Applicable Law" has the meaning set forth in the Long-Term Global Settlement and
28 Compensation Agreement.

29 (6) "Capacity" means the rate at which electrical energy can be generated, expressed in
30 megawatts (MW).

31 (7) "Capital Additions" means additions, improvements and betterments to the Project.

32 (8) "Cause" has the meaning set forth in Section 3.1(f)(ii).

1 (9) "Claimable Event" has the meaning set forth in the Long-Term Global Settlement and
2 Compensation Agreement.

3 (10) "Claiming Party" has the meaning set forth in the definition of "Force Majeure."

4 (11) "Claims" has the meaning set forth in the Long-Term Global Settlement and
5 Compensation Agreement.

6 (12) "Costs of Capital Additions" means those costs incurred or to be incurred to effect
7 Capital Additions.

8 (13) "Costs of Operation" means all costs attributable to the operation and
9 maintenance of the Project, including administrative and general costs determined pursuant to
10 Exhibit B and repairs, renewals and replacements necessary to assure design capability and
11 reliability or that are required by any Governmental Authority. Costs of Operation shall not
12 include either taxes based upon the income of either of the Owners or property taxes that are
13 assessed exclusively on the property interests of only one of the Owners.

14 (14) "Cove Agreements" means (a) the Cove Replacement Agreement between PGE
15 and PacifiCorp, dated as of June 2, 1961, pursuant to which PGE compensates PacifiCorp for
16 inundation of PacifiCorp's Cove Project by the construction of the Pelton and Round Butte
17 Facilities, (b) the Agreement between the United States Department of the Interior (Bureau of
18 Reclamation), Pacific Power & Light Company and PGE dated June 2, 1961 whereby the Bureau
19 of Reclamation became a beneficiary of the alternative power arrangements made in the Cove
20 Replacement Agreement of the same date, (c) the Agreement Concerning Interconnection and
21 Power Exchange dated as of November 1, 1963 and as amended June 27, 1974, between PGE
22 and PacifiCorp and (d) the Round Butte/Cove Interconnection and Operation Agreement
23 between PGE and PacifiCorp dated July 8, 1993.

24 (15) "Covered Claims" has the meaning set forth in Section 3.1(e)(iv).

25 (16) "Effective Budget" has the meaning ascribed to it in Section 3.6(a).

26 (17) "Effective Date" has the meaning set forth in Section 9.1.

27 (18) "Elective Capital Additions" means additions, improvements and betterments to
28 the Project that are not required to assure design capability or reliability or that are not required
29 by any Governmental Authority.

30 (19) "Energy" means kilowatt-hours (kWh).

31 (20) "Estimated Purchase Price" has the meaning assigned to that term in the Asset
32 Purchase Agreement.

33 (21) "Force Majeure" means an event not anticipated as of the Effective Date which is
34 not within the reasonable control of the Party (or in the case of third party obligations or
35 facilities, the third party) claiming suspension (the "Claiming Party"), and which by the exercise
36 of due diligence the Claiming Party is unable to overcome in a commercially reasonable manner

1 or obtain or cause to be obtained a commercially reasonable substitute performance therefor.
2 Events of Force Majeure include, but are not restricted to: wrongful or negligent acts of the
3 other Party; acts of God; fire, civil disturbance; labor dispute or labor shortages; strikes;
4 sabotage; action or restraint by court order or Governmental Authority (so long as the Claiming
5 Party has not applied for or assisted in the application for, and has opposed where and to the
6 extent reasonable, such action or restraint); and inability after diligent application to obtain or
7 maintain required permits, licenses, zoning or other required approvals from any Governmental
8 Authority or other third-party Person whose consent is required as a condition to a Party's
9 performance hereunder.

10 (22) "Governmental Authority" has the meaning set forth in the Long-Term Global
11 Settlement and Compensation Agreement.

12 (23) "Implementation Effective Date" has the meaning set forth in Section 5.7.

13 (24) "Indemnified Owner" has the meaning set forth in Section 6.1(a).

14 (25) "Indemnifying Owner" has the meaning set forth in Section 6.1(a).

15 (26) "Index Value" has the meaning set forth in Section 5.4.

16 (27) "Long-Term Global Settlement and Compensation Agreement" has the meaning
17 set forth in the recitals hereof.

18 (28) "Market Value" has the meaning set forth in Section 5.6.

19 (29) "Net Generating Capability" means the total amount of Energy which the Project
20 is capable of generating, due allowance being made for legal, regulatory and physical constraints
21 then existing, less the amount used in the production thereof.

22 (30) "Net Output" means the net amount of Capacity and Energy produced by the
23 Project from time to time under the operating conditions then existing, including periods when
24 some or all of the Project may be inoperable. "Net Output" is net of station use and after
25 depletions required by the Original License or the New FERC License, as applicable, and other
26 agreements and obligations from time-to-time, including obligations to supply Capacity and/or
27 Energy pursuant to the Cove Agreements.

28 (31) "Off-Peak Hours" has the meaning set forth in Section 5.4.

29 (32) "Off-Peak Index Value" has the meaning set forth in Section 5.4.

30 (33) "On-Peak Hours" has the meaning set forth in Section 5.4.

31 (34) "On-Peak Index Value" has the meaning set forth in Section 5.4.

32 (35) "Operating Committee" means the committee established pursuant to Section
33 3.2(a).

1 (36) "Operating Guidelines" means the Operating Guidelines for the Project attached
2 hereto as Exhibit A (as they may be modified from time to time by the Operating Committee).

3 (37) "Operating Trust Account" means the bank account established by the Operator to
4 receive and disburse funds pursuant to this Agreement as more specifically provided in Section
5 3.3(a).

6 (38) "Operator" means the entity appointed pursuant to Section 3.1 to operate the
7 Project.

8 (39) "Owners" means PGE and the Tribes and their permitted successors and assigns,
9 and any other Person that becomes a holder of an Ownership Share, by operation of law or
10 otherwise, pursuant to the terms of this Agreement, provided, that no such Person shall succeed
11 to or acquire the rights provided to Owners under this Agreement unless and to the extent (a) the
12 assignment or transfer pursuant to which it acquired its Ownership Share is valid under the terms
13 of this Agreement and (b) it becomes a Party to this Agreement by execution of this Agreement
14 or by a written agreement, acceptable to a majority of the holders of the Ownership Shares and
15 the Operator, to be bound by all of the terms and conditions hereof.

16 (40) "Ownership Share" means the respective ownership interest of an Owner
17 expressed as a decimal fraction as specified in Section 2.1 as such may be altered or adjusted
18 pursuant to this Agreement. In all cases Ownership Share shall be computed to two decimal
19 places.

20 (41) "Permitted Claims" has the meaning set forth in Section 3.8(d).

21 (42) "Person" has the meaning set forth in the Long-Term Global Settlement and
22 Compensation Agreement.

23 (43) "PGE" has the meaning set forth in the introductory paragraph hereof.

24 (44) "PGE's Allocation" means the percentage of the Project Rights to which PGE is
25 entitled from time to time, as set forth in Article IV.

26 (45) "Power Purchase and Sale Agreement No.02-03-A" has the meaning set forth in
27 Section 5.11.

28 (46) "Power Purchase and Sale Agreements" means the Wholesale Power Purchase
29 and Sale Agreement No. 02-03-A and the Wholesale Power Purchase and Sale Agreement No.
30 02-06-A attached as Exhibit C hereto.

31 (47) "PRD Implementation Effective Date" has the meaning set forth in Section 5.9.

32 (48) "PRD Net Output" has the meaning set forth in Section 5.8.

33 (49) "Proceedings" has the meaning set forth in the Long-Term Global Settlement and
34 Compensation Agreement.

1 (50) "Project" means the "Pelton and Round Butte Facilities", as defined in the Long-
2 Term Global Settlement and Compensation Agreement.

3 (51) "Project Rights" means generator capability, pondage, reservoir elevation limits,
4 inflows, minimum discharge, generator availability, reserves, load following, spill and all other
5 capability derived from the Project (specifically including capability which may not be
6 considered a "product" as of the Effective Date of this Agreement). "Project Rights" are net of
7 station use and after depletions required by the Original License or the New FERC License, as
8 applicable, and other agreements and obligations from time-to-time, including obligations to
9 supply Capacity and/or Energy pursuant to the Cove Agreements.

10 (52) "Prudent Utility Practice" means any of the practices, methods and acts engaged
11 in or approved by a significant portion of the electric utility industry prior to the action in
12 question or any of the practices, methods and acts, which, in the exercise of reasonable judgment
13 in light of the facts known at the time the decision was made, could have been expected to
14 accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and
15 expedition. Prudent Utility Practice shall apply not only to functional parts of the Project, but
16 also to appropriate structures, landscaping, painting, signs, lighting and other facilities and public
17 relations programs reasonably designed to promote public enjoyment, understanding and
18 acceptance of the Project. Prudent Utility Practice is not intended to be limited to the optimum
19 practice, method or act to the exclusion of all others, but rather to be a spectrum of possible
20 practices, methods or acts. Prudent Utility Practice shall also include those practices, methods
21 and acts that are required by Applicable Law and final orders or regulations of Governmental
22 Authorities having jurisdiction.

23 (53) "Purchase Price" has the meaning assigned to that term in the Asset Purchase
24 Agreement.

25 (54) "Reserve Account" has the meaning set forth in Section 5.14.

26 (55) "Right of First Refusal" has the meaning set forth in Section 12.2.

27 (56) "Scheduling Day" means those days on which the majority of the power market
28 participants in the geographic area of the Western Systems Coordinating Council (as such
29 geographic area is defined as of the Effective Date) schedule Energy, Capacity and other
30 products for future deliveries. (With limited exceptions, as of January 1, 2001 such Scheduling
31 Days are all days except Saturdays, Sundays and holidays).

32 (57) "Taxes" means any or all ad valorem, property, occupation, severance,
33 generation, first use, conservation, Btu or energy, transmission, utility gross receipts, privilege,
34 sales, use, consumption, excise, lease, transaction and other taxes or governmental charges,
35 licenses, fees, permits and assessments or increases therein, other than taxes based upon net
36 income or net worth.

37 (58) "Term" means the term of this Agreement as defined in Section 9.1.

38 (59) "Tribal Lands" has the meaning set forth in the recitals hereof.

1 (60) "Tribes" has the meaning set forth in the introductory paragraph hereof.

2 (61) "Tribes' Allocation" means the percentage of the Project Rights to which the
3 Tribes are entitled from time to time, determined as set forth in Article IV.

4 (62) "Tribes As Third Party" means the Tribes in their status not as an Owner, but
5 rather as a third party otherwise independent of the Project. For example, the Tribes would be a
6 third party relative to their status as the owner of the lumber mill in Warm Springs, but would
7 not be a third party relative to their status as an Owner of an undivided interest in the Project.

8 (63) "Tribes' Ownership Costs" means all of the actual, out-of-pocket costs incurred
9 by the Tribes relating to the Project which would be recognized by FERC were the Tribes
10 required to maintain accounts in accordance with the Uniform System of Accounts. Such costs
11 shall include all costs arising from the ownership, operation and maintenance of the Project and
12 the depreciation component of renewals and replacements for which the Tribes are required to
13 reimburse PGE pursuant to this Agreement. Such costs shall include debt service, return or and
14 of equity capital contributed by the Tribes using the same amortization schedule and rate of
15 return as those related to debt service, the costs of renewals and replacements, FERC fees,
16 payments in lieu of Taxes, insurance and reasonable administrative costs incurred directly by the
17 Tribes. Tribes' Ownership Costs shall also include all the prorations identified in Section 3.6(a)
18 of the Asset Purchase Agreement.

19 (64) "Uniform System of Accounts" means the Uniform System of Accounts
20 prescribed by FERC for electric utilities and hydroelectric licensees as in effect from time to
21 time.

22 1.2 Interpretations.

23 In this Agreement, unless clear contrary intention appears: (a) the singular number
24 includes the plural number and vice versa; (b) reference to any person includes such person's
25 successors and assigns but, if applicable, only if such successors and assigns are permitted by
26 this Agreement, and reference to a person in a particular capacity excludes such person in any
27 other capacity; (c) reference to any gender includes each other gender; (d) reference to any
28 agreement (including this Agreement), document or instrument means such agreement,
29 document or instrument as amended or modified and in effect from time to time in accordance
30 with the terms thereof and, if applicable, the terms hereof; (e) reference to any Article, Section,
31 Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and
32 references in any Article, Section, Schedule, Exhibit or definition to any clause means such
33 clause of such Article, Section, Schedule, Exhibit or definition; (f) "hereunder", "hereof",
34 "hereto", "herein" and words of similar import are reference to this Agreement as a whole and
35 not to any particular Section or other provision hereof; (g) relative to the determination of any
36 period of time, "from" means "from and including", "to" means "to but excluding" and
37 "through" means "through and including"; (h) "including" (and with correlative meaning
38 "include") means including without limiting the generality of any description proceeding such
39 term; and (i) reference to any law (including statutes and ordinances) means such law as
40 amended, modified, codified or reenacted, in whole or in part, and in effect from time to time,
41 including rules and regulations promulgated thereunder.

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**ARTICLE II
OWNERSHIP**

2.1 Initial Ownership.

Subject to the terms and conditions set forth in this Agreement, the Tribes and PGE shall own the Project as tenants in common with each owning undivided interests in the following percentages:

Tribes	33.33%
PGE	66.67%

Each Owner's undivided interest from time to time is referred to herein as its "Ownership Share".

2.2 Options of the Tribes to Increase Ownership Share.

On the terms and subject to the conditions set forth in Section 5.6 of the Long-Term Global Settlement and Compensation Agreement, the Parties recognize that the Tribes have the options to increase their Ownership Share through purchases of the Undivided 16.66% Interest and the Undivided .02% Interest.

2.3 Changes in Ownership Share.

The Ownership Shares are subject to change on account of damage to the Project as provided in Section 8.1 below. Any such changes in an Owner's Ownership Share shall take place pursuant to the terms and conditions of this Agreement and without any further act, except such regulatory approval(s) as may be required.

2.4 Miscellaneous Ownership Rights and Obligations.

Each Owner shall promptly and with all due diligence take all necessary action in aid of obtaining all regulatory approvals, licenses and permits necessary to carry out its obligations under this Agreement.

(a) Each Owner shall, from time-to-time on request, execute deeds, bills of sale and whatever other documents that may be necessary in addition to this Agreement to evidence title.

(b) The Owners expressly waive any right of partition of the Project, whether by partition in kind or sale and division of the proceeds thereof, until the end of the Project as described in Section 8.2.

(c) Nothing in this Agreement shall create a partnership, joint venture, association or, except as provided in Section 3.3, a trust. Each Owner shall severally bear its Ownership Share of all obligations and liabilities of the Project as they arise. No Party shall have a right or power to bind any other Party without its written consent, except as provided in this Agreement. IN THEIR RELATIONS WITH EACH OTHER UNDER THIS

1 AGREEMENT, THE OWNERS SHALL NOT BE CONSIDERED FIDUCIARIES OR TO
2 HAVE ESTABLISHED A CONFIDENTIAL RELATIONSHIP, BUT RATHER SHALL BE
3 FREE TO ACT ON AN ARM'S LENGTH BASIS IN ACCORDANCE WITH THEIR OWN
4 RESPECTIVE SELF-INTEREST, SUBJECT, HOWEVER, TO THE OBLIGATIONS OF THE
5 OWNERS TO ACT IN GOOD FAITH IN THEIR DEALINGS WITH EACH OTHER WITH
6 RESPECT TO ACTIVITIES HEREUNDER.

7 (d) Each Owner and its designees shall have the right to go upon and into the
8 Project at any time, subject to the necessity of efficient and safe construction and operation of the
9 Project, but the Operator alone shall have possession and control of the Project for and on behalf
10 of all of the Owners.

11 2.5 Round Butte Switching Station 230 kV Main Bus.

12 (a) The Tribes shall have the right, without Operating Committee approval, to
13 install a 230kV line position in the Round Butte switching station, to connect such line position
14 to the Round Butte Switching Station 230kV Main and Auxiliary Bus and to operate such line
15 position. Design and operation of such line position shall be in accordance with Prudent Utility
16 Practice and all applicable standards of the Operator, and the Tribes shall obtain the Operator's
17 approval for the design and protection scheme for the line position. PGE shall have no right to
18 use such line position and shall not be required to pay for any of the costs thereof. The Tribes
19 shall compensate PGE equitably for any costs and losses incurred by PGE in connection with the
20 installation of the line position and the connection of such line position to the Round Butte
21 Switching Station 230kV Main and Auxiliary Bus.

22 (b) PGE shall have the right, without Operating Committee approval, to
23 modify the Round Butte Switching Station 230kV Main Bus to increase the capacity of such bus.
24 Design of such modifications to achieve the capacity increase shall be in accordance with
25 Prudent Utility Practice and all applicable standards of the Operator, and PGE shall obtain the
26 Operator's approval for the design and protection scheme for the modifications. The Tribes shall
27 not have the right to participate in, or utilize, the increase in capacity and shall not be required to
28 pay for any of the costs thereof. The Tribes shall modify the line position described in Section
29 2.5(a) above if necessary to accommodate the modifications to achieve the capacity increase.
30 PGE shall compensate the Tribes equitably for any costs (including costs related to any
31 necessary modification of the Tribes' line position, both at the time of the capacity increase and
32 thereafter) and losses incurred by the Tribes in connection with any modification of the Round
33 Butte Switching Station 230kV Main Bus to increase the capacity of such bus.

34 **ARTICLE III**
35 **OPERATION**

36 3.1 Operator.

37 (a) Appointment of PGE as Operator. In order to provide unified
38 management of the Project, each Owner authorizes and designates PGE alone as operator (the
39 "Operator") to operate and maintain the Project under the terms of this Agreement; provided that

1 PGE shall not be deemed to have the status or responsibility of an independent consultant,
2 contractor or engineer.

3 (b) Rights and Duties of the Operator. The Operator, as agent for and on
4 behalf of the Owners, shall, in accordance with Prudent Utility Practice, this Agreement, the
5 Operating Guidelines, any manufacturer's warranty requirements and all Applicable Laws,
6 orders, permits and licenses, now or hereafter in effect:

7 (i) operate and maintain the Project;

8 (ii) represent the Owners with Governmental Authorities on all Project
9 matters within the scope of the Operator's responsibilities hereunder;

10 (iii) take any and all actions necessary or appropriate to comply with
11 such Applicable Laws, orders, permits and licenses, now or hereafter in effect;

12 (iv) hire all Project personnel; and

13 (v) pay all Costs of Operation.

14 Subject to the foregoing, the Operator shall operate and maintain the Project so as to
15 produce, where practicable and consistent with Prudent Utility Practice and the terms of this
16 Agreement, the amounts of Energy which may be scheduled by the Owners as provided herein.
17 The Operator is hereby granted and shall have the rights and powers to do everything necessary,
18 proper and customary, in the ordinary course of business, to fulfill its obligations and effectuate
19 its role as Operator, including the power to enter into contracts with third parties for and in
20 behalf of the Owners, the power to make and receive payments, the power to initiate,
21 compromise or settle claims with third parties, the power to act as agent in its own name and the
22 power to appoint subagents. The Operator shall negotiate any contracts entered into with unions
23 and set wage scales for nonunion personnel.

24 (c) Licensing. The Operator shall, in consultation with the Operating
25 Committee, diligently pursue whatever action is necessary or appropriate to obtain and maintain
26 all FERC, Oregon and general licenses, permits and other rights and regulatory approvals
27 necessary to operation of the Project for itself and in behalf of the Owners. The Owners
28 acknowledge that there is no assurance that such permits, licenses and approvals will be retained
29 or obtained.

30 (d) Communications by Operator to Owners. The Operator shall inform each
31 of the Owners of all material matters necessary to enable all the Owners to participate
32 meaningfully in decision-making related to the Project. The Operator shall provide such
33 information reasonably in advance of any actions or decisions to be made by the Operating
34 Committee, subject to the circumstances thereof. The Operator shall accommodate to the extent
35 reasonably possible reasonable requests for additional information and reasonable requests to
36 discuss matters with the Tribal Council and other representatives of the Tribes.

37 The Operator shall present to each of the Owners a written report describing any event
38 related to the Project which (x) involved a failure to operate the Project in accordance with

1 Prudent Utility Practice, this Agreement or the Operating Guidelines or (y) resulted in, or created
2 a significant risk of, either serious injury to a Project employee or member of the public; serious
3 damage to fish, wildlife or other environmental interests; or material economic injury to an
4 Owner. The Operator shall also discuss with the Operating Committee any measures it proposes
5 to prevent or mitigate any similar events in the future. No failure to provide such a report shall
6 by itself either be an event of default or prejudice the Operator's status as the Operator if the
7 Operator's actions were not in bad faith.

8 (e) Limitations on Compensation and Liability of Operator; Limited
9 Indemnification by Operator. The Tribes acknowledge that were PGE or any other entity to be
10 exposed to significant potential liability to the Tribes arising from the role of Operator, PGE or
11 such other entity would insist upon being adequately compensated by the Tribes for accepting
12 such risk. PGE is willing to perform the role of Operator without compensation other than
13 reimbursement of its expenses and costs, including overhead, as provided in Section 3.4,
14 provided PGE's liability to the Tribes arising or resulting from its role as Operator is
15 substantially limited both with respect to the kind and amount of damages to which it might be
16 exposed. As provided in this Section 3.1(e), the Tribes and PGE intend to limit substantially
17 PGE's potential liability arising from PGE's role as Operator, purchase insurance to mitigate
18 some risks, allocate some risks to the Owners collectively as Costs of Operation and allocate
19 other risks to the Owners individually. To achieve a fair balance of cost and risk allocation, the
20 Owners agree as follows.

21 (i) The Tribes and PGE agree that PGE shall act without
22 compensation in its role as the Operator of the Project other than reimbursement
23 of its expenses and costs, including overhead, as provided in Section 3.4.

24 (ii) The Tribes acknowledge therefore that, under the terms of this
25 Agreement, PGE is not being compensated, as would be an independent provider
26 of operating services, for any risk that it would be liable to the Tribes for any
27 failure of its performance to satisfy any contractual or tort standard.

28 (iii) In behalf of the Tribes and PGE as Owners, PGE as Operator shall
29 procure and maintain the insurance coverage described in Section 11.1 related to
30 Project property and equipment in the same manner as the Operator insures its
31 other owned and operated like facilities.

32 (iv) PGE as Operator shall procure and maintain the insurance
33 coverage described in Section 11.2 related to workers' compensation, general
34 liability and automobile liability in the amounts specified in Section 11.2. To the
35 extent, and only to the extent, any claims, demands, losses, liabilities, and
36 expenses (including reasonable attorneys' fees) are covered by the insurance
37 obtained pursuant to Section 11.2, both with respect to scope of coverage and
38 dollar limits of coverage (collectively, "Covered Claims"), PGE as Operator
39 agrees to indemnify and hold harmless the Tribes from and against all such
40 Covered Claims.

1 (v) To the extent not covered by the insurance described in
2 Sections 11.1 and 11.2, the Tribes hereby waive any and all Claims whether in
3 contract, warranty, tort (including PGE negligence), strict liability or otherwise,
4 against PGE, its employees, officers, agents or Affiliates related to the role of
5 Operator with respect to all risks of physical damage to property and equipment
6 part of or in any way related to the Project, worker's compensation, general
7 liability for personal and bodily injury and property damage (including damages
8 to the property of the Tribes As Third Party), automobile liability and all other
9 risks described in Sections 11.1 and 11.2.

10 (vi) The following amounts shall be treated as Costs of Operation and
11 therefore shared by the Owners in accordance with their Ownership Shares:

- 12 (A) Any self-insurance or deductible amounts for damages
13 otherwise covered under any of the policies described in
14 Sections 11.1 and 11.2;
- 15 (B) Any amounts for damages otherwise covered under any of
16 the policies described in Sections 11.1 and 11.2 that are in
17 excess of the policy limits;
- 18 (C) Any amounts for risks not covered by the policy described
19 in Section 11.1;
- 20 (D) Damages paid to third parties other than the Tribes As
21 Third Party, including on account of risks not covered by
22 the insurance in subsection (iv) above or excluded by that
23 insurance, as provided in Section 3.8(c) below; and
- 24 (E) Damages paid to the Tribes As Third Party, as provided in
25 Section 3.8(d) below.

26 (vii) The Tribes and PGE agree that they shall separately and
27 individually bear the risks of non-operation and reduced operation of the Project
28 and that they shall separately and individually make determinations whether they
29 desire to procure insurance to cover risks related to special, incidental, exemplary
30 or consequential damages including, but not limited to, loss of profits or revenue,
31 loss of use of the Project or any associated equipment, cost of capital, cost of
32 purchased power, cost of substitute equipment, facilities or services, downtime
33 costs, or Claims of customers of Tribes for such damages and such Claims from
34 Tribes' customers. None of the foregoing damages shall be treated as Costs of
35 Operation.

36 (viii) In the event any of the foregoing provisions of this Section 3.1(e)
37 with respect to limitations on PGE's potential liability arising from the role of
38 Operator are held unenforceable in whole or in part for any reason, THE TRIBES
39 AGREE THAT IN NO EVENT SHALL PGE, ITS EMPLOYEES, OFFICERS,
40 AGENTS OR AFFILIATES BE LIABLE TO THE TRIBES WITH RESPECT

1 TO PUBLIC LIABILITY FOR PERSONAL AND BODILY INJURY AND
2 PROPERTY DAMAGE, ALL RISKS OF PHYSICAL DAMAGE TO
3 PROPERTY AND EQUIPMENT THAT IS PART OF THE PROJECT,
4 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY AND ALL
5 OTHER RISKS COVERED BY THE INSURANCE DESCRIBED IN
6 SECTIONS 11.1 AND 11.2, DURING ANY PERIOD OF TWELVE (12)
7 CONSECUTIVE MONTHS FOR AN AMOUNT IN EXCESS OF THE
8 AGGREGATE PAYMENTS PGE HAS RECEIVED FROM THE TRIBES
9 UNDER THIS AGREEMENT DURING SUCH TWELVE (12) MONTH
10 PERIOD AS REIMBURSEMENT ON ACCOUNT OF PGE'S LABOR AND
11 OTHER INTERNAL COSTS, INCLUDING OVERHEAD, INCURRED AS
12 OPERATOR OF THE PROJECT.

13 (ix) Consistent with the agreements expressed in paragraphs (i) and
14 (vii) of this Section 3.1(e) and the acknowledgment expressed in Section 3.1(e)
15 above, THE TRIBES AGREE THAT FOR ANY CLAIM ARISING FROM A
16 THEORY BASED ON CONTRACT LAW, IN NO EVENT SHALL PGE FROM
17 ITS ROLE AS OPERATOR BE LIABLE TO THE TRIBES HEREUNDER FOR
18 ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL,
19 PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING, BUT NOT
20 LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR
21 INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS
22 AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE
23 RELATED HERETO HOWSOEVER CAUSED. This Section 3.1(e)(ix) shall
24 not apply to Covered Claims for which PGE has indemnified the Tribes pursuant
25 to Section 3.1(e)(iv) and to Claims by the Tribes As Third Party brought against
26 the Project, as opposed to PGE in its role as Operator.

27 (x) Consistent with the agreements expressed in paragraphs (i) and
28 (vii) of this Section 3.1(e) and the acknowledgment expressed in Section 3.1(e)
29 above, THE TRIBES AGREE THAT FOR ANY CLAIM ARISING FROM A
30 THEORY BASED ON TORT LAW, IN NO EVENT SHALL PGE FROM ITS
31 ROLE AS OPERATOR BE LIABLE TO THE TRIBES HEREUNDER FOR
32 ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL,
33 PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING, BUT NOT
34 LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR
35 INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS
36 AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE
37 RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT
38 ARISING FROM A PARTY'S SOLE, JOINT OR CURRENT NEGLIGENCE,
39 GROSS NEGLIGENCE OR RECKLESS CONDUCT. This Section 3.1(e)(x)
40 shall not apply to Covered Claims for which PGE has indemnified the Tribes
41 pursuant to Section 3.1(e)(iv) and to Claims by the Tribes As Third Party brought
42 against the Project, as opposed to PGE in its role as Operator.

43 (xi) To the extent the foregoing limitations of liability and exclusions
44 of damages described in paragraphs (ix) and (x) of this Section 3.1(e) are for any

1 reason determined to be ineffective by a court of competent jurisdiction, the
2 Parties stipulate that the calculation of damages for those claims which survive
3 the limitations and exclusions specifically set forth in paragraphs (ix) and (x) shall
4 be no greater than \$500,000 per Claim.

5 (f) Replacement of Operator. The Operator may be replaced only as provided
6 in this Section 3.1(f).

7 (i) The Operator may be replaced without cause by majority vote of
8 total Ownership Shares; provided that no replacement of an Operator without
9 "Cause"(as defined below) shall become effective earlier than four (4) years from
10 the date of such vote unless the existing Operator consents to an earlier date. No
11 proposal to replace the Operator without Cause may be submitted to arbitration
12 pursuant to this Section 3.1(f) or otherwise, and the vote of the Operating
13 Committee shall be final, conclusive and binding on the Owners for all purposes.

14 (ii) Any Party may propose to the Operating Committee that the
15 Operator be replaced for "Cause." "Cause" for this purpose means the existence
16 of all three of the following conditions:

17 (A) The Operator has failed on at least three (3) occasions
18 within the immediately preceding five year period to
19 operate the Project in accordance with Prudent Utility
20 Practice, this Agreement or directions of the Operating
21 Committee;

22 (B) At least three (3) of the events referred to in Section
23 3.1(f)(ii)(A) have resulted in, or created a significant risk
24 of, either serious injury to a Project employee or member of
25 the public; serious damage to fish, wildlife or other
26 environmental interests; or material economic injury to an
27 Owner; and

28 (C) The Operator has failed to present to the Operating
29 Committee a plan that provides reasonable assurance that
30 the Operator will in the future operate the Project in
31 accordance with Prudent Utility Practice, this Agreement
32 and directions of the Operating Committee.

33 Replacement of the Operator for Cause shall require (x) "Cause", as defined
34 above, and (y) a vote of members of the Operating Committee representing at
35 least 65% of the total Ownership Shares. Any Owner may submit the result of
36 such vote to arbitration utilizing the procedures specified in Section 3.2(g) below;
37 provided, however, the arbitrator may approve the proposal to remove the
38 Operator for Cause if, and only if, the arbitrator issues a written decision
39 including findings of fact that all of the elements of Cause set forth above were
40 established by clear and convincing evidence.

1 (iii) If the Operator is replaced, whether or not for Cause, it shall be
2 entitled to be reimbursed as Costs of Operation the reasonable costs it incurs as a
3 result of such replacement (e.g., employee severance costs).

4 (iv) The Operator may resign its duties as Operator at any time;
5 provided that no such resignation shall become effective earlier than one (1) year
6 from the date of notice thereof to all the Owners unless all the Owners consent to
7 an earlier date. If the Operator resigns it shall not be entitled to reimbursement of
8 the costs it incurs as a result of such resignation.

9 (v) In the event the Operator is replaced or resigns pursuant to this
10 Section 3.1(f), the Operating Committee shall select a new Operator and enter into
11 a contract with such new Operator by vote of seventy-five per cent (75%) of the
12 Ownership Shares; provided, however, that the Operating Committee may only
13 select as the new Operator an Affiliate of an Owner by a unanimous vote of the
14 Ownership Shares. Any Owner that disapproves any such selection may submit
15 the selection to arbitration utilizing the procedures specified in Section 3.2(g)
16 below. The arbitrator shall approve the selection unless the arbitrator issues a
17 written decision including findings of fact that one or more of the following
18 conditions has been established by clear and convincing evidence:

19 (A) The proposed Operator lacks reasonable experience in the
20 operation and maintenance of hydroelectric generating
21 stations;

22 (B) The proposed Operator has a record of serious failures to
23 operate other hydroelectric generating stations in
24 accordance with Prudent Utility Practice; or

25 (C) The proposed Operator has a history of dishonesty, willful
26 misconduct or serious violations of environmental laws or
27 regulations which provides a strong basis to conclude that
28 the Operator will not operate the Project in accordance with
29 Prudent Utility Practice, this Agreement or directions of the
30 Operating Committee.

31 (vi) An existing Operator that is an Owner may only assign its role as
32 Operator to an entity to which such Owner transfers all of its Ownership Shares.
33 Any Owner that objects to such assignment of the Operator role may, within thirty
34 (30) days' of the date of such notice, submit such assignment of the Operator role
35 to arbitration utilizing the procedures specified in Section 3.2(g) below. The
36 arbitrator shall approve the assignment unless the arbitrator issues a written
37 decision including findings of fact that one or more of the following conditions
38 has been established by clear and convincing evidence:

- 1 (A) The proposed Operator lacks reasonable experience in the
2 operation and maintenance of hydroelectric generating
3 stations;
- 4 (B) The proposed Operator has a record of serious failures to
5 operate other hydroelectric generating stations in
6 accordance with Prudent Utility Practice; or
- 7 (C) The proposed Operator has a history of dishonesty, willful
8 misconduct or serious violations of environmental laws or
9 regulations which provides a strong basis to conclude that
10 the Operator will not operate the Project in accordance with
11 Prudent Utility Practice, this Agreement or directions of the
12 Operating Committee.

13 (vii) Any determination by the arbitrator to prohibit the assignment of
14 the role of Operator shall not adversely affect any otherwise valid assignment of
15 the Ownership Share of the Owner that is also the Operator if such latter
16 assignment is valid pursuant to Section 12.1; provided, however, that the assignee
17 of such Ownership Share shall then not be entitled to propose that it become the
18 new Operator. If the arbitrator determines consistent with Section 3.1(f)(vi) to
19 prohibit the assignment of the role of Operator and the Owner that is also the
20 Operator nevertheless consummates the assignment of its Ownership Share, then
21 the Operator shall offer to the Owners to continue to perform as Operator under
22 the terms and conditions of this Agreement for a period of no greater than one
23 year from the date of such arbitrator's decision. Any acceptance of such offer
24 shall be by majority vote of the Ownership Shares of all Owners not assigning
25 their shares.

26 (viii) The Parties acknowledge that if a new Operator is installed other
27 than as a result of assignment of PGE's role as Operator that it will likely be
28 necessary to negotiate and execute a contract with such new Operator which
29 includes provisions for compensation and risk allocation that could be
30 significantly different than those provided for in this Ownership and Operation
31 Agreement. The Owners agree that in the event the Owners enter into such a
32 contract with a new Operator, then all provisions in this Agreement related to the
33 compensation of the Operator and limitations on the liability of the Operator shall
34 thereafter be void relative to the new Operator.

35 (g) Ratification of PGE's Prior Acts. The Tribes hereby ratify and approve all
36 contracts entered into by PGE and all actions taken by PGE with respect to the Project which
37 were entered into or taken by PGE prior to the Effective Date of this Agreement, including the
38 Long-Term Global Settlement and Compensation Agreement.

1 3.2 Operating Committee and Operating Decisions.

2 (a) Establishment of Operating Committee. The Tribes and PGE hereby
3 establish an "Operating Committee" to facilitate effective cooperation, interchange of
4 information, economical operation and efficient management of the Project and addressing
5 appropriately natural resources impacted by the Project, on a prudent and orderly basis. The
6 Operating Committee shall be responsible for ensuring that the Owners maintain an adequate
7 level of communication among all parts of the Owners' organizations, both internally and with
8 each other, in order that potential issues or problems may be identified and addressed at an early
9 stage.

10 (b) Composition of Operating Committee. The Operating Committee shall
11 consist of one member representing each of the Owners. The Owners shall endeavor to appoint
12 to the Operating Committee individuals who (i) will promote cooperation, good working
13 relationships, sound decision-making and achievement of long-term economic benefits from the
14 Project while addressing appropriately natural resources impacted by the Project and (ii) have the
15 technical and fiscal skills necessary to optimize the benefits of the Project; provided, however,
16 the Parties agree they shall not be entitled to challenge the qualifications of any individual, or
17 another Owner's appointment of any individual, either pursuant to Section 3.2(g), Section 7.3 or
18 otherwise. At the time of the execution of this Agreement, the Tribes shall appoint one
19 representative to the Operating Committee and PGE shall appoint one representative. Thereafter,
20 the Owners shall be entitled to appoint replacement representatives to the Operating Committee.
21 The Tribes shall also designate one person with natural resource management responsibilities,
22 and shall request the United States Department of the Interior to also designate such a person, to
23 serve as points of contact with the Operating Committee relative to Project natural resource
24 issues. These persons shall attend Operating Committee meetings if requested by the Operating
25 Committee.

26 (c) Operating Committee Meetings. The Operating Committee shall meet at
27 such times as may be agreed or upon three (3) days' written notice by any member, and shall
28 keep written minutes of its meetings. The Operating Committee shall also accommodate any
29 reasonable requests for a meeting with the natural resource points of contact described in Section
30 3.2(b). Each member of the Operating Committee shall have the right to vote the Ownership
31 Share of the Owner appointing such member. Any action which may be taken at a meeting of
32 the Operating Committee may be taken without a meeting by individual action taken in writing
33 by members of the Operating Committee.

34 (d) Matters to Be Approved by Operating Committee. The Owners may and,
35 where this Agreement requires it the Operator shall, submit matters (including, without
36 limitation, estimates and schedules) relating to operation of the Project to the Operating
37 Committee for approval.

38 (i) Each of the following matters shall be submitted to the Operating
39 Committee for approval by unanimous vote of the Ownership Shares:

- 1 (A) Proposals for Elective Capital Additions costing in excess
2 of \$500,000 and for which all Owners are to contribute to
3 the costs thereof;
- 4 (B) Determinations related to allocation of Project Rights
5 required pursuant to Section 4.1(b); and
- 6 (C) Proposals to appoint as Operator an Affiliate of one of the
7 Owners.
- 8 (ii) Proposals for the selection of a new Operator pursuant to Section
9 3.1(f)(v) and to enter into a contract with such new Operator shall require
10 approval of Operating Committee members representing at least 75% of the
11 Ownership Shares.
- 12 (iii) Proposals for the replacement of the Operator for Cause pursuant
13 to Section 3.1(f)(ii) shall require approval of Operating Committee members
14 representing at least 65% of the Ownership Shares.
- 15 (iv) Each of the following matters shall be submitted to the Operating
16 Committee for approval by majority vote of the Ownership Shares:
- 17 (A) Any proposal made by Operating Committee members
18 appointed by an Owner that is not the Operator;
- 19 (B) Budgets for Costs of Operation and Costs of Capital
20 Additions and changes therein as provided in Section 3.4;
- 21 (C) Awards of any contract, approval of any change order, or
22 payment of any controverted Claim, in excess of
23 \$1,000,000;
- 24 (D) Estimates of cost of repair or damage to the Project if in
25 excess of \$2,000,000, recommendation whether to repair in
26 whole or part or to remove from service, and budget for
27 repair of the Project; and
- 28 (E) Proposals to replace the Operator without Cause pursuant
29 to Section 3.1(f)(i).
- 30 (e) Efforts to Achieve Consensus. The Owners shall make reasonable efforts
31 to achieve consensus on matters to be submitted to the Operating Committee for approval. Each
32 Owner shall act in good faith to accommodate reasonable requests from other Owners to discuss
33 such matters prior to a vote by the Operating Committee. In addition, subject to Section 2.4,
34 each Owner shall give due consideration to the views of the other Owner(s) prior to casting its
35 vote on Operating Committee matters.

1 (f) Voting. The member of the Operating Committee representing a Party
2 shall vote that Party's Ownership Share on any matter to be decided by the Operating
3 Committee. Except as otherwise provided in Section 3.2(d), decisions of the Operating
4 Committee shall be by majority vote of the Ownership Shares. In the case of a tie vote, the
5 Operator shall cast the tie-breaking vote. Matters not disapproved by a member of the Operating
6 Committee within the time after submission specified in the submittal, which shall not be less
7 than specified in this Agreement (or if no time is specified in this Agreement, then within seven
8 (7) calendar days) shall be deemed approved by such member. No member of the Operating
9 Committee shall disapprove (i) matters which were submitted to the committee pursuant to the
10 terms of this Agreement and not disapproved within the time allowed, (ii) items found by the
11 arbitrator to have been consistent with Prudent Utility Practice, (iii) items where costs will be or
12 were borne by the Operator individually, or (iv) items, other than Elective Capital Additions,
13 with a cost less than \$1,000,000.

14 (g) Arbitration. The Owners hereby agree to arbitrate, pursuant to the
15 procedures established by this Section 3.2(g), matters (i) specified in this Agreement to be
16 submitted to arbitration pursuant to this Section 3.2(g) and (ii) required to be submitted to the
17 Operating Committee for approval, but which have been disapproved by such committee;
18 provided that any proposal to replace the Operator without Cause pursuant to Section 3.1(f)(i)
19 may not be submitted to arbitration pursuant to this Section 3.2(g). With respect to all matters
20 disapproved by the Operating Committee, each member that, within the specified time,
21 disapproved an item shall, at the time of such disapproval, state in writing its reasons and what
22 alternative is acceptable. Items not so identified shall be deemed approved. The Owners shall
23 submit all such disapproved matters to arbitration in Portland, Oregon under the Commercial
24 Arbitration Rules of the American Arbitration Association. The Parties agree that any such
25 matter shall be submitted to one arbitrator selected by the American Arbitration Association
26 from its panel of arbitrators. If a matter involves replacement of the Operator or prohibition of
27 assignment of the role of Operator, the arbitrator shall follow the process specified in Sections
28 3.1(f)(ii) and 3.1(f)(vi), respectively. If a matter involves an issue other than replacement of the
29 Operator or prohibition of assignment of the role of Operator, the arbitrator shall follow the
30 process specified in paragraphs (A) through (E), below.

31 (A) The arbitrator shall first consider the action or response
32 proposed by the Operator. In doing so, the arbitrator shall
33 consider all written arguments and factual materials which
34 have been submitted to it by any member of the Operating
35 Committee within ten (10) days following its appointment,
36 and as promptly as possible after the expiration of such
37 period make a written determination as to whether the
38 action or response proposed by the Operator would or
39 would not have been consistent with Prudent Utility
40 Practice.

41 (B) Matters or items proposed by the Operator and found by the
42 arbitrator to be consistent with Prudent Utility Practice
43 shall become immediately effective. If, and only if, the
44 arbitrator determines that the matter or item proposed by

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the Operator was not consistent with Prudent Utility Practice, then and only then shall it consider actions or responses proposed by Owners. If the arbitrator determines the matter or item proposed by the Operator to be inconsistent with Prudent Utility Practice and the action or response proposed by an Owner to be consistent with Prudent Utility Practice, the action or response found by the arbitrator to be consistent with Prudent Utility Practice shall become immediately effective. If, and only if, the arbitrator determines the actions or responses proposed by both the Operator and any Owners to be inconsistent with Prudent Utility Practice, the arbitrator shall be authorized to modify the action or response to conform to what would, under the circumstances, have met such test. Such action or response, as modified, shall become effective only if the Operating Committee agrees in accordance with the required percentage vote.

(C) If the arbitrator determines that the item referred to it was consistent with Prudent Utility Practice or determines in a matter involving a potential replacement of the Operator that the Operator should not be replaced, the cost of employing the arbitrator and the related expenses of its determination shall be borne by the Owner(s) whose members on the Operating Committee disapproved such item or proposed the replacement of the Operator, as the case may be, in proportion to their Ownership Shares. For all matters other than those involving replacement of the Operator, the cost of employing the arbitrator and the related expenses of its determination shall be a Cost of Operation if the arbitrator determines that the item referred to it was not consistent with Prudent Utility Practice. If a matter involves replacement of the Operator or a prohibition of assignment of the role of Operator, and the arbitrator determines that the Operator should be replaced or that the assignment of the role of Operator should be prohibited, then the cost of employing the arbitrator and the related expenses of its determination shall be borne by the Owner that is also the Operator.

(D) The Operator shall have the right, but not any duty, to proceed with an item prior to the time allowed under Section 3.2(f) or which has been disapproved by a member of the Operating Committee; provided if the determination made by the arbitrator is that the item was not consistent with Prudent Utility Practice, then the Owner that is the Operator shall individually bear the net increase in Costs of

1 Operation of such action to the extent it was inconsistent
2 with what the arbitrator determined would, under such
3 circumstances, have met such test.

4 (E) The arbitrator shall not have authority to award exemplary
5 or punitive damages, nor damages contrary to the terms of
6 this Agreement. The Parties further agree that they will
7 faithfully observe this Agreement and the rules, and that
8 they will abide by and perform any award rendered by the
9 arbitrator and that a judgment of a court having jurisdiction
10 may be entered upon the award; provided the award may be
11 challenged and modified in whole or part or denied
12 enforcement in whole or part, but only on the basis that the
13 award exceeded the scope of the arbitrator's authority
14 under this Agreement or the Federal Arbitration Act.

15 (h) Annual Meeting of Senior Representatives. PGE and the Tribes recognize
16 that maintaining good lines of communication between their senior representatives is important
17 to the long-term success of the Project and this Agreement and commit to establishing these lines
18 of communication and keeping them open. Accordingly, upon the request of either Owner,
19 senior representatives of each Owner shall meet annually upon thirty (30) days' written notice to
20 discuss any and all matters related to the Project.

21 (i) Annual Report to the Tribal Membership. In recognition of the special
22 importance of the Project to the Tribal membership, the Operating Committee shall annually
23 present for distribution to all members of the Tribes a brief report in appropriate form regarding
24 the Project.

25 3.3 Operating Trust Account and Payment of Costs of Operation.

26 (a) Within thirty (30) days after the Effective Date or such earlier time as the
27 Operating Committee shall agree, PGE shall establish a trust account ("Operating Trust
28 Account") in a bank located in the State of Oregon and having qualifications meeting all
29 requirements imposed upon depositories for any of the Owners. Each Owner shall promptly
30 deposit in such account its Ownership Share of a working cash fund of \$200,000, or such other
31 amount as the Operating Committee shall determine. All monies received by Operator of the
32 Project on account of the Project shall be deposited in the Operating Trust Account, and the
33 Operator shall withdraw and apply funds as necessary.

34 (b) No later than the last Business Day prior to the first and fifteenth day of
35 each month, each Owner shall deposit in the Operating Trust Account one-half (1/2) of such
36 Owner's Ownership Share of the amount budgeted for that month in the Effective Budget
37 adjusted for deviations between budget and actual expenses; provided that when a revised
38 Operating Budget becomes effective during a month, each Owner shall immediately deposit in
39 the Operating Trust Account such Owner's Ownership Share of any increase effectuated by the
40 revised Operating Budget for that month.

1 3.4 Reimbursement for Advances.

2 The Operator shall be reimbursed from the Operating Trust Account for (i) all Costs of
3 Operation and all Costs of Capital Additions advanced by it hereunder, and (ii) administrative
4 and general costs determined pursuant to Exhibit B. Such administrative and general costs shall
5 be paid from the Operating Trust Account in equal monthly installments on the payment date
6 nearest the middle of each month.

7 3.5 Taxes.

8 Each Owner shall pay individually property taxes that are assessed exclusively on the
9 property interests of only one of the Owners. If any Taxes are paid or incurred by the Project as a
10 whole or by the Operator on behalf of the Project as a whole, each Owner shall pay its applicable
11 portion of the Taxes associated with its undivided interest in the Project. Each Owner shall use
12 reasonable efforts to administer this Agreement and implement the provisions hereof in
13 accordance with the intent to minimize Taxes.

14 3.6 Operations and Capital Additions Budgets.

15 (a) On or before each November 1, the Operator shall submit to the Operating
16 Committee a budget of the Costs of Operation and Costs of Capital Additions, for each month
17 for the next succeeding calendar year. Each budget shall be supported by detail adequate for the
18 purposes of each Operating Committee member and shall show, among other things, staffing
19 allocation, Operator services and calculations of administrative and general expenses. Such
20 budget shall become effective unless disapproved within thirty (30) days after submittal. (The
21 approved budget is referred to herein as the "Effective Budget").

22 (b) The Effective Budget shall be changed:

23 (i) to include costs occasioned by an emergency,

24 (ii) to provide for repairs, renewals, replacements or additions
25 necessary to achieve design Capacity and Energy capability, or

26 (iii) to provide for an expenditure required by Governmental Authority
27 or an expenditure otherwise required by this Agreement. Promptly after the
28 occurrence of any of the above events, and promptly after the occurrence of other
29 circumstances requiring the expenditure of funds not contemplated in the
30 Effective Budget, the Operator shall submit a revised budget to the Operating
31 Committee. Costs incurred by the Operator in the exercise of Prudent Utility
32 Practice prior to the time a revised budget becomes effective shall be added as
33 incurred to the amounts due under the budget. The revised budget shall become
34 effective unless disapproved within seven (7) days after submittal.

1 3.7 Accounting.

2 (a) The Operator shall keep separate, complete and accurate account of all
3 deposits in and withdrawals from the Operating Trust Account and complete and accurate
4 account of all costs incurred for which it is reimbursed from such account.

5 (b) All accounts shall be kept so as to permit conversion to the system of
6 accounts prescribed for electric utilities by FERC. The manner in which accounts are kept
7 pursuant to this Agreement is not intended to be determinative of the manner in which they are
8 treated in the books of account of the Owners.

9 (c) Each Owner shall have the right at any reasonable time (i) to examine the
10 separate books of account kept by the Operator pursuant to this section and all supporting data,
11 (ii) to examine the books of account and all supporting data and documents relating to amounts
12 for which any Owner is to be reimbursed and (iii) to examine and copy all plans, specifications,
13 bids and contracts relating to the Project.

14 (d) The Operator shall, by the 15th of each month, supply to each Party a
15 complete itemized account of all deposits in and withdrawals from the trust account during the
16 previous month, together with adequate details of property retirements, removal costs and
17 salvage, and together with an itemization of the basis for reimbursement made to the Operator
18 from such account during each month. The Operator shall cause the Project's costs to be audited
19 by independent certified public accountants of national reputation acceptable to all the Owners at
20 approximately annual intervals and when such accounts are closed. Copies of such audits shall
21 be supplied to each Owner.

22 (e) Any contract with any consultant or contractor of Operator providing for
23 reimbursement of costs or expenses of any kind shall require the keeping and maintenance of
24 books, records, documents and other evidence pertaining to the costs and expenses incurred or
25 claimed under such contract to the extent, and in such detail, as will properly reflect all costs
26 related to this Agreement and shall require such books, records, documents and evidence to be
27 made available to the Owners at all reasonable times for review and audit for a period of three
28 (3) years after final settlement of the applicable contracts.

29 3.8 Certain Costs and Claims Treated as Costs of Operation.

30 (a) Unless specifically provided otherwise in this Ownership and Operation
31 Agreement or in the Long-Term Global Settlement and Compensation Agreement, all costs
32 borne by PGE pursuant to the Long-Term Global Settlement and Compensation Agreement shall
33 constitute Costs of Operation hereunder and shall be shared by the Owners in accordance with
34 their Ownership Shares.

35 (b) Costs borne by PGE pursuant to the Long-Term Global Settlement and
36 Compensation Agreement that relate to the Transmission Facilities shall not constitute Costs of
37 Operation.

38 (c) Any and all Claims of Persons who are not Owners arising from or related
39 in any way to the Project, which Claims are not the subject of an indemnity by one of the Owners

1 as provided in Article VI, shall, to the extent they are not covered by insurance maintained for
2 the Project pursuant to Section 11.2, constitute Costs of Operation hereunder, whether such
3 Claims were incurred prior to or after the Effective Date of this Agreement.

4 (d) The Tribes As Third Party shall have the right to bring Claims against the
5 Project (but not against PGE as Operator) to the extent such Claims relate to the status of Tribes
6 As Third Party and either or both (i) relate to harm to the Tribes' Treaty Reserved Rights
7 incurred after the Effective Date of the Global Settlement and Compensation Agreement or
8 (ii)(x) arise from a Claimable Event and (y) are not waived or proscribed by the Global
9 Settlement and Compensation Agreement (Claims meeting the criteria in "(i)" or "(ii)" are
10 hereinafter referred to as "Permitted Claims"). The provisions of this Section 3.8(d) shall apply
11 notwithstanding the waiver contained in Section 3.1(e)(v) relating to Claims against PGE in its
12 role as Operator. Damages paid to the Tribes As Third Party arising from any Permitted Claims
13 against the Project shall be treated as Costs of Operation and therefore shared by the Owners in
14 accordance with their Ownership Shares to the extent such losses are not covered by insurance
15 maintained by the Operator pursuant to Section 11.2. In the event the Tribes As Third Party
16 bring any Permitted Claim only against PGE and not the Project, then any damages paid by PGE
17 to the Tribes As Third Party shall also be treated as Costs of Operation and therefore be shared
18 by the Owners in accordance with their Ownership Shares.

19 3.9 Elective Capital Additions.

20 At any time a Party determines that a Capital Addition which is not necessary to assure
21 design capability or is not required by any Governmental Authority, is otherwise required or
22 useful, the Party shall prepare a cost estimate, including an appropriate allocation of
23 administrative and general costs of the Operator, of such Elective Capital Addition, and if the
24 Owners agree, the Operator shall proceed with construction and installation, the costs to be
25 shared by the Owners in their Ownership Share, unless otherwise agreed to at the time.
26 However, if all Owners do not agree to pursue the Elective Capital Addition, then the Operator
27 alone or any other Owner alone or together with any other Owner may have such Elective
28 Capital Addition made at its own expense, provided that such addition does not diminish the
29 Ownership Share or increase the costs of the other Owners.

30 **ARTICLE IV**
31 **ALLOCATION OF PROJECT RIGHTS; SCHEDULING**

32 4.1 Allocation of Project Rights.

33 (a) Each Owner shall be entitled to receive as scheduled all or any part of its
34 Ownership Share of Project Rights on a daily basis; provided that to the extent any Project Right
35 is constrained, such Owner's rights under this Agreement shall be correspondingly limited for
36 the same period of time. (Such entitlements of the Tribes and PGE are hereinafter referred to as
37 the "Tribes' Allocation" and "PGE's Allocation", respectively.).

38 (b) Allocation of available Energy for any day shall be determined by
39 multiplying the average daily discharge from the Pelton Reregulating Dam times the combined
40 Pelton and Round Butte water to kWh conversion factor times twenty-four (24) hours times

1 Ownership Share. Such average daily discharge from the Pelton Reregulating Dam shall be
2 determined by the Operator, who shall attempt to ensure maximum economic benefits to the
3 Owners consistent with Project compliance with, as applicable, the Original License, the New
4 FERC License, the Operating Guidelines, Project permits, Applicable Law, Prudent Utility
5 Practice and safety. In recognition of the fact one or both of the Owners may choose to schedule
6 their Project Rights in a manner other than that which would provide the maximum Energy
7 generated by the Project from time to time, the Operating Committee shall develop guidelines to
8 mitigate the impacts of one Owner's daily scheduling of Project Rights on the ability of the other
9 Owner to obtain maximum Energy output from the Project for the day. Allocation of Project
10 Rights other than Energy shall be pro rata by Ownership Share.

11 4.2 Scheduling Project Rights.

12 Each Owner shall schedule its Project Rights in strict accordance with the Operating
13 Guidelines. Subject to such Operating Guidelines, Project Rights shall be scheduled as follows:

14 (a) The Operator shall submit to each Owner, no later than 8:30 a.m. Pacific
15 time of each Scheduling Day, the average hourly discharge and any unusual operating constraint
16 for the next Scheduling Day and any day that precedes the next Scheduling Day. Each Owner
17 shall, by 10:00 a.m. of each Scheduling Day, inform the Operator's energy scheduler of its
18 desired schedule of Project Rights for the next Scheduling Day and any day that precedes the
19 next Scheduling Day. Each Owner, however, will have the right to change its schedule on
20 shorter notice to reflect changes in its requirements, provided any such change does not cause a
21 conflict with the submitted schedule of any other Owner, the Original License, the New FERC
22 License, Project permits, the Operating Guidelines, Applicable Law, Prudent Utility Practice or
23 safety in the Operator's reasonable discretion. The Operator shall also submit to each Owner
24 each Scheduling Day an estimate of average daily flow pertaining to the six days immediately
25 following the day for which average hourly discharge was submitted for scheduling purposes.

26 (b) Subject to the Operating Guidelines, the Owners may schedule any or all
27 of their allocation of Project Rights for any day or any hour. An Owner shall not, however,
28 schedule in excess of its Ownership Share of the estimated available Project Rights for any hour
29 or any day, regardless of whether other Owners are scheduling their Ownership Share of the
30 estimated available Project Rights for such time period.

31 (c) Each Owner shall be responsible for satisfying their own reserve
32 obligations for firm Energy scheduled into the Pacific Northwest power grid consistent with
33 requirements specified by the Western Systems Coordinating Council, or its successor.

34 (d) If either Owner believes that, consistent with the guidelines developed by
35 the Operating Committee pursuant to Section 4.1(b), it has not for any given day been able to
36 schedule its full Project Rights due to the manner in which the other Owner has scheduled its
37 Project Rights, then the former Owner shall orally notify the latter Owner of such belief within
38 twenty-four (24) hours of the occurrence. Any Claims for which such oral notice has not been
39 given in such period shall be waived. To the extent possible, the Owners shall resolve any
40 disagreement regarding such Claim immediately and to provide compensation in the form of

1 additional output from the Project as provided in the guidelines developed pursuant to Section
2 4.1(b).

3 (e) To the extent that Project reservoir levels or operating conditions not
4 recognized in the daily schedule necessitate either prescribed minimum or prescribed maximum
5 generation limits, the Owners shall share such limits as follows. If fulfilling the requested
6 schedules of the Owners would require operation of the Project at an operating level above the
7 maximum prescribed, the Owners whose schedules are less than or equal to the Ownership Share
8 to which they are entitled of such prescribed maximum generation will receive such schedules
9 and each of the other Owners shall reduce their schedules as necessary to bring the Project down
10 to its prescribed maximum generation level. Such reduction shall be in proportion to the amount
11 by which each Owner's desired schedule exceeds its Ownership Share of the prescribed
12 maximum generation. If fulfilling the requested schedules of the Owners would require
13 operation of the Project at an operating level below the minimum prescribed, the Owners whose
14 schedules are greater than or equal to the Ownership Share to which they are entitled of such
15 prescribed minimum generation will receive such schedules and each of the other Owners shall
16 schedule and take, in addition to its desired schedule, a portion of the additional generation
17 required to bring the Project up to its prescribed minimum generation level. Such portion shall
18 be in proportion to the amount by which each Owner's desired schedule falls short of its
19 Ownership Share of the prescribed minimum generation.

20 (f) The Operator shall schedule Project outages and notify the other Owners
21 as far in advance as is reasonable under the circumstances. The Owners recognize that pre-
22 scheduled major outages of the Project may result in differing impacts on the Owners.
23 Accordingly, such major outages will be scheduled in an attempt to equalize the burdens on the
24 Owners. If the Operating Committee does not disapprove such outage within five (5) days, the
25 Project shall be shut down in accordance with such schedule. Notwithstanding the foregoing, the
26 Operator may shut the Project down to avoid hazard to any Person or property, including the
27 Project.

28 (g) When testing of Project facilities requires generation, each Owner shall
29 make provision for acceptance of its Ownership Share of such generation. The Operator will
30 notify the Owners of test schedules as far in advance as is reasonable under the circumstances.
31 Each Owner shall also be responsible from providing its Ownership Share of Project station use.

32 (h) Except as modified by the provisions of Section 4.2 (e) above, during any
33 hour in which the Project does not generate its station use and losses, the Operator's dispatcher
34 shall notify the Owners and each Owner shall arrange for delivery of its Ownership Share of
35 such Energy to the Project.

36 (i) Except as otherwise incorporated by reference in Article V, the provisions
37 of this Article IV shall not apply to the Tribes for any period during which the Tribes have sold
38 to PGE the Tribes' Allocation and the Tribes' rights to schedule Project Rights pursuant to
39 Article V below.

1 Peak Index Value in such circumstances, the index value for the Off-Peak Hours immediately
2 prior and immediately subsequent shall be averaged.

3 (b) In the event Dow Jones Telerate does not publish calculations of Index
4 Value at the Mid-Columbia trading hub for a period greater than five (5) consecutive days, then
5 the Index Values shall be determined for such period by reference to the weighted average index
6 for such days for the Mid-Columbia trading hub as published in Megawatt Daily by McGraw-
7 Hill.

8 (c) In the event Dow Jones Telerate commences publication of Index Values
9 for the Mid-Columbia which reflect the market price of firm electricity at that location for
10 periods more discrete than On-Peak Hours and Off-Peak Hours (e.g. Dow Jones Telerate
11 commences publication of hourly market prices), then Index Values shall be determined by
12 reference to the published values for such more discrete time periods.

13 (d) In the event Index Values cannot be determined pursuant to the foregoing
14 provisions of this Section 5.4, then PGE and the Tribes shall negotiate in good faith to select that
15 substitute index which best reflects the daily market price of firm electricity in the Pacific
16 Northwest region. If PGE and the Tribes do not agree on a substitute index, then either Party
17 may submit the matter to arbitration using the procedures specified in Section 7.3(d) below.

18 5.5 Determination of Timing of PGE Purchases from the Tribes.

19 The timing of PGE's purchases from the Tribes shall be determined by reference to a pre-
20 schedule submitted by Tribes. On each Scheduling Day, PGE shall provide the Tribes an
21 estimate of the average hourly discharge and estimated Energy from the Project as provided in
22 Section 4.2, and the Tribes shall provide by the time specified in Section 4.2 of each Scheduling
23 Day the percentage of the Tribes' Allocation of Energy the Tribes will hypothetically take during
24 each hour of each of the days being scheduled (it being understood that such amounts shall total
25 100% for each day, the Energy cannot be spread across more than one day and the limitations
26 imposed by Sections 4.2(b) and 4.2(c) shall be applicable to such hypothetical scheduling). Such
27 percentages shall be consistent with the submitted schedule of any other Party, the Original
28 License, if applicable, the New FERC License if applicable, the Operating Guidelines, Project
29 permits, Applicable Law, Prudent Utility Practice and safety, and all other provisions of Section
30 4.2. Once a pre-schedule is submitted pursuant to this Section 5.6, the Tribes shall not be
31 permitted to alter it. PGE shall be deemed to have purchased from the Tribes in any hour the
32 product of (i) the Tribes' Allocation, (ii) the percentage value properly prescheduled for that
33 hour by the Tribes and (iii) the actual Energy of the Project for that day. For example, if the
34 actual Energy from the Project for a Monday is equal to 3,600 megawatt hours, the Tribes
35 properly specified 10% of its allocation to be pre-scheduled for a given hour and the Tribes
36 Ownership Share at that time is 33.33%, then PGE shall be deemed to have purchased 119.99
37 megawatt hours of Energy from the Tribes for such hour.

1 5.6 Determination of Market Value by Application of Index Values to PGE Purchases
2 from The Tribes.

3 PGE shall calculate for each hour of each day the product of the amount of its purchases
4 (determined pursuant to Section 5.5) and the Off-Peak Index Value or On-Peak Index Value
5 (determined pursuant to Section 5.4), as the case may be, for the subject hour. (The sum of such
6 products for all hours of a calendar year is hereinafter referred to as the "Market Value"). PGE
7 shall maintain such calculations for review by the Tribes at all reasonable times and shall submit
8 by the last day of each month a report showing the calculations of Market Value for each hour of
9 the previous month.

10 5.7 Election of Tribes Not to Sell Tribes' Allocation to PGE.

11 By notice delivered to PGE no later than April 1 of any calendar year, the Tribes shall
12 have the one-time right to elect for the next subsequent calendar year, and all future calendar
13 years, to take and schedule the Tribes' Allocation and use, sell or otherwise dispose of it as the
14 Tribes may determine, rather than sell it to PGE pursuant to Sections 5.1 through 5.6 above.
15 Such election by the Tribes shall be implemented effective on January 1 of the first calendar year
16 after a complying notice has been given by the Tribes to PGE ("Implementation Effective
17 Date"). On and after the Implementation Effective Date, the Tribes shall schedule their rights to
18 receive Project Rights pursuant to Article IV above. Notwithstanding the foregoing, the Tribes'
19 one-time election provided for in this Section shall not be effective for any calendar year during
20 which the Acquisition Loan is outstanding or any Power Purchase and Sale Agreement remains
21 in effect.

22 5.8 Sale by the Tribes to PGE of Pelton Reregulating Dam Net Output.

23 Unless (a) the Tribes have provided timely notice to PGE as provided in Section
24 5.9 below of the Tribes' election not to sell the net output of the generating facilities in the Pelton
25 Reregulating Dam ("PRD Net Output") to PGE, and (b) the effective date for such option as
26 provided in such Section 5.13 has occurred, the Tribes shall sell to PGE, and PGE shall purchase
27 and acquire from the Tribes, one hundred percent (100%) of the PRD Net Output and the Tribes'
28 rights to schedule such PRD Net Output. The PRD Net Output shall be delivered to PGE at the
29 230 kV bus in the Round Butte switchyard. PGE shall purchase the PRD Net Output at prices
30 determined by reference to the index of the Market Value (as defined in Section 5.6 above) of the
31 Energy purchased. The provisions of Sections 5.3, 5.4, and 5.6 shall apply to these sales.
32 Payment for the Energy delivered shall be made within the first fifteen days following the
33 calendar month during which the Energy was delivered.

34 5.9 Election of Tribes Not to Sell PRD Net Output to PGE.

35 By notice delivered to PGE no later than April 1 of any calendar year, the Tribes shall
36 have the one-time right to elect for the next subsequent calendar year, and all future calendar
37 years, to take and schedule the PRD Net Output and use, sell or otherwise dispose of it as the
38 Tribes may determine, rather than sell it to PGE pursuant to Sections 5.8 above. Such election
39 by the Tribes shall be implemented effective on January 1 of the first calendar year after a
40 complying notice has been given by the Tribes to PGE ("PRD Implementation Effective Date").

1 In the event the Tribes exercise the option provided for in Section 5.7 not to sell Tribes'
2 Allocation to PGE, the Tribes shall also be deemed to have exercised the option in this Section
3 5.9 not to sell the PRD Net Output to PGE. Notwithstanding the foregoing, the Tribes' one-time
4 election provided for in this Section shall not be effective for any calendar year during which the
5 Acquisition Loan is outstanding or any Power Purchase and Sale Agreement remains in effect.

6 5.10 No Prohibition of Alternative Sales of Tribes' Allocation and PRD Net Output to
7 PGE.

8 No provisions in this Article V shall prohibit the Tribes from selling, and PGE from
9 purchasing, all or any part of the Tribes' Allocation, the Tribes' rights to schedule Project Rights
10 and the PRD Net Output on such terms and conditions as they may agree for any period
11 subsequent to the Implementation Effective Date.

12 5.11 Power Purchase Agreements.

13 Notwithstanding the other provisions of this Article V, the Parties agree that PGE shall purchase
14 portions of the Tribes' Allocation and the PRD Net Output in the amounts, at the prices, on the
15 terms and for the periods set forth in the Power Purchase and Sale Agreements. Subject to
16 Sections 5.7 and 5.9, the balance of the Tribes' Allocation and PRD Net Output, if any, not
17 purchased pursuant to the Power Purchase and Sale Agreements shall be purchased by PGE in
18 accordance with the terms of this Agreement. Without in any way limiting PGE's rights under
19 Section 5.13 below, the Tribes hereby grant to PGE a security interest in the Tribe's Allocation,
20 whether now in existence or created or arising at any time in the future, to secure repayment of
21 the Acquisition Loan. PGE's rights under this Agreement are cumulative and may be exercised
22 at any time without affecting any of its other rights under this Agreement. The Tribes represent
23 and warrant that as of the date of this Agreement the Tribes' Allocation and PRD Net Output is
24 free and clear of all liens, charges and encumbrances. The Tribes shall keep the Tribes'
25 Allocation and PRD Net Output free and clear of all liens, charges and encumbrances from and
26 after the date of this Agreement until the Acquisition Loan is repaid in full.

27
28 5.12 Acquisition Loan.

29 On the Transfer Date, PGE shall lend to the Tribes an amount in United States dollars
30 equal to the Estimated Purchase Price, less all of the reasonable and necessary costs incurred by
31 the Tribes to obtain the New FERC License with respect to the Pelton and Round Butte Facilities
32 (the "Acquisition Loan"). Any Adjustment Amount payable by PGE under Section 3.4 of the
33 Asset Purchase Agreement shall be deemed to be a reduction in the principal amount of the
34 Acquisition Loan, and any Adjustment Amount payable by the Tribes under said Section 3.4
35 shall be deemed to be an increase in the principal amount of the Acquisition Loan, in each case
36 as of the Transfer Date. The Acquisition Loan shall bear interest at 8.50% per annum until
37 January 1, 2003 and 12.71% thereafter, shall be repayable as provided in Section 5.13 and shall
38 be evidenced by a note substantially in the form of Exhibit D hereto.

39 5.13 Repayment of Acquisition Loan.

1 The Acquisition Note shall be payable in equal monthly installments as provided in
2 Exhibit D and shall mature on the earlier of (a) January 1, 2007 or (b) the day prior to the date of
3 any sale or other transfer of the Tribes' Ownership Share. The Tribes may prepay the
4 Acquisition Loan in whole or in part at any time without penalty. Until the Acquisition Loan has
5 been repaid in full, all amounts payable by PGE to the Tribes under the Power Purchase and Sale
6 Agreements and under Article V hereof for the Tribes' Allocation or PRD Net Output shall be
7 deemed paid to the Tribes, but shall be retained by PGE as provided in this Section 5.13. All
8 such retained amounts shall be deemed to be applied first to any Costs of Capital Additions
9 payable by the Tribes should the Tribes be in breach of its obligations under Article III, second
10 to any Costs of Operation payable by the Tribes should the Tribes be in breach of its obligations
11 under Article III, and then to the payment of any principal and accrued interest due on the
12 Acquisition Loan, in each case as of the date such retained amounts are payable to the Tribes.
13 To the extent such retained amounts are not adequate to pay in full all Costs of Capital
14 Additions, Costs of Operations and principal and interest then payable by the Tribes, the Tribes
15 shall immediately pay any such deficiency to PGE upon demand. Any excess of the retained
16 amounts over the amounts then payable by the Tribes shall be paid to the Tribes by PGE within
17 the first fifteen days following the calendar month during which the Energy was delivered.
18 Should either of the Power Purchase and Sale Agreements be terminated by the Tribes for any
19 reason before the Acquisition Loan is paid in full, the Tribes shall thereafter make monthly
20 payments in accordance with this Section 5.13 and Exhibit D to this Agreement until the
21 Acquisition Loan is repaid in full.

22 5.14 Reserve Account.

23 Until the Acquisition Loan has been repaid in full, the Tribes shall cause Warm Springs
24 Power Enterprises, a tribally chartered enterprise chartered pursuant to Section 12 of the Federal
25 Corporate Charter of the Tribes to maintain a cash reserve account of at least \$6,000,000 (the
26 "Reserve Account") for payment of principal and interest on the Acquisition Loan. Upon
27 demand of PGE under Section 5.13 with respect to a deficiency, the Tribes shall use amounts in
28 the Reserve Account to pay such deficiency. If the Reserve Account falls below \$6,000,000, the
29 Tribes shall initiate promptly and maintain continuously diligent efforts in good faith to sell
30 long-term bonds on commercially reasonable terms and in amounts sufficient to cover (a) the
31 Tribes' share of projected Costs of Capital Additions and Costs of Operation, (b) any principal
32 and interest due on the Acquisition Loan, and (c) the Reserve Account requirement of
33 \$6,000,000.

34 **ARTICLE VI**
35 **MUTUAL INDEMNIFICATION; LIMITATION OF OWNERS' LIABILITY**

36 6.1 Mutual Indemnification by Owners.

37 (a) Subject to the limitations on remedies, warranties and damages provided
38 for in this Agreement, each Owner (the "Indemnifying Owner") agrees to indemnify and hold
39 harmless the other Owner(s) (the "Indemnified Owner") from and against all Claims of third
40 parties, including on account of personal or bodily injury or death to Persons and damage to the
41 Indemnified Owner's property or facilities or the property of any other Person to the extent
42 arising out of, resulting from, or caused by default of this Agreement or by the negligent or

1 tortious acts, errors, or omissions of the Indemnifying Owner, its affiliates, directors, officers,
2 employees, or agents. This Section 6.1(a) shall not apply to any acts, errors or omissions of PGE
3 related to its role as Operator.

4 (b) Promptly after receipt by an Owner of any Claim or notice of the
5 commencement of any action, administrative or legal proceeding, or investigation as to which
6 the indemnity provided for in this Section 6.1 may apply, the Indemnified Owner shall notify the
7 Indemnifying Owner in writing of such fact. The Indemnifying Owner shall assume the defense
8 thereof with counsel designated by such Owner and satisfactory to the Indemnified Owner,
9 provided that if the defendants in any such action include both the Indemnified Owner and the
10 Indemnifying Owner and the Indemnified Owner shall have reasonably concluded that there may
11 be legal defenses available to it which are different from or additional to, or inconsistent with,
12 those available to the Indemnifying Owner, the Indemnified Owner shall have the right to select
13 and be represented by separate counsel, at the Indemnifying Owner's expense, unless a liability
14 insurer is willing to pay such costs.

15 (c) If the Indemnifying Owner fails to assume the defense of a Claim meriting
16 indemnification, the Indemnified Owner may at the expense of the Indemnifying Owner contest,
17 settle, or pay such Claim, provided that settlement or full payment of any such Claim may be
18 made only following consent of the Indemnifying Owner or, absent such consent, written
19 opinion of the Indemnified Owner's counsel that such Claim is meritorious or warrants
20 settlement.

21 (d) Except as otherwise provided in this Article, and subject to the limitations
22 on damages provided herein, in the event that an Owner is obligated to indemnify and hold the
23 other Owner(s) and its successors and assigns harmless under this Section 6.1, the amount owing
24 to the Indemnified Owner will be the amount of the Indemnified Owner's actual loss net of any
25 insurance proceeds received by the Indemnified Owner following a reasonable effort by the
26 Indemnified Owner to obtain such insurance proceeds.

27 6.2 Exclusion of Liability for Certain Categories of Damages.

28 Consistent with the Recitals to this Agreement, the Tribes and PGE desire to minimize to
29 the extent possible the potential for future disagreements between them with respect to the
30 Project from matters arising under this Agreement. The Tribes and PGE also recognize the
31 potential magnitude of the potential consequential, incidental or punitive damages that might
32 arise from this Agreement and desire to eliminate the risks each might face were such categories
33 of damages not excluded. For these reasons, the Tribes and PGE agree that the remedies
34 available to them against each other shall be limited as provided below.

35 (a) THE OWNERS AGREE THAT FOR ANY CLAIM ARISING FROM A
36 THEORY BASED ON CONTRACT LAW, IN NO EVENT SHALL EITHER OWNER BE
37 LIABLE TO EACH OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS
38 OR ANY OTHER CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO
39 REPLACEMENT POWER COSTS), PUNITIVE, EXEMPLARY, INCIDENTAL OR
40 INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR

1 FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO
2 HOWSOEVER CAUSED.

3 (b) THE OWNERS AGREE THAT FOR ANY CLAIM ARISING FROM A
4 THEORY BASED ON TORT LAW, IN NO EVENT SHALL EITHER OWNER BE LIABLE
5 TO EACH OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY
6 OTHER CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT
7 POWER COSTS), PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT LOSSES OR
8 DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR
9 FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER
10 OR NOT ARISING FROM AN OWNER'S SOLE, JOINT OR CURRENT NEGLIGENCE,
11 GROSS NEGLIGENCE OR RECKLESS CONDUCT.

12 (c) The limitations of liability specified in paragraphs (a) and (b) above shall
13 not apply to any use by one Owner of the Project Rights to which another Owner is entitled.

14 (d) To the extent the foregoing limitations of liability and exclusions of
15 damages described in paragraphs (a) and (b) above are for any reason determined to be
16 ineffective by a court of competent jurisdiction, the Owners stipulate that the calculation of
17 damages for those Claims which survive the limitations and exclusions specifically set forth in
18 paragraphs (a) and (b) shall be no greater than \$500,000 per Claim.

19 **ARTICLE VII**
20 **WAIVER OF IMMUNITY; DISPUTES**

21 **7.1 Waiver of Immunity.**

22 The Tribes acknowledge and agree that in entering into this Agreement, they may incur
23 obligations to PGE, and PGE's successors and assigns, and may become liable to these parties
24 for injunctive or declaratory relief or for damages. The Tribes further acknowledge that PGE
25 would not enter into this Agreement with the Tribes if the Tribes could defeat or hinder
26 enforcement against them of the rights granted to PGE by claiming sovereign immunity. THIS
27 WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS
28 ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER
29 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS
30 AND THE SPECIFIC WAIVER GRANTED. SUBJECT TO THE PROVISIONS OF
31 SECTION 7.4, THE TRIBES THEREFORE HEREBY CONSENT TO SUIT, ARBITRATION,
32 ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS, INJUNCTIONS AND
33 DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS
34 AGREEMENT. THE TRIBES FURTHER EXPRESSLY WAIVE, WITHOUT LIMITATION,
35 ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS (a)
36 TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS
37 AGREEMENT, (b) TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING
38 UNDER THIS AGREEMENT AND (c) TO ENFORCE AND COLLECT ANY JUDGMENT
39 IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS
40 AGREEMENT.

1 7.2 Choice of Laws.

2 This Agreement shall be governed by, and construed, interpreted and enforced in
3 accordance with, the substantive law of the State of Oregon (without reference to any principles
4 of conflicts of laws), except to the extent such Oregon laws may be preempted by the laws of the
5 United States of America.

6 7.3 Dispute Resolution.

7 (a) Scope of Disputes Covered. The provisions of this Section 7.3 shall
8 govern all disputes between the Parties relating to this Agreement other than (i) those disputes
9 specified in Sections 3.1(f) and 3.2 and Article VIII which are to be determined exclusively
10 pursuant to arbitration following the procedures specified in Section 3.2(g) and (ii) the potential
11 disputes specified in Sections 5.4(d) and 12.2(c) which are to be determined exclusively pursuant
12 to arbitration following the procedures specified in Section 7.3(d).

13 (b) Mandatory Mediation. As a condition precedent to commencing any
14 Proceedings, relating to this Agreement or the subject matter hereof, each Party shall first submit
15 the Claim or controversy to mandatory mediation for a period of ninety days following
16 appointment of a mediator. The Parties agree to cooperate and operate in good faith to appoint
17 the mediator and to attempt to resolve all matters in dispute with the assistance of the mediator.
18 If the Parties are unable to agree unanimously upon the appointment of the mediator, then they
19 shall unanimously seek appointment of a mediator by the Chief Judge of the United States
20 District Court for the District of Oregon. If the Chief Judge refuses, or fails, to act the mediator
21 shall be selected by the senior United States Senator from the State of Oregon. PGE and the
22 Tribes agree to share equally the mediator's fees and expenses.

23 (c) Jurisdiction and Venue. The Parties agree that any disputes concerning,
24 relating to or arising out of this Agreement present a federal question. With respect to any
25 Proceeding each Party irrevocably submits to the exclusive jurisdiction of the United States
26 District Court for the District of Oregon located in Portland, Oregon. Each Party hereto
27 irrevocably waives any objection which it may have at any time to the laying of venue of any
28 Proceeding brought in the United States District Court for the District of Oregon located in
29 Portland, Oregon, waives any claim that such Proceeding has been brought in an inconvenient
30 forum and further waives the right to object, with respect to such Proceeding, that such court
31 should not exercise its jurisdiction or should defer to some other judicial or administrative
32 tribunal. In the event such court determines that the subject matter of the Proceeding does not
33 fall within the statutory jurisdiction of U.S. District Courts or for any reason declines to exercise
34 jurisdiction over the Proceeding, then the dispute shall be resolved by judicial proceedings in a
35 court of the State of Oregon which has jurisdiction and venue. Except for the limited purpose
36 specified in Section 7.3(d) below, each Party hereto irrevocably waives any right it might
37 otherwise have to seek to have any Proceeding determined in any tribal court and agrees that
38 assumption of jurisdiction by any federal or state court shall not be delayed or curtailed by any
39 doctrine requiring exhaustion of tribal court remedies. PGE's entry into this Agreement and the
40 Included Agreements shall not be deemed to give rise to a consensual relationship that would
41 establish the Tribes' jurisdiction over PGE's activities.

1 (d) Determination by Arbitration. In the event both the United States District
2 Court for the District of Oregon and the courts of the State of Oregon determine that the subject
3 matter of the Proceeding does not fall within their statutory jurisdiction or for any reason both
4 decline to exercise jurisdiction over the Proceeding, then the Parties shall submit the Proceeding
5 to arbitration in Portland, Oregon under the Commercial Arbitration Rules of the American
6 Arbitration Association. The Parties agree that any such Proceeding shall be submitted to three
7 arbitrators selected by the American Arbitration Association from its panel of arbitrators. The
8 arbitrators shall not have authority to award damages prohibited by this Agreement. The Parties
9 further agree that they will faithfully observe this Agreement and the rules, and that they will
10 abide by and perform any award rendered by the arbitrators and that a judgment of a court
11 having jurisdiction may be entered upon the award; provided, the award may be challenged and
12 modified in whole or part or denied enforcement in whole or part, but only on the basis that the
13 award exceeded the scope of the arbitrators' authority under this Agreement or the Federal
14 Arbitration Act. In the event neither a federal court nor an Oregon court has, or will accept,
15 jurisdiction to enter an order upon the award, then the Tribes and PGE agree that a tribal court
16 judge pro tempore of the Warm Springs Tribal Court shall have jurisdiction exclusively for the
17 purpose of entering an order upon the award. The tribal court judge pro tempore shall be a
18 retired federal court judge who shall be selected from a publicly available list of retired federal
19 court judges, by mutual agreement of the Tribes and PGE, with each of the Tribes and PGE
20 proposing three names from such list to the other and the Tribes and PGE seeking to reach
21 agreement on a judge from such proposed names within fifteen days after the exchange of their
22 respective lists of three names. If the Tribes and PGE are unable to agree on a judge from such
23 list, the selection shall be made from such publicly available list by the CPR Institute for Dispute
24 Resolution, 366 Madison Ave., New York, NY ("CPR"). If CPR is unable or unwilling to select
25 such judge, then the selection shall be made from such publicly available lists, taking into
26 consideration the names provided on the lists proposed by the Tribes and PGE, by another
27 alternative dispute resolution service agreeable to the Tribes and PGE. Judges proposed or
28 selected shall provide to each of the Tribes and PGE statements of any relationships with either
29 Party. Any judge selected shall be impartial and shall not have disqualifying relationships with
30 any Party.

31 7.4 Limitations on Recourse.

32 The Tribes hereby grants to PGE a security interest in the Tribes' Project Rights, whether now in
33 existence or created or arising at any time in the future, to secure any and all obligations of the
34 Tribes to PGE under this Agreement and/or with respect to the Project. PGE hereby grants to the
35 Tribes a security interest in PGE's Project Rights, whether now in existence or created or arising
36 at any time in the future, to secure any and all obligations of PGE to the Tribes under this
37 Agreement and/or with respect to the Project. The Parties' rights under this Agreement are
38 cumulative and may be exercised at any time without affecting any of its other rights under this
39 Agreement. PGE agrees to seek satisfaction of any Claims it may have against the Tribes under
40 this Agreement and otherwise with respect to the Project only from the Tribes' Allocation.
41 Likewise, the Tribes agree to seek satisfaction of any Claims they may have against PGE under
42 this Agreement and otherwise with respect to the Project only from PGE's Allocation.
43 Notwithstanding the foregoing, until the Acquisition Loan is paid in full, if amounts due PGE are
44 not paid in accordance with Section 5.13, PGE can seek recourse from among the Tribes'
45 Allocation, the Reserve Account as described in Section 5.14, or any insurance proceeds the

1 Tribes may have received or be entitled to receive related to the Project either under Article XI
2 or otherwise. The provisions of this Section 7.4 do not limit the rights of either the Tribes or
3 PGE to seek (a) specific performance of this Agreement, (b) other injunctive relief or (c) any
4 other form of non-monetary relief.

5 **ARTICLE VIII**
6 **DAMAGE TO PROJECT; END OF PROJECT**

7 8.1 Damage to the Project.

8 (a) In the event that the Project suffers damage resulting from causes other
9 than ordinary wear, tear or deterioration, to the extent that the estimated cost of repair as
10 unanimously agreed by members of the Operating Committee, or, if they cannot agree within a
11 period of six (6) months from the date of damage, as determined by the Arbitrator pursuant to
12 Section 3.2(g), is less than or equal to \$50,000,000, and if the Owners do not unanimously agree
13 that the Project shall be ended pursuant to Section 8.2, the Operator shall promptly submit a
14 revised Operating Budget and shall proceed to repair the Project, and each Owner shall pay as
15 budgeted, into the Operating Trust Account, its Ownership Share of the cost thereof.

16 (b) If the Project suffers damage to the extent that the estimated cost of repair
17 exceeds \$50,000,000 as determined in Section 8.1(a), the Operating Committee shall agree upon,
18 or if they cannot so agree within six (6) months from the date of damage, the arbitrator shall
19 determine the estimated value of the Project as and when repaired. Thereafter, each Owner
20 which, within a reasonable time to be determined by the Operating Committee, gives notice in
21 writing to the other parties of its desire that the Project be repaired, shall, in the proportion that
22 its Ownership Share bears to the total of the Ownership Shares of all Owners giving such notice,
23 pay into the Operating Trust Account, as budgeted in a revised budget, all of the cost of repair.
24 If any Owner has given such notice, the Ownership Share of each Owner which does not give
25 notice shall, at the end of the reasonable time which was determined by the Operating
26 Committee, be reduced to the extent determined by the following formula:

27
$$S2 = S1 \frac{[V - (C - I)]}{[V]}$$

28

29 where

30
31 V = Estimated value of the Project as repaired
32 C = Estimated cost of repair
33 I = Estimated insurance proceeds, if any, inuring to the benefit of all Parties
34 (shall not include insurance proceeds to which only individual Parties are
35 entitled)
36 S1 = Ownership Share prior to loss
37 S2 = Reduced Ownership Share
38

39 At the same time, the amount of such reduction shall be added to the Ownership Share of
40 the Owners giving such notice in the proportion that the Ownership Share of each bears to the
41 total of the Ownership Shares of all Owners giving such notice.

1 (c) If the Project suffers damage to the extent that the estimated cost of repair
2 as determined in Section 8.1(a) exceeds \$50,000,000 and no Owner gives the notice required by
3 Section 8.1(b), the damaged Project shall not be repaired. If portions of the Project are still
4 capable of economically generating electricity, then the Operator shall implement the procedures
5 specified in Section 8.2 with respect to the damaged facilities and continue to operate the
6 remaining facilities. If none of the Project is still capable of economically generating electricity,
7 then the Operator shall end the Project pursuant to Section 8.2.

8 (d) The Parties expressly agree that no reduction in the Tribes' Ownership
9 Share that may occur pursuant to Section 8.1(b) above shall affect the agreement in Article V of
10 the Long-Term Global Settlement and Compensation Agreement establishing full and fair
11 compensation to the Tribes.

12 8.2 End of the Project.

13 When the Project can no longer be made capable, consistent with Prudent Utility Practice
14 as determined (if necessary) by the arbitrator pursuant to Section 3.2(g), of producing electricity,
15 or is not licensable, or when the Project is ended pursuant to Section 8.1, or when the Owners
16 otherwise agree to end the Project, the Operator shall sell for removal all salable parts of the
17 Project to the highest bidders. After deducting all costs of termination of the Project, including
18 the cost of decommissioning, razing all structures and disposing of the debris and meeting all
19 requirements of Applicable Law, the Operator shall close the Operating Trust Account and, if
20 there are net proceeds, distribute to each Owner its Ownership Share of such proceeds. In the
21 event such cost of ending the Project exceeds available funds, each Owner shall pay its
22 Ownership Share of such costs incurred.

23 **ARTICLE IX**
24 **TERM AND TERMINATION**

25 9.1 Term.

26 This Agreement shall be effective ("Effective Date") upon the Transfer Date as defined
27 in the Asset Purchase Agreement. The term of this Agreement ("Term") shall be from the
28 Effective Date through the date of expiration or earlier termination of the New FERC License
29 ("Termination Date"), provided that the Parties shall comply with any orders of any
30 Governmental Authority with respect to any earlier termination and the costs of such compliance
31 shall be Costs of Operation hereunder.

32 9.2 Termination.

33 This Agreement shall not be subject to termination by any party prior to the Termination
34 Date except as expressly provided in Section 9.1 and Article VIII. Each of the Parties, to the
35 extent not prohibited by Applicable Law, waives all rights now or hereafter existing, conferred
36 by statute, common law or otherwise to quit, terminate or surrender this Agreement.

1
2

ARTICLE X
DEFAULT AND REMEDIES

3 10.1 Default.

4 (a) Upon failure of an Party to make any payment when due, fulfill any
5 covenant, or, except as excluded by Section 13.1, perform any material obligation of a Party
6 herein, any other Party may make written demand upon said Party.

7 (b) If the failure of a Party is to make a payment when due and such failure is
8 not cured within five (5) days from the date of a demand pursuant to Section 10.1(a), it shall
9 constitute a default at the expiration of such period.

10 (c) If the failure of a Party is to fulfill any covenant or to perform any other
11 material obligation the non-performance of which is not excused by Section 13.1 hereof, and if
12 (i) such material violation or breach has not been waived by the other Party, (ii) such material
13 violation or breach is capable of being cured by the non-performing Party and (iii) the non-
14 performing Party has failed (A) to cure such material violation or breach within thirty (30) days
15 of receipt of written notice thereof by the other Party or (B) in the event a material breach cannot
16 be cured despite diligent efforts within a thirty (30) day period, the non-performing Party has
17 failed to initiate promptly and maintain continuously diligent efforts to cure such breach, then the
18 failure shall, at the expiration of such period, constitute a default.

19 (d) If a Party in good faith disputes the existence or extent of a failure
20 described in Section 10.1(a), it shall, within the applicable period set forth in Section 10.1 (b) or
21 (c), make such payment or perform such obligation under written protest directed to the other
22 Parties. Such dispute shall be resolved pursuant to Sections 7.1 through 7.3.

23 10.2 Remedies.

24 (a) An Owner in default shall have no right to use its Project Rights, nor to
25 have representation on the Operating Committee, nor to exercise any other right of an Owner.

26 (b) If a default is limited to a failure of the defaulting Owner to make
27 payments, the defaulting Owner's Ownership Share of Project Rights may be sold by the non-
28 defaulting Owner during the period of default for the benefit of the defaulting Owner (to third
29 parties or other Owners) and the proceeds applied to the amounts owed by such Owner.
30 Payments not made when due may be advanced by the other Owners and, if so advanced, shall
31 bear interest until paid at the rate of one percent (1%) per month or the highest lawful rate,
32 whichever is lower.

33 (c) If a default involves failure of the defaulting Owner to fulfill any covenant
34 or to perform any other material obligation the non-performance of which is not excused by
35 Section 13.1 hereof, the defaulting Owner's Ownership Share of Project Rights may be used or
36 sold by the non-defaulting Owner as they see fit during the period of the default, and the value of
37 the defaulting Owner's Ownership Share of such Project Rights shall be an offsetting claim to
38 the damages suffered by the non-defaulting Owner as a result of the default.

1 (d) In addition to the rights granted in this Section 10.2, any non-defaulting
2 Party may take any action, in law or equity, to enforce this Agreement and, subject to the
3 limitations expressed in this Agreement, to recover for any loss or damage, including reasonable
4 attorneys' fees and costs incurred by reason of such default, both at trial and upon any appeal.

5 **ARTICLE XI**
6 **INSURANCE**

7 **11.1 Project Property and Equipment.**

8 The Operator shall obtain and maintain in force for the Owners and the Operator as their
9 interests shall appear insurance for "all risks" of physical loss or damage to property and
10 equipment part of or in any way related to the Project, with replacement cost coverage and
11 otherwise in the same manner as the Operator insures its other owned and operated like facilities.
12 All Owners shall be named insureds and loss payees as their interests may appear under all
13 policies maintained pursuant to this Section 11.1.

14 **11.2 Workers' Compensation, General Liability and Automobile Liability.**

15 The Operator shall obtain and maintain the following insurance during the Term of this
16 Agreement related to its activities as Operator:

17 (a) Workers' compensation insurance to comply with Oregon laws and
18 employer's liability coverage for \$2,000,000 each accident and \$2,000,000 disease each
19 employee. Coverage shall also be secured as specified in the United States Longshore and
20 Harbor Workers' Act for work to be performed on or near navigable waters. (The Parties do not
21 hereby represent or take the position that the Deschutes River is or is not navigable).

22 (b) General liability insurance, including coverage for contractual liability,
23 Project operations, products and completed operations, with a combined single limit of
24 \$35,000,000 for personal and bodily injury and property damage per occurrence and in the
25 aggregate. Any watercraft exclusion shall be deleted if service necessitates use of watercraft of
26 any kind. Such general liability insurance may be in any reasonable combination of primary and
27 excess liability policies. If the general liability policy is a "claims-made policy" and it is
28 cancelled or not renewed, then the Operator shall make reasonable efforts to secure upon
29 reasonable terms and conditions, including a reasonable premium, either a "tail policy" or a
30 "sunrise endorsement." The Operator may, but shall not be required to, carry general liability
31 insurance coverage its role as Operator in excess of the foregoing \$35,000,000 limit. If the
32 Operator does so, it shall offer the Tribes the option to contribute on an equitable basis to the
33 cost of excess coverage up to a maximum limit of \$65,000,000 as Costs of Operation. If the
34 Tribes exercise such option, the indemnity described in Section 3.1(e)(iv) shall extend to such
35 excess coverage subject to the maximum limit of \$65,000,000. If the Tribes do not exercise such
36 option, the indemnity described in Section 3.1(e)(iv) shall not extend to such excess coverage.

37 (c) Automobile liability to include coverage for all owned, non-owned and
38 hired vehicles for \$5,000,000 per accident. Such automobile liability insurance may be in any
39 reasonable combination of primary and excess liability policies. The deductible shall not exceed
40 \$5,000 absent unanimous approval of the Operating Committee.

1 If, consistent with the manner in which the Operator insures its other owned and operated
2 like facilities, the Operator provides any of the insurance required in Sections 11.2(a) and (b)
3 through a self-insurance program, then any losses or damages shall be treated as Costs of
4 Operation and shared by the Owners in accordance with their Ownership Shares.

5 11.3 Consequential Damages.

6 Unless the Operator insures its other owned and operated facilities for such risks pursuant
7 to the coverage described in Section 11.1 above, in no event shall the Operator be required to
8 obtain or maintain insurance to insure against consequential damages including, but not limited
9 to, business interruption, loss of profits or revenue, loss of use of the Project or any associated
10 equipment, cost of capital, cost of purchased power, cost of substitute equipment, facilities or
11 services, downtime costs, or Claims of customers of the Owners for such damages and such
12 claims from the Owners' customers.

13 11.4 Primary Insurance.

14 All insurance carried by the Operator pursuant to this Section 11, including that described
15 in Section 11.2(b) to the extent of Operator's indemnification obligation specified in Section
16 3.1(e) (iv), shall be primary to any other available coverage. Any other available coverage
17 maintained by any Owner shall not be contributory.

18 11.5 Costs of Operation.

19 Except as specified in Section 11.2(b) with respect to excess general liability coverage,
20 the costs of all insurance maintained by the Operator pursuant to this Section 11 shall be treated
21 as Costs of Operation.

22 11.6 Coverage to be Maintained by Owners.

23 In addition to insurance procured by the Operator pursuant to Sections 11.1 and 11.2
24 above, each of the Owners shall also procure the insurance described in paragraphs (a), (b) and
25 (c) below related to its capacity and activities as an Owner of the Project.

26 (a) Workers' compensation insurance to comply with Oregon laws or Tribal
27 laws, whichever are applicable, and employer's liability coverage for \$2,000,000 each accident
28 and \$2,000,000 disease each employee. Coverage shall also be secured as specified in the
29 United States Longshore and Harbor Workers' Act for work to be performed on or near
30 navigable waters. (The Parties do not hereby represent or take the position that the Deschutes
31 River is or is not navigable).

32 (b) General liability insurance, including coverage for contractual liability,
33 products and completed operations, with a combined single limit of \$5,000,000 for personal and
34 bodily injury and property damage per occurrence. Any watercraft exclusion shall be deleted if
35 service necessitates use of watercraft of any kind. Such general liability insurance may be in any
36 reasonable combination of primary and excess liability policies.

1 (c) Automobile liability to include coverage for all owned, non-owned and
2 hired vehicles for \$5,000,000 per accident. Such automobile liability insurance may be in any
3 reasonable combination of primary and excess liability policies.

4 Any Owner may provide the insurance required in this Section 11.6 through a self-
5 insurance program with the permission of the other Owners, which shall not be unreasonably
6 withheld.

7 11.7 Waiver of Subrogation.

8 Each Owner and the Operator shall require their insurance underwriters to waive all their
9 rights of recovery, under subrogation or otherwise, against the Operator and the other Owner(s).

10 11.8 Status of Insurance.

11 The Operator shall keep the Owners informed of changes in and the status of insurance in
12 force, and provided it does so, the Operator shall not be liable to any of the Owners for any
13 failure to insure nor any inadequacy of coverage.

14 11.9 Supplemental Insurance.

15 Nothing in this Agreement shall prohibit any Owner or the Operator from procuring
16 insurance that supplements the coverages required by this Agreement. The Party purchasing
17 such supplemental coverage shall be solely responsible for the premiums therefor and shall
18 solely be entitled to retain any payments related thereto from the insurance carrier.

19 11.10 Election to Purchase Separate Coverage.

20 Notwithstanding any other provision of this Agreement, either Owner may in its
21 discretion elect not to participate in the insurance program the Operator is otherwise required to
22 maintain pursuant to this Section 11. The electing Owner may make such election with respect
23 to any one or more of the coverages the Operator is required to maintain pursuant to Sections
24 11.1 and 11.2. Any such election shall be in writing delivered to the Operator with reasonable
25 advance notice under the circumstances and, assuming reasonable advance notice has been
26 given, shall be effective upon the expiration of the current term of the subject policy, or such
27 other date as the subject Owner and Operator may agree. Upon the effective date the electing
28 Owner shall no longer be responsible for Costs of Operation attributable to the premiums for
29 such policy and shall not be entitled to participate in any payments related thereto from the
30 insurance carrier. In the event the electing Owner chooses not to participate in the general
31 liability policy and coverage specified in Section 11.2 (b), then the indemnity obligation of the
32 Operator specified in Section 3.1(e)(iv) shall immediately cease and be of no effect relative to
33 such electing Owner.

1
2 **ARTICLE XII**
ASSIGNMENTS AND TRANSFERS

3 12.1 Assignments and Transfers.

4 Neither this Agreement nor any right, interest or obligation hereunder may be assigned by
5 either Owner without the prior written consent of the other Owner hereto, which Owner may
6 withhold its consent in its sole discretion, and any attempted assignment shall be void, except the
7 following assignments and transfers which shall not require such consent:

8 (a) assignments and transfers which occur by operation of law;

9 (b) assignments and transfers by PGE of its rights, interests and obligations
10 hereunder, in whole or in part, to an Affiliate;

11 (c) assignments and transfers by the Tribes of their rights to receive payments
12 from PGE or the Tribes' Allocation of Project Rights hereunder, provided, that any such
13 assignments and transfers by the Tribes shall not involve any mortgage, grant of a security
14 interest or other encumbrance of the Tribes' title to the Project;

15 (d) assignments and transfers by PGE of all or any part of its interest in the
16 Project to any mortgagee, trustee or secured party, as security for bonds or other indebtedness of
17 PGE, present or future;

18 (e) assignments and transfers by PGE of all or any part of its interest
19 hereunder to any entity acquiring all or a substantial portion of PGE's property;

20 (f) assignments and transfers by PGE to any entity into which or with which
21 PGE is merged or consolidated;

22 (g) assignments and transfers by PGE to the State of Oregon, an agency
23 thereof or to a trust, cooperative or other non-profit entity provided PGE has complied with
24 Section 12.3 of this Agreement; or

25 (h) assignments and transfers by PGE of its Ownership Share of the Project to
26 a for-profit entity provided PGE has complied with Section 12.2 of this Agreement.

27 Assignments and transfers shall not relieve an Owner of any obligation hereunder, except
28 to the extent agreed in writing by the other Owners, provided that an otherwise valid assignment
29 or transfer by PGE to a Person (a) having, as of the date of such assignment or transfer, a
30 tangible net worth not less than that of PGE as of such date (or whose obligations hereunder are
31 guaranteed by a Person having such tangible net worth), and (b) having an Investment Grade or
32 higher rating on its senior, unsecured debt as of such date, shall automatically result in a full and
33 complete release of PGE from all of its unmatured obligations hereunder and a novation of this
34 Agreement between the Tribes and such assignee or transferee.

1 12.2 Right of First Refusal Upon Sale by PGE.

2 Upon the terms and conditions set forth in this Section 12.2, PGE shall afford the Tribes a
3 right of first refusal to purchase all or any portion of PGE's Ownership Share in the Project that
4 PGE chooses to sell ("Right of First Refusal").

5 (a) The Right of First Refusal provided for in this Section 12.2 shall apply
6 only to a transfer by PGE described in Section 12.1(h) that does not meet any of the other criteria
7 specified in Section 12.1(a)-(g). The Right of First Refusal shall not apply to a transfer by PGE
8 described in Section 12.3.

9 (b) PGE shall not be required to afford the Tribes the First Right of Refusal
10 unless PGE determines it would accept a third party offer. (If PGE conducted an auction, for
11 example, and reserved the right to reject all bids, PGE could reject the highest bid and choose not
12 to sell, either to the highest bidder or to the Tribes).

13 (c) PGE shall provide the Tribes notice of its intent to accept a third party
14 offer for PGE's Ownership Interest in the Project and shall provide the Tribes a copy of the
15 definitive agreement establishing the price and terms of the proposed transaction. The Tribes
16 shall have forty-five days from the date of receipt from PGE of notice and the definitive
17 agreement within which to conduct any due diligence and to decide whether to exercise the Right
18 of First Refusal. A condition precedent to exercise of the Right of First Refusal and closing is
19 that Tribes not be in default of the Global Settlement Agreement, the Power Purchase and Sale
20 Agreements, this Agreement or any other material agreement to which the Tribes are a party,
21 whether or not PGE is a counterparty. Unless the Tribes have notified PGE affirmatively in
22 writing of their exercise of the Right of First Refusal within such forty-five (45) day period, the
23 Tribes shall be deemed to have waived their Right of First Refusal with respect to the subject
24 offer. To be effective, the Tribes' exercise of the Right of First Refusal must (i) be an
25 unconditional acceptance to purchase the proffered assets on the same terms and conditions as
26 contained in the definitive agreement referenced above (specifically including date of closing
27 and payment terms), (ii) apply to the entire interest in the Pelton and Round Butte Facilities
28 being transferred. (E.g., if PGE were transferring its entire Undivided 66.67% Interest, the
29 Tribes would have to purchase that amount--they could not choose to purchase, say, half of that
30 amount.) and (iii) be accompanied by payment of the topping fee described in Section 12.2(e)
31 below. In addition, elements of this Ownership and Operation Agreement unique to the Tribes'
32 sovereign status, such as jurisdiction and waiver of immunity, shall be added to the terms of the
33 definitive agreement to be executed by the Tribes. To the extent the Tribes are legally precluded
34 from complying with one or more terms of the definitive agreement between PGE and the third
35 party, the Tribes shall provide PGE equivalent value in either alternative terms or money. Any
36 disputes concerning equivalency shall be resolved by arbitration using the procedures specified
37 in Section 7.3(d) of this Agreement.

38 (d) To provide PGE appropriate assurance that it will be able to obtain
39 necessary regulatory approvals for a sale by PGE to the Tribes, at the time the Tribes exercise the
40 Right of First Refusal the Tribes shall establish to PGE's reasonable satisfaction either (i) the
41 Tribes have acquired the expertise necessary to operate the Project or (ii) the Tribes will within
42 sixty days after their exercise of the Right of First Refusal enter into an agreement with a

1 competent third party, acceptable to FERC and the State of Oregon, to be the Project Operator.
2 PGE shall have the right to reject the Tribes' exercise of the Right of First Refusal and proceed
3 with PGE's proposed sale if the Tribes fail to provide either the assurance described in Section
4 12.2(d)(i) or that described in Section 12.2(d)(ii).

5 (e) To mitigate potential dampening of interest in any sale which dampening
6 could be harmful to PGE's customers and/or shareholders and to provide funds that may be
7 required to compensate an otherwise successful purchaser for its efforts to investigate and
8 implement a purchase from PGE, upon their exercise of the Right of First Refusal the Tribes
9 shall pay PGE a non-refundable "topping fee" equal to the greater of 5% of the sales price or a
10 minimum of \$4 million dollars.

11 (f) PGE shall have the right to reject the Tribes' exercise of the Right of First
12 Refusal if the Tribes, having established to PGE's satisfaction that they will enter into an
13 operating agreement with a competent third party pursuant to Section 12.2(d)(ii), nevertheless do
14 not achieve such an agreement within the required sixty (60) day time frame. If PGE so rejects
15 the Right of First Refusal pursuant to this Section 12.2(f), then (i) PGE may make the sale to the
16 original purchaser or any other potential purchaser at whatever price and on whatever terms PGE
17 deems appropriate and (ii) if PGE is unable to consummate the sale to the original purchaser on
18 the same terms and conditions as those in the definitive agreement presented to the Tribes in
19 accordance with Section 12.2(c) above, PGE shall be entitled to retain the topping fee paid by the
20 Tribes pursuant to Section 12.2(e) above to compensate PGE for its expenses and for its lost
21 opportunity to consummate the original sale. If PGE does not consummate the sale to the
22 original purchaser or another purchaser at such time, then the Tribes' Right of First Refusal shall
23 terminate and not apply to any future transfers by PGE.

24 (g) PGE shall have the same rights vis-a-vis the Tribes as it would vis-a-vis
25 the proposed third party purchaser to terminate the purchase based on regulatory conditions on
26 approval, as well as other conditions constituting a material adverse change. If PGE terminates
27 the purchase pursuant to this Section 12.2(g) other than as a result of a material adverse change
28 relating specifically to the Tribes, then (i) PGE may not make the sale to the original purchaser
29 or any other potential purchaser, (ii) the Tribes' Right of First Refusal shall not terminate and
30 shall apply to any future transfers by PGE and (iii) PGE shall promptly return to the Tribes the
31 topping fee paid by the Tribes pursuant to Section 12.2(e).

32 (h) If Tribes exercise the foregoing Right of First Refusal and do not then
33 complete the purchase, other than for reasons totally outside the reasonable control of Tribes, (i)
34 PGE may make the sale to the original purchaser or any other potential purchaser at whatever
35 price and on whatever terms PGE deems appropriate and (ii) if PGE is unable to consummate the
36 sale to the original purchaser on the same terms and conditions as those in the definitive
37 agreement presented to the Tribes in accordance with Section 12.2(c) above, PGE shall be
38 entitled to retain the topping fee paid by the Tribes pursuant to Section 12.2(e) above to
39 compensate PGE for its expenses and for its lost opportunity to consummate the original sale. If
40 PGE does not consummate the sale to the original purchaser or another purchaser at such time,
41 then the Tribes' Right of First Refusal shall terminate and not apply to any future transfers by
42 PGE.

1 (i) The Tribes' Right of First Refusal is subject to changes in law and actions
2 of governmental entities that might impair the exercise of such Right of First Refusal or the
3 purchase of PGE's interest. In the event of such a change in law or action of Governmental
4 Authorities that prevents exercise of such Right of First Refusal or the purchase of PGE's
5 interest, (i) PGE may make a sale to the third party and (ii) regardless of whether it makes such a
6 sale, PGE shall have no liability to the Tribes arising from such impairment of the Tribes' Right
7 of First Refusal.

8 12.3 Acceleration of Tribes' First Purchase Option and Second Purchase Option.

9 Any sale by PGE of its Ownership Share of the Project to the State of Oregon, an agency
10 thereof or to a trust, cooperative or other non-profit entity shall be subject to the right of the
11 Tribes to exercise prior thereto the First Purchase Option and the Second Purchase Option, as
12 these terms are defined in the Global Settlement Agreement. PGE shall notify the Tribes at least
13 one hundred fifty (150) days in advance of the projected sale to one of the entities referred to in
14 the immediately preceding sentence. The Tribes shall then have seventy-five days within which
15 to exercise this option to exercise either or both the First Purchase Option and the Second
16 Purchase Option as of a date no sooner than seventy-five (75), and no later than one hundred
17 fifty (150) days, after the Tribes have given PGE notice of their election to exercise this option.
18 The Tribes shall purchase the interest(s) from PGE, upon the same terms and conditions as those
19 contained in the Asset Purchase Agreement, subject only to the following modifications:

20 (a) the date of closing, transfer of title and payment of the purchase price shall
21 be the date specified in the Tribes' notice, or if not a Business Day, then the next Business Day
22 thereafter;

23 (b) the Purchased Assets, as defined in the Asset Purchase Agreement,
24 purchased by the Tribes shall be the Undivided 16.66% Interest in the Pelton and Round Butte
25 Facilities and or the Undivided .02% Interest in the Pelton and Round Butte Facilities, as the case
26 may be, as such facilities exist as of the closing;

27 (c) the Purchase Price, as defined in the Asset Purchase Agreement, shall be
28 (i) .2498 times PGE's Ownership Share of the Net Book Value of the Pelton and Round Butte
29 Facilities as of the closing date, as reflected on PGE's books of account as of that date, with
30 respect to a sale of the Undivided 16.66% Interest, plus (ii) .0004 times PGE's Ownership Share
31 of the Net Book Value of the Pelton and Round Butte Facilities as of the closing date, as
32 reflected on PGE's books of account as of that date, with respect to a sale of the Undivided .02%
33 Interest, plus (iii) the commitment of the Tribes to pay PGE either (A) a sum of money agreed by
34 them or (B) the net benefits PGE would have received if it had continued to receive the Project
35 Rights associated with the Ownership Share sold to the Tribes during the period from the closing
36 to the dates the Tribes would have been able to exercise the First Purchase Option and the
37 Second Purchase Option pursuant to the terms of the Long-Term Global Settlement and
38 Compensation Agreement. Such net benefits shall be determined by application of the following
39 formula:

1 Annual Tribes Payment to PGE = (PS * Annual Energy Value)
2 - (PS/OP) * (GP + Additions - AD-DT) * CC)
3 - (PS * O&M)
4 - (PS * Depreciation)
5 - (PS/OP * Property Taxes)
6
7 Where,
8
9 PS = PGE Ownership Share percentage sold to the Tribes pursuant to
10 this Section 12.3 (.1668 if both the First Purchase Option and
11 Second Purchase Option are exercised, and .0002 if only the
12 Second Purchase Option is exercised)
13
14 OP = PGE Project Ownership Share percentage just prior to the time of
15 the sale
16
17 GP = PGE's gross plant in service value associated with OP just prior to
18 the time of the sale
19
20 AD = PGE's accumulated depreciation associated with OP at the time of
21 the sale plus "Depreciation" (as defined below) for the period
22 subsequent to the sale
23
24 DT = PGE's deferred taxes associated with OP at the time of the sale
25 plus deferred taxes PGE would have incurred but for the sale
26
27 Additions = Cumulative Capital Additions for OP subsequent to the time of the
28 sale
29
30 Depreciation = Depreciation on plant & Capital Additions subsequent to the time
31 of the sale
32
33 O&M = Total annual Project direct operation & maintenance expenses
34 but not to exceed the average real Annual Project direct O&M for
35 the last ten years of the New FERC License (determined by
36 adjusting actuals to account for changes in the CPI) unless such
37 excess is attributable to conditions imposed by the FERC license
38 which follows the New FERC License (Budget trued up to actuals
39 at year end)
40
41 CC = PGE's weighted average cost of capital, grossed up for income
42 taxes, of 12%
43
44 Scheduled Hourly Project Energy = Available Project Energy pre-scheduled on
hourly basis for the PGE OP
Hourly Market Price = Mid-Columbia hourly market price or
appropriate substitute
Annual Energy Value = Annual sum (Scheduled Hourly Project Energy *
Hourly Market Price)

40 For purposes of the monthly calculation the energy value would be for the specific
41 month, O&M would be the budget spread equally over the year and trued up to actuals in the
42 December billing, while the capital costs are assumed to be spread equally over the year with no
43 true up during the year. Payments would be made on a monthly basis within 15 days of the end
44 of the month.

1 with a copy to:
2 Confederated Tribes of the Warm Springs Reservation
3 Secretary-Treasurer
4 P. O. Box C
5 Warm Springs, OR 97761

6 and a copy to:
7 Mr. Dennis C. Karnopp, Esq.
8 Karnopp, Petersen, Noteboom, Hansen, Arnett, & Sayeg LLP
9 1201 NW Wall St.
10 Suite 300
11 Bend, OR 97701

12 **To PGE:**
13 Portland General Electric Company
14 Attention: Senior Vice President, Power Supply
15 1-World Trade Center-17
16 121 SW Salmon Street
17 Portland, OR 97204

18 with a copy to:
19 Portland General Electric Company
20 Attention: General Counsel
21 1-World Trade Center-17
22 121 SW Salmon Street
23 Portland, OR 97204

24 (b) Effective Time.

25 Notice given pursuant to this Section 13.4 shall be effective upon physical receipt by both
26 of the remaining Party.

27 13.5 Waivers.

28 Except as otherwise provided herein, no provision of this Agreement may be waived
29 except in writing. No failure by any Party to exercise, and no delay in exercising, short of the
30 statutory period, any right, power or remedy under this Agreement shall operate as a waiver
31 thereof. Any waiver at any time by a Party of its right with respect to a default under this
32 Agreement, or with respect to any other matter arising in connection therewith, shall not be
33 deemed a waiver with respect to any subsequent default or matter.

1 13.6 No Reliance.

2 Each Party acknowledges that in entering into this Agreement, it has not relied on any
3 statement, representation or promise of the other Party or any other Person or entity, except as
4 expressly stated in this Agreement.

5 13.7 Assumption of Risk.

6 In entering into this Agreement, each of the Parties assumes the risk of any mistake of
7 fact or law, and if either or both of the Parties should subsequently discover that any
8 understanding of the facts or the law was incorrect, neither of the Parties shall be entitled to, nor
9 shall attempt to, set aside this Agreement or any portion thereof.

10 13.8 Waiver of Defenses.

11 Upon the execution of this Agreement, the Parties release each other from any and all
12 Claims relating to the formation and negotiation of this Agreement, including, but not limited to
13 reformation, rescission, mistake of fact, or mistake of law. The Parties further agree that they
14 waive and will not raise in any court, administrative body or other tribunal any Claim in
15 avoidance of or defense to the enforcement of this Agreement other than the express conditions
16 set forth in this Agreement.

17 13.9 No Third-Party Beneficiaries.

18 None of the promises, rights or obligations contained in this Agreement shall inure to the
19 benefit of any Person or entity not a Party to this Agreement; and no action may be commenced
20 or prosecuted against any Party by any third party claiming to be a third-party beneficiary of this
21 Agreement or the transactions contemplated hereby.

22 13.10 Severability.

23 If any provision of this Agreement is held to be illegal, invalid or unenforceable under
24 any present or future law, and if the rights or obligations of any Party hereto under this
25 Agreement will not be materially and adversely affected thereby, (a) such provision will be fully
26 severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or
27 unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this
28 Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or
29 unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or
30 unenforceable provision, there shall be added automatically as a part of this Agreement a legal,
31 valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable
32 provision as may be possible.

33 13.11 Independent Counsel.


34 The Parties acknowledge that they have been represented by independent counsel in
35 connection with this Agreement, they fully understand the terms of this Agreement, and they
36 voluntarily agree to those terms for the purposes of making a full compromise and settlement of
37 the subject matter of this Agreement.

1 13.12 Entire Agreement.

2 This Agreement constitutes the complete and entire expression of agreement between the
3 Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous
4 offers, promises, representations, negotiations, discussions, and communications, whether
5 written or oral, which may have been made in connection with the subject matter of this
6 Agreement, including, but not limited to, the First Amendment to the Ownership and Operation
7 Agreement signed by the Parties and dated as of January 2, 2002, and the Second Amendment to
8 the Ownership and Operation Agreement signed by the Parties and dated as of January 1, 2002,
9 the terms of both of which have been incorporated into and superseded by this Agreement. Any
10 such representations or claims are hereby disclaimed. This Agreement may be signed in
11 counterparts.

12 IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first
13 above written.

14 THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION

15
16
17 By: 
18 Name: Olney Patt, Jr.
19 Title: Chairman Tribal Council

20
21
22 PORTLAND GENERAL ELECTRIC COMPANY

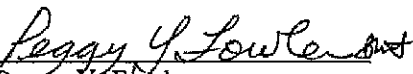
23
24
25 By: 
26 Name: Peggy Y. Fowler
27 Title: Chairman, CEO and President
28

EXHIBIT A

Round Butte / Pelton Operating Guidelines

These guidelines are intended to guide the operation of Round Butte and Pelton under typical circumstances. Extreme or unusual conditions may require deviations from these guidelines.

GENERATOR GUIDELINES

	Round Butte			Pelton		
	<u>Unit#1</u>	<u>Unit#2</u>	<u>Unit#3</u>	<u>Unit#1</u>	<u>Unit#2</u>	<u>Unit#3</u>
<u>Generating Limits</u> (Mw)						
Maximum						
Peak*	105	105	105	36	38	38
Normal	100	100	100	35	35	35
Forbidden Zone						
Top	60	60	60	30	30	30
Bottom	40	40	40	20	20	20
Minimum	20	20	20	15	15	15
Most Efficient*						
Top	90	90	90	35	35	35
Bottom	70	70	70	30	30	30

Notes:

- The Peak Maximum is the highest available output available to meet peak demands and to make temporary deliveries of contingency reserves to replace lost generation within the Northwest Power Pool. The availability and duration of the Peak Maximum is dependent on acceptable generator and transformer winding temperatures. The Plant Operators will take manual control over the output of the units (i.e. no AGC control) when operating above the Normal Maximum.
- Units outputs shall be within their most efficient ranges whenever possible.

	Round Butte			Pelton		
	<u>Unit#1</u>	<u>Unit#2</u>	<u>Unit#3</u>	<u>Unit#1</u>	<u>Unit#2</u>	<u>Unit#3</u>
<u>Nominal Ramp Rates</u> (Mw/Minute)						
Upward	20	20	20	8	8	8
Downward	20	20	20	8	8	8
<u>Nominal Start Times *</u> (Minutes)						
Time to Synchronized	4	4	4	2-3	2-3	2-3
Time to Full Output	6-8	6-8	6-8	6-8	6-8	6-8
<u>Suggested Minimum On/Off Time*</u> (Minutes)	30	30	30	30	30	30
<u>Suggested Daily Starts*</u> (starts/day)	< 4	< 4	< 4	< 4	< 4	< 4

Notes:

- Start times can be reduced to roughly half the nominal times when rapid response is necessary. More than one unit can be started simultaneously.
- The suggested values for minimum on/off times and daily starts reflect the adverse impact that frequent output changes have on the life expectancy of the units. Minimizing unit output changes should be a factor in scheduling and dispatching plans for the Deschutes projects. It is recognized, however, that changing real-time conditions will often require us to operate units outside these suggested values.

1 RESERVOIR GUIDELINES

	<u>ReReg</u>	<u>Pelton Forebay Elevations</u> (feet)	<u>R Butte Forebay</u>
7 Absolute Maximum	1435.0	1580.0	1945.0*
8 Normal Maximum	1435.0	1578.0	1945.0*
9 6/15 - 9/15 Minimum	1415.0	1576.0	1944.0*
10 Normal Minimum	1415.0	1576.0	1935.0*
11 Absolute Minimum	1408.0	1573.0*	1865.0

14 Transit Time from Above

15 (minutes)	20	20	N.A.
--------------	----	----	------

17 Notes:

- 18 • A Round Butte forebay Emergency Maximum of 1945.5 feet can be made available by the Project Manager for flood control use.
- 20 • Oregon Department of Fish & Wildlife research "fish traps" can be damaged by improper Round Butte forebay elevations.
- 22 • Boats at Pelton Park may become stranded on rocks if the Pelton forebay elevation drops below 1575.0 feet.
- 24 • The minimum Round Butte forebay elevation is influenced by run-off expectations based on precipitation, snow pack, and expected temperatures. 1935.0 feet reflects the minimum elevation for normal precipitation, snow pack, and temperatures.

29 REREG STREAMFLOW RELEASE GUIDELINES

	<u>July 1st -- February 28th</u>	<u>March 1st -- June 30th</u>
32 <u>Minimum Release</u> (cubic feet/second)	smaller of 3,240 cfs* , OR actual inflows** to Round Butte	smaller of 3,680 cfs* , OR actual inflows** to Round

35 Butte

36 Notes:

- 37 • Minimum releases are set to avoid reading fluctuations below license restrictions of 3,000 cfs and 3,500 cfs respectively.
- 39 • Inflows measurements fluctuate by as much as 100-200 cfs during the course of a normal day. Values for actual inflow should be the average of inflow measurements over a period of several hours. Changes in actual inflow should be marked by a sustained shift in inflow measurements.

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	<u>May 15 - October 31</u>	<u>Other Times</u>
<u>Maximum Hourly Change*</u> (feet/hour)	0.05	0.10
<u>Maximum Daily Change*</u> (feet/day)	0.20	0.40
<u>Time of Day for Changes*</u>	1 hour after sunset through 1 hour before sunrise	same as 5/15-10/31 whenever possible.

Notes:

- These ReReg change guidelines are intended to minimize downstream river fluctuations which impact recreational users and therefore the public's perception how well PGE is fulfilling its obligations as a steward of natural resources. These guidelines must be considered in scheduling and dispatching plans for the Deschutes projects, and shall be complied with whenever possible.
- It may be necessary during emergency conditions or sudden large changes in actual inflows to deviate from these guidelines. Deviations shall be preapproved by the Project Manager whenever possible.

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EXHIBIT B

Administrative and General Costs

See Attached

EXHIBIT "B"

Allocation of PGE Administration & General Overhead Expenses

The allocation of PGE administration and general overhead expense is labor based. Any PGE labor directly charged to the "project" would be used as the numerator and PGE total company labor as the denominator. The resulting percentage would be applied to the Corporate Governance Base Costs to determine the amount of A&G to allocate to the Pelton / Round Butte Project. The allocation percentage for the project is initially calculated on a budget basis at the beginning of the year and trued up at the end of the year for actuals. The monthly charges for A&G are based on the actual costs charged to the accounts listed below.

The accounts that make up the Corporate Governance Base Costs are listed below:

<u>Account</u>	<u>Description of Account</u>
N44012	Provide Executive Oversight And Guidance
N44029	General Administration
N44072	Purchase Standard Office Supplies
N44108	General Support - Operating & Maintain WTC
N44151	Process Financial & Operating Information
N44154	Reporting Other Internal Financial & Forecasting
N44155	Reporting Other External Financial & Operating Information
N44156	Perform Purchasing Function
N44157	Process Accounts Payable
N44159	Manage Budget & Planning Process
N44161	Provide Business Support
N44162	Perform Internal Auditing
N44163	General Support - Manage Financial Information
N44166	Operating Information Delivery Systems - Non-allocable
N44173	Maintain A&G Technology Series
N44174	Build/Enhance A&G Technology Systems
N44194	Maintain Copiers - Non-Allocable
N44208	Provide Printing Services
N44221	Provide Mail Services
N44222	External Production Services - Costs
N44223	Provide Corp Phone Support/Conference Room
N44224	Provide Travel Services
N44225	Provide Internal Communications
N44226	General Support - Provide Services to Employees
N44394	Corporate A&G Secondaries

EXHIBIT "B"

1
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EXHIBIT C
Wholesale Power Purchase and Sale Agreement No. 02-03-A
And Wholesale Power Purchase and Sale Agreement No. 02-06-A

See Attached

WHOLESALE POWER

PURCHASE AND SALE AGREEMENT

No. 02-06-A

BETWEEN

**THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
OF OREGON**

AND

PORTLAND GENERAL ELECTRIC COMPANY

**WHOLESALE POWER PURCHASE AND SALE AGREEMENT
No. 02-06-A
BETWEEN
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
OF OREGON
AND
PORTLAND GENERAL ELECTRIC COMPANY**

TABLE OF CONTENTS

	<i>Page</i>
ARTICLE I DEFINITIONS	1
1.1 Definitions.....	1
1.2 Interpretations.....	4
ARTICLE II TERM AND TERMINATION	5
2.1 Contract Term.....	5
2.2 Delivery Term.....	5
ARTICLE III REPRESENTATIONS AND WARRANTIES.....	5
3.1 Representations and Warranties.....	5
ARTICLE IV OBLIGATIONS AND DELIVERIES.....	7
4.1 Firm Energy.....	7
4.2 Transmission Losses.....	7
4.3 Notification of Scheduled Deliveries.....	7
ARTICLE V TITLE AND RISK.....	8
5.1 Title and Risk of Loss.....	8
5.2 Seller Warranties.....	8
ARTICLE VI NONPERFORMANCE AND REMEDIES.....	8
6.1 Damages for Failure to Deliver or Receive.....	8
ARTICLE VII DEFAULT.....	9
7.1 Default.....	9
7.2 Remedies.....	9
7.3 Other Remedies.....	11
7.4 Costs for Exercise of Rights.....	11
7.5 Other Events.....	11
7.6 Set Off of Accounts.....	12
ARTICLE VIII UNCONTROLLABLE FORCE	12
8.1 Performance Excused.....	12

8.2 Exclusions	12
8.3 Notice.....	13
8.4 Settlements.....	13
ARTICLE IX WAIVER OF SOVEREIGN IMMUNITY	13
ARTICLE X LIMITATIONS OF REMEDIES, LIABILITY AND DAMAGES.....	14
ARTICLE XI DUTY TO MITIGATE DAMAGES	15
11.1 Mitigation.....	15
ARTICLE XII TAXES	15
12.1 Taxes.....	15
ARTICLE XIII BILLING AND PAYMENT.....	15
13.1 Billing and Payment.....	15
13.2 Method of Payment.....	15
13.3 Overdue Payments.....	16
ARTICLE XIV ARBITRATION	16
14.1 Scope of Disputes to be Arbitrated.....	16
14.2 Arbitration Process.....	16
ARTICLE XV MISCELLANEOUS.....	17
15.1 Assignment of Agreement.....	17
15.2 Limitations on Recourse.....	17
15.3 Audit Right.....	17
15.4 Winding Up Arrangements.....	17
15.5 Notices.....	18
15.6 Governing Law.....	18
15.7 Waivers.....	18
15.8 Severability.....	18
15.9 Section Headings.....	18
15.10 No Rights to Third Parties.....	19
15.11 Parties Acting for Own Account.....	19
15.12 Entire Agreement; Amendment.....	19
15.13 Conditions of Performance.....	19

EXHIBIT A

**WHOLESALE POWER PURCHASE AND SALE AGREEMENT
NO. 02-06-A
BETWEEN
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
OF OREGON
AND
PORTLAND GENERAL ELECTRIC COMPANY**

This Wholesale Power Purchase and Sale Agreement No. 02-06-A (this "Agreement") is entered into effective as of November 13, 2001, (the "Effective Date") by and between Portland General Electric Company, ("PGE" or "Buyer"), and The Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribes" or "Seller"). PGE and Seller may also be referred to individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, the Tribes desire to sell, and PGE desires to purchase, Firm Capacity and Energy from the Tribes in accordance with the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the premises and representations contained herein, the Parties agree hereby as follows:

**ARTICLE I
Definitions**

1.1 Definitions.

As used in this Agreement, the following terms shall have the meanings specified in this Section 1.1:

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

1.1.2 "*Agreement*" shall have the meaning set forth in the introductory paragraph above.

1.1.3 "*Bankruptcy Proceeding*" shall mean, with respect to a Party or entity, when such Party or entity (i) makes an assignment or any general arrangement for the benefit of creditors, (ii) 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 petition filed against it and such petition is not withdrawn or dismissed for 30 days after such filing, (iii) otherwise becomes bankrupt or insolvent (however evidenced) or (iv) is unable to pay its debts as they fall due.

1.1.4 "*Business Day*" shall mean a calendar day other than days on which Federal Reserve member banks in Portland, Oregon are authorized or required by Law to be closed.

1.1.5 "*Claims*" shall mean all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to, during the term of, or after the termination of this Agreement.

1.1.6 "*Contract Day*" shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, inclusive, during the Delivery Term except for the six official NERC holidays.

1.1.7 "*Contract Price*" shall mean Thirty-six Dollars and Seventy Five Cents (\$36.75) in U.S. dollars per MWh of Contract Quantity for four hundred (400) MWhs of Heavy Load Hour Firm Energy per Day delivered from July 1, 2002 to December 31, 2006, inclusive.

1.1.8 "*Contract Quantity*" means a minimum and a maximum of four hundred (400) MWhs of Heavy Load Hour Firm Energy per Day from July 1, 2002 through December 31, 2006.

1.1.9 "*Contract Term*" shall mean the term of this Agreement as set forth in Section 2.1.

1.1.10 "*Costs*" shall have the meaning defined in Section 7.2.5.

1.1.11 "*Day*" shall be defined as any 24-hour period commencing at 00:00 hours at the prevailing time at the Delivery Point.

1.1.12 "*Default*" shall have the meaning set forth in Section 7.1.

1.1.13 "*Defaulting Party*" shall have the meaning set forth in Section 7.1.

1.1.14 "*Delivery Point*" shall mean the Round Butte Bus Bar unless otherwise mutually agreed upon by the Parties.

1.1.15 "*Delivery Term*" shall have the meaning defined in Section 2.2.

1.1.16 "*Energy*" shall mean electric Energy expressed in megawatt hours (MWh).

1.1.17 "*Equitable Defenses*" shall mean any bankruptcy, insolvency, reorganization and other Laws affecting creditor's rights generally, and with regard to equitable remedies, the discretion of the court before which the proceedings to obtain same may be pending.

1.1.18 "*Fees*" shall mean Scheduling, imbalance or similar fees, charges or penalties imposed by third parties.

1.1.19 "*Firm Energy*" shall mean the only excuse for non-delivery or non-acceptance of Energy shall be the existence of an event of Uncontrollable Force, or the other Party's nonperformance.

1.1.20 "*Gains*" shall have the meaning defined in Section 7.2.5.

1.1.21 "*Heavy Load Hours*" shall mean hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, except for NERC designated holidays.

1.1.22 "*Interest Rate*" means, for any date, two percent over the per annum rate of interest equal to the Prime Rate; provided, the Interest Rate shall never exceed the maximum lawful rate permitted by applicable Law.

1.1.23 "*Law*" means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

1.1.24 "*Legal Proceedings*" shall mean any suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority.

1.1.25 "*Light Load Hours*" shall mean all hours except for Heavy Load Hours.

1.1.26 "*Losses*" shall have the meaning defined in Section 7.2.5.

1.1.27 "*NERC*" means the North American Electric Reliability Council or any successor thereto.

1.1.28 "*Non-Defaulting Party*" shall have the meaning set forth in Section 7.1.1.

1.1.29 "*Ownership and Operation Agreement*" means the Agreement for the Ownership and Operation of the Pelton and Round Butte Dams and generating facilities between the Tribes and PGE.

1.1.30 "*PPT*" means Pacific Prevailing Time, that is, prevailing standard time or daylight savings time in the pacific time zone, as applicable.

1.1.31 "*Primary Transmission System*" shall mean the facilities immediately connected on each side of the Delivery Point through which Energy is Scheduled to be delivered or received pursuant to this Agreement.

1.1.32 "*Primary Transmission System Operator*" shall mean the entity or entities operating the Primary Transmission System.

1.1.33 "*Replacement Price*" shall have the meaning set forth in Section 6.1.1.

1.1.34 "*Sale Price*" shall have the meaning set forth in Section 6.1.2.

1.1.35 "*Schedule*" or "*Scheduled*" or "*Scheduling*" shall mean the act of Seller or Buyer of notifying, requesting and confirming to each other the quantity of Energy to be delivered on any given Day or Days during a Delivery Period at a specified Delivery Point.

1.1.36 "*Termination Payment*" shall have the meaning set forth in Section 7.2.2.

1.1.37 "*Transmission Providers*" shall mean collectively the entities providing transmission services for Buyer or Seller to or from the Delivery Point. Transmission Providers shall include Primary Transmission System Operators, sending and receiving Control Areas, intermediate Control Areas and other entities that own transmission or control transmission services provided by others.

1.1.38 "*Uncontrollable Force*" shall mean an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party) claiming suspension (the Claiming Party), and which by the exercise of due diligence the Claiming Party, or third party, is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor.

The only transmission-related events which can qualify as events for which performance of any obligation under this Agreement may be excused due to an Uncontrollable Force are events on a Primary Transmission System which directly affects firm transmission to or from the Delivery Point. Such events include, without limitation (except as otherwise provided herein), the loss, interruption or curtailment (in accordance with a Primary Transmission System Operator's applicable tariffs, applicable governing agreements or standard practice) of firm transmission on the Primary Transmission System delivering Energy to the Delivery Point or the Primary Transmission System receiving Energy from the Delivery Point.

As applied to any of the services provided hereunder, Uncontrollable Force specifically excludes the following: (i) loss of Buyer's markets or Buyer's inability economically to use or resell Energy purchased hereunder; (ii) Seller's inability to obtain the Contract Quantity from any particular generation resource or third party supplier; (iii) Seller's inability economically to use or resell Energy purchased hereunder; (iv) drought; (v) regulatory disallowance of the pass through of the costs of Energy or related costs; (vi) increases or decreases in Energy prices; (vii) loss, interruption or curtailment of a source or sources of supply; and (viii) the loss, interruption or curtailment, for any reason, of transmission service on systems other than on the Primary Transmission System.

1.2 Interpretations.

In this Agreement, unless a clear contrary intention appears: (i) the singular number includes the plural number and vice versa; (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (iii) reference to any gender includes each other gender; (iv) reference to any

agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (v) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (vi) "hereunder," "hereof," "hereto," "herein" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof; (vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (viii) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including;" and (ix) reference to any law (including statutes and ordinances) means such law as amended, modified codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

ARTICLE II Term and Termination

2.1 Contract Term.

Subject to the provisions of Section 15.4 regarding winding-up arrangements, the term of this Agreement (the "Contract Term") shall begin on July 1, 2002 and shall remain in effect until December 31, 2006; *provided, however*, that this Agreement shall continue notwithstanding such termination until such time as all liabilities, obligations and rights related to or associated with any transactions entered into prior to the date of termination are complete and fully and finally discharged or have expired.

2.2 Delivery Term.

Delivery of Energy hereunder shall commence at 6:00:00 PPT on July 1, 2002 and shall end at 22:00:00 PPT on December 31, 2006.

ARTICLE III Representations and Warranties

3.1 Representations and Warranties.

On the Effective Date of this Agreement each Party represents and warrants to the other Party that:

3.1.1 With regard to and the Tribes:

3.1.1.1 The Tribes are a federally recognized Indian tribe organized under a constitution and bylaws ratified by the members of the Tribes on December 18, 1937, and approved by the Assistant Secretary of the Interior of the United States on February 14, 1938, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as

amended by the Act of June 15, 1935 (49 Stat. 378). The Tribes ratified on April 23, 1938 a corporate charter issued to them by Interior pursuant to Section 17 of such Act of June 18, 1934. Pursuant to the foregoing authorities the Tribes exercise governmental and corporate powers over Tribal Lands within the boundaries of the Warm Springs Indian Reservation as described in that certain Treaty between the United States of America and the Tribes and Bands of the Middle Oregon executed June 25, 1855;

3.1.1.2 The Tribes have full power and authority to enter into this Agreement, to perform their obligations hereunder and to consummate the transactions contemplated hereby, which transactions have been duly and validly authorized by the members of the Tribes and the Tribal Council of the Tribes and no other tribal action on the part of the Tribes is necessary. This Agreement has been duly and validly executed and delivered by the Tribes and this Agreement constitutes and upon the execution by the Tribes and PGE, will constitute a legal, valid and binding obligation of the Tribes enforceable against the Tribes in accordance with the terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles;

3.1.1.3 The execution and delivery by the Tribes of this Agreement, the performance by the Tribes of their obligations under this Agreement, the consummation of the transactions contemplated hereby will not: (1) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the constitution, bylaws or corporate charter of the Tribes; (2) require any consent, approval, authorization or permit or filing with or notification to any Governmental Authority; (3) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Tribes are a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (4) conflict with or result in a violation or breach of any term or provision of any law or order applicable to the Tribes, including laws or regulations promulgated by the Tribes; and

3.1.1.4 There are no actions or proceedings pending or, to the knowledge of the Tribes, threatened against, relating to or affecting the Tribes which could reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

3.1.2 With regard to PGE:

3.1.2.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction in which a transaction will be performed by it;

3.1.2.2 It has all regulatory authorizations necessary for it to legally enter into and perform its obligations under this Agreement;

3.1.2.3 The execution, delivery and performance of this Agreement is within its powers, has been duly authorized by all necessary action and does not violate any terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it;

3.1.2.4 This Agreement when entered into in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

3.1.2.5 There are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it; and

3.1.2.6 There are no Legal Proceedings that materially adversely affect its ability to perform its obligations under this Agreement.

ARTICLE IV Obligations and Deliveries

4.1 Firm Energy.

Upon the commencement of deliveries pursuant to Section 2.2 through the remaining term of this Agreement, Seller shall make available to Buyer, and Buyer shall purchase the Contract Quantity. At Buyer's request, Energy may be scheduled for delivery in Light Load Hours and Heavy Load Hours at any rate, *provided however*, the rate shall not be in conflict with the Seller's scheduling rights contained in Section 4.2 and 5.6 of the Ownership and Operation Agreement. Seller's obligation to deliver the Contract Quantity shall be absolute and the only excuse for failure of Seller to deliver the Contract Quantity shall be an Uncontrollable Force or Buyer's failure to perform.

4.2 Transmission Losses.

Seller shall deliver 20 KWh to the Delivery Point for each MWh of Contract Quantity purchased under this Agreement. Such deliveries shall be full compensation for transmission losses assumed to be incurred by Buyer in transmitting the Contract Quantity from the Delivery Point to PGE's Bethel substation.

4.3 Notification of Scheduled Deliveries.

Seller shall notify Buyer of scheduled deliveries in accordance with Section 4.2 of the Ownership and Operation Agreement. In the event Seller supplies the Contract Quantity from a source other than the Pelton Round Butte generation facilities or the Pelton Reregulating Dam, unless otherwise agreed, Seller shall be obligated to Schedule with the appropriate Transmission Providers or arrange for Scheduling service and to deliver to the Primary Transmission System, which is delivering Energy to the Delivery Point, and Buyer shall be obligated to Schedule with the appropriate Transmission Providers or arrange for a Scheduling service and to receive from the Primary Transmission System, which is receiving Energy at the Delivery Point, the Contract

Quantity during each Day in accordance with the Transmission Provider's or Primary Transmission System Operator's notice requirements.

ARTICLE V Title and Risk

5.1 Title and Risk of Loss.

Title to and risk of loss from Energy shall pass from Seller to Buyer at the Delivery Point.

5.2 Seller Warranties.

Seller warrants that it will transfer to Buyer good title to the Energy, free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point and that its sale is in compliance with all applicable laws and regulations. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

ARTICLE VI Nonperformance and Remedies

6.1 Damages for Failure to Deliver or Receive.

Without limiting the rights of the non-breaching Party under the provisions of this Article 6 or otherwise, if either Party fails to deliver or receive or to provide, as the case may be, the quantities of Energy due under this Agreement, (thereby becoming the non-performing Party) the non-breaching Party shall, as promptly as practicable, but no longer than twenty-four (24) hours, give notice of such nonperformance to the non-performing Party. If the Parties agree and if commercially reasonable to do so in the context of its outstanding obligations, the non-breaching Party may allow the non-performing Party to remedy such nonperformance through an increase in subsequent hourly deliveries or receipts, as appropriate. If such a cure is not allowed by the non-breaching Party, or if allowed is not effected, the non-breaching Party shall be entitled to receive from the non-performing Party an amount calculated as follows (unless performance is excused by Uncontrollable Force):

6.1.1 In the event that Seller fails to Schedule and deliver all or part of the Contract Quantity, where such failure was not agreed to or was not caused by Uncontrollable Force or by Buyer, Seller shall pay Buyer (on a date payment would otherwise be due from Buyer under this Agreement) an amount for each megawatt hour (MWh) of such deficiency equal to the positive difference, if any, of (i) the "Replacement Price", which is the price at which Buyer is, or would be, able to obtain comparable supplies of power at a commercially reasonable price (adjusted to reflect differences in transmission costs, if any) minus (ii) the Contract Price; *provided, however*, in no event shall any such amounts include any penalties, ratcheted demand or similar charge.

6.1.2 In the event that PGE fails to Schedule and to receive all or part of the Contract Quantity, where such failure was not agreed to or was not caused by Uncontrollable Force or by Seller, Buyer shall pay Seller (on a date payment would otherwise be due to Seller under this Agreement) an amount for each MWh of such deficiency equal to the positive difference, if any, of (i) the Contract Price minus (ii) the "Sales Price", which is the price at which, if any, Seller resells or otherwise disposes of all or part of the Contract Quantity not received by Buyer, *provided, however*, in no event shall any such amounts include any penalties, ratcheted demand or similar charge.

6.1.3 If payment pursuant to 6.1.1 and 6.1.2 is not made on a date payment would otherwise be due, the non-performing Party shall pay any amount due from it under this Article 6 within two (2) Business Days after the demand therefor is made.

ARTICLE VII Default

7.1 Default.

A Default shall mean with respect to a Party (Defaulting Party):

7.1.1 Except as otherwise specified in the Ownership and Operation Agreement, as amended, the failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice of such failure is given to the Defaulting Party by the other Party (Non-Defaulting Party) and provided the payment is not the subject of a good faith dispute; or

7.1.2 Any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any material respect; or

7.1.3 Making a general assignment or arrangement for the benefit of creditors;
or

7.1.4 The failure by the Defaulting Party to perform any covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Article 7) or its obligations to deliver or receive Energy, a remedy for which is provided in Article 6, and such failure is not excused by Uncontrollable Force or cured within five (5) Business Days after written notice thereof to the Defaulting Party; or

7.1.5 The inability to pay its debts as they fall due; or

7.1.6 The Defaulting Party shall be subject to a Bankruptcy Proceeding.

7.2 Remedies.

In the event of a Default by the Tribes,

7.2.1 If a Default is limited to a failure of the Tribes to make payments, the Tribes' generation associated with their ownership share of the Pelton Dam and Round Butte Dam shall be sold during the period of Default for the benefit of PGE and the proceeds applied to the amounts owed by the Tribes.

7.2.2 Early Termination. Notwithstanding and in addition to any other provision of this Agreement, and except as provided below, if a Default occurs with respect to a Defaulting Party at any time during the term of this Agreement, the Non-Defaulting Party may, for so long as the Default is continuing:

7.2.2.1 Establish a date (which date shall be between one (1) and five (5) Business Days after the Non-Defaulting Party delivers notice) (Early Termination Date) on which the Agreement will terminate; and

7.2.2.2 Withhold any payments due in respect of this Agreement; *provided, however*, upon the occurrence of any Default listed in Sections 7.1.3, 7.1.5 or 7.1.6 as it may apply to any Party, this Agreement in respect thereof shall automatically terminate, without notice, and without any other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

7.2.3 Termination Payment. If an Early Termination Date has been designated, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs resulting from the termination of the Agreement. The Gains, Losses and Costs shall be determined by comparing the value of the remaining term, Contract Quantity and Contract Prices remaining over the Contract Term had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for the Agreement. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Power futures contracts, quotations from leading dealers in Energy swap contracts and other bona fide third party offers, all adjusted for the length of the remaining term and difference in transmission. It is expressly agreed that a Party shall not be required to enter into replacement transactions in order to determine the Termination Payment, as defined below.

7.2.4 The Non-Defaulting Party shall aggregate such Gains, Losses and Costs with respect to the Agreement into a single net amount (Termination Payment) and notify the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within five (5) Business Days of receipt of such notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Agreement, the Non-Defaulting Party shall pay such excess to the Defaulting Party on or before the later of: (i) ten (10) days after the end of the month ending on or after the Early Termination Date or (ii) five (5) Business Days after receipt by the Defaulting Party of the Non-Defaulting Party's notice given above, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Defaulting Party disagrees with the calculation of the Termination

Payment, the issue shall be submitted to arbitration in accordance with the arbitration procedures set forth in Article 14 and the resulting Termination Payment shall be due and payable within three (3) Business Days after the award.

7.2.5 As used herein with respect to each Party: (i) "Costs" shall mean, with respect to a Party, brokerage fees, commissions and other similar Transaction Costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated Agreement, and attorney fees, if any, incurred in connection with enforcing its rights under this Agreement; (ii) "Gains" shall mean, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to the terminated Agreement, determined in a commercially reasonable manner; and (iii) "Losses" shall mean, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to the terminated Agreement, determined in a commercially reasonable manner. At the time for payment of any amount due under this Section 7.2, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

7.3 Other Remedies.

7.3.1 Notwithstanding any other provision of this Agreement, if Seller or Buyer fails to pay to the other Party any amount when due, the aggrieved Party shall have the right to: (i) suspend performance under the Agreement until such amounts plus interest at the Interest Rate have been paid and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate; provided, however, if the non-paying Party, in good faith, shall dispute the amount of any such billing or part thereof and shall pay such amounts as it concedes to be correct, no suspension shall be permitted.

7.4 Costs for Exercise of Rights.

After the occurrence of a Default, the Defaulting Party shall be responsible for all reasonable costs and expenses actually incurred by the Non-Defaulting Party in connection with the exercise of its rights under this Agreement including, without limitation, reasonable attorneys' fees (including appeal) and disbursements.

7.5 Other Events.

In the event PGE is regulated by a federal, state or local regulatory body, and such body shall disallow all or any portion of any costs incurred or yet to be incurred by PGE under any provision of this Agreement, such action shall not operate to excuse PGE from performance of any obligation nor shall such action give rise to any right of PGE to any refund or retroactive adjustment of the Contract Price provided in this Agreement. Notwithstanding the foregoing, if a Party's activities hereunder become subject to regulation of any kind whatsoever under any Law to a greater or different extent than that existing on the Effective Date and such regulation either:

(i) renders this Agreement illegal or unenforceable in its entirety; or (ii) materially adversely affects the business of the affected Party, with respect to its financial position or otherwise, then in the case of (i) above, either Party, and in the case of (ii) above, the affected Party, shall at such time have the right to declare an Early Termination Date in accordance with the provisions hereof; provided, notwithstanding the rights of the Parties to declare an early Termination Date as stated above, the affected Party shall be liable for payment of the Termination Payment calculated by the non-affected Party as provided in Section 7.2. Notice that an Early Termination pursuant to Section 7.2 has occurred shall be given by the non-affected Party to the affected Party before the close of business on the Business Day following such liquidation, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the affected Party against the non-affected Party.

7.6 Set Off of Accounts.

As an alternative to its rights under Sections 7.2 and 7.3 and without prejudice to its exercise of its rights under such Sections at any time, the Non-Defaulting Party may from time to time set off any or all amounts which the Defaulting Party owes to it (whether under this Agreement or otherwise and whether or not then due) against any or all amounts which it owes to the Defaulting Party (whether under this Agreement or otherwise and whether or not then due) provided that any amount not then due which is included in such setoff shall be discounted to the prime rate (as disclosed by U.S. Bank from time to time) at the time of setoff (to take account of the period between the date of setoff and the date on which such amount would have otherwise been due).

ARTICLE VIII Uncontrollable Force

8.1 Performance Excused.

Except with regard to a Party's obligation to make payments when due, neither Party shall be considered to be in Default in the performance of any obligations under this Agreement when a failure of performance shall be due to an Uncontrollable Force. In the event either Party hereto is prevented, wholly or in part, by an Uncontrollable Force from carrying out its obligations under this Agreement, it is agreed that upon such Party's giving notice and full details of such Uncontrollable Force as promptly as practicable, but not later than twenty-four (24) hours after the discovery of the effects of an Uncontrollable Force or the occurrence of the cause relied on, whichever is later, the Party giving such notice shall be relieved of its obligations insofar as they are affected by such Uncontrollable Force during the continuance of any inability so caused from its inception but for no longer period. The Party claiming Uncontrollable Force shall remedy the Uncontrollable Force with all reasonable dispatch.

8.2 Exclusions.

Neither Party shall be entitled to the benefit of this Article 8 under any of the following circumstances:

8.2.1 To the extent that the inability was caused by the negligence of the Party claiming relief;

8.2.2 To the extent that the inability was caused by the Party claiming relief having failed to remedy the condition acting commercially reasonably and with reasonable dispatch;

8.2.3 To the extent the event constituting Uncontrollable Force was intentionally initiated or intentionally acquiesced in by the Party claiming relief for the purpose of allowing that Party to claim Uncontrollable Force; or

8.2.4 If the inability was caused by a Party's lack of funds.

8.3 Notice.

The Party giving notice of Uncontrollable Force shall state in the notice required in Section 8.1, or if not practicable, in a second notice delivered by facsimile, telecopier or in writing not more than twenty-four (24) hours after the initial notice, the nature of the Uncontrollable Force, the date of its commencement and the anticipated duration if ascertainable and the actions being taken to mitigate the effects of the Uncontrollable Force. If requested by the other Party, the Party claiming Uncontrollable Force shall provide a written report on the event of Uncontrollable Force including the cause, the actions taken to mitigate its effects and other information as may be reasonably requested by the other Party to evaluate the claim of Uncontrollable Force.

8.4 Settlements.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement of the use of commercially reasonable efforts in restoring normal operating conditions shall not require the settlement of strikes or lockouts by acceding to the terms of the opposing Party when such is inadvisable in the discretion of the Party having the difficulty.

ARTICLE IX Waiver of Sovereign Immunity

The Tribes acknowledge and agree that in entering into this Agreement they may incur obligations to PGE, and PGE's successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. The Tribes further acknowledge that PGE would not enter into this Agreement with the Tribes if the Tribes could defeat or hinder enforcement against them of the rights granted to PGE by claiming sovereign immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. THE TRIBES HEREBY CONSENT TO SUIT, ARBITRATION, ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS,

INJUNCTIONS AND DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS AGREEMENT AND ANY TRANSACTION HEREUNDER. THE TRIBES FURTHER EXPRESSLY WAIVE, WITHOUT LIMITATION, ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS (A) TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS AGREEMENT, (B) TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING UNDER THIS AGREEMENT AND ANY TRANSACTION HEREUNDER AND (C) TO ENFORCE AND COLLECT ANY JUDGMENT IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS AGREEMENT AND ANY TRANSACTION HEREUNDER.

ARTICLE X
Limitations of Remedies, Liability
and Damages

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE PARTIES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON CONTRACT LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO, HOWSOEVER CAUSED.

THE PARTIES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON TORT LAW OR OTHERWISE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM A PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE OR RECKLESS CONDUCT.

TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE UNDER THIS AGREEMENT IS AGREED BY THE PARTIES TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT

OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION OF SUCH DAMAGES, AND NOT A PENALTY.

ARTICLE XI
Duty to Mitigate Damages

11.1 Mitigation.

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

ARTICLE XII
Taxes

12.1 Taxes.

The Contract Price shall include full reimbursement for, and Seller is liable for and shall pay, or cause to be paid, or reimburse Buyer if Buyer has paid, all taxes applicable to the delivery of Energy arising prior to the Delivery Point. If Buyer is required to remit such tax, the amount shall be deducted from any sums due to Seller. Seller shall indemnify, defend and hold harmless Buyer from any Claims for such taxes. The Contract Price does not include reimbursement for, and Buyer is liable for and shall pay, cause to be paid, or reimburse Seller if Seller has paid, all taxes applicable to the delivery of Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over Buyer. Buyer shall indemnify, defend and hold harmless Seller from any Claims for such taxes. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of any tax. Each Party shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize taxes.

ARTICLE XIII
Billing and Payment

13.1 Billing and Payment.

On or before the tenth (10th) day of each month following an Invoice Month, Seller shall send to Buyer an invoice setting forth the quantity of Energy which was Scheduled, the Contract Price or taxes, if applicable, Seller is obligated by Law to collect from Buyer, and the total amount due from Buyer.

13.2 Method of Payment.

PGE shall remit the amount due by wire or electronic fund transfer, pursuant to Seller's invoice instructions, by the later of the twentieth (20th) day of the calendar month in which the

invoice was rendered or the tenth (10th) calendar day following the presentation of such invoice, provided that if such day is not a Business Day, payment is due on the next Business Day following that date. Wire or electronic fund transfers shall be by FEDWIRE or other electronic transfer service that assures immediately available funds to Seller on no later than the due date.

13.3 Overdue Payments.

Overdue payments shall bear interest at the Interest Rate from and including the due date to, but excluding the date of, payment on the unpaid portion.

ARTICLE XIV

Arbitration

14.1 Scope of Disputes to be Arbitrated.

Any dispute or need for an interpretation arising out of Article 6 and Article 7 of this Agreement pertaining to the calculation of a Termination Payment or a payment required thereunder shall be submitted to binding arbitration. DISPUTES OTHER THAN THOSE SPECIFICALLY REFERENCED IN THE FOREGOING SENTENCE SHALL BE SUBMITTED TO ARBITRATION PURSUANT TO THIS ARTICLE 14.

14.2 Arbitration Process.

Arbitration pursuant to this Article 14 shall be by one arbitrator who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be as mutually agreed by the Parties within fourteen (14) days after written notice from either Party requesting arbitration, or failing agreement, shall be selected under the expedited rules of the Portland Arbitration Service (the "PSA"). Such arbitration shall be held in Portland, Oregon. The rules of the PSA shall apply to the extent not inconsistent with the rules herein specified. Either Party may initiate arbitration by written notice to the other Party and the arbitration shall be conducted according to the following: (i) not later than seven (7) days prior to the hearing date set by the arbitrator, each Party shall submit a brief with a single proposal for settlement; (ii) the hearing shall be conducted on a confidential basis without continuance or adjournment; (iii) the arbitrator shall be limited to selecting only one of the two proposals submitted by the Parties; (iv) each Party shall divide equally the cost of the arbitrator and the hearing and each Party shall be responsible for its own expenses and those of its counsel and representatives; and (v) evidence concerning the financial position or organizational make-up of the Parties, any offer made or the details of any negotiation prior to the arbitration and the cost to the Parties of their representatives and counsel shall not be admissible.

ARTICLE XV Miscellaneous

15.1 Assignment of Agreement.

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party (which consent shall not unreasonably be withheld); *provided, however*, either Party may, without consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by all terms and conditions hereof.

15.2 Limitations on Recourse.

The Tribes hereby pledge all their Pelton Round Butte Project Rights ("Project Rights"), as they are defined in the Ownership and Operation Agreement to satisfy any and all obligations they may have to PGE under this Agreement and otherwise with respect to the Pelton Round Butte Project. PGE agrees to seek satisfaction of any Claims it may have against the Tribes under this Agreement initially from the Tribes' Project Rights and to the extent the Tribes' Project Rights are insufficient to satisfy PGE's outstanding claims, PGE shall next seek satisfaction from the Tribes' rights in the Pelton Reregulating Dam generation. In the event the a Claim has not been satisfied as of the expiration of the term of this Agreement, PGE's rights pursuant to this Section 15.2 shall continue notwithstanding the termination of this Agreement until such time as all liabilities, obligations and rights related to or associated with the Agreement prior to the date of termination are satisfied. The provisions of this Section 15.2 do not limit the rights of either the Tribes or PGE to seek (a) specific performance of this Agreement, (b) other injunctive relief or (c) any other form of non-monetary relief.

15.3 Audit Right.

Each Party shall have the right, at its sole cost and expense, upon reasonable notice and at reasonable times, to examine the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any billing statement, payment demand, charge, payment or computation made under this Agreement during the immediately preceding twenty-four (24) months. For all transactions pursuant to this Agreement, the Parties shall retain all relevant records for twenty-four (24) months following each Delivery Period.

15.4 Winding Up Arrangements.

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect following the expiration or termination of this Agreement to the extent necessary to give full force and effect to the rights and obligations undertaken by the Parties herein.

15.5 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit A. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

15.6 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAW, EXCEPT TO THE EXTENT SUCH OREGON LAWS MAY BE PREEMPTED BY THE LAWS OF THE UNITED STATES OF AMERICA.

15.7 Waivers.

No waiver by either Party, either express or implied, of any one or more Defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future Default or Defaults, whether of a like or a different character. Failure by a Party to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce strict compliance with every term, covenant or condition herein, notwithstanding any course of dealing or custom of the trade.

15.8 Severability.

If any provision of this Agreement or the application thereof to any Party or circumstance shall be unenforceable to any extent, the remainder of this Agreement and the application of such provisions to the other Party or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by Law.

15.9 Section Headings.

Section headings are for the convenience of reference only and shall not affect the interpretation of this Agreement.

15.10 No Rights to Third Parties.

The provisions of this Agreement shall not impart rights enforceable by any person or organization not a Party or bound as a Party except for a permitted successor assignee of a Party bound by this Agreement.

15.11 Parties Acting for Own Account.

The Parties acknowledge that each Party is acting for its own account, and that each has made its own independent decision to enter into this Agreement and to whether this Agreement are appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. Each Party warrants that it is capable of evaluating and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of this Agreement. Neither Party is relying on any communications (written or oral) of the other Party as investment advice or as a recommendation to enter into this Agreement. The Parties acknowledge that neither is acting as a fiduciary, as an advisor or in an agency capacity with respect to the other Party.

15.12 Entire Agreement; Amendment.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersedes all prior agreements with respect hereto. This Agreement may be modified only by a written agreement executed by both Parties hereto.


15.13 Conditions of Performance.

Performance by any Party under this Agreement is conditioned on performance then due by the other Party hereto under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

PORTLAND GENERAL ELECTRIC
COMPANY

THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF
OREGON.

By: 
Name: RONALD W. JOHNSON
Title: VICE PRESIDENT

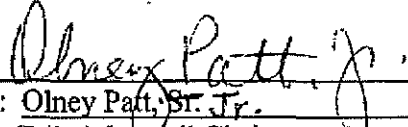
By: 
Name: Olney Patt, Sr. Jr.
Title: Tribal Council Chairman

EXHIBIT A
to the
Wholesale Power Purchase and Sale Agreement
between
The Confederated Tribes of the Warm Springs Reservation
and
Portland General Electric Company

NOTICES AND PAYMENT

Portland General Electric Company:

NOTICES & CORRESPONDENCE

Portland General Electric Company
Attn: Power Operations
121 SW Salmon Street
Portland, OR 97204
Fax No.: (503) 464-2605
Phone No.: (503) 464-7358

PAYMENTS (US Dollars)

U.S. Bank
for Portland General Electric
ABA Routing No.: 123000220
Account No.: 153600063512

Confirmation: Cash Management
Phone No.: 503-464-7085 or 503-464-7760

INVOICES:

Portland General Electric Company
Attn: Accounts Payable
121 SW Salmon Street
Portland, OR 97204

Seller:

NOTICES & CORRESPONDENCE

Attn: _____

Fax No.: _____
Phone No.: _____

PAYMENTS

ABA No.: _____
Account No.: _____
Confirmation: _____
Phone No.: _____

INVOICES

Attn: _____

Fax No.: _____
Phone No.: _____

or to such other address as Seller or PGE shall from time to time designate by letter properly addressed.

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EXHIBIT D
PROMISSORY NOTE

EXHIBIT D

PROMISSORY NOTE

January 1, 2002

FOR VALUE RECEIVED, the undersigned Confederated Tribes of the Warm Springs Reservation of Oregon, a federally recognized Indian tribe having a Constitution and Bylaws and Corporate Charter adopted pursuant to the terms of the Indian Reorganization Act, including its governing body, the Tribal Council ("Maker"), promises to pay to the order of Portland General Electric Company, an Oregon corporation ("Payee"), the principal amount of Twenty Four Million Nine Hundred and Six Dollars (\$24,906,000.00), plus or minus any Adjustment Amount as set forth in Section 1 hereof, plus interest on the unpaid principal balance hereof at the rate and in the manner described in this Promissory Note (this "Note").

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the Ownership and Operation Agreement for the Pelton and Round Butte Dams and Generating Facilities, as Amended and Restated, dated as of January 1, 2002, by and between Maker and Payee (the "Ownership Agreement"), and is subject to the terms and conditions thereof. Capitalized terms not otherwise defined in this Note have the meanings specified in the Ownership Agreement.

1. Adjustment to Principal Amount. Any Adjustment Amount payable by Payee under Section 3.4 of the Asset Purchase Agreement shall be deemed to be a reduction in the principal amount hereunder, and any Adjustment Amount payable by Maker under said Section 3.4 shall be deemed to be an increase in the principal amount hereunder, in each case as of the date hereof. The parties shall sign an addendum to this Note promptly following the final determination of the Adjustment Amount setting forth the adjusted principal and monthly payments hereunder.

2. Interest Rate. The outstanding principal balance hereof shall bear interest at the rate of eight and one half percent (8.5%) per annum until the day that is one (1) year from the date of this Note, and thereafter at the rate of twelve and seventy-one one-hundredths percent (12.71%) per annum. Interest hereunder shall be compounded annually and shall be determined on the basis of a 365- or 366-day year, as applicable.

3. Payment Schedule. The outstanding principal of and interest on this Note shall be payable in monthly payments of \$542,641.36, adjusted as necessary to reflect level amortization of the adjusted principal amount hereof determined in accordance with Section 1 of this Note. Payments shall commence on February 1, 2002, and shall be made on the same day of each and every month thereafter until the earlier of January 1, 2007 or the day prior to

any sale or transfer of Maker's Ownership Share (the "Maturity Date"), at which time the entire outstanding principal balance of this Note, together with all principal, accrued and unpaid interest, late charges and other amounts that may become payable under this Note shall be due and payable in full. In the event that Maker has made one or more payments hereunder prior to the final determination of any Adjustment Amount, the first monthly payment subsequent to such final determination shall be increased or decreased, as applicable, to account for the amount by which Maker has overpaid or underpaid based upon the adjusted amortization schedule.

4. Prepayment. This Note may be prepaid in whole or in part at any time on or before the Maturity Date.

5. Overdue Amounts. Any overdue principal of and, to the extent permitted by law, overdue interest on the outstanding principal of this Note will bear interest before and after judgment, payable on demand, for each day until paid at a rate of twelve and seventy-one one-hundredths percent (12.71%) per annum.

6. Default. Any of the following, without notice or demand of any kind, shall constitute a default under this Note (an "Event of Default"):

- (a) Maker shall fail to make any payment required hereunder when due;
- (b) Maker shall be in default under Section 10.1 of the Ownership Agreement;
- (c) Maker shall be in default with respect to its obligations concerning the sale of long-term bonds under Section 5.18 of the Ownership Agreement;
- (d) Maker shall become insolvent, or shall suffer or consent to or apply for the appointment of a receiver, trustee, custodian or liquidator of its property, or shall generally be unable to or fail to pay its debts as they become due, or shall make a general assignment for the benefit of creditors;
- (e) Maker shall file a voluntary petition in bankruptcy, or seek to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Code, or under any state or other Federal law granting relief to debtors, whether now or hereafter in effect; or any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other applicable state or other Federal law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against Maker and is not dismissed, stayed or vacated within sixty days thereafter; Maker shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition; or Maker shall be adjudicated a bankrupt, or an order for relief shall be entered by any court of competent jurisdiction under the

Bankruptcy Code or any other applicable state or Federal law relating to bankruptcy, reorganization or other relief for debtors.

Upon the occurrence of an Event of Default, the entire outstanding principal balance of this Note, together with all accrued interest, costs, late charges and other amounts that may become payable under the terms of this Note shall, at the option of the Payee, become due and payable forthwith, without notice, provided that in the case of any of the Events of Default specified in clause (d) or (e) above, without any notice to Maker or any other act by Payee, this Note shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Maker. No failure to exercise such option shall be deemed a waiver on the part of the Payee hereof of any right accruing thereafter.

7. Expenses. Maker agrees to pay any and all costs, including without limitation attorneys' fees and expenses at trial, or on any appellate review, incurred by Payee or any holder of this Note in enforcing this Note and collecting sums due under this Note.

8. Waiver. Maker hereby waives presentment, demand of payment, notice of dishonor, protest, notice of nonpayment and any and all other notices and demands whatsoever. **MAKER ACKNOWLEDGES THAT THE WAIVER OF IMMUNITY PROVISIONS IN SECTION 7.1 OF THE OWNERSHIP AGREEMENT ARE APPLICABLE TO ITS OBLIGATIONS UNDER THIS NOTE.**

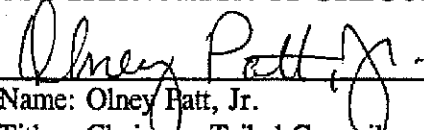
9. Governing Law and Validity. This Note shall be governed by and construed in accordance with the laws of the State of Oregon and the United States of America. If one or more of the provisions contained in this Note shall be for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but this Note shall be construed as if such invalid, illegal or unenforceable provisions had never been included.

IN WITNESS WHEREOF, Maker has executed this Note as of the date set forth above.

MAKER

**CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON**

By:


Name: Olney Patt, Jr.
Title: Chairman Tribal Council

WHOLESALE POWER

PURCHASE AND SALE AGREEMENT

No. 02-03-A

BETWEEN

**THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
OF OREGON**

AND

PORTLAND GENERAL ELECTRIC COMPANY

**WHOLESALE POWER PURCHASE AND SALE AGREEMENT
NO. 02-03-A
BETWEEN
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
OF OREGON
AND
PORTLAND GENERAL ELECTRIC COMPANY**

TABLE OF CONTENTS

	<i>Page</i>
ARTICLE I DEFINITIONS.....	1
1.1 Definitions.....	1
1.2 Interpretations.....	5
ARTICLE II TERM AND TERMINATION.....	5
2.1 Contract Term.....	5
2.2 Delivery Term.....	5
ARTICLE III REPRESENTATIONS AND WARRANTIES.....	6
3.1 Representations and Warranties.....	6
ARTICLE IV OBLIGATIONS AND DELIVERIES.....	7
4.1 Firm Energy.....	7
4.2 Transmission Losses.....	8
4.3 Transmission Costs.....	8
4.4 Notification of Scheduled Deliveries.....	8
ARTICLE V TITLE AND RISK.....	8
5.1 Title and Risk of Loss.....	8
5.2 Seller Warranties.....	8
ARTICLE VI NONPERFORMANCE AND REMEDIES.....	9
6.1 Damages for Failure to Deliver or Receive.....	9
ARTICLE VII DEFAULT.....	9
7.1 Default.....	9
7.2 Remedies.....	10
7.3 Other Remedies.....	12
7.4 Costs for Exercise of Rights.....	12
7.5 Other Events.....	12
7.6 Set Off of Accounts.....	12
ARTICLE VIII UNCONTROLLABLE FORCE.....	13

8.1 Performance Excused.....	13
8.2 Exclusions.....	13
8.3 Notice.....	13
8.4 Settlements.....	14
ARTICLE IX WAIVER OF SOVEREIGN IMMUNITY.....	14
ARTICLE X LIMITATIONS OF REMEDIES, LIABILITY AND DAMAGES.....	14
ARTICLE XI DUTY TO MITIGATE DAMAGES.....	15
11.1 Mitigation.....	15
ARTICLE XII TAXES.....	15
12.1 Taxes.....	15
ARTICLE XIII BILLING AND PAYMENT.....	16
13.1 Billing and Payment.....	16
13.2 Method of Payment.....	16
13.3 Overdue Payments.....	16
ARTICLE XIV ARBITRATION.....	16
14.1 Scope of Disputes to be Arbitrated.....	16
14.2 Arbitration Process.....	17
ARTICLE XV MISCELLANEOUS.....	17
15.1 Assignment of Agreement.....	17
15.2 Limitations on Recourse.....	17
15.3 Audit Right.....	18
15.4 Winding Up Arrangements.....	18
15.5 Notices.....	18
15.6 Governing Law.....	18
15.7 Waivers.....	19
15.8 Severability.....	19
15.9 Section Headings.....	19
15.10 No Rights to Third Parties.....	19
15.11 Parties Acting for Own Account.....	19
15.12 Entire Agreement; Amendment.....	19
15.13 Conditions of Performance.....	20
EXHIBIT A	

WHOLESALE POWER PURCHASE AND SALE AGREEMENT
No. 02-03-A
BETWEEN
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
OF OREGON
AND
PORTLAND GENERAL ELECTRIC COMPANY

This Wholesale Power Purchase and Sale Agreement No. 02-03-A (this "Agreement") is entered into effective as of July 16, 2001, (the "Effective Date") by and between Portland General Electric Company, ("PGE" or "Buyer"), and The Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribes" or "Seller"). PGE and Seller may also be referred to individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, the Tribes desire to sell, and PGE desires to purchase, Firm Capacity and Energy from the Tribes in accordance with the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the premises and representations contained herein, the Parties agree hereby as follows:

ARTICLE I
Definitions

1.1 Definitions.

As used in this Agreement, the following terms shall have the meanings specified in this Section 1.1:

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

1.1.2 "*Agreement*" shall have the meaning set forth in the introductory paragraph above.

1.1.3 "*Bankruptcy Proceeding*" shall mean, with respect to a Party or entity, when such Party or entity (i) makes an assignment or any general arrangement for the benefit of creditors, (ii) 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 petition filed against it and such petition is not withdrawn or dismissed for 30 days after such filing, (iii) otherwise becomes bankrupt or insolvent (however evidenced) or (iv) is unable to pay its debts as they fall due.

1.1.4 "*Business Day*" shall mean a calendar day other than days on which Federal Reserve member banks in Portland, Oregon are authorized or required by Law to be closed.

1.1.5 "*Claims*" shall mean all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to, during the term of, or after the termination of this Agreement.

1.1.6 "*Contract Day*" shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, inclusive, during the Delivery Term except for the six official NERC holidays.

1.1.7 "*Contract Price*" shall mean (1) Ninety Dollars (\$90.00) in U.S. dollars per MWh of Contract Quantity for the first four hundred (400) MWhs of Heavy Load Hour Firm Energy per Day delivered from January 1, 2002 to March 30, 2002 inclusive, (2) Sixty-Two Dollars and Fifty Cents (\$62.50) in U.S. Dollars for the second four hundred (400) MWhs of Heavy Load Hour Firm Energy per Day delivered from January 1, 2002 to March 30, 2002, inclusive and (3) Fifty Dollars (\$50.00) in U.S. dollars per MWh of Contract Quantity for the first four hundred (400) MWhs of Heavy Load Hour Firm Energy per Day delivered from April 1, 2002 to June 29, 2002 inclusive.

1.1.8 "*Contract Quantity*" means a minimum and a maximum of eight hundred (800) MWhs of Heavy Load Hour Firm Energy per Day from January 1 to March 30, 2002 inclusive and a minimum and a maximum of four hundred (400) MWhs of Heavy Load Hour Firm Energy from April 1 to June 29 inclusive, plus such additional deliveries as are required for transmission losses pursuant to Paragraph 4.2.

1.1.9 "*Contract Term*" shall mean the term of this Agreement as set forth in Section 2.1.

1.1.10 "*Costs*" shall have the meaning defined in Section 7.2.4.

1.1.11 "*Day*" shall be defined as any 24-hour period commencing at 00:00 hours at the prevailing time at the Delivery Point.

1.1.12 "*Default*" shall have the meaning set forth in Section 7.1.

1.1.13 "*Defaulting Party*" shall have the meaning set forth in Section 7.1.

1.1.14 "*Delivery Point*" shall mean the Round Butte Switchyard 230 kV bus unless otherwise mutually agreed upon by the Parties.

1.1.15 "*Delivery Term*" shall have the meaning defined in Section 2.2.

1.1.16 "*Energy*" shall mean electric Energy expressed in megawatt hours (MWh).

1.1.17 "*Equitable Defenses*" shall mean any bankruptcy, insolvency, reorganization and other Laws affecting creditor's rights generally, and with regard to equitable remedies, the discretion of the court before which the proceedings to obtain same may be pending.

1.1.18 "*Fees*" shall mean Scheduling, imbalance or similar fees, charges or penalties imposed by third parties.

1.1.19 "*Firm Energy*" shall mean the only excuse for non-delivery or non-acceptance of Energy shall be the existence of an event of Uncontrollable Force, or the other Party's nonperformance.

1.1.20 "*Gains*" shall have the meaning defined in Section 7.2.4.

1.1.21 "*Heavy Load Hours*" shall mean hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, except for NERC designated holidays.

1.1.22 "*Interest Rate*" means, for any date, two percent over the per annum rate of interest equal to the Prime Rate; provided, the Interest Rate shall never exceed the maximum lawful rate permitted by applicable Law.

1.1.23 "*Law*" means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

1.1.24 "*Legal Proceedings*" shall mean any suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority.

1.1.25 "*Light Load Hours*" shall mean all hours except for Heavy Load Hours.

1.1.26 "*Losses*" shall have the meaning defined in Section 7.2.4.

1.1.27 "*Mid-C*" shall mean the Mid-Columbia trading hub.

1.1.28 "*NERC*" means the North American Electric Reliability Council or any successor thereto.

1.1.29 "*Non-Defaulting Party*" shall have the meaning set forth in Section 7.1.1.

1.1.30 "*Ownership and Operation Agreement*" means the Agreement for the Ownership and Operation of the Pelton and Round Butte Dams and generating facilities between the Tribes and PGE.

1.1.31 "*PPT*" means Pacific Prevailing Time, that is, prevailing standard time or daylight savings time in the pacific time zone, as applicable.

1.1.32 "*Primary Transmission System*" shall mean the facilities immediately connected on each side of the Delivery Point through which Energy is Scheduled to be delivered or received pursuant to this Agreement.

1.1.33 "*Primary Transmission System Operator*" shall mean the entity or entities operating the Primary Transmission System.

1.1.34 "*Replacement Price*" shall have the meaning set forth in Section 6.1.1.

1.1.35 "*Sale Price*" shall have the meaning set forth in Section 6.1.2.

1.1.36 "*Schedule*" or "*Scheduled*" or "*Scheduling*" shall mean the act of Seller or Buyer of notifying, requesting and confirming to each other the quantity of Energy to be delivered on any given Day or Days during a Delivery Period at a specified Delivery Point.

1.1.37 "*Termination Payment*" shall have the meaning set forth in Section 7.2.2.

1.1.38 "*Transmission Providers*" shall mean collectively the entities providing transmission services for Buyer or Seller to or from the Delivery Point. Transmission Providers shall include Primary Transmission System Operators, sending and receiving Control Areas, intermediate Control Areas and other entities that own transmission or control transmission services provided by others.

1.1.39 "*Uncontrollable Force*" shall mean an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party) claiming suspension (the Claiming Party), and which by the exercise of due diligence the Claiming Party, or third party, is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor.

The only transmission-related events which can qualify as events for which performance of any obligation under this Agreement may be excused due to an Uncontrollable Force are events on a Primary Transmission System which directly affects firm transmission to or from the Delivery Point. Such events include, without limitation (except as otherwise provided herein), the loss, interruption or curtailment (in accordance with a Primary Transmission System Operator's applicable tariffs, applicable governing agreements or standard practice) of firm transmission on the Primary Transmission System delivering Energy to the Delivery Point or the Primary Transmission System receiving Energy from the Delivery Point.

As applied to any of the services provided hereunder, Uncontrollable Force specifically excludes the following: (i) loss of Buyer's markets or Buyer's inability economically to use or resell Energy purchased hereunder; (ii) Seller's inability to obtain the Contract Quantity from any particular generation resource or third party supplier; (iii) Seller's inability economically to use or resell Energy purchased hereunder; (iv) drought; (v) regulatory disallowance of the pass through of the costs of Energy or related costs; (vi) increases or decreases in Energy prices; (vii) loss, interruption or curtailment of a source or sources of

supply; and (viii) the loss, interruption or curtailment, for any reason, of transmission service on systems other than on the Primary Transmission System.

1.2 Interpretations.

In this Agreement, unless a clear contrary intention appears: (i) the singular number includes the plural number and vice versa; (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (iii) reference to any gender includes each other gender; (iv) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (v) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (vi) "hereunder," "hereof," "hereto," "herein" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof; (vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (viii) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including;" and (ix) reference to any law (including statutes and ordinances) means such law as amended, modified codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

ARTICLE II
Term and Termination

2.1 Contract Term.

Subject to the provisions of Section 14.3 regarding winding-up arrangements, the term of this Agreement (the "Contract Term") shall begin on January 1, 2002 and shall remain in effect until June 29, 2002; *provided, however*, that this Agreement shall continue notwithstanding such termination until such time as all liabilities, obligations and rights related to or associated with any transactions entered into prior to the date of termination are complete and fully and finally discharged or have expired.

2.2 Delivery Term.

Delivery of Energy hereunder shall commence at 06:00:00 PPT on January 1, 2002 and shall end at 22:00:00 PPT on June 29, 2002.

ARTICLE III
Representations and Warranties

3.1 Representations and Warranties.

On the Effective Date of this Agreement each Party represents and warrants to the other Party that:

3.1.1 With regard to and the Tribes:

3.1.1.1 The Tribes are a federally recognized Indian tribe organized under a constitution and bylaws ratified by the members of the Tribes on December 18, 1937, and approved by the Assistant Secretary of the Interior of the United States on February 14, 1938, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378). The Tribes ratified on April 23, 1938 a corporate charter issued to them by Interior pursuant to Section 17 of such Act of June 18, 1934. Pursuant to the foregoing authorities the Tribes exercise governmental and corporate powers over Tribal Lands within the boundaries of the Warm Springs Indian Reservation as described in that certain Treaty between the United States of America and the Tribes and Bands of the Middle Oregon executed June 25, 1855;

3.1.1.2 The Tribes have full power and authority to enter into this Agreement, to perform their obligations hereunder and to consummate the transactions contemplated hereby, which transactions have been duly and validly authorized by the members of the Tribes and the Tribal Council of the Tribes and no other tribal action on the part of the Tribes is necessary. This Agreement has been duly and validly executed and delivered by the Tribes and this Agreement constitutes and upon the execution by the Tribes and PGE, will constitute a legal, valid and binding obligation of the Tribes enforceable against the Tribes in accordance with the terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles;

3.1.1.3 The execution and delivery by the Tribes of this Agreement, the performance by the Tribes of their obligations under this Agreement, the consummation of the transactions contemplated hereby will not: (1) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the constitution, bylaws or corporate charter of the Tribes; (2) require any consent, approval, authorization or permit or filing with or notification to any Governmental Authority; (3) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Tribes are a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (4) conflict with or result in a violation or breach of any term or provision of any law or order applicable to the Tribes, including laws or regulations promulgated by the Tribes; and

3.1.1.4 There are no actions or proceedings pending or, to the knowledge of the Tribes, threatened against, relating to or affecting the Tribes which could reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

3.1.2 With regard to PGE:

3.1.2.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction in which a transaction will be performed by it;

3.1.2.2 It has all regulatory authorizations necessary for it to legally enter into and perform its obligations under this Agreement;

3.1.2.3 The execution, delivery and performance of this Agreement is within its powers, has been duly authorized by all necessary action and does not violate any terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it;

3.1.2.4 This Agreement when entered into in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

3.1.2.5 There are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it; and

3.1.2.6 There are no Legal Proceedings that materially adversely affect its ability to perform its obligations under this Agreement.

ARTICLE IV
Obligations and Deliveries

4.1 Firm Energy.

Upon the commencement of deliveries pursuant to Section 2.2 through the remaining term of this Agreement, Seller shall make available to Buyer, and Buyer shall purchase the Contract Quantity. At Buyer's request, Energy may be scheduled for delivery in Light Load Hours and Heavy Load Hours at any rate, *provided however*, the rate shall not be in conflict with the Seller's scheduling rights contained in Section 4.2 and 5.6 of the Ownership and Operation Agreement. Seller's obligation to deliver the Contract Quantity shall be absolute and the only excuse for failure of Seller to deliver the Contract Quantity shall be an Uncontrollable Force or Buyer's failure to perform.

4.2 Transmission Losses.

Seller shall deliver 47 KWh to the Delivery Point for each MWh of Contract Quantity purchased under this Agreement. Such deliveries shall be full compensation for transmission losses assumed to be incurred by Buyer in transmitting the Contract Quantity from the Delivery Point to the Mid-C.

4.3 Transmission Costs.

Seller shall pay \$3.93 for each MWh delivered to the Delivery Point in satisfaction of the Contract Quantity excluding transmission losses. This amount shall be full payment for the use of transmission facilities assumed to be used in delivering the Contract Quantity from the Delivery Point to the Mid-C. Buyer shall be responsible for any loss of Energy, any costs or charges imposed on or associated with the Contract Quantity, including inadvertent Energy flows, transmission losses and loss charges relating to the transmission of the Contract Quantity, associated with the transmission of Energy after its assumed delivery to the Mid-C.

4.4 Notification of Scheduled Deliveries.

Seller shall notify Buyer of scheduled deliveries in accordance with Section 4.2 of the Ownership and Operation Agreement. In the event Seller supplies the Contract Quantity from a source other than the Pelton Round Butte generation facilities or the Pelton Reregulating Dam, unless otherwise agreed, Seller shall be obligated to Schedule with the appropriate Transmission Providers or arrange for Scheduling service and to deliver to the Primary Transmission System, which is delivering Energy to the Delivery Point, and Buyer shall be obligated to Schedule with the appropriate Transmission Providers or arrange for a Scheduling service and to receive from the Primary Transmission System, which is receiving Energy at the Delivery Point, the Contract Quantity during each Day in accordance with the Transmission Provider's or Primary Transmission System Operator's notice requirements.

ARTICLE V Title and Risk

5.1 Title and Risk of Loss.

Title to and risk of loss from Energy shall pass from Seller to Buyer at the Delivery Point.

5.2 Seller Warranties.

Seller warrants that it will transfer to Buyer good title to the Energy, free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point and that its sale is in compliance with all applicable laws and regulations. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

ARTICLE VI Nonperformance and Remedies

6.1 Damages for Failure to Deliver or Receive.

Without limiting the rights of the non-breaching Party under the provisions of this Article 6 or otherwise, if either Party fails to deliver or receive or to provide, as the case may be, the quantities of Energy due under this Agreement, (thereby becoming the non-performing Party) the non-breaching Party shall, as promptly as practicable, but no longer than twenty-four (24) hours, give notice of such nonperformance to the non-performing Party. If the Parties agree and if commercially reasonable to do so in the context of its outstanding obligations, the non-breaching Party may allow the non-performing Party to remedy such nonperformance through an increase in subsequent hourly deliveries or receipts, as appropriate. If such a cure is not allowed by the non-breaching Party, or if allowed is not effected, the non-breaching Party shall be entitled to receive from the non-performing Party an amount calculated as follows (unless performance is excused by Uncontrollable Force):

6.1.1 In the event that Seller fails to Schedule and deliver all or part of the Contract Quantity, where such failure was not agreed to or was not caused by Uncontrollable Force or by Buyer, Seller shall pay Buyer (on a date payment would otherwise be due from Buyer under this Agreement) an amount for each megawatt hour (MWh) of such deficiency equal to the positive difference, if any, of (i) the "Replacement Price", which is the price at which Buyer is, or would be, able to obtain comparable supplies of power at a commercially reasonable price (adjusted to reflect differences in transmission costs, if any) minus (ii) the Contract Price; *provided, however*, in no event shall any such amounts include any penalties, ratcheted demand or similar charge.

6.1.2 In the event that PGE fails to Schedule and to receive all or part of the Contract Quantity, where such failure was not agreed to or was not caused by Uncontrollable Force or by Seller, Buyer shall pay Seller (on a date payment would otherwise be due to Seller under this Agreement) an amount for each MWh of such deficiency equal to the positive difference; if any, of (i) the Contract Price minus (ii) the "Sales Price", which is the price at which, if any, Seller resells or otherwise disposes of all or part of the Contract Quantity not received by Buyer, *provided, however*, in no event shall any such amounts include any penalties, ratcheted demand or similar charge.

6.1.3 If payment pursuant to 6.1.1 and 6.1.2 is not made on a date payment would otherwise be due, the non-performing Party shall pay any amount due from it under this Article 6 within two (2) Business Days after the demand therefor is made.

ARTICLE VII Default

7.1 Default.

A Default shall mean with respect to a Party (Defaulting Party):

7.1.1 The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice of such failure is given to the Defaulting Party by the other Party (Non-Defaulting Party) and provided the payment is not the subject of a good faith dispute; or

7.1.2 Any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any material respect; or

7.1.3 Making a general assignment or arrangement for the benefit of creditors; or

7.1.4 The failure by the Defaulting Party to perform any covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Article 7) or its obligations to deliver or receive Energy, a remedy for which is provided in Article 6, and such failure is not excused by Uncontrollable Force or cured within five (5) Business Days after written notice thereof to the Defaulting Party; or

7.1.5 The inability to pay its debts as they fall due; or

7.1.6 The Defaulting Party shall be subject to a Bankruptcy Proceeding.

7.2 Remedies.

In the event of a Default by the Tribes,

7.2.1 If a Default is limited to a failure of the Tribes to make payments, the Tribes' generation associated with their ownership share of the Pelton Dam and Round Butte Dam shall be sold during the period of Default for the benefit of PGE and the proceeds applied to the amounts owed by the Tribes.

7.2.2 Early Termination. Notwithstanding and in addition to any other provision of this Agreement, and except as provided below, if a Default occurs with respect to a Defaulting Party at any time during the term of this Agreement, the Non-Defaulting Party may, for so long as the Default is continuing:

7.2.2.1 Establish a date (which date shall be between one (1) and five (5) Business Days after the Non-Defaulting Party delivers notice) (Early Termination Date) on which the Agreement will terminate; and

7.2.2.2 Withhold any payments due in respect of this Agreement; *provided, however*, upon the occurrence of any Default listed in Sections 7.1.3, 7.1.5 or 7.1.6 as it may apply to any Party, this Agreement in respect thereof shall automatically terminate, without notice, and without any other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

7.2.3 Termination Payment. If an Early Termination Date has been designated, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs resulting from the termination of the Agreement. The Gains, Losses and Costs shall be determined by comparing the value of the remaining term, Contract Quantity and Contract Prices remaining over the Contract Term had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for the Agreement. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Power futures contracts, quotations from leading dealers in Energy swap contracts and other bona fide third party offers, all adjusted for the length of the remaining term and difference in transmission. It is expressly agreed that a Party shall not be required to enter into replacement transactions in order to determine the Termination Payment, as defined below.

7.2.4 The Non-Defaulting Party shall aggregate such Gains, Losses and Costs with respect to the Agreement into a single net amount (Termination Payment) and notify the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within five (5) Business Days of receipt of such notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Agreement, the Non-Defaulting Party shall pay such excess to the Defaulting Party on or before the later of: (i) ten (10) days after the end of the month ending on or after the Early Termination Date or (ii) five (5) Business Days after receipt by the Defaulting Party of the Non-Defaulting Party's notice given above, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Defaulting Party disagrees with the calculation of the Termination Payment, the issue shall be submitted to arbitration in accordance with the arbitration procedures set forth in Article 13 and the resulting Termination Payment shall be due and payable within three (3) Business Days after the award.

7.2.5 As used herein with respect to each Party: (i) "Costs" shall mean, with respect to a Party, brokerage fees, commissions and other similar Transaction Costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated Agreement, and attorney fees, if any, incurred in connection with enforcing its rights under this Agreement; (ii) "Gains" shall mean, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to the terminated Agreement, determined in a commercially reasonable manner; and (iii) "Losses" shall mean, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to the terminated Agreement, determined in a commercially reasonable manner. At the time for payment of any amount due under this Section 7.2, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

7.3 Other Remedies.

7.3.1 Notwithstanding any other provision of this Agreement, if Seller or Buyer fails to pay to the other Party any amount when due, the aggrieved Party shall have the right to: (i) suspend performance under the Agreement until such amounts plus interest at the Interest Rate have been paid and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate; provided, however, if the non-paying Party, in good faith, shall dispute the amount of any such billing or part thereof and shall pay such amounts as it concedes to be correct, no suspension shall be permitted.

7.4 Costs for Exercise of Rights.

After the occurrence of a Default, the Defaulting Party shall be responsible for all reasonable costs and expenses actually incurred by the Non-Defaulting Party in connection with the exercise of its rights under this Agreement including, without limitation, reasonable attorneys' fees (including appeal) and disbursements.

7.5 Other Events.

In the event PGE is regulated by a federal, state or local regulatory body, and such body shall disallow all or any portion of any costs incurred or yet to be incurred by PGE under any provision of this Agreement, such action shall not operate to excuse PGE from performance of any obligation nor shall such action give rise to any right of PGE to any refund or retroactive adjustment of the Contract Price provided in this Agreement. Notwithstanding the foregoing, if a Party's activities hereunder become subject to regulation of any kind whatsoever under any Law to a greater or different extent than that existing on the Effective Date and such regulation either: (i) renders this Agreement illegal or unenforceable in its entirety; or (ii) materially adversely affects the business of the affected Party, with respect to its financial position or otherwise, then in the case of (i) above, either Party, and in the case of (ii) above, the affected Party, shall at such time have the right to declare an Early Termination Date in accordance with the provisions hereof; provided, notwithstanding the rights of the Parties to declare an early Termination Date as stated above, the affected Party shall be liable for payment of the Termination Payment calculated by the non-affected Party as provided in Section 7.2. Notice that an Early Termination pursuant to Section 7.2 has occurred shall be given by the non-affected Party to the affected Party before the close of business on the Business Day following such liquidation, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the affected Party against the non-affected Party.

7.6 Set Off of Accounts.

As an alternative to its rights under Sections 7.2 and 7.3 and without prejudice to its exercise of its rights under such Sections at any time, the Non-Defaulting Party may from time to time set off any or all amounts which the Defaulting Party owes to it (whether under this Agreement or otherwise and whether or not then due) against any or all amounts which it owes to the Defaulting Party (whether under this Agreement or otherwise and whether or not then due) provided that any amount not then due which is included in such setoff shall be discounted to the

prime rate (as disclosed by U.S. Bank from time to time) at the time of setoff (to take account of the period between the date of setoff and the date on which such amount would have otherwise been due).

ARTICLE VIII Uncontrollable Force

8.1 Performance Excused.

Except with regard to a Party's obligation to make payments when due, neither Party shall be considered to be in Default in the performance of any obligations under this Agreement when a failure of performance shall be due to an Uncontrollable Force. In the event either Party hereto is prevented, wholly or in part, by an Uncontrollable Force from carrying out its obligations under this Agreement, it is agreed that upon such Party's giving notice and full details of such Uncontrollable Force as promptly as practicable, but not later than twenty-four (24) hours after the discovery of the effects of an Uncontrollable Force or the occurrence of the cause relied on, whichever is later, the Party giving such notice shall be relieved of its obligations insofar as they are affected by such Uncontrollable Force during the continuance of any inability so caused from its inception but for no longer period. The Party claiming Uncontrollable Force shall remedy the Uncontrollable Force with all reasonable dispatch.

8.2 Exclusions.

Neither Party shall be entitled to the benefit of this Article 8 under any of the following circumstances:

8.2.1 To the extent that the inability was caused by the negligence of the Party claiming relief;

8.2.2 To the extent that the inability was caused by the Party claiming relief having failed to remedy the condition acting commercially reasonably and with reasonable dispatch;

8.2.3 To the extent the event constituting Uncontrollable Force was intentionally initiated or intentionally acquiesced in by the Party claiming relief for the purpose of allowing that Party to claim Uncontrollable Force; or

8.2.4 If the inability was caused by a Party's lack of funds.

8.3 Notice.

The Party giving notice of Uncontrollable Force shall state in the notice required in Section 8.1, or if not practicable, in a second notice delivered by facsimile, telecopier or in writing not more than twenty-four (24) hours after the initial notice, the nature of the Uncontrollable Force, the date of its commencement and the anticipated duration if ascertainable and the actions being taken to mitigate the effects of the Uncontrollable Force. If requested by

the other Party, the Party claiming Uncontrollable Force shall provide a written report on the event of Uncontrollable Force including the cause, the actions taken to mitigate its effects and other information as may be reasonably requested by the other Party to evaluate the claim of Uncontrollable Force.

8.4 Settlements.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement of the use of commercially reasonable efforts in restoring normal operating conditions shall not require the settlement of strikes or lockouts by acceding to the terms of the opposing Party when such is inadvisable in the discretion of the Party having the difficulty.

ARTICLE IX

Waiver of Sovereign Immunity

The Tribes acknowledge and agree that in entering into this Agreement they may incur obligations to PGE, and PGE's successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. The Tribes further acknowledge that PGE would not enter into this Agreement with the Tribes if the Tribes could defeat or hinder enforcement against them of the rights granted to PGE by claiming sovereign immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. THEREFORE, THE TRIBES HEREBY CONSENT TO SUIT, ARBITRATION, ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS, INJUNCTIONS AND DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS AGREEMENT AND ANY TRANSACTION HEREUNDER. THE TRIBES FURTHER EXPRESSLY WAIVE, WITHOUT LIMITATION, ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS (A) TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS AGREEMENT, (B) TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING UNDER THIS AGREEMENT AND ANY TRANSACTION HEREUNDER AND (C) TO ENFORCE AND COLLECT ANY JUDGMENT IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS AGREEMENT AND ANY TRANSACTION HEREUNDER.

ARTICLE X

Limitations of Remedies, Liability and Damages

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S

LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE PARTIES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON CONTRACT LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO, HOWSOEVER CAUSED.

THE PARTIES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON TORT LAW OR OTHERWISE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM A PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE OR RECKLESS CONDUCT.

TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE UNDER THIS AGREEMENT IS AGREED BY THE PARTIES TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION OF SUCH DAMAGES, AND NOT A PENALTY.

ARTICLE XI

Duty to Mitigate Damages

11.1 Mitigation.

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

ARTICLE XII

Taxes

12.1 Taxes.

The Contract Price shall include full reimbursement for, and Seller is liable for and shall pay, or cause to be paid, or reimburse Buyer if Buyer has paid, all taxes applicable to the

delivery of Energy arising prior to the Delivery Point. If Buyer is required to remit such tax, the amount shall be deducted from any sums due to Seller. Seller shall indemnify, defend and hold harmless Buyer from any Claims for such taxes. The Contract Price does not include reimbursement for, and Buyer is liable for and shall pay, cause to be paid, or reimburse Seller if Seller has paid, all taxes applicable to the delivery of Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over Buyer. Buyer shall indemnify, defend and hold harmless Seller from any Claims for such taxes. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of any tax. Each Party shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize taxes.

ARTICLE XIII **Billing and Payment**

13.1 Billing and Payment.

On or before the tenth (10th) day of each month following an Invoice Month, Seller shall send to Buyer an invoice setting forth the quantity of Energy which was Scheduled, the Contract Price or taxes, if applicable, Seller is obligated by Law to collect from Buyer, and the total amount due from Buyer.

13.2 Method of Payment.

PGE shall remit the amount due by wire or electronic fund transfer, pursuant to Seller's invoice instructions, by the later of the twentieth (20th) day of the calendar month in which the invoice was rendered or the tenth (10th) calendar day following the presentation of such invoice, provided that if such day is not a Business Day, payment is due on the next Business Day following that date. Wire or electronic fund transfers shall be by FEDWIRE or other electronic transfer service that assures immediately available funds to Seller on no later than the due date.

13.3 Overdue Payments.

Overdue payments shall bear interest at the Interest Rate from and including the due date to, but excluding the date of, payment on the unpaid portion.

ARTICLE XIV **Arbitration**

14.1 Scope of Disputes to be Arbitrated.

Any dispute or need for an interpretation arising out of Article 6 and Article 7 of this Agreement pertaining to the calculation of a Termination Payment or a payment required thereunder shall be submitted to binding arbitration. DISPUTES OTHER THAN THOSE

SPECIFICALLY REFERENCED IN THE FOREGOING SENTENCE SHALL BE SUBMITTED TO ARBITRATION PURSUANT TO THIS ARTICLE 14.

14.2 Arbitration Process.

Arbitration pursuant to this Article 14 shall be by one arbitrator who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be as mutually agreed by the Parties within fourteen (14) days after written notice from either Party requesting arbitration, or failing agreement, shall be selected under the expedited rules of the Portland Arbitration Service (the "PSA"). Such arbitration shall be held in Portland, Oregon. The rules of the PSA shall apply to the extent not inconsistent with the rules herein specified. Either Party may initiate arbitration by written notice to the other Party and the arbitration shall be conducted according to the following: (i) not later than seven (7) days prior to the hearing date set by the arbitrator, each Party shall submit a brief with a single proposal for settlement; (ii) the hearing shall be conducted on a confidential basis without continuance or adjournment; (iii) the arbitrator shall be limited to selecting only one of the two proposals submitted by the Parties; (iv) each Party shall divide equally the cost of the arbitrator and the hearing and each Party shall be responsible for its own expenses and those of its counsel and representatives; and (v) evidence concerning the financial position or organizational make-up of the Parties, any offer made or the details of any negotiation prior to the arbitration and the cost to the Parties of their representatives and counsel shall not be admissible.

ARTICLE XV
Miscellaneous

15.1 Assignment of Agreement.

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party (which consent shall not unreasonably be withheld); *provided, however*, either Party may, without consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by all terms and conditions hereof.

15.2 Limitations on Recourse.

The Tribes hereby pledge all their Pelton Round Butte Project Rights ("Project Rights"), as they are defined in the Ownership and Operation Agreement to satisfy any and all obligations they may have to PGE under this Agreement and otherwise with respect to the Pelton Round Butte Project. PGE agrees to seek satisfaction of any Claims it may have against the Tribes under this Agreement initially from the Tribes' Project Rights and to the extent the Tribes' Project Rights are insufficient to satisfy PGE's outstanding claims, PGE shall next seek

satisfaction from the Tribes' rights in the Pelton Reregulating Dam generation. In the event a Claim has not been satisfied as of the expiration of the term of this Agreement, PGE's rights pursuant to this Section 15.2 shall continue notwithstanding the termination of this Agreement until such time as all liabilities, obligations and rights related to or associated with the Agreement prior to the date of termination are satisfied. The provisions of this section 15.2 do not limit the rights of either the Tribes or PGE to seek (a) specific performance of this Agreement, (b) other injunctive relief or (c) any other form of non-monetary relief.

15.3 Audit Right.

Each Party shall have the right, at its sole cost and expense, upon reasonable notice and at reasonable times, to examine the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any billing statement, payment demand, charge, payment or computation made under this Agreement during the immediately preceding twenty-four (24) months. For all transactions pursuant to this Agreement, the Parties shall retain all relevant records for twenty-four (24) months following each Delivery Period.

15.4 Winding Up Arrangements.

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect following the expiration or termination of this Agreement to the extent necessary to give full force and effect to the rights and obligations undertaken by the Parties herein.

15.5 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit A. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

15.6 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAW, EXCEPT TO THE EXTENT SUCH OREGON LAWS MAY BE PREEMPTED BY THE LAWS OF THE UNITED STATES OF AMERICA.

15.7 Waivers.

No waiver by either Party, either express or implied, of any one or more Defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future Default or Defaults, whether of a like or a different character. Failure by a Party to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce strict compliance with every term, covenant or condition herein, notwithstanding any course of dealing or custom of the trade.

15.8 Severability.

If any provision of this Agreement or the application thereof to any Party or circumstance shall be unenforceable to any extent, the remainder of this Agreement and the application of such provisions to the other Party or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by Law.

15.9 Section Headings.

Section headings are for the convenience of reference only and shall not affect the interpretation of this Agreement.

15.10 No Rights to Third Parties.

The provisions of this Agreement shall not impart rights enforceable by any person or organization not a Party or bound as a Party except for a permitted successor assignee of a Party bound by this Agreement.

15.11 Parties Acting for Own Account.

The Parties acknowledge that each Party is acting for its own account, and that each has made its own independent decision to enter into this Agreement and to whether this Agreement are appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. Each Party warrants that it is capable of evaluating and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of this Agreement. Neither Party is relying on any communications (written or oral) of the other Party as investment advice or as a recommendation to enter into this Agreement. The Parties acknowledge that neither is acting as a fiduciary, as an advisor or in an agency capacity with respect to the other Party.

15.12 Entire Agreement; Amendment.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersedes all prior agreements with respect hereto. This Agreement may be modified only by a written agreement executed by both Parties hereto.


15.13 Conditions of Performance.

Performance by any Party under this Agreement is conditioned on performance then due by the other Party hereto under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

PORTLAND GENERAL ELECTRIC
COMPANY

THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF
OREGON

By: 
Name: RONALD W. JOHNSON
Title: VICE PRESIDENT

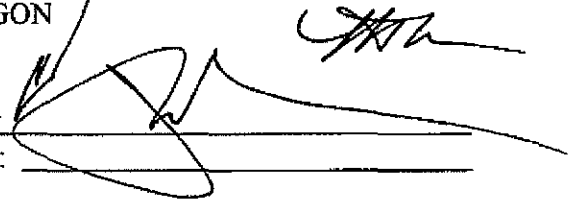
By: 
Name: _____
Title: _____
Charles V. Jackson
Secretary-Treasurer

EXHIBIT A
to the
Wholesale Power Purchase and Sale Agreement
between
The Confederated Tribes of the Warm Springs Reservation
and
Portland General Electric Company

NOTICES AND PAYMENT

Portland General Electric Company:

NOTICES & CORRESPONDENCE

Portland General Electric Company
Attn: Power Operations
121 SW Salmon Street
Portland, OR 97204
Fax No.: (503) 464-2605
Phone No.: (503) 464-7358

PAYMENTS (US Dollars)

U.S. Bank
for Portland General Electric
ABA Routing No.: 123000220
Account No.: 153600063512

Confirmation: Cash Management
Phone No.: 503-464-7085 or 503-464-7760

INVOICES:

Portland General Electric Company
Attn: Accounts Payable
121 SW Salmon Street
Portland, OR 97204

Seller:

NOTICES & CORRESPONDENCE

Attn: _____

Fax No.: _____
Phone No.: _____

PAYMENTS

ABA No.: _____
Account No.: _____
Confirmation: _____
Phone No.: _____

INVOICES

Attn: _____

Fax No.: _____
Phone No.: _____

or to such other address as Seller or PGE shall from time to time designate by letter properly addressed.

DOCUMENT ESCROW AGREEMENT

This DOCUMENT ESCROW AGREEMENT ("Escrow Agreement"), is dated as of January 1, 2002 and is by and among The Confederated Tribes of the Warm Springs Reservation of Oregon, a federally recognized Indian tribe having a Constitution and Bylaws and Corporate Charter adopted pursuant to the terms of the Indian Reorganization Act, including its governing body the Tribal Council (the "Tribes"), Portland General Electric Company, an Oregon corporation ("PGE") and Jefferson County Title ("Escrow Agent"). (The Tribes and PGE are each referred to individually herein as a "Party" and collectively as the "Parties.")

Definitions

Unless otherwise defined in this Escrow Agreement, terms defined in the Long-Term Global Settlement and Compensation Agreement dated April 12, 2000 ("Settlement and Compensation Agreement" and the Asset Purchase Agreement between the Parties dated as of January 1, 2002 (the "Asset Purchase Agreement") shall have the same meanings when used herein as in such agreements.

Introductory Statement

The Parties have executed (and/or have received from third parties) the documents listed in Schedule A hereto (the "Escrow Documents") pursuant to the Settlement and Compensation Agreement and the Asset Purchase Agreement. The Parties desire that delivery of the Escrow Documents, and the effectiveness thereof, be conditioned and contingent entirely upon satisfaction of the Escrow Conditions (as defined below) and wish to place the Escrow Documents in escrow with Escrow Agent pending satisfaction or failure of the Escrow Conditions. However, the Parties desire that such escrow shall not continue after March 31, 2002 (the "Outside Date"); and the Parties intend that, if the Escrow Conditions are not satisfied on or before 5:00 p.m. Portland, Oregon time on the Outside Date, the Escrow Documents shall be void and of no further force and effect whatsoever.

NOW, THEREFORE, in consideration of Ten Dollars (\$10) and other good and valuable consideration, and intending to be legally bound hereby, the Parties and Escrow Agent agree as follows:

1. Escrow Deposit. The Parties herewith deliver the Escrow Documents to Escrow Agent. Escrow Agent agrees to hold the Escrow Documents in escrow upon the terms, and subject to the conditions, of this Escrow Agreement.

2. Escrow Conditions. The "Escrow Conditions" are defined and set forth on Schedule B hereto.

3. Instructions to Escrow Agent.

(a) If the Escrow Conditions are satisfied before 5:00 p.m. Portland, Oregon time on the Outside Date, time being of the essence, Escrow Agent shall distribute the Escrow Documents in accordance with the distribution instructions in Schedule A hereto. The Parties agree that distribution of the Escrow Documents by Escrow Agent in accordance with the instructions in Schedule A shall be deemed to complete delivery of the Escrow Documents under the Settlement and Compensation Agreement and the Asset Purchase Agreement. Upon such distribution of the Escrow Documents by the Escrow Agent this Escrow Agreement shall terminate.

(b) If the Escrow Conditions are not satisfied before 5:00 p.m. Portland, Oregon time on the Outside Date, time being of the essence, the Escrow Documents shall be deemed void and of no force and effect whatsoever, provided that such deemed voiding of the Escrow Documents shall have no effect upon the remaining rights, obligations and remedies of the Parties as provided in the Settlement and Compensation Agreement and the Asset Purchase Agreement, each of which has been fully executed and delivered by the Parties contemporaneously herewith and is not otherwise subject to this escrow. Escrow Agent shall hold the Escrow Documents for thirty (30) days after the Outside Date and, promptly thereafter, unless Escrow Agent shall have previously received a written agreement signed by both Parties directing otherwise (which neither Party shall have any obligation to sign), Escrow Agent shall destroy all the Escrow Documents to signify that the same are void and of no force and effect whatsoever whereupon this Escrow Agreement shall terminate.

4. Limitations on Escrow Agent's Responsibilities. Escrow Agent shall have no duties or responsibilities except those set forth herein, which the Parties agree are ministerial in nature. Escrow Agent shall have no duty to know or determine the performance or non-performance of any provision of any agreement between the Parties, including with respect to the Settlement and Compensation Agreement and the Asset Purchase Agreement. Except for Escrow Agent's own willful default or gross negligence, Escrow Agent shall have no liability for the performance of any duties imposed upon Escrow Agent under this Escrow Agreement. Escrow Agent may rely and/or act upon any instrument or document which Escrow Agent believes to be genuine and to have been executed and/or delivered by the proper person. Escrow Agent may assume that any person

purporting to give any notice or instructions in accordance with the provisions of this Escrow Agreement has been duly authorized to do so. Escrow Agent shall not be bound by any amendment, modification, cancellation or rescission of this Escrow Agreement unless in writing, signed by the Parties and delivered to Escrow Agent. No assignment, transfer, conveyance or hypothecation of any right, title or interest in and to the subject matter of this Escrow Agreement shall be binding upon Escrow Agent unless written notice thereof shall be served upon Escrow Agent.

5. Uncertainty/Disputes. If Escrow Agent is uncertain for any reason whatsoever as to its duties or rights under this Escrow Agreement, or if Escrow Agent receives instructions from any person which (in Escrow Agent's sole judgment) conflict with this Escrow Agreement, notwithstanding any provision hereof to the contrary Escrow Agent may act as follows:

(a) Escrow Agent may continue to hold the Escrow Documents until Escrow Agent receives either (i) a written agreement of both Parties with respect to the disposition of the Escrow Documents or (ii) a final non-appealable order of a court of competent jurisdiction entered in a proceeding in which both Parties are named that directs the disposition of the Escrow Documents, in which event Escrow Agent shall distribute the Escrow Documents in accordance with such agreement or court order, as applicable; and/or

(b) Escrow Agent may take such other action as Escrow Agent deems necessary or desirable, in its discretion, to discharge and terminate its duties under this Escrow Agreement, including delivery of the Escrow Documents into a court as provided in Section 11 hereof and/or bringing in such court of an action of interpleader or any other proceedings in such court which Escrow Agent deems appropriate.

In any event, the Parties shall be jointly and severally liable for, and shall pay promptly, reasonable attorney's fees and costs incurred by Escrow Agent for any litigation in which Escrow Agent is named as, or becomes, a party, or which is brought by Escrow Agent, under or with respect to this Escrow Agreement.

6. Indemnity. The Parties (jointly and severally) shall reimburse Escrow Agent (and hereby agree to indemnify and hold Escrow Agent harmless against) loss, liability, cost or expense in connection with this Escrow Agreement and/or performance of Escrow Agent's duties hereunder, including defending against any claim or liability arising out of or relating to this Escrow Agreement. As between the Parties, all fees, costs and indemnities of Escrow Agent shall be shared equally by each of them.

7. Release. The Parties hereby release Escrow Agent from any act done or omitted to be done in good faith in the performance of its duties under this Escrow Agreement excepting gross negligence or willful misconduct. However, paragraphs 5 and 6 above shall not require reimbursement to, or indemnification of, Escrow Agent in any legal action in which there

is a determination, final beyond appeal, of gross negligence or willful misconduct on the part of Escrow Agent.

8. Notices. Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by telegraph, telex, or fax or by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below:

If to the Parties:

To the Tribes:

Confederated Tribes of the Warm Springs Reservation
Chairman, Tribal Council
P. O. Box C
Warm Springs, OR 97761

with a copy to:

Mr. Dennis C. Karnopp, Esq.
Karnopp, Petersen, Noteboom, Hansen, Arnett, & Sayeg LLP
1201 NW Wall St.
Suite 300
Bend, OR 97701

To PGE:

Portland General Electric Company
Attention: Vice President, Power Supply
1 World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

with a copy to:

Portland General Electric Company
Attention: General Counsel
1 World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

If to Escrow Agent:

Jefferson County Title Company
534 SW 4th Street
Madras, OR 97741
Attention: Debbie Rauscher

Notice given pursuant to this Section 8 shall be effective upon physical receipt by both of the two non-notifying parties.

9. Waiver of Immunity. The Tribes acknowledge and agree that in entering into this Escrow Agreement, they may incur obligations to the Escrow Agent, PGE, and each of their respective successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. The Tribes further acknowledge that the Escrow Agent and PGE would not enter into this Escrow Agreement with the Tribes if the Tribes could defeat or hinder enforcement against them of the rights granted to the Escrow Agent or PGE by claiming sovereign immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. THE TRIBES HEREBY CONSENT TO SUIT, ARBITRATION, ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS, INJUNCTIONS AND DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS ESCROW AGREEMENT. THE TRIBES HEREBY EXPRESSLY WAIVE, WITHOUT LIMITATION, ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS ESCROW AGREEMENT, TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING UNDER THIS ESCROW AGREEMENT, AND TO ENFORCE AND COLLECT ANY JUDGMENT IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS ESCROW AGREEMENT.

10. Choice of Laws. This Escrow Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State of Oregon (without reference to any principles of conflicts of laws), except to the extent such Oregon laws may be preempted by the laws of the United States of America.

11. Jurisdiction and Venue. The Parties and the Escrow Agent agree that any disputes concerning, relating to or arising out of this Escrow Agreement present a federal question. With respect to any proceedings, suit or action relating to this Escrow Agreement or the subject matter hereof, (collectively referred to as "Proceedings") each Party and the Escrow Agent irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Oregon located in Portland, Oregon. Each Party hereto and the Escrow Agent irrevocably waives any objection which it may have at any time to the laying of venue of any Proceeding brought in the United States District Court for the District of Oregon located in Portland, Oregon, waives any claim

that such Proceeding has been brought in an inconvenient forum and further waives the right to object, with respect to such Proceeding, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal. In the event such court determines that the subject matter of the Proceeding does not fall within the statutory jurisdiction of U.S. District Courts or for any reason declines to exercise jurisdiction over the Proceeding, then the dispute shall be resolved by judicial proceedings in a court of the State of Oregon which has jurisdiction and venue. Except for the limited purpose specified in Section 12 below, each Party hereto and the Escrow Agent irrevocably waives any right it might otherwise have to seek to have any Proceeding determined in any tribal court and agrees that assumption of jurisdiction by any federal or state court shall not be delayed or curtailed by any doctrine requiring exhaustion of tribal court remedies. Neither of PGE's nor the Escrow Agent's entry into this Escrow Agreement shall be deemed to give rise to a consensual relationship that would establish the Tribes' jurisdiction over PGE's or the Escrow Agent's activities.

12. Determination by FERC or Arbitration if No U.S. District Court or Oregon State Court Jurisdiction. In the event both the United States District Court for the District of Oregon and the courts of the State of Oregon determine that the subject matter of the Proceeding does not fall within their statutory jurisdiction or for any reason both decline to exercise jurisdiction over the Proceeding, then the Parties and the Escrow Agent, as the case may be, shall first seek to have such Proceeding determined by FERC. The Parties and the Escrow Agent further agree that in the event any Proceeding is so brought to FERC and FERC declines to determine the Proceeding, then the Parties and the Escrow Agent, as the case may be, shall submit the Proceeding to arbitration in Portland, Oregon under the Commercial Arbitration Rules of the American Arbitration Association. The Parties and the Escrow Agent agree that any such Proceeding shall be submitted to three arbitrators selected by the American Arbitration Association from its panel of arbitrators. The arbitrators shall not have authority to award exemplary, punitive, or speculative damages or damages based on or measured by tort or other non-contractual principles. The Parties and the Escrow Agent further agree that they will faithfully observe this Escrow Agreement and the rules, that they will abide by and perform any award rendered by the arbitrators and that a judgment of a court having jurisdiction may be entered upon the award; provided, however, the award may be challenged and modified in whole or part or denied enforcement in whole or part, but only on the basis that the award exceeded the scope of the arbitrators' authority under this Escrow Agreement or the Federal Arbitration Act. In the event neither a federal court nor an Oregon court has, or will accept, jurisdiction to enter an order upon the award, then the Tribes and PGE agree that a tribal court judge pro tempore of the Warm Springs Tribal Court shall have jurisdiction exclusively for the purpose of entering an order upon the award. The tribal court judge pro tempore shall be a retired federal court judge who shall be selected from a publicly available list of retired federal court judges, by mutual agreement of the Tribes and PGE, with each of the Tribes and PGE proposing three names from such list to the other and the Tribes and PGE seeking to reach agreement on a judge from such proposed names within fifteen days after the exchange of their respective lists of three names. If the Tribes and PGE are unable to agree on a judge from such list, the selection shall be made from such publicly available list by the CPR Institute for Dispute Resolution, 366 Madison Ave., New York, NY ("CPR"). If CPR is unable or unwilling to select such judge, then the selection shall be made

from such publicly available lists, taking into consideration the names provided on the lists proposed by the Tribes and PGE, by another alternative dispute resolution service agreeable to the Tribes and PGE. Judges proposed or selected shall provide to each of the Tribes and PGE statements of any relationships with either Party. Any judge selected shall be impartial and shall not have disqualifying relationships with any Party.

13. Severability. If any provision of this Escrow Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party or Escrow Agent under this Escrow Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Escrow Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Escrow Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Escrow Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

14. Resignation. Escrow Agent may resign by giving notice in writing to the Parties as provided herein of its intent to so resign. Resignation shall become effective upon the first to occur of (a) the execution by a substitute escrow agent of a written acceptance of responsibilities hereunder and (b) thirty (30) days after the effective date of Escrow Agent=s notice of intent to resign.

15. No Effect on Other Agreements. This Escrow Agreement has been delivered pursuant to the Settlement and Compensation Agreement and the Asset Purchase Agreement for the purpose of fulfilling the rights and obligations of the Parties as set forth therein. This Escrow Agreement is not intended to and shall not modify or amend the respective rights and obligations of the Parties under such agreements or any other agreement between the Parties, except and to the extent of obligations to be performed hereunder. Closing of the escrow, or termination of this Escrow Agreement, shall not terminate, waive, release or otherwise relinquish in any way any right or obligation of either Party or any Person under any agreement to which such Party or Person or any other Person may be bound.

16. Fees. The Parties shall share equally the cost of the fees paid by the Title Company to carry out its responsibilities under this Escrow Agreement.

17. Miscellaneous. This Escrow Agreement embodies the entire agreement and understanding among the parties and supersedes all prior agreements and understandings relating to the subject matter thereof. This Escrow Agreement may not be modified or amended or any term or provisions hereof waived or discharged except in writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced. All the terms of this Escrow Agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties and their

respective successors and assigns. This Escrow Agreement may be executed in (a) counterparts, a complete set of which shall constitute an original and/or (b) duplicates, each of which shall constitute an original. Copies of this Escrow Agreement showing the signatures of the Parties and Escrow Agent may be used for all purposes as originals (whether produced by photographic, digital, computer, or other means of reproduction).

18. No Consequential, Incidental or Punitive Damages.

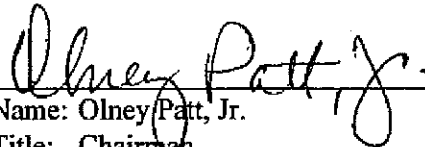
THE PARTIES AND THE ESCROW AGENT AGREE THAT IN NO EVENT SHALL ANY OF THEM BE LIABLE TO ANY OTHER(S) OF THEM HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL (INCLUDING REPLACEMENT POWER COSTS), PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH OF EITHER PARTY OR THE ESCROW AGENT.

19. Termination of Settlement and Compensation Agreement Prior to Satisfaction of Escrow Conditions. In the event the Settlement and Compensation Agreement is terminated prior to satisfaction of all the Escrow Conditions, then this Escrow Agreement shall terminate simultaneously with the termination of the Settlement and Compensation Agreement.


SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the day and year first above written.


THE CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON

By: 
Name: Olney Patt, Jr.
Title: Chairman

PORTLAND GENERAL ELECTRIC COMPANY

By: 
Name: Ronald W. Johnson
Title: Vice President, Power Supply

Jefferson County Title Company

By: 
Name: Debbie Rauscher
Title: Vice President / Assistant County Manager

SCHEDULE A

Escrow Documents and Instructions for Delivery

1. Bill of Sale dated as of January 1, 2002. Original to the Tribes and copy to PGE.
2. The following deeds of conveyance:

Bargain and Sale Deed dated as of January 1, 2002.

Originals to the Tribes and one copy of each to PGE.
3. The following instruments of assignment or conveyance:

Partial Assignment of Easements and Assumption Agreement
dated as of January 1, 2002.

Originals to the Tribes and one copy of each to PGE.
4. Ownership and Operation Agreement for the Pelton and Round Butte Dams and Generating Facilities by The Confederated Tribes of the Warm Springs Reservation of Oregon and Portland General Electric Company, dated as of January 1, 2002. One original to each of the Tribes and PGE.
5. Mutual General Release by The Confederated Tribes of the Warm Springs Reservation of Oregon and Portland General Electric Company, dated as of January 1, 2002. One original to each of the Tribes and PGE.
6. Asset Purchase Agreement Between The Confederated Tribes of the Warm Springs Reservation of Oregon and Portland General Electric Company, dated as of January 1, 2002 at 12:15 a.m. One original to each of the Tribes and PGE.

SCHEDULE B

Escrow Conditions

The Escrow Conditions under the foregoing Escrow Agreement consist of the following:

1. The occurrence of 0015 hours Pacific time on January 1, 2002.

DOCUMENT ESCROW AGREEMENT

This DOCUMENT ESCROW AGREEMENT ("Escrow Agreement"), is dated as of January 1, 2002 and is by and among The Confederated Tribes of the Warm Springs Reservation of Oregon, a federally recognized Indian tribe having a Constitution and Bylaws and Corporate Charter adopted pursuant to the terms of the Indian Reorganization Act, including its governing body the Tribal Council (the "Tribes"), Portland General Electric Company, an Oregon corporation ("PGE") and Jefferson County Title ("Escrow Agent"). (The Tribes and PGE are each referred to individually herein as a "Party" and collectively as the "Parties.")

Definitions

Unless otherwise defined in this Escrow Agreement, terms defined in the Long-Term Global Settlement and Compensation Agreement dated April 12, 2000 ("Settlement and Compensation Agreement" and the Asset Purchase Agreement between the Parties dated as of January 1, 2002 (the "Asset Purchase Agreement") shall have the same meanings when used herein as in such agreements.

Introductory Statement

The Parties have executed (and/or have received from third parties) the documents listed in Schedule A hereto (the "Escrow Documents") pursuant to the Settlement and Compensation Agreement and the Asset Purchase Agreement. The Parties desire that delivery of the Escrow Documents, and the effectiveness thereof, be conditioned and contingent entirely upon satisfaction of the Escrow Conditions (as defined below) and wish to place the Escrow Documents in escrow with Escrow Agent pending satisfaction or failure of the Escrow Conditions. However, the Parties desire that such escrow shall not continue after March 31, 2002 (the "Outside Date"); and the Parties intend that, if the Escrow Conditions are not satisfied on or before 5:00 p.m. Portland, Oregon time on the Outside Date, the Escrow Documents shall be void and of no further force and effect whatsoever.

NOW, THEREFORE, in consideration of Ten Dollars (\$10) and other good and valuable consideration, and intending to be legally bound hereby, the Parties and Escrow Agent agree as follows:

1. Escrow Deposit. The Parties herewith deliver the Escrow Documents to Escrow Agent. Escrow Agent agrees to hold the Escrow Documents in escrow upon the terms, and subject to the conditions, of this Escrow Agreement.

2. Escrow Conditions. The "Escrow Conditions" are defined and set forth on Schedule B hereto.

3. Instructions to Escrow Agent.

(a) If the Escrow Conditions are satisfied before 5:00 p.m. Portland, Oregon time on the Outside Date, time being of the essence, Escrow Agent shall distribute the Escrow Documents in accordance with the distribution instructions in Schedule A hereto. The Parties agree that distribution of the Escrow Documents by Escrow Agent in accordance with the instructions in Schedule A shall be deemed to complete delivery of the Escrow Documents under the Settlement and Compensation Agreement and the Asset Purchase Agreement. Upon such distribution of the Escrow Documents by the Escrow Agent this Escrow Agreement shall terminate.

(b) If the Escrow Conditions are not satisfied before 5:00 p.m. Portland, Oregon time on the Outside Date, time being of the essence, the Escrow Documents shall be deemed void and of no force and effect whatsoever, provided that such deemed voiding of the Escrow Documents shall have no effect upon the remaining rights, obligations and remedies of the Parties as provided in the Settlement and Compensation Agreement and the Asset Purchase Agreement, each of which has been fully executed and delivered by the Parties contemporaneously herewith and is not otherwise subject to this escrow. Escrow Agent shall hold the Escrow Documents for thirty (30) days after the Outside Date and, promptly thereafter, unless Escrow Agent shall have previously received a written agreement signed by both Parties directing otherwise (which neither Party shall have any obligation to sign), Escrow Agent shall destroy all the Escrow Documents to signify that the same are void and of no force and effect whatsoever whereupon this Escrow Agreement shall terminate.

4. Limitations on Escrow Agent's Responsibilities. Escrow Agent shall have no duties or responsibilities except those set forth herein, which the Parties agree are ministerial in nature. Escrow Agent shall have no duty to know or determine the performance or non-performance of any provision of any agreement between the Parties, including with respect to the Settlement and Compensation Agreement and the Asset Purchase Agreement. Except for Escrow Agent's own willful default or gross negligence, Escrow Agent shall have no liability for the performance of any duties imposed upon Escrow Agent under this Escrow Agreement. Escrow Agent may rely and/or act upon any instrument or document which Escrow Agent believes to be genuine and to have been executed and/or delivered by the proper person. Escrow Agent may assume that any person

purporting to give any notice or instructions in accordance with the provisions of this Escrow Agreement has been duly authorized to do so. Escrow Agent shall not be bound by any amendment, modification, cancellation or rescission of this Escrow Agreement unless in writing, signed by the Parties and delivered to Escrow Agent. No assignment, transfer, conveyance or hypothecation of any right, title or interest in and to the subject matter of this Escrow Agreement shall be binding upon Escrow Agent unless written notice thereof shall be served upon Escrow Agent.

5. Uncertainty/Disputes. If Escrow Agent is uncertain for any reason whatsoever as to its duties or rights under this Escrow Agreement, or if Escrow Agent receives instructions from any person which (in Escrow Agent's sole judgment) conflict with this Escrow Agreement, notwithstanding any provision hereof to the contrary Escrow Agent may act as follows:

(a) Escrow Agent may continue to hold the Escrow Documents until Escrow Agent receives either (i) a written agreement of both Parties with respect to the disposition of the Escrow Documents or (ii) a final non-appealable order of a court of competent jurisdiction entered in a proceeding in which both Parties are named that directs the disposition of the Escrow Documents, in which event Escrow Agent shall distribute the Escrow Documents in accordance with such agreement or court order, as applicable; and/or

(b) Escrow Agent may take such other action as Escrow Agent deems necessary or desirable, in its discretion, to discharge and terminate its duties under this Escrow Agreement, including delivery of the Escrow Documents into a court as provided in Section 11 hereof and/or bringing in such court of an action of interpleader or any other proceedings in such court which Escrow Agent deems appropriate.

In any event, the Parties shall be jointly and severally liable for, and shall pay promptly, reasonable attorney's fees and costs incurred by Escrow Agent for any litigation in which Escrow Agent is named as, or becomes, a party, or which is brought by Escrow Agent, under or with respect to this Escrow Agreement.

6. Indemnity. The Parties (jointly and severally) shall reimburse Escrow Agent (and hereby agree to indemnify and hold Escrow Agent harmless against) loss, liability, cost or expense in connection with this Escrow Agreement and/or performance of Escrow Agent's duties hereunder, including defending against any claim or liability arising out of or relating to this Escrow Agreement. As between the Parties, all fees, costs and indemnities of Escrow Agent shall be shared equally by each of them.

7. Release. The Parties hereby release Escrow Agent from any act done or omitted to be done in good faith in the performance of its duties under this Escrow Agreement excepting gross negligence or willful misconduct. However, paragraphs 5 and 6 above shall not require reimbursement to, or indemnification of, Escrow Agent in any legal action in which there

is a determination, final beyond appeal, of gross negligence or willful misconduct on the part of Escrow Agent.

8. Notices. Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by telegraph, telex, or fax or by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below:

If to the Parties:

To the Tribes:

Confederated Tribes of the Warm Springs Reservation
Chairman, Tribal Council
P. O. Box C
Warm Springs, OR 97761

with a copy to:

Mr. Dennis C. Karnopp, Esq.
Karnopp, Petersen, Noteboom, Hansen, Arnett, & Sayeg LLP
1201 NW Wall St.
Suite 300
Bend, OR 97701

To PGE:

Portland General Electric Company
Attention: Vice President, Power Supply
1 World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

with a copy to:

Portland General Electric Company
Attention: General Counsel
1 World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

If to Escrow Agent:

Jefferson County Title Company
534 SW 4th Street
Madras, OR 97741
Attention: Debbie Rauscher

Notice given pursuant to this Section 8 shall be effective upon physical receipt by both of the two non-notifying parties.

9. Waiver of Immunity. The Tribes acknowledge and agree that in entering into this Escrow Agreement, they may incur obligations to the Escrow Agent, PGE, and each of their respective successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. The Tribes further acknowledge that the Escrow Agent and PGE would not enter into this Escrow Agreement with the Tribes if the Tribes could defeat or hinder enforcement against them of the rights granted to the Escrow Agent or PGE by claiming sovereign immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. THE TRIBES HEREBY CONSENT TO SUIT, ARBITRATION, ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS, INJUNCTIONS AND DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS ESCROW AGREEMENT. THE TRIBES HEREBY EXPRESSLY WAIVE, WITHOUT LIMITATION, ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS ESCROW AGREEMENT, TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING UNDER THIS ESCROW AGREEMENT, AND TO ENFORCE AND COLLECT ANY JUDGMENT IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS ESCROW AGREEMENT.

10. Choice of Laws. This Escrow Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State of Oregon (without reference to any principles of conflicts of laws), except to the extent such Oregon laws may be preempted by the laws of the United States of America.

11. Jurisdiction and Venue. The Parties and the Escrow Agent agree that any disputes concerning, relating to or arising out of this Escrow Agreement present a federal question. With respect to any proceedings, suit or action relating to this Escrow Agreement or the subject matter hereof, (collectively referred to as "Proceedings") each Party and the Escrow Agent irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Oregon located in Portland, Oregon. Each Party hereto and the Escrow Agent irrevocably waives any objection which it may have at any time to the laying of venue of any Proceeding brought in the United States District Court for the District of Oregon located in Portland, Oregon, waives any claim

that such Proceeding has been brought in an inconvenient forum and further waives the right to object, with respect to such Proceeding, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal. In the event such court determines that the subject matter of the Proceeding does not fall within the statutory jurisdiction of U.S. District Courts or for any reason declines to exercise jurisdiction over the Proceeding, then the dispute shall be resolved by judicial proceedings in a court of the State of Oregon which has jurisdiction and venue. Except for the limited purpose specified in Section 12 below, each Party hereto and the Escrow Agent irrevocably waives any right it might otherwise have to seek to have any Proceeding determined in any tribal court and agrees that assumption of jurisdiction by any federal or state court shall not be delayed or curtailed by any doctrine requiring exhaustion of tribal court remedies. Neither of PGE's nor the Escrow Agent's entry into this Escrow Agreement shall be deemed to give rise to a consensual relationship that would establish the Tribes' jurisdiction over PGE's or the Escrow Agent's activities.

12. Determination by FERC or Arbitration if No U.S. District Court or Oregon State Court Jurisdiction. In the event both the United States District Court for the District of Oregon and the courts of the State of Oregon determine that the subject matter of the Proceeding does not fall within their statutory jurisdiction or for any reason both decline to exercise jurisdiction over the Proceeding, then the Parties and the Escrow Agent, as the case may be, shall first seek to have such Proceeding determined by FERC. The Parties and the Escrow Agent further agree that in the event any Proceeding is so brought to FERC and FERC declines to determine the Proceeding, then the Parties and the Escrow Agent, as the case may be, shall submit the Proceeding to arbitration in Portland, Oregon under the Commercial Arbitration Rules of the American Arbitration Association. The Parties and the Escrow Agent agree that any such Proceeding shall be submitted to three arbitrators selected by the American Arbitration Association from its panel of arbitrators. The arbitrators shall not have authority to award exemplary, punitive, or speculative damages or damages based on or measured by tort or other non-contractual principles. The Parties and the Escrow Agent further agree that they will faithfully observe this Escrow Agreement and the rules, that they will abide by and perform any award rendered by the arbitrators and that a judgment of a court having jurisdiction may be entered upon the award; provided, however, the award may be challenged and modified in whole or part or denied enforcement in whole or part, but only on the basis that the award exceeded the scope of the arbitrators' authority under this Escrow Agreement or the Federal Arbitration Act. In the event neither a federal court nor an Oregon court has, or will accept, jurisdiction to enter an order upon the award, then the Tribes and PGE agree that a tribal court judge pro tempore of the Warm Springs Tribal Court shall have jurisdiction exclusively for the purpose of entering an order upon the award. The tribal court judge pro tempore shall be a retired federal court judge who shall be selected from a publicly available list of retired federal court judges, by mutual agreement of the Tribes and PGE, with each of the Tribes and PGE proposing three names from such list to the other and the Tribes and PGE seeking to reach agreement on a judge from such proposed names within fifteen days after the exchange of their respective lists of three names. If the Tribes and PGE are unable to agree on a judge from such list, the selection shall be made from such publicly available list by the CPR Institute for Dispute Resolution, 366 Madison Ave., New York, NY ("CPR"). If CPR is unable or unwilling to select such judge, then the selection shall be made

from such publicly available lists, taking into consideration the names provided on the lists proposed by the Tribes and PGE, by another alternative dispute resolution service agreeable to the Tribes and PGE. Judges proposed or selected shall provide to each of the Tribes and PGE statements of any relationships with either Party. Any judge selected shall be impartial and shall not have disqualifying relationships with any Party.

13. Severability. If any provision of this Escrow Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party or Escrow Agent under this Escrow Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Escrow Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Escrow Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Escrow Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

14. Resignation. Escrow Agent may resign by giving notice in writing to the Parties as provided herein of its intent to so resign. Resignation shall become effective upon the first to occur of (a) the execution by a substitute escrow agent of a written acceptance of responsibilities hereunder and (b) thirty (30) days after the effective date of Escrow Agent's notice of intent to resign.

15. No Effect on Other Agreements. This Escrow Agreement has been delivered pursuant to the Settlement and Compensation Agreement and the Asset Purchase Agreement for the purpose of fulfilling the rights and obligations of the Parties as set forth therein. This Escrow Agreement is not intended to and shall not modify or amend the respective rights and obligations of the Parties under such agreements or any other agreement between the Parties, except and to the extent of obligations to be performed hereunder. Closing of the escrow, or termination of this Escrow Agreement, shall not terminate, waive, release or otherwise relinquish in any way any right or obligation of either Party or any Person under any agreement to which such Party or Person or any other Person may be bound.

16. Fees. The Parties shall share equally the cost of the fees paid by the Title Company to carry out its responsibilities under this Escrow Agreement.

17. Miscellaneous. This Escrow Agreement embodies the entire agreement and understanding among the parties and supersedes all prior agreements and understandings relating to the subject matter thereof. This Escrow Agreement may not be modified or amended or any term or provisions hereof waived or discharged except in writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced. All the terms of this Escrow Agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties and their

respective successors and assigns. This Escrow Agreement may be executed in (a) counterparts, a complete set of which shall constitute an original and/or (b) duplicates, each of which shall constitute an original. Copies of this Escrow Agreement showing the signatures of the Parties and Escrow Agent may be used for all purposes as originals (whether produced by photographic, digital, computer, or other means of reproduction).

18. No Consequential, Incidental or Punitive Damages.

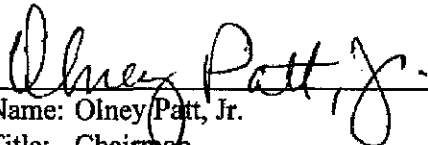
THE PARTIES AND THE ESCROW AGENT AGREE THAT IN NO EVENT SHALL ANY OF THEM BE LIABLE TO ANY OTHER(S) OF THEM HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL (INCLUDING REPLACEMENT POWER COSTS), PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH OF EITHER PARTY OR THE ESCROW AGENT.

19. Termination of Settlement and Compensation Agreement Prior to Satisfaction of Escrow Conditions. In the event the Settlement and Compensation Agreement is terminated prior to satisfaction of all the Escrow Conditions, then this Escrow Agreement shall terminate simultaneously with the termination of the Settlement and Compensation Agreement.


SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the day and year first above written.


THE CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON

By: 
Name: Olney/Patt, Jr.
Title: Chairman

PORTLAND GENERAL ELECTRIC COMPANY

By: 
Name: Ronald W. Johnson
Title: Vice President, Power Supply

Jefferson County Title Company

By: 
Name: Debbie Rauscher
Title: Vice President / Assistant County Manager

SCHEDULE A

Escrow Documents and Instructions for Delivery

1. Bill of Sale dated as of January 1, 2002. Original to the Tribes and copy to PGE.
2. The following deeds of conveyance:

Bargain and Sale Deed dated as of January 1, 2002.

Originals to the Tribes and one copy of each to PGE.
3. The following instruments of assignment or conveyance:

Partial Assignment of Easements and Assumption Agreement dated as of January 1, 2002.

Originals to the Tribes and one copy of each to PGE.
4. Ownership and Operation Agreement for the Pelton and Round Butte Dams and Generating Facilities by The Confederated Tribes of the Warm Springs Reservation of Oregon and Portland General Electric Company, dated as of January 1, 2002. One original to each of the Tribes and PGE.
5. Mutual General Release by The Confederated Tribes of the Warm Springs Reservation of Oregon and Portland General Electric Company, dated as of January 1, 2002. One original to each of the Tribes and PGE.
6. Asset Purchase Agreement Between The Confederated Tribes of the Warm Springs Reservation of Oregon and Portland General Electric Company, dated as of January 1, 2002 at 12:15 a.m. One original to each of the Tribes and PGE.

SCHEDULE B

Escrow Conditions

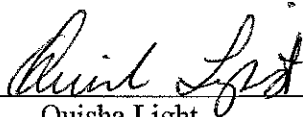
The Escrow Conditions under the foregoing Escrow Agreement consist of the following:

1. The occurrence of 0015 hours Pacific time on January 1, 2002.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused **PORTLAND GENERAL ELECTRIC COMPANY'S REPORT OF MAJOR RESOURCE ACQUISITION** to be served by electronic mail to those parties whose email addresses appear on the attached service list for Docket No. RE XX.

Dated at Portland, Oregon, this 21st day of April, 2014.



Quisha Light
Regulatory Paralegal
Portland General Electric Company
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(503) 464-2200 (Fax)
quisha.light@pgn.com

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