



January 20, 2006

***VIA ELECTRONIC FILING***

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

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

Re: PacifiCorp's Rebuttal Testimony and Exhibits in Phase I of Docket No. UM-1129

Enclosed for filing is an original and 5 copies of PacifiCorp's Rebuttal Testimony and Exhibits in Phase I of Docket UM-1129. Copies of this filing have been served on the UM-1129 Service List.

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

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

Very truly yours,

D. Douglas Larson  
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cc: Service List  
Enclosures

## CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January 2006, I caused to be served, via Overnight delivery and or electronic mail, a true and correct copy of PacifiCorp's Rebuttal Testimony and Exhibits in Phase I of Docket No. UM-1129

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**PACIFICORP**

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**UM 1129**

In the Matter of Public Utility Commission of Oregon Staff's Investigation  
Relating to Electric Utility Purchases from Qualifying Facilities

Rebuttal Testimony and Exhibits

**January 2006**



Case UM-1129  
PPL Exhibit 105  
Witness: Mark T. Widmer

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

PACIFICORP

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**Rebuttal Testimony of Mark T. Widmer**

**Avoided Cost Pricing**

January 2006

1    **Q.    Please state your name, business address and present position with**  
2       **PacifiCorp (the Company).**

3    A.    My Name is Mark Widmer, my business address is 825 N.E. Multnomah, Suite  
4       800, Portland, Oregon 97232, and my present position is Director, Net Power  
5       Cost in the Commercial and Trading Organization's Planning and Analytics  
6       Department.

7    **Q.    Have you previously provided testimony in this case?**

8    A.    Yes, I submitted rebuttal testimony and accompanying exhibits in the first phase  
9       of this case.

10   **Q.    Have your position with the Company and duties changed since then?**

11   A.    Yes. I was promoted to my present position in late 2004. I am responsible for the  
12       coordination and preparation of net power cost and related analysis used in retail  
13       price filings. In addition, I represent the Company on power resource and other  
14       various issues such as avoided costs, with intervenor and regulatory groups  
15       associated with the six state regulatory Commissions to whose jurisdictions we  
16       are subject.

17   **Q.    What is the purpose of your testimony?**

18   A.    My testimony is in response to the testimony of Messrs. Falkenberg, Reading,  
19       Woodin and Galbraith on the Company's resource deficiency / sufficiency  
20       calculation and Mr. Falkenberg's gas index pricing proposal, as well as testimony  
21       regarding Revised Protocol.



1    **Deficiency / Sufficiency Calculation**

2    **Q.    Is the Company's resource sufficiency calculation overly complex as**  
3       **suggested by Mr. Falkenberg?**

4    A.    No. The Company has employed a resource sufficiency calculation in all of its  
5       avoided cost filings in all jurisdictions for over 15 years. To the best of my  
6       knowledge, this is the first time anyone has suggested the methodology is "overly  
7       complex".

8    **Q.    What is the purpose of the Company's calculation?**

9    A.    The calculation determines at what point the Company needs to add the next base  
10       load resource, the proxy plant. This point is defined as when the Company  
11       becomes both energy and capacity deficit since the proxy plant is intended to  
12       represent a baseload resource.

13   **Q.    Has the Company revised its resource deficiency / sufficiency calculation**  
14       **over time?**

15   A.    Yes. Many years ago the Company used a capacity reserve requirement approach  
16       based on a planning margin. Next, the Company used an approach that based its  
17       reserve requirement on the system's two largest contingencies. This method was  
18       used in our avoided cost filing Advice 01-107. Subsequent to that filing, the  
19       Company began using an approach similar to the North American Electric  
20       Reliability Council (NERC) and the Western Electricity Coordinating Council  
21       (WECC) requirements for operating reserves, as is used for setting retail rates.  
22       These entities require contingency reserves to be the greater of the most severe  
23       single contingency (MSSC) or 5 percent of operating hydro and wind resources

1 and 7 percent of operating thermal resources. The 5 and 7 percent method  
2 produces the largest reserve requirement for PacifiCorp. Further, an additional  
3 amount is added for regulating reserves to meet WECC's Minimum Operating  
4 Reliability Criteria (MORC) for Generation Control and Performance.

5 **Q. If the Company used a 15 percent planning margin as proposed by Mr.**  
6 **Falkenberg in lieu of the method currently used by the Company, would it**  
7 **change the resource deficiency / sufficiency period?**

8 A. No. The utilization of a planning margin approach for capacity reserve  
9 requirements does not affect the Company's energy position; it only affects the  
10 capacity position. Since resource deficiency is defined as when the Company is  
11 both energy and capacity deficit, there would be no change in the deficiency  
12 period.

13 **Q. Mr. Falkenberg suggested that the Company is now resource deficit in part**  
14 **because it is building new baseload resources. Is this assertion correct?**

15 A. No, that assertion is wrong. Although the Company is currently building a new  
16 baseload resource as well as adding other resources these resources have already  
17 been committed to and are not avoidable through the acquisition of QF resources.  
18 So they are included as existing resources in the resource deficiency / sufficiency  
19 calculation and do not demonstrate a resource deficiency.

20 **Q. Does the resource deficiency / sufficiency calculation used in the Company's**  
21 **avoided cost filing produce results similar to the IRP method used to**  
22 **determine when a new CCCT will be added?**

23 A. Yes. The 2004 IRP assumed a new CCCT would be added in 2009 compared to

1 2010 for the avoided cost methodology. The 2004 IRP update, which was filed in  
2 November 2005, eliminated the need for the 2009 CCCT. The next CCCT is now  
3 expected to be added in 2012.

4 **Q. Does the Company's deficiency / sufficiency calculation reflect a non-**  
5 **standard industry practice as Mr. Falkenberg suggests?**

6 A. No. The methodology has been used and accepted in several of the Company's  
7 jurisdictions.

8 **Q. Would Mr. Falkenberg's proposed avoided cost method produce avoided**  
9 **cost rates that are representative of the costs a QF would allow the Company**  
10 **to avoid?**

11 A. No. Mr. Falkenberg's proposed methodology would produce avoided cost rates  
12 that are not representative of the costs that a QF would allow the Company to  
13 avoid, because he assumes a QF will allow the Company to avoid a CCCT  
14 beginning in 2006. As I explained above, this simply is not going to happen. The  
15 2004 IRP did not include an avoidable CCCT until 2009 and the 2004 IRP update  
16 does not include an avoidable CCCT until 2012. Therefore, Mr. Falkenberg's  
17 proposed method is predicated on a fundamentally wrong assumption. Further,  
18 given the Company's load and resource balance I expect that parties would argue  
19 imprudence if the Company actually added another CCCT beginning in 2006.

20 **Q. What resource costs is a QF likely to allow the Company to avoid prior to a**  
21 **new baseload resource being added?**

22 A. In the interim, the Company will primarily meet its capacity shortages with a  
23 combination of market based options that include short-term firm wholesale

1 market purchases, exchanges, demand side management and bilateral power  
2 purchase agreements, such as the purchases from Wolverine Creek Energy LLC  
3 (a wind plant) and Amp Resources (Cove Fort) LLC (a geothermal plant).  
4 Therefore, the Company's deficiency / sufficiency calculation and associated  
5 avoided cost rates are reflective of the costs a QF would allow the Company to  
6 avoid.

7 **Q. Mr. Falkenberg suggests that GRID is completely unsuitable for determining**  
8 **avoided costs because it simulates the operation of thermal units based on**  
9 **projected market conditions. Is this statement correct?**

10 A. No. As I explained above the Company's methodology produces results  
11 consistent with the IRP in terms of identifying when a new baseload resource is  
12 needed. Simulating the operation of thermal units based on projected market  
13 conditions to determine market price weightings is entirely appropriate, as it  
14 estimates how the Company's operations and costs will be affected by the  
15 changing market.

16 **Q. Is Mr. Falkenberg's concern about including a forecast of short-term firm**  
17 **sales and purchase transactions valid?**

18 A. No. The concern is based on an inaccurate assumption. The Company did not  
19 include a forecast of planned transactions, as only executed transactions were  
20 included in the deficiency / sufficiency calculation.

21 **Q. What is your recommendation for Mr. Falkenberg's resource deficiency /**  
22 **sufficiency calculation?**

23 A. Mr. Falkenberg's proposal should be rejected because it is based on inaccurate,

1 invalid or inappropriate assumptions that would be used to set avoided costs on a  
2 fictitious 2006 CCCT resource that is not representative of the costs that a QF  
3 would allow the Company to avoid during a sufficiency period.

4 **Q. In Mr. Woodin's testimony, he proposes two alternate methods of calculating**  
5 **the resources sufficiency / deficit period. Would you comment on these**  
6 **recommendations?**

7 A. Yes. In his second recommendation, he suggests that the Company should  
8 eliminate "planned resources" as a factor for establishing avoided cost rates. As  
9 already discussed, the Company's deficiency / sufficiency calculation includes  
10 executed transactions and does not include planned resources. Thus, his  
11 recommendation is based upon a misunderstanding of the Company's  
12 methodology. Mr. Woodin's first recommendation to eliminate resource  
13 sufficiency should also be rejected for the same reasons that Mr. Falkenberg's  
14 similar proposal should be rejected.

15 **Q. On page 4 of this testimony Mr. Woodin states "... under the current**  
16 **sufficiency definition, utilities will always be acquiring planned resources of**  
17 **their own and will always remain sufficient when it comes to QFs." Is this**  
18 **correct?**

19 A. No. To reiterate, Mr. Woodin is incorrect in his assertion that the Company uses  
20 planned resources in its sufficiency period calculations. Moreover, the  
21 Company's avoided costs filed with and approved by the Commission in Advice  
22 filing 01-017 did not even have a sufficiency period, and the current method of  
23 determining resource sufficiency/deficiency could also result in the effective

1 elimination of a sufficiency period. However, I agree that the Company should  
2 plan to provide reliable service to our customers. As such, the Company should  
3 add new resources as needed to provide reliable service, but more than that, the  
4 Company should attempt to time the availability of the new resources to coincide  
5 with resource requirements. In the end, avoided cost rates should be based on the  
6 value of the costs that a QF allows the Company to avoid at the time a contract is  
7 executed.

8 **Q. On page 2 of Mr. Reading's testimony, he indicates that avoided costs decline**  
9 **by one-third over the next five years. He then attributes this decline on high**  
10 **gas prices and the sufficiency period. Are his sufficiency period comments**  
11 **well founded?**

12 A. No. As explained above, prior to the acquisition of a new baseload resource, the  
13 Company expects to meet resource requirements with a variety of resources,  
14 including market resources. The currently approved avoided cost rates and  
15 method properly capture the associated avoided costs. The avoided costs in rates  
16 decline because the market for resources delivered in the future is lower than the  
17 market for similar resources delivered in the near-term. Mr. Engberg discusses  
18 Mr. Reading's natural gas price and electric market price issues.

19 **Q. Do you have any comments on Mr. Galbraith's proposal to determine the**  
20 **Company's annual capacity position based on the largest capacity deficit?**

21 A. Yes. The Company believes that the capacity determination should be tied to the  
22 month of the Company's system peak requirements. However, as a practical  
23 matter the recommendation should not have a material impact, therefore, the

1 Company does not object to Mr. Galbraith's recommendation.

2 **Natural Gas Index Pricing**

3 **Q. On page 9 of his testimony, Mr. Falkenberg states that QFs should be offered**  
4 **a gas market indexed rate during the sufficiency period. Do you agree?**

5 A. No. Prior to the acquisition of a baseload resource, utilities will meet incremental  
6 resource requirements with market resources. In this case, it is more appropriate  
7 to base avoided costs on the wholesale market price of electricity to be consistent  
8 with the price of those market resources. While the market price of electricity  
9 may at times be based on the price of natural gas resources on the margin, there  
10 are always other fundamentals that may be involved. The market price of  
11 electricity is based on a weighting of resources expected to be on the margin.  
12 Therefore, the market price of electricity is a better predictor of the costs a QF  
13 will allow a utility to actually avoid during a resource sufficiency period. This  
14 means that Mr. Falkenberg's proposal to use gas indexing, rather than the electric  
15 wholesale market, could easily result in PacifiCorp or its customers NOT being  
16 indifferent to the QF purchase. For this reason, Mr. Falkenberg's gas indexing  
17 proposal should be rejected.

18 **Q. Do you have any comments on Mr. Falkenberg's issue of price movements?**

19 A. Yes. If the Commission is inclined to provide some form of indexing due to  
20 market price fluctuation, the market price of electricity, rather than gas, should be  
21 indexed because it would be reflective of the current market value of resources  
22 which can be affected by numerous factors such as hydro precipitation, load  
23 variation and other factors which may or may not be related to the price of natural

1 gas. Further, if indexing is allowed because fixed pricing is considered to be  
2 inequitable, because it does not allow QFs to receive fair value for their power,  
3 the Company should not be required to bear the substantial risk of that volatility.  
4 In order to protect the Company from this volatility and to allow recovery of the  
5 cost for the energy it sells to customers, the Commission should adopt some form  
6 of balancing account mechanism or power cost adjustment mechanism.

7 **Revised Protocol**

8 **Q. Both Staff witness Ms. Schwartz and ICNU witness Mr. Falkenberg assert**  
9 **that the cost of New QF Contracts in Oregon should be deemed equal to the**  
10 **cost of Comparable Resources as defined in the Revised Protocol. Does the**  
11 **Company agree with this position?**

12 A. No. The comparison of New QF Contracts to Comparable Resources is a  
13 mechanism within the Revised Protocol that is designed to allow states to  
14 implement different pricing policies and methodologies for New QF Contracts, as  
15 has been done in the past, without shifting costs to other states. Deeming avoided  
16 costs to be equal to the cost of Comparable Resources makes this provision of the  
17 Revised Protocol meaningless. If other states took this approach, then no costs  
18 associated with New QF Contracts would ever be assigned situs, since those states  
19 would simply “deem” QF prices equal to “avoided cost”. Differences in state-  
20 determined “avoided cost” prices and/or methodologies have historically been  
21 dramatic as can be seen by examining Existing QF Contracts. For example,  
22 Existing QF Contracts in Utah are about \$60 / MWh, while those in Oregon are  
23 about \$120 / MWh. The Revised Protocol allows states to continue setting



1 avoided costs as they see fit, with the caveat that costs of New QF Contracts that  
2 exceed the cost of Comparable Resources are assigned situs.

3 **Q. How does the Revised Protocol define Comparable Resources?**

4 A. The definition of Comparable Resources is contained in Appendix A of the  
5 Revised Protocol which states:

6 **“Comparable Resource”** means Resources with similar capacity factors,  
7 start-up costs, and other output and operating characteristics.

8 **Q. What is the basis of Ms. Schwartz’s and Mr. Falkenberg’s claims that prices**  
9 **determined in this proceeding are equal to those of a Comparable Resource?**

10 A. Neither witness presents any evidence as the basis of their claim. Mr. Falkenberg  
11 simply asserts that the Commission should make this finding. Ms. Schwartz first  
12 describes the method or process for establishing avoided cost rates in Oregon and  
13 then asserts that the Commission process yields rates that are similar to those for  
14 comparable resources.

15 **Q. Is it possible that Oregon avoided costs could be equal to the cost of**  
16 **Comparable Resources?**

17 A. Yes, however, they could also be different. Oregon avoided costs are  
18 administratively determined at a point in time, while the cost of Comparable  
19 Resources are not administratively determined and would be based on the options  
20 available to the Company at the time the New QF Contract is entered into. It  
21 would not be reasonable to prejudge or “deem” the relationship of the costs of a  
22 New QF Contract to the cost of a Comparable Resource. This determination  
23 should be made, if the issue is raised by a party, on a case-by-case basis in the

1 context of a rate case, when appropriate information can be presented to the  
2 Commission. This approach gives parties reasonable access to due process given  
3 the fact that Comparable Resources are not pre-defined and all QF's do not have  
4 the exact same characteristics of the proxy resource.

5 **Q. What would happen if there were a disagreement among states as to the**  
6 **assignment of cost for New QF Contracts?**

7 A. When and if that ever happened, the Company would refer the issue to the  
8 Standing Committee, which is the forum created by the Revised Protocol to  
9 address and resolve disagreements among the states that are bound to arise from  
10 time to time.

11 **Q. What do you recommend?**

12 A. I recommend the Commission reject Staff and ICNU proposals to deem the  
13 Oregon avoided cost equal to the cost of Comparable Resources, and find that this  
14 issue can be raised by any party in a rate case when the cost of a New QF  
15 Contract is included in the Company's revenue requirement. I believe parties  
16 should be expected to work in good faith, as intended by the Revised Protocol,  
17 with other states through the Standing Committee should any disagreements arise  
18 among states as to the allocation of costs for New QF Contracts.

19 **Q. Does this conclude your testimony?**

20 A. Yes



Case UM-1129  
PPL Exhibit 302  
Witness: Nathalie O. Wessling

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

PACIFICORP

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**Rebuttal Testimony of Nathalie O. Wessling**

**Creditworthiness/Security**

January 2006

1    **Q.     Please state your name, business address and occupation.**

2    A.     My name is Nathalie O. Wessling. My business address is 825 NE Multnomah  
3           Street, Suite 1800, Portland, Oregon 97232. I am employed by PacifiCorp (the  
4           Company) in the Credit Department.

5    **Q.     Briefly describe your education and business experience.**

6    A.     I have a Bachelor of Science degree in Marketing from the University of  
7           Maryland. I have worked in the Company's corporate Credit Department for the  
8           past nine years where my responsibilities have included establishing credit  
9           procedures and controls, measuring credit exposure and monitoring counterparty  
10          credit risk in connection with wholesale energy trading. Prior to this position, I  
11          was a Lease Portfolio Manager for seven years with Pacific Venture Finance, a  
12          subsidiary of PacifiCorp Financial Services.

13   **Q.     Please describe your current duties.**

14   A.     I am responsible for providing credit support to the Origination group within the  
15          Company's Commercial and Trading Department and ensuring counterparty credit  
16          risk is appropriately mitigated.

17   **Q.     What is the subject matter of this rebuttal testimony?**

18   A.     I will address issues raised by Staff, ODOE, Sherman County/Simplot and the  
19          FRC in the UM 1129 – Phase 1 Compliance proceedings regarding PacifiCorp's  
20          default, creditworthiness and security provisions.

1    **Q.     Staff asks that the Company clarify in its PPA that it will make an exception**  
2       **for a default if a QF is working with a lender with which it is delinquent.**

3       **What is the Company's response?**

4    A.    It is standard business practice to have cross default terms in other commercial  
5           transactions. With a QF being delinquent on other financial obligations, it is an  
6           indication of increased risk of the inability of the QF to perform under the Power  
7           Purchase Agreement (PPA). In some instances, the Company may make an  
8           exception to this practice when the Company is satisfied with the level of risk  
9           presented. Because these determinations can only be made on a case-by-case  
10          basis based on the particular circumstances, it is not appropriate to include  
11          language granting such exceptions in the standard contract.

12   **Q.     What is the Company's position regarding the requirement of a letter of**  
13       **credit for environmental remediation if the QF chooses the Step-In Rights**  
14       **option for its form of Default Security?**

15   A.    The Company believes a letter of credit is a reasonable requirement if a QF selects  
16           the Step-In-Rights option. The Company would potentially be exposed to joint  
17           and several liability for environmental remediation costs under CERCLA (the  
18           Federal Superfund Laws). While the risk may be considered by Staff and the  
19           ODOE to be minimal, the risk is nonetheless unknown and cannot be determined  
20           until an evaluation of the specific project site is completed. Mr. Keto also states  
21           that for a project on an industrial or brownfield site, that the host company be  
22           given the option to assume the financial responsibility for environmental  
23           remediation in lieu of a letter of credit. The Company believes that, even

1 assuming the host company were willing to assume this financial responsibility,  
2 there is no guarantee that the amount they would be willing and able to provide  
3 would be adequate. Without a letter of credit, the Company would have the risk  
4 that the host company will not have the financial wherewithal to satisfy  
5 environmental remediation obligations.

6 **Q. Staff recommends that there be a cap on the default losses that can be**  
7 **recouped. Similarly, ODOE proposes that a cap on these default losses**  
8 **should be the contract value of the contracted minimum power delivery**  
9 **during the default period. How do you respond to these proposals?**

10 A. The Company does not believe there is a sound rationale for having any cap on  
11 default losses that can be recouped. There is no basis for presuming that the  
12 contract value proposed by ODOE would reflect the actual costs the Company  
13 may incur during the default period. Staff's proposal of 110 percent of forward  
14 market prices reflects a more reasonable relationship to actual replacement power  
15 costs. However, a cap could subject the Company and its ratepayers to additional  
16 expenses for power should the replacement power cost exceed some established  
17 cap. Staff recognizes this exposure in its response to PGE Data Request 1.

18 **Q. ODOE proposes a cap on default security of 2 percent of project capital**  
19 **costs. Do you agree with that proposal?**

20 A. No. A cap of 2 percent of project capital costs has no relationship to the actual  
21 replacement power costs that could be incurred should the QF fail to perform. As  
22 Staff recognized in finding the Company's approach of determining the amount of  
23 default security to be reasonable, the Company requires default security in an

1 amount that reflects the potential harm to the Company and ratepayers in the event  
2 of a default and the Company incurs replacement power costs at prices that exceed  
3 those in the QF contract.

4 **Q. ODOE believes that Order No. 05-584 gives the QF the option of meeting the**  
5 **creditworthiness standards by only making representations that the QF is**  
6 **current on existing debt obligations and has not been a debtor in a**  
7 **bankruptcy proceeding within the preceding two years, and does not have to**  
8 **make any other representation. What is the Company's response?**

9 A. Order No. 05-584, at page 45, states that "... all QFs should be required to  
10 establish creditworthiness by making a set of representations and warranties that  
11 the QF has good credit, *including* that it is current on existing debt obligations and  
12 had not been a debtor in a bankruptcy proceeding within the preceding two years."  
13 (Emphasis added.) The Company believes that by using the word "including",  
14 rather than specifying that only those two representations could be required, the  
15 Commission intended that other representations could be required. Requiring  
16 additional representations is a reasonable means of protecting the Company and  
17 its customers for the damages caused by default. I note that Staff likewise  
18 believes that the utilities may include creditworthiness requirements in addition to  
19 those two representations as stated by ODOE.



1 **Q. Similarly, Mr. Woodin, on behalf of Sherman County/Simplot, states that the**  
2 **Company's definition of default security is not necessary in light of the**  
3 **Order, and that the definition of a letter of credit is inappropriate as it goes**  
4 **beyond the security requirement set forth in the Order. Do you agree?**

5 A. No. The Order clearly allows for default security under specified circumstances,  
6 and the Company's approach to determining the amount required for default  
7 security is reasonable, as recognized by Staff. Likewise, the Order allows for a  
8 letter of credit as a form of default security, and the Company's PPA specifies  
9 reasonable requirements for an acceptable letter of credit.

10 **Q. Do you agree with Mr. Woodin that the requirement for QF projects that are**  
11 **greater than 3MW to meet additional creditworthiness requirements is**  
12 **contrary to provisions in the Order?**

13 A. No. The Company set a 3MW threshold above which to impose additional credit  
14 requirements; below 3MW the Company is not imposing these additional  
15 requirements, although it could have, according to the direction of the Order. As I  
16 stated above, additional representations are allowed under Order No. 05-584.

17 **Q. Mr. Woodin also states that PacifiCorp's contract is not clear that the**  
18 **security measures come into play only if the QF is unable to make the**  
19 **creditworthiness representations. Do you agree?**

20 A. No. This issue is entirely clear as shown in Section 3.27 of the PPA, where it is  
21 stated that the Seller need not post security provided that Seller makes the stated  
22 representations in the contract.

1   **Q.     Mr. Sanders, on behalf of the FRC, states the default provisions of the**  
2           **standard contract are potentially devastating to his operation, and Mr.**  
3           **Pegar, for the FRC, questions how utility ratepayers are protected from**  
4           **harm by the default provisions. What is the Company's response?**

5   **A.**     It is prudent business practice to include default provisions in the QF PPAs, as  
6           they provide the ratepayers and the Company with similar levels of protection as  
7           found in other commercial contracts and in a competitive market.

8   **Q.     Does this conclude your rebuttal testimony?**

9   **A.**     Yes.



Case UM-1129  
PPL Exhibit 400  
Witness: Bruce W. Griswold

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

PACIFICORP

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**Rebuttal Testimony of Bruce W. Griswold**  
**Standard Contract Terms**

January 2006

1    **Q.     Please state your name, business address and position with PacifiCorp dba Utah**  
2        **Power & Light Company (the Company).**

3    A.     My name is Bruce W. Griswold. My business address is 825 N. E. Multnomah, Suite  
4           600, Portland, Oregon 97232. I am a Manager in the Origination section of the  
5           Company's Commercial and Trading Department.

6    **QUALIFICATIONS**

7    **Q.     Please briefly describe your education and business experience.**

8    A.     I have a B.S. and M.S. degree in Agricultural Engineering from Montana State and  
9           Oregon State, respectively. I have been employed with PacifiCorp over twenty years  
10          in various positions of responsibility in retail energy services, engineering, marketing  
11          and wholesale energy services. I have also worked in private industry and with an  
12          environmental firm as a project engineer. I currently work in the Commercial and  
13          Trading business unit of PacifiCorp. My responsibilities are wholesale, qualifying  
14          facility and large retail transactions including the negotiation and management of the  
15          non-tariff power supply and resource acquisition agreements with PacifiCorp's largest  
16          retail customers.

17   **Q.     Have you previously testified in any regulatory proceedings?**

18   A.     Yes. I have testified in proceedings in Utah and Idaho.

19   **PURPOSE OF TESTIMONY**

20   **Q.     What is the purpose of your testimony?**

21   A.     I will be responding to a number of comments made by parties in their direct  
22          testimony on Phase I issues in this Docket including Ms. Schwartz of the OPUC Staff,  
23          Mr. Keto of the ODOE Staff, and Mr. Woodin, representing Sherman County and J.R.

1 Simplot Company. I will also be sponsoring PacifiCorp's proposed standard off-  
2 system power purchase agreement ("PPA") and revisions to the filed standard PPAs  
3 for new and existing QFs.

4 **Q. How is your testimony organized?**

5 A. I have organized my testimony around specific issues as outlined in the Phase I  
6 consolidated list and respond to specific comments associated with those issues.

7 **MULTIPLE QF PROJECT ELIGIBILITY**

8 **Q. Does the Company have a position regarding the eligibility criteria for standard**  
9 **prices and contract terms that should be used when multiple QF projects are**  
10 **developed by a single entity or similar ownership structure?**

11 A. Yes. While PURPA provides the overlying criteria that apply to whether the QF  
12 project qualifies as a single project or multiple QF projects, it does not provide the  
13 criteria at a granular level related to state standard price and contract offers. The  
14 Company actively participated with ODOE and other Parties to this Docket in  
15 developing definitions and uniform criteria based on ownership structure, shared  
16 interconnection and infrastructure, and site. The result is a settlement that the  
17 Company believes is reasonable and equitable for QF projects in Oregon and is  
18 consistent with similar criteria proposed in a current Idaho QF Docket.

19 **DEFAULT PROVISIONS**

20 **Q. Does the Company agree with other parties' position that a delay in the**  
21 **commercial operation date is not an event of default?**

22 A. No. From an overall contractual perspective, the Company's intent is to clearly  
23 articulate the QF's obligations and establish the consequences for the QF of not

1 meeting those obligations. Meeting the commercial operation date is considered  
2 such an obligation and is one that is used in other commercial transactions. Ms.  
3 Schwartz has recommended that the contracts be amended to not allow termination  
4 related damages when the QF is in default due to missing its commercial operation  
5 date and the Company is in a resource sufficiency period at the specified on-line date.  
6 What this fails to take into account is the lost opportunity cost of accepting that  
7 energy and making market sales where appropriate for the benefit of the ratepayers  
8 thereby reducing the overall net power costs to customers. The Company proposes  
9 that the replacement cost is the difference between the market and the contract price.  
10 This represents the opportunity cost whether PacifiCorp is in a resource sufficiency  
11 period or deficiency period. If the market is greater than the contract price then  
12 market sales can be made to reduce net power costs for the benefit of the ratepayers,  
13 or market purchases can be avoided if the QF comes on-line.

14 **Q. Why should a specific time to cure be established in the event of default?**

15 A. First, let me describe how a QF resource becomes part of the Company's resource  
16 portfolio. Once a QF contract is signed and filed with the Commission, the Company  
17 is relying on that power from the QF as of the scheduled commercial operation date.  
18 The Company will incorporate that power into its forward position and balances its  
19 system around that position. This may mean that the Company buys or sells energy  
20 depending on whether it becomes long or is still short with the QF addition. If the QF  
21 does not come on-line on the scheduled commercial operation date, the Company will  
22 most likely have to go to the market to address the position. In the case of the  
23 deficiency period, the Company will purchase from the market to fill the position. In

1 the sufficiency period, the Company will already be in the market selling its length so  
2 it will lose the opportunity cost of additional sales to reduce net power costs. Having  
3 a defined time to cure is a reasonable and prudent requirement in order to bracket the  
4 period that the Company is managing its position with the uncertainty around the QF  
5 coming on-line. Several parties' testified on their opposition to commercial operation  
6 delay as an event of default however their testimony focused primarily on the time  
7 allowance for cure of the default and the costs incurred by the Company that would be  
8 applied as damages as a result of the default. It is important in any contractual  
9 arrangement to have expectations set and understood, but they should be reasonable  
10 for both parties. In the Company's contract, the QF is given up to 120 days to cure a  
11 delay with several opportunities to communicate with the Company on the status of  
12 the default cure. Ms. Schwartz points out that this is a reasonable approach. It  
13 provides certainty for PacifiCorp for planning purposes and also gives the QF a  
14 specific timeline to bring the project on-line or fix the problem.

15 **Q. What should the appropriate replacement costs be during the delay period?**

16 A. This point goes to the cost incurred during the delay period. I have already pointed  
17 out that the market opportunity cost is the appropriate mechanism for damages  
18 regardless of the resource sufficiency or deficiency period. In a sufficiency period,  
19 the Company would have made market sales to the net power cost of the Company for  
20 the benefit of the customers. In a deficiency period it is the cost incurred by the  
21 Company for the power purchased by the Company from the market to replace the  
22 QF.



1    **Q.     How does the Company respond to parties who believe under-delivery or not**  
2           **meeting its minimum obligation is not an event of default by the QF?**

3    A.     The Company agrees with OPUC Staff on this point. The QF is operating and  
4           providing energy which the Company is using to supply its retail load. Under-  
5           delivery results in the Company making up the difference from the market to either  
6           supply load or make market sales so the damages should in fact be calculated to  
7           account for the market opportunity cost (market minus contract cost) on the volume  
8           under-delivered to meet the annual minimum set for the QF. Mr. Woodin believes it  
9           is a punishment and not a financial issue when in fact it is the exact opposite. The  
10          market opportunity cost should be accounted for, even in the sufficiency period. He  
11          also goes on to state that it is not reasonable that failure to meet its minimum  
12          obligation due to weather is an event of default. The QF standard avoided cost prices  
13          are set based on forecasts of firm fuel sources (gas) and, as such, it is intended that the  
14          proxy resource is a reliable resource. If the QF cannot commit to being reliable then,  
15          in lieu of a minimum obligation, the QF should be considered a non-firm resource and  
16          their contract priced accordingly to reflect the intermittency of their resource. Put  
17          another way, the Company does not have the ability to have a minimum delivery  
18          obligation at anything less than its firm load, while the QF has the opportunity to set  
19          its minimum delivery obligation at something that might reflect a much lower  
20          capacity factor based on a worst case operating scenario.

21   **Q.     Do you agree with Mr. Keto that the minimum delivery should be based on the**  
22           **resource type?**

23   A.     No. While it is an interesting generic approach, the Company believes that the

1 individual QF has the responsibility and the best resources to determine its own  
2 minimum delivery obligation based on its knowledge of adverse motive force or fuel  
3 availability conditions and unplanned maintenance at its site.

4 **Q. Mr. Keto in his testimony on page 7, states that “catastrophic weather-related**  
5 **events” are not included in the definition of force majeure, and should be. Is he**  
6 **correct?**

7 A. No. The Company’s definition of force majeure in all its agreements does in fact  
8 include acts of God, storms, fire, etc. However, it does exclude the cost or  
9 availability of fuel or motive force resources to operate the QF project which is  
10 appropriate. The QF is responsible for the accurate forecast of its operation and  
11 should be accounting for its motive force and fuel availability in setting its minimum  
12 delivery.

### 13 **INDEMNIFICATION**

14 **Q. Is Mr. Woodin’s position on indemnification at the point of delivery correct?**

15 A. No. The issue here is the handoff of the power generated by the QF and delivered to  
16 PacifiCorp. The QF is responsible for the generation and the delivery of power up to  
17 and including the point of delivery. The utility accepts the power from the point of  
18 delivery into its system for serving load and making market sales. The generation  
19 interconnection agreement is based on that premise. The indemnification language  
20 conveys that point correctly. The Company is responsible for the power once it  
21 accepts the power from the point of delivery and the QF is responsible for the power  
22 up to and at the point of delivery.

**TARIFF PROCEDURES AND TIMELINES**

**Q. Do you agree with Mr. Keto that a thirty day turnaround is adequate to complete a review and execution of the power purchase agreement once the QF has submitted it to the utility?**

A. No. Having a single step from draft submittal by the QF to signature in thirty days is a tough schedule to keep at best. Breaking it up in steps with milestones provides for better checks and balances through the contract preparation process. PacifiCorp lays out six steps for securing a power purchase agreement in its Schedule 37. The steps are clear with milestones, sets expectations, and each step allows for adequate time to review and exchange information with the QF project. For many QF developers it is their first QF project. Even the smallest project has a lot of moving pieces including interconnection, equipment specifications, output forecasts, permits, etc. and frequently, a project may have collected the information up front for the contract preparation but it is incomplete on such items as dates or final equipment selection.

**Q. Do you agree with Ms. Schwartz recommendation on timelines?**

A. Yes, to the extent that any of the QF written comments and proposals for the standard contract do not require significant time to analyze or are not significant deviations for the standard contract, the Company believes that a fifteen (15) business day response time is adequate for each of the four steps a through d outlined in Ms. Schwartz's testimony. The Company recommends adopting a standard response timeline of fifteen (15) business days for each step. However, the tariff should also be clear that if the QF seeks variations on the contract or has not completed their delivery of information then the timeline should be extended by the number of days until the

1 necessary information is delivered.

2 **TREATMENT OF ADDITIONAL GENERATION WHEN PROJECT UPGRADED**

3 **Q. Do you agree with Ms. Schwartz recommendation on the treatment of additional**  
4 **generation when a QF project is upgraded?**

5 A. Not entirely. It is clearly appropriate for the QF to replace or upgrade its generation  
6 equipment as they deem necessary within the guidelines set for standard QF contracts.  
7 The Company's issue is the pricing proposed on any additional capacity when a  
8 replacement occurs or an improvement is made. Ms. Schwartz recommends that  
9 output up to the original nameplate rating be priced at the avoided costs rates at the  
10 effective date and that the additional capacity be priced at the avoided cost rates at the  
11 date of improvement or replacement. There is difficulty in administering such a  
12 contract due to using the nameplate rating as the price threshold for existing versus  
13 current avoided cost rates. A QF rarely runs at its nameplate rating and generally has  
14 variability in its production which can be tied to a number of items including motive  
15 force variation, thermal host demand and weather. In many of these cases, because of  
16 this variability in output, there would be a greater administrative burden of such a  
17 contract and potential for dispute over what is attributed to the existing capacity or the  
18 new capacity. For that reason, the Company believes it should approach the upgrade  
19 in the same way we approach any commercial deal. What the QF was obligated to  
20 provide in the original contract blended with what they propose to provide after the  
21 upgrade. Therefore it is more appropriate to calculate a new contract price for the  
22 overall QF project including the upgrade or improvement based on the weighted  
23 average of the existing capacity and/or energy of the QF at the avoided cost rates on

1 the effective date of the original contract and the capacity and/or energy at the avoided  
2 cost rates in effect at the time of the upgrade or improvement. This new contract  
3 price would become effective upon the commercial operation date of the upgraded QF  
4 project and adhere to all the terms and conditions as originally provided in the  
5 existing contract. I want to make it clear that this pricing mechanism for upgraded  
6 projects is only applicable to QF projects less than 10MW qualifying for standard  
7 avoided cost rates. The Company does agree that once the total new nameplate  
8 capacity rating is over 10 MW, then the QF no longer qualifies as a standard contract  
9 and a new non-standard QF PPA would be negotiated as allowed at the then  
10 applicable avoided cost rates and terms. Upgraded projects that result in a QF being  
11 considered over 10 MW get new contractual price(s) that are negotiated as allowed  
12 under the non-standard QF methodology at the then applicable avoided cost rates and  
13 terms while taking into account the indifference standard. This means that the new  
14 negotiated rate should not be limited to the then applicable rates but should take into  
15 account the obligations that both parties originally entered into.

16 **STANDARD QF CONTRACT**

17 **Q. Do you have any corrections or clarifications in the filed standard contract that**  
18 **was submitted to the Commission? If so, please explain the corrections and**  
19 **clarifications.**

20 **A.** Yes. A number of the changes were appropriate corrections pointed out by parties to  
21 the Docket and others were clarifications to meet the intention of the Order. I have  
22 outlined the changes and clarifications below. PPL Exhibit 401 and PPL Exhibit 402  
23 are clean copies of the standard QF PPAs for new and existing projects, respectively,

1 with corrections and clarifications included. In the description below I have identified  
2 the first section number shown as the section number for new QF PPAs. The  
3 bracketed section numbers refer to the PPA for an existing QF project.

4 a. 1.7, [1.5] -- changed "Expiration Date" to "Termination Date"

5 b. 1.12, [1.10] -- changed "Facility Nameplate Capacity" to "Facility Capacity  
6 Rating"

7 c. 1.25, [1.23] -- changed reference to 11.3.1 to 11.4.1

8 d. 1.27, [1.25] -- changed "Fridays" to "Saturdays"

9 e. 2.2.2, [not applicable to existing QF PPA] -- replaced "By \_\_\_\_" with "Upon  
10 completion of construction"

11 f. 3.2.3, [3.2.3] -- changed "Seller's shareholders, directors and officers have" to  
12 "Seller has"

13 g. 11.3.2, [11.3.2] -- replaced entire paragraph (including sub caption) with: "In  
14 the event this Agreement is terminated because of Seller's default and Seller  
15 wishes to again sell Net Output to PacifiCorp following such termination,  
16 PacifiCorp in its sole discretion may require that Seller shall do so subject to  
17 the terms of this Agreement, including but not limited to the Contract Price,  
18 until the Termination Date (as set forth in Section 2.4). At such time Seller and  
19 PacifiCorp agree to execute a written document ratifying the terms of this  
20 Agreement." (This change was made in accordance with OPUC Staff's  
21 recommendation.)

22 h. 11.4.1, [11.4.1] -- deleted "Amounts owed by Seller pursuant to this paragraph  
23 shall be due within fifteen (15) days after any invoice from PacifiCorp for the

1 same."

2 i. In the PPA for existing projects, Recital G, change "Existing QF Contract" to  
3 "New QF Contract"

4 **OFF-SYSTEM QF CONTRACTS**

5 **Q. How does the Company intend to contract with QF projects that are not directly**  
6 **connected to its electrical system?**

7 A. The Company believes the most appropriate mechanism for purchasing power from  
8 off-system QF projects is through a separate standard QF contract that includes the  
9 additional provisions and terms necessary to meet its PURPA obligation. PPL  
10 Exhibit 403 is the Company's proposed standard off-system QF contract. The off-  
11 system contract was developed from the standard QF contract on file with the  
12 Commission and accommodates both existing and new QF projects, with the changes  
13 described above.

14 **Q. What is unique about an off-system QF contract?**

15 A. The primary characteristic of an off-system QF project is that the interconnection  
16 point between the QF and the electric system is different than the point of delivery to  
17 PacifiCorp. The QF has to arrange with a third party transmission provider to  
18 transmit the energy to PacifiCorp on a firm basis and the QF must also schedule  
19 deliveries or arrange for a third party to schedule deliveries to PacifiCorp. There are  
20 variations of this configuration as I will discuss later however, the Company based its  
21 template off-system contract on this arrangement. In accordance with PURPA,  
22 PacifiCorp is only obligated to purchase net output from the QF, thus the contract also  
23 provides a mechanism for balancing the purchase of scheduled energy deliveries by

1 the QF at the point of delivery with the actual net output of the QF at the point of  
2 interconnection. This is a very critical component for an off-system contract. In the  
3 Company's off-system PPA, an energy imbalance account is established. The energy  
4 imbalance account ("EIA") is designed to correct any mismatch between energy  
5 scheduled by the QF and the actual real-time energy deliveries by the QF. Through the  
6 EIA, the QF, or its scheduling service, schedules deliveries to PacifiCorp on an hourly  
7 basis each day. The EIA provides a mechanism for the QF to true-up over-schedules  
8 and under-schedules to zero against the net output volume of energy it delivers in the  
9 on-peak hours and the off-peak hours over the settlement period of the day. If  
10 scheduled delivery is greater than the actual net output in the settlement period of the  
11 day ("surplus energy") then PacifiCorp accepts the surplus energy and there is no cost  
12 to the QF for over delivery. Likewise if the scheduled energy is less than actual net  
13 output for the settlement period, then the EIA will be reset to zero with no  
14 corresponding compensation paid by PacifiCorp to the QF for the negative EIA. Put  
15 in simple terms, the Company buys the lesser of scheduled deliveries and net output.  
16 As I stated earlier we are required to purchase net output only from a QF and if we  
17 purchased net output when scheduled deliveries are less than net output, we would not  
18 be receiving the energy we had paid for. The EIA mechanism provides the QF the  
19 ability to accurately balance the two within the settlement period. Additionally,  
20 depending on the QF's performance in the settlement period through the term of the  
21 agreement, the Company can extend the settlement period up to a year. For example  
22 if the settlement period was set to a month then the EIA would be based on the on-  
23 peak hours and off-peak hours in the month. This approach allows the QF to net their



1 output against schedule in the settlement period with no charges imposed by  
2 PacifiCorp.

3 **Q. Do you agree with Ms. Schwartz recommendation that an off-system QF should**  
4 **be compensated for scheduled deliveries during on-peak hours above nameplate**  
5 **rating to accommodate the hourly scheduling practices in whole megawatts?**

6 A. Yes, but only to the extent that the QF energy imbalance account in the on-peak hours  
7 net to zero in the on-peak period. Let's take a very simplistic example. The  
8 nameplate rating is 4.5 MW and total delivered energy in the 16-hour on-peak period  
9 is 72 MWh. If the third party transmission provider schedules deliveries of 5 MW for  
10 eight hours and 4 MW for 8 hours then the QF should be compensated for the full 72  
11 MWh at on-peak prices. If the QF schedules deliveries in the on-peak period in the  
12 amount of 80 MWhs or 5 MW for each hour of the 16 hours, but the QF net output is  
13 72 MWh, then the surplus energy of 8 MWhs would be accepted by PacifiCorp but  
14 the QF would not be compensated for those 8 MWhs. This approach compensates the  
15 QF at the full on-peak price for their actual output in those hours.

16 **Q. Does PPL Exhibit 403 – Off-System Power Purchase Agreement apply to all off-**  
17 **system QF configurations?**

18 A. No, there are a number of off-system configurations that can occur because  
19 PacifiCorp's system is large and interconnected with other utilities, transmission  
20 providers and control areas. The off-system contract submitted in PPL Exhibit 403 is  
21 the "typical" arrangement we would expect to encounter. As it is written, it only  
22 applies to the QF configuration where the QF is located in another utility's service  
23 area, physically interconnected to that utility's electrical system, outside of

PacifiCorp's control area, acquires firm transmission and ancillary services from a third party transmission provider (e.g., BPA), and delivers a scheduled firm product to PacifiCorp at a designated point of delivery where PacifiCorp is interconnected with the third party transmission provider. In that case, the QF needs to secure an interconnection agreement with the other utility, secure firm transmission and appropriate transmission scheduling services from the transmission provider, and establish the point of delivery with PacifiCorp where the transmission provider and PacifiCorp are interconnected.

**Q. What are the other off-system QF configurations that PacifiCorp anticipates to occur?**

A. I have outlined examples below of the major off-system configurations that the Company has either discussed with potential QFs or could occur based on our review. I have attempted to show the key configuration components. The template off-system contract described above and included in PPL Exhibit 403 is shown as configuration 1 in the table.

	<b>QF Location</b>	<b>Point of Interconnection</b>	<b>Control Area</b>	<b>Transmission and Transmission Services</b>	<b>Point of Delivery</b>
1	Other Utility	Other Utility	3 <sup>rd</sup> Party Transmission Provider	3 <sup>rd</sup> Party Transmission Provider	PacifiCorp interconnection with 3 <sup>rd</sup> Party Transmission Provider
2	Other Utility	3 <sup>rd</sup> Party Transmission Provider (e.g., BPA)	3 <sup>rd</sup> Party Transmission Provider	3 <sup>rd</sup> Party Transmission Provider	PacifiCorp interconnection with 3 <sup>rd</sup> Party Transmission Provider
3	Other Utility	Other Utility	PacifiCorp	3 <sup>rd</sup> Party Transmission Provider	PacifiCorp interconnection with 3 <sup>rd</sup> Party Transmission Provider

In these examples, the obligations and arrangements between parties can vary.

For example, metering and telemetry may vary depending on control area manager

1 requirements. In order to accommodate each off-system QF, the Company intends to  
2 modify the template off-system agreement on a case-by-case basis to reflect the  
3 specific situation of the off-system QF, primarily in the Appendix W of the PPA.

4 **Q. Does this conclude your testimony?**

5 A. Yes, it does.



Case UM-1129  
PPL Exhibit 401  
Witness: Bruce W. Griswold

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

PACIFICORP

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Exhibit Accompanying Rebuttal Testimony of Bruce W. Griswold  
Standard QF PPA for New Projects

January 2006

**POWER PURCHASE AGREEMENT**

**BETWEEN**

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

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

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

### RECITALS

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

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

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

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

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

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

## AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

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

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

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

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

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

1.4.2 The Facility has completed Start-Up Testing;

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

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



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

1.5 **"Commission"** means the Oregon Public Utilities Commission.

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

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

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

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

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

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

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

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

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

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

1.16 **"Generation Interconnection Agreement"** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp's transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp's interconnection facilities required to accommodate deliveries of Seller's Net

Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

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

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

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

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

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

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

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

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

1.25 **"Net Replacement Power Costs"** shall have the meaning set forth in Section 11.4.1.

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

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

1.28 **"Point of Delivery"** means the high side of the Seller's step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility

is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

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

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

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

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

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

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

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

- 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of \_\_\_\_\_.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
  - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:
- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
  - (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
  - (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations.
  - (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
  - (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3 MW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

- \_\_\_\_\_ Seller affirms and adopts all warranties of this Section 3.2.7, and therefore is not required to post security under Section 10; or
- \_\_\_\_\_ Seller does not affirm and adopt all warranties of this Section 3.2.7, and therefore Seller elects to post the security specified in Section 10 .

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

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

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

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

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

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

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

## **SECTION 5: PURCHASE PRICES**

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

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

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

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

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

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

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

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

6.2 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection



between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.2 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.3 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

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

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

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

## **SECTION 8: METERING**

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

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests disclose an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

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

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

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

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

### **SECTION 10: SECURITY**

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

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

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

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

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

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

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

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

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

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

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

- 10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.
- 10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.
- 10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.
- (a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.
- (b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.
- 10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp

intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

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

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

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

- 11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;
- 11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.
- 11.1.6 Underdelivery. Seller's failure to satisfy the minimum delivery obligation of Section 4.3.

11.2 Notice; Opportunity to Cure.

- 11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.
- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.3 Termination.

- 11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; provided, however that PacifiCorp shall not terminate for a default under Section 11.1.6 unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.
- 11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.
- 11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the sum of the Replacement Price for

the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

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

#### 11.4 Damages.

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

#### 11.4.2 Recoupment of Damages.

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

### **SECTION 12: INDEMNIFICATION AND LIABILITY**

#### 12.1 Indemnities.

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by

Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

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

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

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

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



policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

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

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

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

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

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

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

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

14.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any

action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

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

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

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

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

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

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

#### **SECTION 15: SEVERAL OBLIGATIONS**

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

#### **SECTION 16: CHOICE OF LAW**

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

### **SECTION 17: PARTIAL INVALIDITY**

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

### **SECTION 18: WAIVER**

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

### **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

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

### **SECTION 20: REPEAL OF PURPA**

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

### **SECTION 21: SUCCESSORS AND ASSIGNS**

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

### **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

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

### **SECTION 23: NOTICES**

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

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232  Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 600 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
<b>Scheduling:</b>	(same as street address above)  Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
<b>Payments:</b>	(same as street address above)  Attn: Back Office, Suite 600 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT:  NAME: PacifiCorp Wholesale	
<b>Credit and Collections:</b>	(same as street address above)  Attn: Credit Manager, Suite 1800 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above)  Attn: General Counsel and Legal Counsel  Phone: (503) 813-6266 and (801) 220-4568 Facsimile: (503) 813-7262 and (801) 220-3299	

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

**SECTION 24: COMMISSION INVESTIGATION**

The Seller and PacifiCorp acknowledge that the rates, terms and conditions specified in this Agreement and the related tariffs are being investigated by the Oregon Public Utility Commission. Upon a decision by the Oregon Public Utility Commission in the investigation, PacifiCorp will notify the Seller within ten calendar days. The Seller shall have thirty calendar days from the effective date of the revised standard contract and tariffs complying with the Commission's order to amend this Agreement if the Seller so chooses to adopt the revised standard contract and/or the revised rates, terms and conditions in the tariff approved by the Oregon Public Utility Commission as a result of the investigation.

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

PacifiCorp

Seller

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

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

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

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

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

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

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

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

**Type (synchronous or inductive):**

**Model:**

**Number of Phases:**

**Rated Output (kW):**

**Rated Output (kVA):**

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

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

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

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

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

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

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

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

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

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

[legal description of parcel]

**Power factor requirements:**

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

EXHIBIT B

SELLER'S INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

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

Instructions to Seller:

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

EXHIBIT C  
REQUIRED FACILITY DOCUMENTS

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



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

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

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

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

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

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

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

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

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

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

EXHIBIT E

START-UP TESTING

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

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

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

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

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



Case UM-1129  
PPL Exhibit 402  
Witness: Bruce W. Griswold

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

PACIFICORP

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Exhibit Accompanying Rebuttal Testimony of Bruce W. Griswold  
Standard QF PPA for Existing Projects

January 2006

**POWER PURCHASE AGREEMENT**

**BETWEEN**

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

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

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

### RECITALS

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

B. The Parties desire to enter into this Agreement to replace in its entirety the power purchase agreement dated \_\_\_\_\_ (the "PPA"), which terminates on \_\_\_\_\_ [date]; and

C. Seller intends to continue to deliver Net Output under this Agreement; and

D. Seller intends to continue to operate the Facility as a Qualifying Facility, and is deemed to have established commercial operation under the previous PPA; and

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

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

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



## **AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

### **SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

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

1.3 **"Commission"** means the Oregon Public Utilities Commission.

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

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

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

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

1.8 **"Effective Date"** of this Agreement shall be \_\_\_\_\_, which is the date upon which the PPA terminates.

1.9 **"Energy Delivery Schedule"** shall have the meaning set forth in Section 4.5.

1.10 **"Excess Output"** shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

1.11 **"Facility"** shall have the meaning set forth in Recital A.

1.12 **"Facility Capacity Rating"** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.13 **"FERC"** means the Federal Energy Regulatory Commission, or its successor.

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

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

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

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

1.18 **"Maximum Annual Delivery"** shall have the meaning set forth in Section 4.3.

1.19 **"Minimum Annual Delivery"** shall have the meaning set forth in Section 4.3.

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

1.21 **"Net Energy"** means the energy component, in kWh, of Net Output.

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

1.23 **"Net Replacement Power Costs"** shall have the meaning set forth in Section 11.4.1.

1.24 **"Off-Peak Hours"** means all hours of the week that are not On-Peak Hours.

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

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

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

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

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

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

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

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

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

## **SECTION 2: TERM; EFFECTIVE DATE**

2.1 After execution by both Parties, this Agreement shall become effective on the Effective Date.

2.2 By the Effective Date, Seller shall provide PacifiCorp with (a) a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement, and (b) the Required Facility Documents.

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

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

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

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

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

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

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

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

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

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

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

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

3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

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

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

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or

nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

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

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

Seller hereby declares (Seller initial one only):

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

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

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the

representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

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

4.1 Commencing on the Effective Date, Seller will sell and PacifiCorp will purchase all Net Output from the Facility.

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

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

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

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

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

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

_____	Fixed Price
_____	Gas Market
_____	Banded Gas Market

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

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

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

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

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

6.1 Seller shall not increase the Facility Capacity Rating above that specified in **Exhibit A** or increase the ability of the Facility to deliver Net Output in quantities in excess of the Facility Capacity Rating through any means including, but not limited to, replacement of, modification of, or addition of existing equipment, except with the written consent of PacifiCorp.

6.2 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.2 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.3 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.4 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the



anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

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

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

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

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

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests disclose an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

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

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to

reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

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

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

### **SECTION 10: SECURITY**

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

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

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

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

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

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

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

10.3 Senior Lien. Within thirty (30) days after the Effective Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

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

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

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

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

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

10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and

PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

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

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

10.5 As a condition to providing a Senior Lien or Step-in Rights, Seller shall, within thirty (30) days after the Effective Date, post and maintain, in an amount reasonably determined by PacifiCorp, a Letter of Credit in favor of PacifiCorp, which PacifiCorp, during the term of this Agreement, can draw upon to satisfy amounts PacifiCorp might reasonably incur in order to satisfy environmental remediation requirements.

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

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

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

11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Underdelivery. Seller's failure to satisfy the minimum delivery obligation of Section 4.3.

11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate

this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; provided, however that PacifiCorp shall not terminate for a default under Section 11.1.5 unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

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

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

#### 11.4 Damages.

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

#### 11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.

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

## **SECTION 12: INDEMNIFICATION AND LIABILITY**

### **12.1 Indemnities.**

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement

shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

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

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

13.1 Certificates. No later than the Effective Date of this Agreement, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

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

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

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

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each



insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

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

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

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

14.1 As used in this Agreement, **"Force Majeure"** or **"an event of Force Majeure"** means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

- 14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and
- 14.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and
- 14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

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

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

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

#### **SECTION 15: SEVERAL OBLIGATIONS**

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

#### **SECTION 16: CHOICE OF LAW**

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

#### **SECTION 17: PARTIAL INVALIDITY**

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

#### **SECTION 18: WAIVER**

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

#### **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

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

## **SECTION 20: REPEAL OF PURPA**

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

## **SECTION 21: SUCCESSORS AND ASSIGNS**

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

## **SECTION 22: ENTIRE AGREEMENT**

22.1 Upon the Effective Date, this Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

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

## **SECTION 23: NOTICES**

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

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232  Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 600 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	

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

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

**SECTION 24: COMMISSION INVESTIGATION**

The Seller and PacifiCorp acknowledge that the rates, terms and conditions specified in this Agreement and the related tariffs are being investigated by the Oregon Public Utility Commission. Upon a decision by the Oregon Public Utility Commission in the investigation, PacifiCorp will notify the Seller within ten calendar days. The Seller shall have thirty calendar days from the effective date of the revised standard contract and tariffs complying with the Commission's order to amend this Agreement if the Seller so chooses to adopt the revised standard contract and/or the revised rates, terms and conditions in the tariff approved by the Oregon Public Utility Commission as a result of the investigation.

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

PacifiCorp

Seller

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

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

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

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

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

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

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

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

**Type (synchronous or inductive):**

**Model:**

**Number of Phases:**

**Rated Output (kW):**

**Rated Output (kVA):**

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

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

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

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

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

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

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

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

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

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

[legal description of parcel]

**Power factor requirements:**

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

EXHIBIT B

SELLER'S INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

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

Instructions to Seller:

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

EXHIBIT C  
REQUIRED FACILITY DOCUMENTS

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



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

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

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

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

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

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

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

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

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

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

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



Case UM-1129  
PPL Exhibit 403  
Witness: Bruce W. Griswold

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

PACIFICORP

---

Exhibit Accompanying Rebuttal Testimony of Bruce W. Griswold  
Standard QF Off-System Contract

January 2006

**POWER PURCHASE AGREEMENT**

**BETWEEN**

---

**[an Off-System Qualifying Facility (New or Existing) with 10MW Facility Capacity  
Rating, or Less, and uninterruptible transmission to the Point of Delivery]**

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

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

### RECITALS

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

A. [Existing QFs Only:] Seller owns, operates, and maintains a \_\_\_\_\_ [state type of facility] facility for the generation of electric power, including interconnection facilities, located in \_\_\_\_\_ [City, County, State] with a Facility Capacity Rating of \_\_\_\_\_ kilowatts (kW) as further described in **Exhibit A** and **Exhibit B ("Facility")**; and

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

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

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

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

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

G. Seller intends to transmit Net Output to PacifiCorp via transmission facilities operated by a third party, and PacifiCorp intends to accept scheduled firm delivery of Seller's Net

Output, under the terms of this Agreement, including the Generation Scheduling Addendum attached as **Addendum W** and incorporated contemporaneously herewith.

## **AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

### **SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

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

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

1.3 **"Billing Period"** means calendar months.

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

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

1.4.2 The Facility has completed Start-Up Testing (applies to new Facilities and new upgrades only);

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

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

1.5 **"Commission"** means the Oregon Public Utilities Commission.

1.6 **"Contract Price"** means the applicable price for Net Output stated in Sections 5.1 and 5.2.



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

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

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

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

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

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

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

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

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

1.16 **"Generation Scheduling Addendum"** means **Addendum W**, the portion of this Agreement providing for the measurement, scheduling, and delivery of Net Output from the Facility to the Point of Delivery via a non-PacifiCorp transmission provider.

1.17 **"Interconnected Utility"** means \_\_\_\_\_, the operator of the electric utility system at the Point of Interconnection.

1.18 **"Interconnection Agreement"** means the agreement (or contemporaneous agreements) between Seller and the Interconnected Utility governing interconnection of Seller's Facility at the Point of Interconnection and associated use of the Interconnected Utility's system.

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

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

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

1.22 **"Maximum Annual Delivery"** shall have the meaning set forth in Section 4.3.

1.23 **"Minimum Annual Delivery"** shall have the meaning set forth in Section 4.3.

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

1.25 **"Net Energy"** means the energy component, in kWh, of Net Output.

1.26 **"Net Output"** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller's load other than station use), if any, up to and including the Point of Interconnection. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Interconnection, less any station use not provided by the Facility.

1.27 **"Net Replacement Power Costs"** shall have the meaning set forth in Section 11.4.1.

1.28 **"Off-Peak Hours"** means all hours of the week that are not On-Peak Hours.

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

1.30 **"Point of Delivery"** means the location in PacifiCorp's system where PacifiCorp has agreed to receive Seller's Net Energy, as specified in **Exhibit B**.

1.31 **"Point of Interconnection"** means the point of interconnection between Seller's Facility and the Transmitting Entity's system, if applicable, as specified in **Exhibit B**.

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

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

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

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

1.36 **"Required Facility Documents"** means all licenses, permits, authorizations, and agreements, including an Interconnection Agreement and Transmission Agreement(s), necessary for construction, operation and maintenance of the Facility, and delivery of Facility output, consistent with the terms of this Agreement. The Required Facility Documents are set forth in **Exhibit C**.

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

1.38 **"Scheduled Commercial Operation Date"** shall have the meaning set forth in Recital C.

1.39 **"Scheduled Initial Delivery Date"** shall have the meaning set forth in Recital B.

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

1.41 **"Termination Date"** shall have the meaning set forth in Section 2.4.

1.42 **"Transmission Agreement"** means the agreement (or contemporaneous agreements) between Seller and the Transmitting Entity providing for Seller's uninterrupted right to transmit Net Output to the Point of Delivery.

1.43 **"Transmitting Entity(s)"** means \_\_\_\_\_, the (non-PacifiCorp) operator of the transmission system at the Point of Delivery.

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

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

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

2.2.1 By \_\_\_\_\_, Seller shall provide PacifiCorp with a copy of an executed Interconnection Agreement and an executed Transmission Agreement, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

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

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

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

**SECTION 3: REPRESENTATIONS AND WARRANTIES**

- 3.1 PacifiCorp represents, covenants, and warrants to Seller that:
- 3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.
  - 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
  - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of \_\_\_\_\_.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

- 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:
- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
  - (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
  - (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations.
  - (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.

- (e) **[Applicable only to Sellers with a Facility having a Facility Capacity Rating greater than 3 MW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

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

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

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

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

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

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

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

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

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

## **SECTION 5: PURCHASE PRICES**

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

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

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

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

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

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

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

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed. Seller shall not increase the Facility Capacity Rating above that specified in **Exhibit A** or increase the ability of the Facility to deliver Net Output in quantities in excess of the Facility Capacity Rating through any means



including, but not limited to, replacement of, modification of, or addition to existing equipment, except with the written consent of PacifiCorp.

6.2 Seller shall operate and maintain the Facility in a safe manner in accordance with this Agreement, the Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and the Point of Delivery is disconnected, suspended or interrupted, in whole or in part, pursuant to the Interconnection Agreement or Transmission Agreement(s), or to the extent generation curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement or Transmission Agreement(s). PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.2 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.3 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

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

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

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

## **SECTION 8: METERING AT THE POINT OF INTERCONNECTION**

8.1 Metering shall be performed at the location and in a manner consistent with this Agreement, as specified in **Exhibit B**, and shall provide PacifiCorp with the capability to determine remotely Facility Net Output in real time. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Interconnection.

8.2 Seller shall pay for the installation, testing, and maintenance of any metering required by Section 8.1, and shall provide reasonable access to such meters. PacifiCorp shall reasonably determine when and how to inspect, test, repair and replace the metering equipment. If any of the inspections or tests disclose a measurement error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

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

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

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

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

## **SECTION 10: SECURITY**

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

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

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

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

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

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

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

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

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

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

- 10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.
- 10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.
- 10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.
- 10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.
- (a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.
  - (b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and

operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

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

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

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

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

- 11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Interconnection Agreement and any Transmission Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the

posting of additional Default Security, within thirty (30) days from the date of such request;

- 11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.
- 11.1.6 Underdelivery. Seller's failure to satisfy the minimum delivery obligation of Section 4.3.

11.2 Notice; Opportunity to Cure.

- 11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.
- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.3 Termination.

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

termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

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

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

11.4 Damages.

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

11.4.2 Recoupment of Damages.

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

## **SECTION 12: INDEMNIFICATION AND LIABILITY**

### **12.1 Indemnities.**

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

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

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



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

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

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

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

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

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

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

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

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

14.1 As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall re-commence performance of such obligation, provided that:

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

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

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

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

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

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

#### **SECTION 15: SEVERAL OBLIGATIONS**

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

#### **SECTION 16: CHOICE OF LAW**

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

#### **SECTION 17: PARTIAL INVALIDITY**

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

#### **SECTION 18: WAIVER**

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

#### **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

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

#### **SECTION 20: REPEAL OF PURPA**

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

#### **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the

foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

## **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

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

## **SECTION 23: NOTICES**

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

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232  Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 600 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
<b>Scheduling:</b>	(same as street address above)  Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
<b>Payments:</b>	(same as street address above)  Attn: Back Office, Suite 600 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
<b>Wire Transfer:</b>	To be provided in a separate letter to Seller	
<b>Credit and Collections:</b>	(same as street address above)  Attn: Credit Manager, Suite 1800	

Notices	PacifiCorp	Seller
	Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above) Attn: General Counsel. and Legal Counsel Phone: (503) 813-6266 and (801) 220-4568 Facsimile: (503) 813-7262 and (801) 220-3299	

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

#### **SECTION 24: COMMISSION INVESTIGATION**

The Seller and PacifiCorp acknowledge that the rates, terms and conditions specified in this Agreement and the related tariffs are being investigated by the Oregon Public Utility Commission. Upon a decision by the Oregon Public Utility Commission in the investigation, PacifiCorp will notify the Seller within ten calendar days. The Seller shall have thirty calendar days from the effective date of the revised standard contract and tariffs complying with the Commission's order to amend this Agreement if the Seller so chooses to adopt the revised standard contract and/or the revised rates, terms and conditions in the tariff approved by the Oregon Public Utility Commission as a result of the investigation.

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

PacifiCorp

Seller

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

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

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

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

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

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

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**

**Seller to Complete]**

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

**A. Manufacturer's Nameplate Data:**

**Type (synchronous or inductive):**

**Model:**

**Number of Phases:**

**Rated Output (kW):**

**Rated Output (kVA):**

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

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

**Power factor requirements:**

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

**B. Seller's Estimate of Facility Output Under Ideal (Maximum) or Worst (Minimum) Conditions**

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

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

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

---

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

---

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

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

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

[legal description of parcel]

**EXHIBIT B**

**SELLER'S INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

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

Instructions to Seller:

1. Describe the point(s) of metering, including the type of meter(s), and the owner of the meter(s).
2. Provide single line diagram of Facility including station use meter, Facility output meter(s), Interconnection Facilities, Point of Interconnection,
3. Specify the Point of Delivery, and any transmission facilities on Seller's side of the Point of Delivery used to deliver Net Output.

**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

Interconnection Agreement, Transmission Agreement, QF Certification, and [others to be identified].



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

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

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

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

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

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

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

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

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

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

## EXHIBIT E

### START-UP TESTING

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

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

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

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

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

**GENERATION SCHEDULING ADDENDUM**

WHEREAS, Seller's Facility is not located within the control area of PacifiCorp;

WHEREAS, Seller's Facility will not interconnect directly to PacifiCorp's System;

WHEREAS, Seller and PacifiCorp have not executed, and will not execute, a Generation Interconnection Agreement in conjunction with the Power Purchase Agreement;

WHEREAS, Seller has elected to exercise its right under PURPA to deliver Net Output from its QF Facility to PacifiCorp via one (or more) Transmitting Entities.

WHEREAS, PacifiCorp desires that Seller schedule delivery of Net Output on a firm, hourly basis;

WHEREAS, PacifiCorp does not intend to buy, and Seller does not intend to deliver, more or less than Net Output from the Facility (except as expressly provided, below);

THEREFORE, Seller and PacifiCorp do hereby agree to the following, which shall become part of their Power Purchase Agreement:

**DEFINITIONS**

The meaning of the terms defined in the Power Purchase Agreement and this **Addendum W** shall apply to this Generation Scheduling Addendum:

**"Day"** means midnight to midnight, prevailing local time at the Point of Delivery, or any other mutually agreeable 24-hour period.

**"Energy Imbalance Accumulation,"** or **"EIA,"** means the accumulated difference between Seller's Net Output and the energy actually delivered at the Point of Delivery. A positive accumulated difference indicates Seller's net delivery of Supplemented Output to PacifiCorp.

**"Firm Delivery"** means uninterruptible transmission service that is reserved and/or scheduled between the Point of Interconnection and the Point of Delivery pursuant to Seller's Transmission Agreement.

**"Settlement Period"** means one Day.

**"Supplemented Output"** means any increment of scheduled hourly firm energy delivered to the Point of Delivery in excess of the Facility's Net Output during that same hour.

**"Surplus Delivery"** means any scheduled firm energy delivered by the Facility in excess of hourly Net Output that is not offset by the scheduled delivery of firm energy in deficit of

hourly Net Output during the Settlement Period. PacifiCorp shall accept Surplus Delivery, but shall not pay for it.

**SELLER'S OBLIGATIONS IN LIEU OF THOSE CONTAINED IN A GENERATION INTERCONNECTION AGREEMENT.**

1. **Seller's Responsibility to Arrange for Delivery of Net Output to Point of Delivery.** Seller shall arrange for the Firm Delivery of Net Output to the Point of Delivery. Seller shall comply with the terms and conditions of the Transmission Agreement(s) between the Seller and the Transmitting Entity(s). Whenever Seller fails to provide for Firm Delivery of Net Output, all Net Output delivered via non-firm transmission rights shall be deemed Excess Output, and therefore subject to the payment provision in Section 5.4.

2. **Seller's Responsibility to Schedule Delivery.** Seller shall coordinate with the Transmitting Entity(s) to provide PacifiCorp with a schedule of the next Day's hourly scheduled Net Output deliveries at least 24 (twenty-four) hours prior to the beginning of the day being scheduled; *provided, however*, that a schedule provided on a Day before any non-Business Day shall include schedules for each day to and including the next Business day. The term "Business Day" shall have the meaning set forth in Pacific Power & Light's Schedule 37.

3. **Seller's Responsibility to Maintain Interconnection Facilities.** Except for metering, as provided in Section 8.2, PacifiCorp shall have no obligation to install or maintain any interconnection facilities on Seller's side of the Point of Interconnection. PacifiCorp shall not pay any costs arising from Seller interconnecting its Facility with the Transmitting Entity(s).

4. **Seller's Responsibility to Pay Transmission Costs.** Seller shall make all arrangements for, and pay all costs associated with, transmitting Net Output to PacifiCorp, scheduling energy into the PacifiCorp system and any other costs associated with delivering the Seller's Net Output to the Point of Delivery.

5. **Energy Reserve Requirements.** The Transmitting Entity shall provide all generation reserves as required by the WECC and/or as required by any other governing agency or industry standard to deliver the Net Energy to the Point of Delivery, at no cost to PacifiCorp.

6. **Seller's Responsibility to Report Net Output.** On or before the tenth (10<sup>th</sup>) day following the end of each Billing Period, Seller shall send a report documenting hourly station service, Excess Output, and Net Output from the Facility during the previous Billing Period, in columnar format substantially similar to the attached **Example 1**. If requested, Seller shall provide an electronic copy of the data used to calculate Net Output, in a standard format specified by PacifiCorp. For each day Seller is late delivering the certified report, PacifiCorp shall be entitled to postpone its payment deadline in Section 9 of this Power Purchase Agreement by one Business Day. Seller hereby grants PacifiCorp the right to audit its certified reports of hourly Net Output. In the event of discovery of a billing error resulting in underpayment or overpayment, the Parties agree to limit recovery to a period of three years from the date of discovery.

7. **Seller's Supplemental Representations and Warranties.** In addition to the Seller's representations and warranties contained in Section 3 of this Agreement, Seller warrants that:

- (a) Seller's Supplemented Output, if any, results from Seller's purchase of some form of energy imbalance ancillary service;
- (b) The Transmitting Entity(s) requires Seller to procure the service, above, as a condition of providing transmission service;
- (c) The Transmitting Entity requires Seller to schedule deliveries of Net Output in increments of no less than one (1) megawatt;
- (d) Seller is not attempting to sell PacifiCorp energy or capacity in excess of its Net Output; and
- (e) The energy imbalance service, above, is designed to correct a mismatch between energy scheduled by the QF and the actual real-time deliveries by the QF.

7. **Seller's Right to Deliver Supplemented Output.** In reliance upon Seller's warranties in Section 5, above, PacifiCorp agrees to accept and pay for Supplemented Output; *provided, however, that* Seller agrees to achieve an EIA of zero (0) kilowatt-hours during On-Peak Hours and zero (0) kilowatt-hours during Off-Peak Hours at the end of each Settlement Period.

(a) **Remedy for Seller's Failure to Achieve zero EIA.** In the event Seller does not achieve zero EIA at the end of each Settlement Period, PacifiCorp will declare any positive balance to be Surplus Delivery, and Seller's EIA will be reset to zero. PacifiCorp will include an accounting of Surplus Delivery in each monthly statement provided to Seller pursuant to Section 9.1 of this Agreement.

(b) **Negative Energy Imbalance Accumulations.** Any negative EIA (indicating that the Transmitting Entity has delivered less than Seller's Net Output), will be reset to zero at the end of each Settlement Period without any corresponding compensation by PacifiCorp.

(c) **PacifiCorp's Option to Change EIA Settlement Period.** In the event PacifiCorp reasonably determines that doing so likely will have a *de minimis* net effect upon the cost of Seller's Net Output to PacifiCorp, it may elect to enlarge the Settlement Period, up to a maximum of one Contract Year. Conversely, if PacifiCorp reasonably determines, based on the QF's performance during the current year, that reducing the Settlement Period likely will significantly lower the net cost of Seller's Net Output to PacifiCorp, it shall have the right to shorten Seller's EIA settlement period beginning the first day of the following Contract Year. However, in no case shall the Settlement Period be less than one Day. In the event, a regional transmission organization ("RTO") or

equivalent is formed and PacifiCorp is a participant, the EIA Settlement Period shall default to RTO's specified settlement period and any other scheduling conditions that could affect this Agreement.



**Example of Seller's Output Reporting Requirement**

		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
				<b>(=A-B)</b>		<b>(=Max (0, C-D))</b>
		Meter Reading <sup>ψ</sup>	Meter		Facility	
	Hour	at Point of	reading at		Capacity	
	ending	Interconnection	Station	Net Output	Rating	Excess Output
Day	(HE)	(MWh)	Power	(MWh)	(MW)	(MWh)
			Meter*			
1	7:00	0.50	0.01	0.49	1.50	
1	8:00	0.50	0.02	0.48	1.50	
1	9:00	0.50	0.01	0.49	1.50	
1	10:00	0.50	0.01	0.49	1.50	
1	11:00	0.50	0.01	0.49	1.50	
1	12:00	1.60	0.01	1.59	1.50	0.09
1	13:00	1.70	0.01	1.69	1.50	0.19
1	14:00	1.60	0.01	1.59	1.50	0.09
1	15:00	1.50	0.01	1.49	1.50	
1	16:00	1.50	0.01	1.50	1.50	
1	17:00	1.50	0.00	1.50	1.50	
1	18:00	1.50	0.01	1.49	1.50	
1	19:00	0.50	0.02	0.48	1.50	
1	20:00	0.50	0.01	0.49	1.50	

<sup>ψ</sup> Meter Reading may be in units of kWh but are shown in MWh for example purposes. Meter Reading shall be adjusted for losses, if any, between point of metering and the Point of Interconnection.

\* Does not apply if Station Service is provided from the gross output of the Facility.



Case UM-1129  
PPL Exhibit 500  
Witness: David J. Engberg

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

PACIFICORP

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**Rebuttal Testimony of David J. Engberg**

**Natural Gas Pricing**

January 2006

1    **Q.     Please state your name, business address and present position with**  
2       **PacifiCorp (the Company).**

3    A.    My Name is David Engberg, my business address is 825 N.E. Multnomah, Suite  
4           600, Portland, Oregon 97232, and my present position is Manager, Energy Market  
5           Analysis in the Commercial and Trading Organization's Planning and Analytics  
6           Department.

7    **Q.     Briefly describe your education and business experience.**

8    A.    I received undergraduate and graduate degrees in Civil Engineering from the  
9           University of California, Davis. I received a PhD from The Johns Hopkins  
10          University in Environmental Engineering with emphasis in the field of  
11          engineering economic systems. I have worked for the Company since 1981 and  
12          have held various positions in the resource planning and strategic planning areas,  
13          among others. I have been in my present position since 2001.

14   **Q.     Please describe your current duties.**

15   A.    I am responsible for commodity market analyses and price forecasting used  
16          throughout PacifiCorp. This includes the regular preparation of long-range price  
17          forecasts for western electricity markets. My duties also include analysis of short-  
18          term supply and demand fundamentals and their effects on market prices, in  
19          support of PacifiCorp's Commercial and Trading business. Regularly tracking  
20          and analyzing natural gas markets is an integral part of these responsibilities.

21   **Q.     What is the purpose of your testimony?**

22   A.    My testimony is in response to the testimony of Messrs. Reading and Carver on  
23          natural gas prices used in the Company's Phase I Compliance Filing in this case.

1    **Q.    Do any parties question the reasonableness of PacifiCorp's natural gas price**  
2       **forecast in its UM 1129 Phase I filing?**

3    A.    Yes. ODOE witness Dr. Phil Carver and witness Dr. Don Reading on behalf of  
4       Sherman County Court and the J.R. Simplot Company both challenge the  
5       reasonableness of PacifiCorp's gas prices. Dr. Reading compares near-term gas  
6       prices from PacifiCorp's Phase I filing with more recent futures contract prices on  
7       the New York Mercantile Exchange (NYMEX) and concludes that more recent  
8       NYMEX prices are higher. Dr. Carver makes a similar comparison, although he  
9       mistakenly assumes that the near-term prices in PacifiCorp's Phase I filing were  
10      provided by a consultant. He recommends that the Commission require utilities  
11      to update their filings with more recent market prices. He also recommends that  
12      the regional hub prices in future compliance filings be based on Commission  
13      prescribed basis differentials off of NYMEX futures prices and that prices beyond  
14      the six-year horizon of NYMEX futures contracts be based on a simple nominal  
15      inflation assumption. I will address these positions and recommendations below.

16   **Q.    Please describe the source of natural gas prices included in PacifiCorp's**  
17       **Phase I compliance filing.**

18   A.    Natural gas prices for the Rockies/Opal delivery point, provided in Exhibit E –  
19       Schedule 37 and Pricing Summary Table, were derived from PacifiCorp's most  
20       recent Official Price Projection that was available at the time the filing was  
21       prepared. That Official Price Projection was published on March 31, 2005, and  
22       used in the Company's avoided cost analysis conducted in June, 2005.

1    **Q.    Are those prices consistent with market prices for gas prevalent at that time?**

2    A.    Yes. PacifiCorp's Official Price Projection encompasses both natural gas and  
3           electricity prices for western points of delivery. The first six years of these prices  
4           are market prices. PacifiCorp obtains market prices on each trading day. In the  
5           case of Rockies/Opal, market prices are frequently quoted as a basis to Henry  
6           Hub, which is the delivery point for the NYMEX futures contracts, which are also  
7           consistently available through the six year horizon.

8    **Q.    Is ODOE witness Dr. Phil Carver's characterization of PacifiCorp's short-**  
9           **range forecast of natural gas prices accurate?**

10   A.    No. Dr. Carver assumes that PacifiCorp relies on a consultant's forecast for the  
11           period for which market prices are available. As I just described, PacifiCorp  
12           relies on market prices for the first six years of its Official Price Projection,,  
13           including market prices for Rockies/Opal.

14   **Q.    How do you account for the differences in natural gas forward or futures**  
15           **prices referenced by Dr. Carver and Dr. Reading and those in PacifiCorp's**  
16           **Phase I filing?**

17   A.    Both witnesses observe that natural gas prices have shifted substantially this year  
18           since the time that PacifiCorp's Phase I filing was prepared. This is correct and in  
19           fact, natural gas prices over the last several years have been volatile.

20   **Q.    What are the implications of this price volatility?**

21   A.    Whenever natural gas prices need to be fixed or established for a period of time,  
22           such as in PacifiCorp's Phase I filing, subsequent events will inevitably cause  
23           shifts in market prices that cause them to differ from market prices that were

1 previously established. This can occur over even a relatively short period of time.  
2 For example, NYMEX futures prices for 2006 dropped by an average of  
3 \$1.84/MMBtu or 15 percent in a matter of weeks at the end of 2005.

4 **Q. PacifiCorp's Phase I filing is dated July 12, 2005. Why weren't more recent**  
5 **market prices than March 31 used in that filing?**

6 A. PacifiCorp used the most recent Official Price Projection to prepare its Phase I  
7 filing. The avoided cost studies utilized in that filing were undertaken before the  
8 next Official Price Projection was completed on June 30, 2005.

9 **Q. For what purposes does PacifiCorp use its Official Price Projection?**

10 A. PacifiCorp's Official Price Projection is applied uniformly and consistently for all  
11 uses requiring long-range commodity price assumptions. These include  
12 integrated resource planning, competitive resource acquisitions, risk management  
13 and financial reporting purposes. That is, the Company's decisions regarding  
14 what resources will be acquired are based in part on the Official Price Projection.  
15 Disregarding that in favor of some other price projections would cause a  
16 movement away from the ratepayer neutrality standard of PURPA.

17 **Q. Does PacifiCorp follow well-established processes and controls in developing**  
18 **and implementing its Official Price Projection?**

19 A. Yes, it does. The importance of the purposes for which it is used require careful  
20 controls.

21 **Q. Please describe those processes and controls used by the Company.**

22 A. PacifiCorp uses a computer model of the Western Interconnect to simulate  
23 western electricity markets and prices over a twenty-year horizon and derives the

1 long-range portion of its Official Price Projection from this model. The Company  
2 undertakes a quarterly review of all assumptions used in its long-range electricity  
3 price projections. Natural gas price projections are a key element of this review,  
4 but a wide range of assumptions is reviewed for their use in the Company's model  
5 of the Western Interconnect's markets. Before the quarterly price projection is  
6 approved, all assumptions and their impacts on market prices are subjected to  
7 validation and quality control tests and reviewed by PacifiCorp's Risk  
8 Management Group and the final Official Price Projection must be approved by a  
9 management-level Steering Committee. At the end of each calendar quarter, the  
10 reviewed and approved long-range price projections are combined with current  
11 market prices to form the new Official Price Projection. Because the Official  
12 Price Projection is used for financial accounting and reporting, it is also regularly  
13 reviewed by PacifiCorp's outside auditor as part of its processes.

14 **Q. What is the source of long-range natural gas price projections used in**  
15 **PacifiCorp's Official Price Projection?**

16 A. PacifiCorp relies on advisory services from the PIRA Energy Group for long-  
17 range natural gas price forecasts. PIRA is a widely recognized and respected  
18 source with an extensive client list and thirty years experience analyzing North  
19 American natural gas markets, global oil markets, and other regional energy  
20 markets. PIRA regularly reviews long-range trends and uncertainties affecting  
21 natural gas and other energy commodity markets and updates its forecasts as  
22 warranted.



1   **Q.    Does PacifiCorp check PIRA's natural gas price forecast for reasonableness?**

2   A.    Yes. PacifiCorp periodically compares PIRA's long-range forecast to other  
3       forecasts, including those from CERA, Wood Mackenzie and the U.S.  
4       Department of Energy/Energy Information Administration's Annual Energy  
5       Outlook.

6   **Q.    How does PacifiCorp utilize PIRA's long-range natural gas forecast?**

7   A.    PIRA's long-range natural gas forecast utilized in PacifiCorp's March 31, 2005  
8       Official Price Projection extended until 2015. Beyond that date PacifiCorp  
9       applied its long-range inflation assumption to escalate natural gas prices. PIRA's  
10       long-range natural gas forecast includes annual average values for the Henry Hub  
11       index and basis differentials for western points of delivery for certain of those  
12       years. PacifiCorp applies these basis differentials and monthly price distributions  
13       from PIRA's short-term forecast to derive long-range monthly values, including  
14       prices for the Rockies/Opal delivery point used in PacifiCorp's Phase I filing.  
15       PIRA recently extended its long-range natural gas forecast to the year 2020.

16   **Q.    Does PIRA's long range forecast show escalation different from the rate of**  
17       **inflation?**

18   A.    Yes it has and is likely to in the future. In PIRA's forecast utilized in the March  
19       31, 2005 Official Price Projection, natural gas prices at Henry Hub declined in  
20       real terms by about 12 percent between 2011 and 2015, or about 3 percent per  
21       year on average.

1   **Q.     Are there legitimate reasons that long-range natural gas prices should**  
2       **escalate at a rate different from inflation?**

3   A.    Yes. PIRA describes a number of market forces that will tend to drive natural gas  
4       prices down over the medium term and up over the long term in its forecasts. I'll  
5       mention two primary factors that will affect the trajectory of North American  
6       natural gas prices. One is the timing of new supplies that should restore a better  
7       balance of supply in relation to demand, including the approaching influx of LNG  
8       imports. Exerting a counter-effect in the longer term is escalation of discovery  
9       and development costs for incremental gas supplies in North America's mature  
10      producing areas such as the Gulf of Mexico. The relative strength and timing of  
11      these trends will likely cause natural gas prices to escalate at rates different than  
12      the general rate of inflation.

13   **Q.     Do you agree with Dr. Carver's recommendation that PacifiCorp should**  
14       **merely apply a nominal inflation to natural gas prices beyond the period for**  
15       **which NYMEX futures prices are available?**

16   A.    No. To the extent that credible analysis and emerging events support price  
17       escalation different than nominal inflation, that information should not be ignored  
18       or discarded.

19   **Q.     Dr. Carver also recommends that the Commission should establish a fixed**  
20       **basis differential to be applied to NYMEX Henry Hub prices to derive prices**  
21       **for western points of natural gas delivery. Do you agree with that**  
22       **recommendation?**

23   A.    No. It would be a mistake to assume a constant, fixed basis differential for

1 western points of delivery. Market prices for western points of delivery tend to  
2 shift in relation to Henry Hub prices and a constant and static basis differential  
3 would ignore such shifts. As I testified, the prices for the Rockies/Opal market  
4 included in PacifiCorp's Official Price Projection are based on market quotes or  
5 derived from market prices for that region. Valid market prices should not be  
6 discarded in lieu of a fixed, static basis differential assumption.

7 **Q. In light of the various pieces of testimony addressing natural gas prices, what**  
8 **is your recommendation?**

9 A. I recommend that the Commission find that the Company's natural gas prices  
10 used in its avoided cost prices in its Phase I Compliance filing are reasonable, as  
11 supported by this testimony and the testimony of Staff witness Steve Chriss.

12 **Q. Does this conclude your direct testimony?**

13 A. Yes.



Case UM-1129  
PPL Exhibit 600  
Witness: Catherine F. Reinhart

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

PACIFICORP

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**Rebuttal Testimony of Catherine F. Reinhart**  
**Insurance**

January 2006

1   **Q.    Please state your name, business address and present position with**  
2       **PacifiCorp (the Company).**

3   A.    My name is Catherine Reinhart, my business address is 825 N.E. Multnomah,  
4       Suite 1800, Portland, Oregon 97232, and my present position is Senior Risk and  
5       Insurance Analyst.

6   **Q.    Please briefly describe your education and business experience.**

7   A.    I have attended Portland Community College and Clackamas Community  
8       College, taking business and insurance courses. I have worked within the  
9       insurance industry since January 1967, holding positions with insurance  
10      companies, local agencies, national brokering offices, and Insurance and Risk  
11      Management departments of large companies.

12   **Q.    What are your duties with the Company?**

13   A.    My duties include administration of the insurance programs including placement  
14      of coverage and renewals. I have day to day responsibility to respond to the  
15      insurance needs of the Company on property, casualty, and surety issues.

16   **Q.    What is the purpose of your testimony?**

17   A.    I will respond to the testimony of Mr. Dougherty and Mr. Woodin regarding the  
18      appropriateness of requiring QFs to use insurance companies that have a specified  
19      rating by the A.M. Best Company.

20   **Q.    What are the particular recommendations to which you respond?**

21   A.    Mr. Dougherty recommends that QFs be allowed to obtain insurance from any  
22      insurance company that writes insurance coverage in Oregon, rather than  
23      requiring at least a rating of "A-" from A.M. Best Company, as proposed by the

1 Company. Mr. Woodin also takes exception to the rating requirement proposed  
2 by PacifiCorp.

3 **Q. What is A.M. Best Company?**

4 A. A.M. Best Company is the oldest, most widely recognized, full-service rating  
5 agency specializing in the insurance industry. In its 105 year history A.M. Best's  
6 financial information and ratings on insurance companies have helped to  
7 encourage a financially strong industry through the prevention and detection of  
8 insurer insolvency. It provides ratings that reflect an insurer's ability to satisfy its  
9 obligations. The rating is the information that is available to assist the public  
10 (insurance buyer) in making sound decisions in the choice of an insurance  
11 provider. As reflected in Mr. Dougherty's testimony, A.M. Best provides ratings  
12 in two general categories: Secure and Vulnerable. A.M. Best describes Secure  
13 insurers as having a strong or good ability to meet their long-term obligations to  
14 members and policyholders. Those classified in the Secure rating categories  
15 ("B+" rated and above) maintain a level of financial strength that is not vulnerable  
16 to unfavorable changes in the business, economic or regulatory environment.  
17 Based on A.M. Best's insolvency studies, companies rated in the Secure category  
18 have experienced a failure frequency that is significantly lower than companies in  
19 Vulnerable category ("B" rated and below) and companies not rated or followed  
20 by A.M. Best.

1   **Q.    Why you disagree with the recommendations that the A.M. Best rating not**  
2       **be required, and that a QF be allowed to obtain insurance from any**  
3       **company that writes insurance coverage in Oregon?**

4    A.   Such a reduced standard would expose the utility and its customers to greater risk  
5       that the insurer will not be able to meet its obligations to its insureds. Requiring  
6       the rating from A.M. Best is a reasonable means of insuring a prudent choice in  
7       the insurer selected to provide coverage over the QF operation. The use of a  
8       rating from A.M. Best in this way is standard in the industry. While Mr.  
9       Dougherty presents information that most of the insurers in Oregon have at least a  
10      B+ rating, the fact that there are insurers writing coverage in Oregon without as  
11      good a rating means that under his proposal, there would be increased risk of an  
12      insurer not having the financial ability to meet its obligations.

13   **Q.    Why not allow a B+ or better rating, as recommended by Mr. Dougherty if**  
14       **the Commission decides that the utilities can require a minimum rating from**  
15       **A.M. Best?**

16   A.   While requiring at least a B+ is certainly better than no rating requirement, it is  
17       preferable to require a rating that is more solidly within the Secure category, as it  
18       reflects a stronger position which translates to reduced risk for the QF, the  
19       Company and its customers.

20   **Q.    Does this conclude your testimony?**

21   A.   Yes.



