

Issues	PacifiCorp Section #	Wasatch Wind Section #	PacifiCorp Proposed Language	Wasatch Wind Proposed Language
Commercial Operation Percentage	1.1		“Commercial Operation” means the Facility is fully operational and reliable, at not less than ninety percent (90%) of the Expected Facility Capacity Rating,”	“Commercial Operation” means the Facility is fully operational and reliable, at not less than eighty percent (80%) of the Expected Facility Capacity Rating,”
Guaranteed Commercial Operation	1.1		“Guaranteed Commercial Operation Date” means ninety days after the Scheduled Commercial Operation Date as the same may be extended due to a Force Majeure Event.	“Guaranteed Commercial Operation Date” means one hundred twenty days after the Scheduled Commercial Operation Date as the same may be extended due to a Force Majeure Event.
Replacement Price and Liquidated Damages	1.1		“Replacement Price” means the price at which PacifiCorp, acting in a commercially reasonable manner, replaces any undelivered energy that Seller is required to deliver under this Agreement plus the price to replace Renewable Energy Credits not delivered, if applicable. The Replacement Price is deemed, for purposes of this Agreement, to equal the Firm Market Price Index during the period of underdelivery (plus \$5/Mwh, if PacifiCorp must replace RECs). If, after the Effective Date, a liquid market for Renewable Energy Credits emerges in a form and location that PacifiCorp reasonably determines states the market value of the Renewable Energy Credits delivered under this Agreement, the replacement price for Renewable Energy Credits shall be the market price, else the replacement	“Replacement Energy” means the energy provided by the Seller to replace any or all of the Output Shortfall as defined in Section 6.11.2. This Replacement Energy is defined as a Network Resource and will be provided to the PacifiCorp transmission system. The replacement energy is delivered on day(s) determined at the sole discretion of the Seller within one year after an Output Shortfall is determined per Section 6.11.2. The Replacement Energy will be delivered to PacifiCorp’s transmission system in an equivalent aggregate ratio as the previous Contract Year’s On Peak/Off Peak energy delivered by the Facility and will not exceed the delivery requirements of the Output Shortfall.  “Replacement Energy Contract” means a Seller

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			price shall be \$5/MWh.	executed irrevocable firm energy delivery contract from a credit worthy energy production facility committed to delivering a Contract Year of Replacement Energy to the PacifiCorp system as a Network Resource as required by Seller or within 30 days notice from PacifiCorp only at times determined by supplier to meet the obligations of Seller for Replacement Energy. The right for PacifiCorp to demand the Replacement Energy is limited to within 30 days of each Contract Year end and will be delivered over the following Contract Year.
	6.11.2		<p><u>Liquidated Damages for Output Shortfall.</u> If the Availability in any given Contract Year falls below the Guaranteed Availability for that Contract Year, the resulting shortfall shall be expressed in MWh as the “Output Shortfall.” The Output Shortfall shall be calculated in accordance with the following formula:</p> <p>Output Shortfall = (Guaranteed Availability – Availability) x _____ MWh</p> <p>If an Output Shortfall occurs in any given Contract Year, Seller shall pay PacifiCorp liquidated damages equal to the product of (i) the Output Shortfall for that Contract Year, multiplied by (ii) PacifiCorp’s Cost to Cover for that Contract Year; <i>provided, however</i>, that if the Commercial Operation Date occurs in the first or last Contract Year, the Output Shortfall shall be</p>	<p><u>Liquidated Damages language should be stricken from the contract for “small projects” less than 20 MW as an inappropriate provision for a non firm wind resource. If the commission finds that LD’s are necessary then the following should be adopted:</u></p> <p><u>Liquidated Damages for Output Shortfall.</u> If the Availability in any given Contract Year falls below the Guaranteed Availability for that Contract Year, the resulting shortfall shall be expressed in MWh as the ”Output Shortfall.” The Output Shortfall shall be calculated in accordance with the following formula:</p> <p>OutputShortfall = ((Guaranteed Availability – Availability) x _____ MWh) – Replacement Energy:</p>

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			<p>prorated on the basis of the number of days in that Contract Year. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to the Facility’s failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty, (b) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages, and (c) the required payment by Seller of such liquidated damages shall be PacifiCorp’s sole remedy for such deficiency in Net Output. An Example calculation of liquidated damages for an Output Shortfall is included in Exhibit 6.11.2.</p>	<p>If the Output Shortfall Calculation is a negative number then for the purposes of this contract the Output Shortfall is zero. If an Output Shortfall occurs in any given Contract Year, Seller shall pay PacifiCorp liquidated damages equal to the product of (i) the Output Shortfall for that Contract Year, multiplied by (ii) PacifiCorp’s Cost to Cover for that Contract Year. Replacement Energy may be used to cover any or all of the Output Shortfall and will alleviate the requirement for liquidated damages for that portion of the Output Shortfall that is covered by Replacement Energy. If the Output Shortfall occurs in the first or last Contract Year, the Output Shortfall shall be prorated on the basis of the number of days in that Contract Year. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to the Facility’s failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty, (b) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages, and (c) the required payment by Seller of such liquidated damages shall be PacifiCorp’s sole remedy for such deficiency in Net Output. An Example calculation of liquidated damages for an Output Shortfall is included in Exhibit 6.11.2.</p>
Termination	2.6		<p><u>Termination.</u> If the Facility does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, including any extension pursuant to Section 14.2 due to Force Majeure, PacifiCorp may terminate, without any</p>	<p><u>Termination.</u> If the Facility does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, including any extension pursuant to Section 14.2 due to Force Majeure, PacifiCorp may terminate, without any</p>

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			compensation to Seller, this Agreement pursuant to Section 14.2.	compensation to Seller, this Agreement pursuant to Section 14.2. In no event shall PacifiCorp have the unilateral right to terminate this Agreement if a duly authorized representative of Seller shall certify in writing within 10 days of request by PacifiCorp that the failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date was the result of conditions or events beyond the control of Seller and that Seller is making all reasonable efforts to achieve Commercial Operation.
Guaranteed Availability	8.1		<u>Guaranteed Availability.</u> Seller guarantees that the annual Availability of the Facility (the “Guaranteed Availability”) for (i) the first Contract Year shall be no less than 0.70, and (ii) for the second Contract Year shall be no less than 0.80. Beginning with the third Contract Year and for each Contract Year thereafter, the Guaranteed Availability for each Contract Year shall be 0.875, with such annual Availability to be calculated for purposes of this Section 0 for each Contract Year.	<u>Guaranteed Availability.</u> Seller guarantees that the annual Availability of the Facility (the ”Guaranteed Availability”) for (i) the first Contract Year shall be no less than 0.70, and (ii) for the second Contract Year shall be no less than 0.80. Beginning with the third Contract Year and continuing through the through the remainder of the Contract the Guaranteed Availability shall be .80.  If the Seller’s Facility experiences a forced outage due to equipment failure which is not caused by an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller’s Facility, Seller may, after giving notice as provided below, temporarily suspend all deliveries of Net Energy to PacifiCorp from the Facility or from individual generation unite(s) within the Facility affected by the forced outage for a period of not

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				<p>less than 48 hours to correct the forced outage condition (“Declared Suspension of Energy Deliveries”). The Seller’s Declared Suspension of Energy Deliveries will begin at the start of the next full hour following the Seller’s notification as specified below and will continue for the time as specified (not less than 48 hours) in the written notification provided by the Seller</p> <p>If the Seller desires to initiate a Declared Suspension of Energy Deliveries, the Seller will notify PacifiCorps generation coordination desk, by email to wsc@PacifiCorp.com by telephone (503-813-5394), or by fax (503-813-5512), of Seller’s unscheduled outage. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during non-peak hours. The beginning hour of the Declared Suspension of Energy Deliveries will be at the earliest the next full hour after making contact with PacifiCorp. The Seller will, within 24 hours after the telephone contact, provide PacifiCorp a written notice in accordance with Section 21 declaring the beginning hour and duration of the Declared Suspension of Energy Deliveries and a description of the conditions that caused the Seller to initiate a Declared Suspension of Energy Deliveries. PacifiCorp will review the documentation provided by the Seller to determine PacifiCorp’s acceptance of the described forced outage as qualifying for a Declared Suspension of Energy Deliveries.</p>

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				PacifiCorp acceptance of the Seller s forced outage as an acceptable forced outage will be based upon the clear documentation provided by the Seller that the forced outage is not due to an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller s Facility. Seller agrees to retain all performance related data for the Facility for a minimum of three years, and to cooperate with PacifiCorp in the event PacifiCorp decides to audit Seller s reporting of Facility Net Output and Adjusted Scheduled Monthly Capacity Factor.
Termination of Duty to Buy	10.4		<u>Termination of Duty to Buy.</u> If this Agreement is terminated because of Seller’s default, Seller may not thereafter require or seek to require PacifiCorp to purchase energy from the Facility under PURPA (or any other Requirements of Law) for any periods that would have been within the Term had this Agreement remained in effect. Seller hereby waives its rights to require PacifiCorp to do so. This Section 0 shall survive the termination of this Agreement.	<u>Termination of Duty to Buy.</u> Removed
Right to Terminate	14.5		<u>Right to Terminate.</u> If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding 180 consecutive days (despite the affected Party’s effort to take all reasonable steps	Not included.

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			to remedy the cause of the Force Majeure with all reasonable dispatch), then the Party not affected by the event of Force Majeure, with respect to its obligations under this Agreement, may terminate this Agreement by giving ten (10) days prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to period following the effective date of such termination; <i>provided, however</i> , that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.	
Availability Definition	1.1		“Availability” means, for any Contract Year, the ratio of (x) the aggregate sum of the turbine-minutes in which each of the wind turbines at the Facility was available to operate during a Contract Year over (y) the product of [insert actual number of turbines for the project] wind turbines multiplied by the number of minutes in such Contract Year. A wind turbine shall be deemed <i>not</i> available to operate during minutes in which the turbine (a) is in an emergency, stop, service mode or pause state; (b) is in run” status and faulted; (c) is included in a Permitted Outage, Planned Outage, Maintenance Outage or Forced Outage; or (d) is otherwise not operational or capable of delivering energy to the	“Availability” means, for any Contract Year, the ratio of (x) the aggregate sum of the turbine-minutes in which each of the wind turbines at the Facility was available to operate during a Contract Year over (y) the product of (9) wind turbines multiplied by the number of minutes in such Contract Year. A wind turbine shall be deemed <i>not</i> available to operate during minutes in which the turbine (a) is in an emergency, stop, service mode or pause state; (b) is in run” status and faulted; (c) is included in a Permitted Outage, Planned Outage, Maintenance Outage or Forced Outage; or (d) is otherwise not operational or capable of delivering energy to the Facility Busbar; <i>provided, however</i> , that

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			<p>Facility Busbar; <i>provided, however,</i> that notwithstanding the preceding sentence, for purposes of determining Availability, a wind turbine shall be deemed to have been available to operate to the extent that it is unavailable due to (i) an event of Force Majeure; (ii) a default by PacifiCorp under this Agreement; (iii) inadequate or excessive wind speed at times when the wind turbine would otherwise be available; (iv) the wind turbine not yet resuming operations because, under such normal operating parameters, the turbine has not yet "cut in" following an event of inadequate or excessive wind speed; or (v) other climatic conditions that exceed such normal operating parameters (including but not limited to blade icing and ambient air temperatures outside of the normal operating parameters</p>	<p>notwithstanding the preceding sentence, for purposes of determining Availability, a wind turbine shall be deemed to have been available to operate to the extent that it is unavailable due to (i) an event of Force Majeure; (ii) a default by PacifiCorp under this Agreement; (iii) inadequate or excessive wind speed at times when the wind turbine would otherwise be available; (iv) the wind turbine not yet resuming operations because, under such normal operating parameters, the turbine has not yet "cut in" following an event of inadequate or excessive wind speed; (v) other climatic conditions that exceed such normal operating parameters (including but not limited to blade icing and ambient air temperatures outside of the normal operating parameters) <b>or (vi) a "Declared Suspension of Energy Deliveries"</b>.</p>
Test Energy	5.1.1		<p><u>Prior to Commercial Operation.</u> For all Test Energy delivered to PacifiCorp more than ninety (90) days prior to the Scheduled Commercial Operation Date, PacifiCorp <b>Error! Bookmark not defined.</b> shall pay Seller <b>Error! Bookmark not defined.</b> seventy-five percent (75%) of the Contract Price specified for the then current Contract Year. For all Test Energy delivered to PacifiCorp ninety (90) days or less than ninety (90) days prior to the Scheduled Commercial Operation Date, PacifiCorp <b>Error! Bookmark not defined.</b> shall pay Seller <b>Error! Bookmark not defined.</b> one hundred percent (100%) of the Contract Price specified for the then current</p>	<p><u>Prior to Commercial Operation.</u> For all Test Energy delivered to PacifiCorp more than (180) days prior to the Scheduled Commercial Operation Date, PacifiCorp shall pay Seller seventy-five percent (75%) of the Contract Price specified for the then current Contract Year. For all Test Energy delivered to PacifiCorp one hundred eighty days (180) to ninety (90) days prior to the Scheduled Commercial Operation Date, PacifiCorp shall pay Seller 90% (90%) of the Contract Price specified for the current Contract Year. For all Test Energy delivered to PacifiCorp less than ninety (90) days prior to the Scheduled Commercial Operation Date,</p>



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			Contract Year.	PacifiCorp shall pay Seller 100% (100%) of the Contract Price specified for the current Contract Year.
Project Development Security	7.1		<u>Project Development Security.</u> Project Development Security is not required if Seller <b>Error! Bookmark not defined.</b> meets or exceeds the Credit Requirement.	<u>Project Development Security.</u> <b>Project Development Security is not required.</b>
Default Security	7.2		All of Section 7.2 is included in entirety.	Default Security not required ie. all of section 7.2 is removed.
Delay Damages	1.1		“Delay Damages” are the damages payable by Seller <b>Error! Bookmark not defined.</b> under the circumstances described in Section 2, and are equal to \$[will be determined by PacifiCorp credit group] per MW <b>Error! Bookmark not defined.</b> of Expected Facility Capacity Rating for each day commencing on the day after the Scheduled Commercial Operation Date and ending on the Commercial Operation Date	“Delay Damages” are the damages payable by Seller under the circumstances described in Section 2, and are equal to the lesser of \$_____ [will be determined by PacifiCorp credit group] per MW of Expected Facility Capacity Rating or PacifiCorp’s Cost to Cover for each day commencing on the day after the Scheduled Commercial Operation Date and ending on the Commercial Operation Date.
Telemetry	6.9.1		<u>Telemetry.</u> Seller <b>Error! Bookmark not defined.</b> shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility <b>Error! Bookmark not defined.</b> pursuant to the Generation Interconnection Agreement and to PacifiCorp <b>Error! Bookmark not defined.</b> on a real-time basis and will operate such equipment	<u>Telemetry.</u> Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Generation Interconnection Agreement and to PacifiCorp and will operate such equipment when requested by PacifiCorp to indicate:

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			<p>when requested by PacifiCorp to indicate:</p> <p style="padding-left: 40px;">(a) instantaneous MW <b>Error! Bookmark not defined.</b> output at the Point of Delivery;</p> <p style="padding-left: 40px;">(b) Net Output; and</p> <p style="padding-left: 40px;">(c) the Facility <b>Error! Bookmark not defined.</b>'s total instantaneous generation capacity.</p> <p>Seller <b>Error! Bookmark not defined.</b> shall also transmit to PacifiCorp <b>Error! Bookmark not defined.</b> any other data from the Facility <b>Error! Bookmark not defined.</b> that Seller receives on a real time basis (including but not limited to meteorological data, wind speed data, wind direction data and output data). Seller shall provide such real time data to PacifiCorp on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp shall also receive the data in four second intervals).</p>	<p style="padding-left: 40px;">(d) MW output at the Point of Delivery;</p> <p style="padding-left: 40px;">(e) Net Output;</p> <p>Seller shall also transmit to PacifiCorp any other data from the Facility that Seller receives (including but not limited to meteorological data, wind speed data, wind direction data and output data). Seller shall provide such data to PacifiCorp on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp shall also receive the data in four second intervals).</p>
Time to Cure	10.1.1		<p><u>Defaults.</u> The following events are defaults under this Agreement:</p> <p>Defaults by Either Party.</p> <p>A Party's failure to make a payment when due under this Agreement if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default.</p>	<p><u>Defaults.</u> The following events are defaults under this Agreement:</p> <p>Defaults by Either Party.</p> <p>A Party's failure to make a payment when due under this Agreement if the failure is not cured within <b>thirty (30)</b> days after the non-defaulting Party gives the defaulting Party a notice of the default.</p>

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Seller Defaults	10.1.2		<p><u>Defaults by Seller</u><b>Error! Bookmark not defined.</b></p> <p>a) Seller<b>Error! Bookmark not defined.</b>'s failure to post, increase, maintain or replenish the Project Development Security or Default Security<b>Error! Bookmark not defined.</b> by the applicable dates set forth in Sections <b>Error! Reference source not found.</b>, 0, or <b>Error! Reference source not found.</b></p> <p>b) Seller<b>Error! Bookmark not defined.</b>'s failure to cause the Facility<b>Error! Bookmark not defined.</b> to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date</p>	<p><u>Defaults by Seller.</u></p> <p>a) Omitted.</p> <p>b) Seller's failure to cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, <b>unless such failure is the result of events or conditions beyond the reasonable control of Seller.</b></p>
Forecasting	6.6.2		<p><u>Day-Ahead Forecasts and Updates.</u> By 0600 PPT<b>Error! Bookmark not defined.</b> on the Business Day immediately preceding the day on which energy from the Facility<b>Error! Bookmark not defined.</b> is to be delivered, Seller<b>Error! Bookmark not defined.</b> shall provide PacifiCorp<b>Error! Bookmark not defined.</b> with an hourly forecast of deliveries for each hour of the next day; <i>provided, however,</i> that a forecast provided on a day before any non-Business Day shall include forecasts for each day to and including the next Business Day. Seller shall update a forecast any time information becomes available indicating a change in the forecast of generation of Net Output from the then current forecast; <i>provided, however,</i> that</p>	<p><u>Day-Ahead Forecasts and Updates.</u> Omitted</p>

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			<p>Seller shall not be required to update such forecasts more frequently than once per hour. To the extent commercially reasonable, the Parties shall cooperate to implement and use automatic forecast updates. Seller shall communicate forecasts under this Section 0 in an efficient manner, including, but not limited to, electronic mail or other such media as determined by PacifiCorp (which, at PacifiCorp's discretion, may be in lieu of or in addition to notice from PacifiCorp under <b>Error! Reference source not found.</b>). Upon request by PacifiCorp, Seller shall provide a 24-hour telephone number that PacifiCorp may contact to determine the then-current status of the Facility.</p>	
Planned Outages	6.4.1		<p><u>Planned Outages and Maintenance Outages.</u> Seller<b>Error! Bookmark not defined.</b> shall provide PacifiCorp<b>Error! Bookmark not defined.</b> with a Maintenance Outage schedule for the Facility<b>Error! Bookmark not defined.</b> for the first Contract Year at least sixty (60) days prior to the Commercial Operation Date. Thereafter, Seller shall submit to PacifiCorp an annual Maintenance Outage schedule at least one month, but no more than three months, in advance of each Contract Year. Seller shall furnish PacifiCorp with reasonable advance notice of any Planned Outage and any change in the annual Maintenance Outage schedule. Seller shall use commercially reasonable efforts to coordinate scheduled maintenance (including Planned Outages or Maintenance Outages) with</p>	<p><u>Planned Outages and Maintenance Outages.</u> . Seller shall use commercially reasonable efforts to coordinate scheduled maintenance with PacifiCorp and to accommodate PacifiCorp's reasonable requests to modify the times of scheduled maintenance as long as the modification to the scheduled maintenance in the sole discretion of Seller does not affect Availability.</p>

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			PacifiCorp and to accommodate PacifiCorp’s reasonable requests to modify the times of scheduled maintenance. . Seller shall not schedule any Outage requiring curtailment of more than _____percent (%) of the Facility Capacity Rating during the months of September, November, December, January, February, June, July or August without the prior written approval of PacifiCorp, which approval may be withheld by PacifiCorp in its sole discretion.	