PacifiCorp / Wasatch Wind Joint Issues Matrix

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,"	
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.	
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 price shall be $5/MWh.	

Issues	PacifiCorp Section #	Wasatch Wind Section #	PacifiCorp Proposed Language	Wasatch Wind Proposed Language
	6.11.2		Liquidated Damages for Output Shortfall. 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: Output Shortfall = (Guaranteed Availability – Availability) x **______** MWh 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; *provided*, *however*, that if the Commercial Operation Date 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.	

Issues	**PacifiCorp Section #**	**Wasatch Wind Section #**	**PacifiCorp Proposed Language**	**Wasatch Wind Proposed Language**
Termination	2.6		Termination. 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 compensation to Seller, this Agreement pursuant to Section 10.1.2(b).	
Guaranteed Availability	6.11.1		Guaranteed Availability. 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 6.11.1 for each Contract Year.	
Termination of Duty to Buy	10.4		Termination of Duty to Buy. 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 10.4 shall survive the termination of this Agreement.	

Issues	PacifiCorp Section #	Wasatch Wind Section #	PacifiCorp Proposed Language	Wasatch Wind Proposed Language
Right to Terminate	14.5		Right to Terminate. 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 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; *provided, however*, 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.	