

DPU Exhibit 1.1SR

PacifiCorp / Wasatch Wind Joint Issues Matrix

Issues	PacifiCorp Section #	Wasatch Wind Section #	PacifiCorp Proposed Language	Wasatch Wind Proposed Language	Division Position
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,”	A reasonable compromise may be 88%, which would allow 1 turbine to be down at the time and still allow the facility to be in commercial operation.
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.	If 1 turbine can be down and the facility still in commercial operations, Division sees no reason to deviate from 90 days as also provided in Pioneer Wind.
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	“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	WW proposal gives an inadequate remedy. PacifiCorp is already required to sign a put option for this wind energy; it should not be required to sign a put option that is completely outside of its control with a third party not covered by federal law.

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			<p>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.</p>	<p>delivered by the Facility and will not exceed the delivery requirements of the Output Shortfall.</p> <p>“Replacement Energy Contract” means a Seller 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.</p>	
	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</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</p>	<p>Damages are standard for most contracts under which certain performance standards are pledged. The Division is concerned that eliminating or capping LDs would cause the cost to be born by either the Company or ratepayers rather than the developer. This additional cost could prevent the</p>

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			<p>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 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)</p>	<p>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> <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</p>	<p>contract from meeting the ratepayer indifference standard. Replacement energy should not be completely ruled out, but should be provided at the discretion of PacifiCorp in accordance with the energy needs of its system.</p>

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			<p>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>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 compensation to Seller, this Agreement pursuant to Section 10.1.2(b).</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 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.</p>	<p>WW should not be able to keep PC from terminating a contract under which WW is not performing simply by blaming its non performance upon some unforeseeable event. Unforeseeable events are a development risk unless they fall into the realm of a Force Majeure.</p>

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Guaranteed Availability	6.11.1		<p><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 6.11.1 for each Contract Year.</p>	<p><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.</p> <p>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 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</p>	<p>The Division believes that a guaranteed availability that accounts for prudent scheduled maintenance outages as outlined in PC testimony is reasonable. 87.5% availability would still allow for 1 turbine to be down. Outages that are not a force majeure event are a risk that should be born by the developer unless the developer is willing to take price changes to account for the risk to ratepayers.</p>

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				<p>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. PacifiCorp acceptance of the Seller's forced outage as an acceptable forced outage will be based upon the clear documentation provided by the</p>	

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				<p>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.</p>	
Termination of Duty to Buy	10.4		<p><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 10.4 shall survive the termination of this Agreement.</p>	<p><u>Termination of Duty to Buy.</u> Removed</p>	<p>This is a legal issue that the Division’s analyst is not qualified to address. If the Commission so desires, it can be addressed at the hearing by Division counsel.</p>

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Right to Terminate	14.5		<p><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 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</p>	Not included.	<p>This is a contract clause that is fairly consistent among all firm contracts with which the Division has experience. WW has presented no evidence as to why it should be excluded from this condition. Parties should have the right to terminate an agreement under which the counter party cannot fulfill its responsibilities.</p>

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			termination.		
Availability Definition	1.1		<p>“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 ____ 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, that notwithstanding the preceding sentence, for</i></p>	<p>“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, 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;</i></p>	<p>The ability of the seller to adjust the number of turbines included in the “available” count renders moot any piece of the contract dealing with availability. This would, again, push the risk of this project to the ratepayers and/or the Company rather than to the developer.</p>

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			<p>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>(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) or (vi) a “Declared Suspension of Energy Deliveries”.</p>	
Test Energy	5.1.1		<p><u>Prior to Commercial Operation.</u> For all Test</p>	<p><u>Prior to Commercial Operation.</u> For all Test Energy delivered to PacifiCorp more than</p>	<p>I believe that the provision requested by WW is one that</p>

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			Energy, PacifiCorp shall pay Seller seventy-five percent (75%) of the Contract Price specified for the first Contract Year.	(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, PacifiCorp shall pay Seller 100% (100%) of the Contract Price specified for the current Contract Year.	was given to Pioneer, so the Division recommends it also be given here in lieu of an extension of the “guaranteed commercial operation date” requested by WW in section 1.1.
Project Development Security	7.1/2.3		<p><u>Project Development Security.</u> Project Development Security is not required if Seller meets or exceeds the Credit Requirement.</p> <p><u>Form and Amount of Project Development Security.</u> If Seller does not satisfy the Credit Requirement, then on or before the date specified in Section 2.3(a), Seller shall post and maintain in favor</p>	<u>Project Development Security.</u> Project Development Security is not required.	As with all firm contracts with facilities not yet constructed, security to guarantee that the project will be constructed as per the contract requirements is reasonable. The language ordered by the Commission in 05-035-09 should work in this case as well.

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			<p>of PacifiCorp (a) a guaranty from a party that satisfies the Credit Requirement, in a form acceptable to PacifiCorp in its reasonable discretion, or (b) a Letter of Credit in favor of PacifiCorp, equal in each case to [180 times the Delay Damages, but not less than _____] (the “Project Development Security”).</p> <p>(a) On or before the twelfth (12th) month preceding the Scheduled Commercial Operation Date, Seller shall provide Project Development Security in the amount described in Section 7.1.1;</p>		
Default Security	7.2		<p><u>Duty to Post Default Security</u>. Beginning on the Commercial Operation Date, at any time during the Term when Seller does not satisfy the Credit Requirement, Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from an entity that satisfies</p>	Default Security not required ie. all of section 7.2 is removed.	It is reasonable to expect the developer to accept the risk associated with this project, therefore, some default security is reasonable.

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			<p>the Credit Requirement, in a form acceptable to PacifiCorp in its reasonable discretion, or (b) a Letter of Credit (the “Default Security”), as provided in this Section 7.2. In the event Seller posts Default Security and thereafter satisfies the Credit Requirement, as demonstrated to the reasonable satisfaction of PacifiCorp, then Seller shall be entitled to a release by PacifiCorp of the Default Security for so long as Seller continues to satisfy the Credit Requirement.</p> <p><u>Amount of Default Security.</u> The amount of the Default Security required by Section 7.2.1 shall be sufficient to provide replacement power and corresponding Renewable Energy Credits under this Agreement for the next eighteen (18) calendar months. This amount shall be deemed equal to the positive difference between</p>		

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			<p>(a) the forward power prices at Palo Verde (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source) for the next eighteen (18) calendar months (or, if the remaining Term is less than eighteen (18) calendar months), then for the remainder of the Term) plus \$5 per MWh, minus (b) the Contract Price, multiplied by the MWhs that would be delivered for such period under this Agreement (assuming Net Output based on the total of the estimated monthly output set forth on Exhibit B for that period); <i>provided, however</i>, that the Default Security shall be no less than _____ and shall not exceed _____. An Example illustrating the calculation of this amount under certain stated conditions is included in Exhibit 7.2.2.</p> <p><u>Adjustments to Default</u></p>		

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			<p><u>Security.</u> On or before January 1 of each year during the Term, Seller shall (a) adjust the Default Security by increasing or decreasing the Default Security to correspond to the amount reasonably determined by PacifiCorp under Section 7.2.2 and (b) deliver such adjusted Default Security to PacifiCorp. PacifiCorp shall notify Seller of the determination of such amount on or before the preceding December 1.</p> <p><u>Use of Default Security to Pay Amounts Due to PacifiCorp.</u> If Seller fails to pay any amount due to PacifiCorp within the time provided for payment under this Agreement, PacifiCorp shall be entitled to and shall draw upon the Default Security, from time to time, an amount equal to the amount unpaid. PacifiCorp shall also be entitled to draw upon the Default Security for damages arising if this</p>		

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			<p>Agreement is terminated under Section 10 because of Seller's default.</p> <p><u>Security is Not a Limit on Seller's Liability.</u> The security contemplated by this Section 7: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be PacifiCorp's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that PacifiCorp draws on the Project Development Security or the Default Security, Seller shall, within ten (10) Business Days, replenish or reinstate the drawn security to the full amount then required by this Section 7. In the event that any entity providing Default Security in the form of a guaranty no longer satisfies the Credit Requirement, Seller shall cause such guaranty to be replaced by alternate</p>		

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			<p>Default Security meeting the requirements of Section 7.2 within ten (10) Business Days after the earlier of (i) Seller’s receipt of notice from any source that the guarantor no longer satisfies the Credit Requirement or (ii) Seller’s receipt of written notice from PacifiCorp requesting the posting of alternate Default Security.</p> <p>[In the event PacifiCorp reasonably determines that the Security provisions, above, are inadequate, PacifiCorp reserves the right to require other methods of security including, but not limited to, step-in rights and or a subordinated lien].</p>		
Delay Damages	1.1		“Delay Damages” are the damages payable by Seller under the circumstances described in Section 2, and are equal to \$_____ per MW of Expected Facility	“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	Striking the language “the lesser of” and just having cost to cover of the expected facility capacity rating seems reasonable.

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			Capacity Rating for each day commencing on the day after the Scheduled Commercial Operation Date and ending on the Commercial Operation Date.	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		<p><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 on a real-time basis and will operate such equipment when requested by PacifiCorp to indicate:</p> <p>(a) instantaneous MW output at the Point of Delivery;</p> <p>(b) Net Output; and</p> <p>(c) the Facility's total instantaneous</p>	<p><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:</p> <ol style="list-style-type: none"> 1. MW output at the Point of Delivery; 2. Net Output; <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 (<i>e.g.</i>, if Seller receives the data in four second intervals, PacifiCorp shall also receive the data in four second intervals).</p>	<p>This provision does not appear in any of the last three QF contracts to be approved in Utah. It does, however, appear in the proxy contract and in the proposed contract in Docket 05-035-09. Without further information as to why this provision is unreasonable or, conversely, is necessary, the Division is unable to provide a recommendation.</p>

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			<p>generation capacity.</p> <p>Seller shall also transmit to PacifiCorp any other data from the Facility 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>		
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</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 thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.</p>	<p>A reasonable compromise may be to split the difference and give the defaulting party 20 days.</p>

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			defaulting Party a notice of the default.		
Seller Defaults	10.1.2		<p><u>Defaults by Seller.</u></p> <p>(a) Seller’s failure to post, increase, maintain or replenish the Project Development Security or Default Security by the applicable dates set forth in Sections 2.3, 7.1, or 7.2.</p> <p>(b) Seller’s failure to cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date.</p> <p>(c) Seller’s sale of energy or Renewable Energy Credits (if applicable) from the Facility to a Party other than PacifiCorp in breach of this Agreement if Seller does not permanently cease such sale and compensate PacifiCorp for the damages arising from the breach within ten (10) days after PacifiCorp gives Seller a</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, unless such failure is the result of events or conditions beyond the reasonable control of Seller.</p>	<p>Events beyond the control of the Seller would be included in the definition of risk. It is reasonable to expect the developer to accept the risk associated with the project. Therefore, PacifiCorp’s proposed default conditions seem reasonable.</p>

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			<p>notice of default.</p> <p>(d) After the Commercial Operation Date, Seller’s failure to maintain material permits, land rights, or other material rights (other than interconnection rights, which are covered by Section 10.1.2(e) below) necessary to operate the Facility (after the expiration of applicable notice, cure and waiver periods), which failure could reasonably be expected to have a material adverse effect on PacifiCorp’s rights and obligations under this Agreement, taken as a whole; provided, that if (i) any such failure has not in fact resulted in any such material adverse effect, (ii) Seller has provided assurances reasonably acceptable to PacifiCorp that Seller will hold PacifiCorp harmless from any claims or liabilities that may arise as a result of any such failure, (iii) Seller demonstrates to</p>		

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			<p>PacifiCorp’s reasonable satisfaction that the potential adverse effect of any such failure is capable of being remedied by Seller within a reasonable period of time, (iv) Seller is diligently pursuing such actions in good faith as may be necessary to remedy such potential adverse effect, and (v) Seller’s pursuit of such actions could not reasonably be expected to subject PacifiCorp to any increased exposure of liability or adverse impact on PacifiCorp’s rights and obligations under this Agreement, then in such case, Seller shall have a reasonable period of time to remedy such potential adverse effect on PacifiCorp’s rights and obligations under this Agreement, and during such period, Seller shall not be deemed to be in default under this Agreement.</p> <p>(e) Seller’s failure to cure any default under the</p>		

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			<p>Generation Interconnection Agreement, within the time required under such agreement (after the expiration of applicable notice, cure and waiver periods), which default results in (i) the termination of the Generation Interconnection Agreement by the Transmission Provider or (ii) the exercise of other remedies for default under such agreement, which exercise could reasonably be expected to have a material adverse effect on PacifiCorp’s rights and obligations under this Agreement, taken as a whole.</p>		
Forecasting	6.6.2		<p><u>Day-Ahead Forecasts and Updates.</u> By 0600 PPT on the Business Day immediately preceding the day on which energy from the Facility is to be delivered, Seller shall provide PacifiCorp with an hourly forecast of deliveries for each hour of the next day; <i>provided, however,</i> that</p>	<p><u>Day-Ahead Forecasts and Updates.</u> Omitted</p>	<p>The Division does not have a position on this issue as yet because it has seen no evidence either in support or against it.</p>

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			<p>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 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 6.6.2 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 Section 16). Upon</p>		

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			request by PacifiCorp, Seller shall provide a 24-hour telephone number that PacifiCorp may contact to determine the then-current status of the Facility.		
Planned Outages	6.4.1		<p><u>Planned Outages and Maintenance Outages.</u> Seller shall provide PacifiCorp with a Maintenance Outage schedule for the Facility 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</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>	<p>The Division feels that providing PacifiCorp with an annual schedule of planned maintenance is not unreasonable. Scheduling maintenance so as to avoid peak usage months is also not unreasonable, unless production patterns (wind curves) would suggest otherwise. For example, if there is very little wind available in July, it may be more reasonable to schedule maintenance when the wind doesn’t ordinarily blow.</p>

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			<p>Planned Outages or Maintenance Outages) with 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.</p>		