

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**COTTONWOOD HYDRO, LLC**

(an existing Qualifying Facility with a 3,000 kW Facility Capacity Rating or Less, directly interconnected to PacifiCorp’s electric system in Utah)

**AND**

**PACIFICORP**

**Contents**

SECTION 1: Term .....2  
SECTION 2: Purchase Prices .....2  
SECTION 3: Delivery of Power .....3  
SECTION 4: Liquidated Damages .....4  
SECTION 5: Security .....5  
SECTION 6: Notices .....6  
SECTION 7: Integration .....7  
APPENDIX A: General Terms and Conditions .....9  
APPENDIX B: Definitions .....24  
APPENDIX C: Contract Pricing .....30  
APPENDIX D: Commission Approved Tariff .....31  
EXHIBIT A: Description of Seller’s Facility .....32  
EXHIBIT B: Point of Delivery/Parties’ Interconnection Facilities .....34  
EXHIBIT C: Required Facility Documents .....35  
EXHIBIT D: Energy Delivery Schedule .....36  
EXHIBIT E-1: Motive Force Plan .....38  
EXHIBIT E-2: Engineer’s Certification .....39  
EXHIBIT F: Seller Authorization to Release Generation Data to PacifiCorp .....40

THIS AGREEMENT, entered into this 28<sup>th</sup> day of December, 2009 is between Cottonwood Hydro, LLC, “**Seller**” and PacifiCorp, an Oregon corporation and a regulated public utility, “**PacifiCorp**.” Each of Seller and PacifiCorp may be referred to individually as a “**Party**” or collectively as the “**Parties**.”

### **Recitals**

A. Seller, a limited liability company duly organized under the laws of the state of Utah, owns, operates and maintains a hydroelectric facility for the generation of electric power, including Interconnection Facilities, located in Sandy, Salt Lake County, Utah with a Facility Capacity Rating of 850 kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** (the “**Facility**”); and

B. The Parties desire to enter into this Agreement to replace in its entirety their Power Purchase Agreement dated August 25, 2008 (the “**Previous PPA**”), which replacement will occur on 00:00 Mountain Prevailing Time January 1, 2010 (the “**PPA Replacement 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 3,090,000 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

F. Seller shall (choose one)  sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp  sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

G. PacifiCorp intends to designate Seller’s Facility as a Network Resource for the purposes of serving Network Load.

H. This Agreement is a “New QF Contract” under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

NOW, THEREFORE, the Parties mutually agree as follows:

## SECTION 1: Term

1.1 This Agreement shall become effective after execution by both Parties (“**Effective Date**”).

1.2 By the PPA Replacement Date, Seller shall provide PacifiCorp with (a) a copy of an executed Generator Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement, (b) the Required Facility Documents, and (c) an executed copy of **Exhibit F** “Seller Authorization to Release Generation Data to PacifiCorp”.

1.3 By the date fifteen (15) days after the Effective Date, Seller shall provide security required under Section 5.2, as applicable.

1.4 Except as otherwise provided herein, this Agreement shall terminate at 24:00 Mountain Prevailing Time on December 31, 2011 (“**Expiration Date**”).

## SECTION 2: Purchase Prices

2.1 Energy Purchase Price. Except as provided in Section 2.3, commencing immediately after the PPA Replacement Date, PacifiCorp will pay Seller the following non-levelized prices for Net Output in accordance with Schedule 37 as set forth in **Appendix C** (“**Contract Price**”):

Calendar Year	On-Peak Energy Prices		Off-Peak Energy Prices	
	Winter (¢/kWh)	Summer (¢/kWh)	Winter (¢/kWh)	Summer (¢/kWh)
2010	5.64	6.12	4.97	5.45
2011	6.02	6.52	4.78	5.28

2.2 If Seller chooses to receive compensation for energy only, Seller shall not be subject to Sections 4 and 5, below, nor Section A6.3, below. Seller has selected the following option (Seller to initial one):

    JW     Seller is being compensated for capacity (Sections 4, 5, and A6.3 apply)

           Seller is not being compensated for capacity (Sections 4, 5, and A6.3 do not apply)

2.3 Inadvertent Energy. PacifiCorp may accept Inadvertent Energy at its sole discretion, but will not purchase or pay for Inadvertent Energy.

2.4 Excess Output. PacifiCorp shall pay Seller the Off-Peak price for all Excess Output. [If Off-Peak pricing is not available, Seller shall receive the non-firm energy price in lieu of the Off-Peak price.] Such payment will be accomplished by adjustments pursuant to Section A5.2.

### **SECTION 3: Delivery of Power**

3.1 Delivery of Net Output. Unless otherwise provided herein, commencing immediately after the PPA Replacement Date, PacifiCorp will purchase and Seller will sell all Net Output from the Facility.

3.2 No Sales to Third Parties. During the term of this Agreement, Seller shall not sell any Net Output from the Facility to any entity other than PacifiCorp.

3.3 Minimum and Maximum Annual Delivery. Seller shall make available from the Facility a minimum of 1,000,000 kWh of Net Output during each Contract Year (“**Minimum Annual Delivery**”), which corresponds to a Projected Annual Capacity Factor of 13.4%. Seller shall make available from the Facility a maximum of 4,000,000 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller has explained its basis for determining the Minimum and Maximum Annual Delivery amounts in **Exhibits D, E-1, and E-2**. For partial years and any Contract Year in which the Facility was prevented from generating electricity for reasons of Force Majeure or Net Output is curtailed pursuant to Section A2.3, unless due to the fault of Seller, Minimum and Maximum Annual Delivery amounts will be reduced on a *pro rata* basis for such Contract Year.

3.4 Seller shall not increase the Facility Capacity Rating above that specified in Recital A through any means including, but not limited to, replacement of, modification of, or addition of existing equipment, except pursuant to Section 3.5. To the extent not otherwise provided in the Generator Interconnection Agreement, all costs associated with the modifications to Interconnection Facilities, the System, or PacifiCorp’s electric system occasioned by or related to the interconnection of the Facility with PacifiCorp’s system, or any increase in generating capability of the Facility, shall be borne by Seller.

3.5 Increase to the Maximum Facility Delivery Rate. Seller may, in accordance with this Section 3.5 and upon written approval by PacifiCorp, increase the Maximum Facility Delivery Rate, unless, after such increase, the Maximum Facility Delivery Rate would exceed 3,000 kW. PacifiCorp approval of such increase is conditioned on the Public Utility Regulatory Policies Act (16 U.S.C. 824a-3) and other applicable law requiring PacifiCorp to purchase the incremental Net Output. If Seller increases the Maximum Facility Delivery Rate, PacifiCorp will continue to pay for base Net Output at the rate(s) prescribed by Section 2 of this Agreement, and PacifiCorp will pay for incremental Net Output resulting from the increase to the Maximum Facility Delivery Rate at the rate(s) prescribed by the Commission at the time of PacifiCorp’s approval, if granted, of the increase in the Maximum Facility Delivery Rate. PacifiCorp shall, in its approval, if granted, specify a reasonable means of distinguishing such base Net Output from such incremental Net Output.

3.6 Environmental Attributes. The Parties disagree whether PacifiCorp is entitled to ownership of RECs associated with Net Output purchased by PacifiCorp under this Agreement (“PPA RECs”). The Parties hereby agree that either Party, or both, may petition the Commission for a declaration of which Party owns the RECs associated with Net Output purchased pursuant to PacifiCorp’s Utah Schedule 37 Tariff. The Parties hereby agree, further, to cooperate fully to allocate (retrospectively to the PPA Replacement Date and prospectively through the end of this Agreement) the PPA RECs in accordance with the Commission’s final, formal determination. Pending a final, formal disposition by the Commission, the Parties agree that Seller shall hold and not sell any PPA RECs to any third party.

**[Section 4 applies only if Seller elected to be compensated for capacity in Section 2]**

#### **SECTION 4: Liquidated Damages**

4.1 Output Shortfalls. In the event Seller fails to deliver at least the Minimum Annual Delivery, then Seller shall pay PacifiCorp, as liquidated damages, the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy that Seller was obligated to deliver but did not deliver during the Contract Year; *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price.

4.2 Stipulation to Liquidated Damages for Underdelivery. Each Party agrees that (a) the damages that PacifiCorp would incur due to the Facility’s failure to deliver Minimum Annual Delivery 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.

4.3 Recoupment of Liquidated Damages. Amounts owed by Seller pursuant to this Section 4 shall be due within five (5) business days after any invoice from PacifiCorp for the same and any amounts owing after the due date thereof shall bear interest pursuant to Section A5.3. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above. 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 5 applies only if Seller elected to be compensated for capacity in Section 2]**

## SECTION 5: Security

5.1 Creditworthiness Warranties. Seller warrants all of the following:

- 5.1.1 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.
- 5.1.2 Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- 5.1.3 Seller is not in default under any of its other agreements and is current on all of its financial obligations.
- 5.1.4 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.

    JW     **Seller initial here to adopt Creditworthiness Warranties in Section 5.1.**

5.2 If Seller does not adopt the Creditworthiness Warranties in Section 5.1, Seller shall post one of the following types of security, at Seller's election. Seller has selected the following option (Seller to initial one):

    JW     **Seller meets the Credit Requirements.**

                     **Seller will provide Cash Escrow:** 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.

                     **Seller will provide a Letter of Credit:** 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.

                     **Seller will grant a Senior Lien:** Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and Related Assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement, a financing

statement, 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). For the sole purpose of example, the “Facility and Related Assets” may include but are not limited to equipment and structures, products of the Facility whether electricity or other, fuel supply agreements, rights to motive force, and real property rights and attachments thereto. PacifiCorp alone shall determine the extent of the Facility and Related Assets to be included in the senior lien 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.

5.3 Amount of 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 (“**Default Security**”). Default Security 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 Palo Verde (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Contract Prices, 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 Contract Prices. Such amount shall be fixed at the Effective Date of this Agreement. Using this methodology, the Parties have agreed that the amount of Default Security is \$0 (enter amount, even if Seller did not elect to provide either cash escrow or Letter of Credit).

5.4 Material Adverse Change. PacifiCorp may require Seller to post security, in any form above, in the event of a Material Adverse Change, *provided, however,* that in the event Seller’s obligation to post Default Security arises solely from Seller’s delinquent performance of construction-related financial obligations, upon Seller’s request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller’s financial risks to PacifiCorp’s reasonable satisfaction.

**SECTION 6: Notices**

6.1 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.

Notices	PacifiCorp	Seller
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600	Cottonwood Hydro, LLC 5014 East Little Cottonwood Canyon Rd. Sandy, UT 84092

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
	E-mail: SmallQF@PacifiCorp.com Phone: (503) 813 - 5218 Facsimile: (503) 813 - 6291	E-mail: Susannah Williams [susannah@cottonwoodhydro.com] Phone: (801) -440-9650 Facsimile: (801) 942 - 3331  Duns: 80-143-5038 Tax Payer ID: 26-0728516
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	Same as above
<b>Scheduling:</b>	(same as street address above)  Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	Same as above
<b>Payments:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	Same as above
<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 700 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	Same as above
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above)  Attn: PacifiCorp General Counsel Phone: (503) 813 - 5029 Facsimile: (503) 813 - 7252	Same as above

6.2 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 6.

### **SECTION 7: Integration**

7.1 The appendices and exhibits referred to herein and attached hereto comprise part of and are hereby incorporated into this Agreement. **Appendices A** “General Terms and Conditions”, **B** “Definitions”, **C** “Contract Pricing”, and **D** “Commission Approved Tariff” are hereby incorporated into this Agreement.

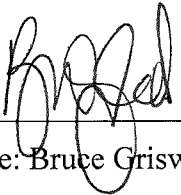


7.2 In the event of a conflict between two or more provisions in this Agreement, the terms contained in Sections 1 through 7 shall control; in the event of a conflict between this Agreement and any applicable tariff, the tariff shall control.

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

Cottonwood Hydro, LLC

By:  \_\_\_\_\_ *JRS*

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

Name: Bruce Griswold

Name: James Williams

Title: Director Short Term Origination and  
QF Contracts

Title: Manager

Date: 12/28/09 \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX A: General Terms and Conditions**

**Contents**

Section A1: Representations and Warranties.....	8
Section A2: Operation and Control .....	10
Section A3: Fuel/Motive Force.....	13
Section A4: Metering .....	14
Section A5: Billings, Computations and Payments.....	15
Section A6: Default and Remedies.....	15
Section A7: Indemnification and Liability.....	18
Section A8: Insurance.....	19
Section A9: Force Majeure .....	20
Section A10: Several Obligations.....	21
Section A11: Choice of Law .....	21
Section A12: Partial Invalidity.....	21
Section A13: Waiver .....	21
Section A14: Governmental Jurisdiction and Authorizations .....	21
Section A15: Repeal of PURPA .....	21
Section A16: Successors and Assigns .....	22
Section A17: Entire Agreement.....	22

**SECTION A1: REPRESENTATIONS AND WARRANTIES**

A1.1 PacifiCorp represents, covenants, and warrants to Seller that:

- A1.1.1 PacifiCorp is duly organized and validly existing under the laws of the state of Oregon.
- A1.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
- A1.1.3 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.
- A1.1.4 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.
- A1.1.5 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).

A1.2 Seller represents, covenants, and warrants to PacifiCorp that:

- A1.1.1 Seller is a duly organized and validly existing legal entity as set forth in Recital A.
- A1.2.1 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.
- A1.2.2 Seller's shareholders, directors and officers have taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
- A1.2.3 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.
- A1.2.4 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).
- A1.2.5 The Facility is and shall for the term of this Agreement continue to be a QF. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PacifiCorp prior to PacifiCorp's execution of this Agreement. If at any time during the term of this Agreement PacifiCorp has reason to believe that Seller no longer qualifies as a QF, PacifiCorp may identify the basis for such belief and require Seller to demonstrate that the Facility is a lawful QF. If, upon review of such data and documentation, PacifiCorp continues to believe that the Facility is not a lawful QF, then PacifiCorp may require that Seller provide PacifiCorp a written legal opinion, from an attorney in good standing in the state in which the Facility is located and who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and has been operated lawfully as a QF under this Agreement. The attorney's opinion shall provide sufficient documentation to demonstrate that Seller has maintained and will continue to maintain the Facility as a QF. If such legal opinion states

that Seller has maintained the Facility as a QF, then PacifiCorp shall pay for said legal opinion, otherwise Seller shall pay for said legal opinion.

A1.3 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 A1 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 A2: OPERATION AND CONTROL**

A2.1 As-Built Supplement. Upon completion of any construction affecting the Facility, Seller shall provide PacifiCorp an As-built Supplement bearing the stamp of a Licensed Professional Engineer that accurately depicts the Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

A2.2 Safe Operation. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generator Interconnection Agreement, 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 the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section A2 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.

### A2.3 Energy Acceptance.

A2.3.1 PacifiCorp to acquire transmission rights for Seller's Net Output. PacifiCorp shall designate Seller's Facility as a Network Resource in accordance with the Tariff, and shall acquire and pay for Network Integration Transmission Service sufficient to accept Net Output from Seller's Facility at Seller's Maximum Facility Delivery Rate, provided, that the aforementioned obligation shall not cause PacifiCorp to pay for any System upgrades or interconnection costs necessary to accept or integrate any or all of Seller's Net Output.

A2.3.2 PacifiCorp's right to curtail Seller's Net Output. PacifiCorp shall have the right to refuse acceptance of all or part of Seller's energy at the Point of Delivery, in accordance with Subsection A2.3.3. Seller shall comply with PacifiCorp's requests for partial or complete curtailment pursuant to this Subsection A2.3.2, as soon as reasonably possible.

A2.3.3 Curtailement for Necessity. PacifiCorp may curtail Seller's generation for necessity. For any curtailment made pursuant to this Section A2.3.3, PacifiCorp shall not pay Seller for any curtailed energy and capacity, nor shall PacifiCorp be liable for Production Tax Credits or Environmental Attributes that are not realized due to such curtailment.

- (a) Curtailement for necessity includes:
  - (i) curtailment during times and to the extent that the Transmission Provider Curtails (as defined in the Tariff) Network Integration Transmission Service (as defined in the Tariff) to PacifiCorp pursuant to the terms of the Tariff;
  - (ii) curtailment during times and to the extent that such energy is not delivered due to acts or omissions of PacifiCorp Transmission;
  - (iii) curtailment during times and to the extent PacifiCorp requires and cannot obtain transmission rights from a third-party to move Seller's energy to a point on the System where it can be utilized, provided that under no circumstances is PacifiCorp obligated to pay for upgrades to third-party's system.
- (b) Upon termination of each curtailment for necessity, PacifiCorp shall transmit to Seller, within ten (10) business days, a written statement documenting the cause of curtailment, the time curtailment commenced, the amount of curtailment during each hour of the curtailment period, and the time curtailment ended.
- (c) At the end of each Billing Period, Seller shall calculate the energy for each curtailment for necessity during that month and transmit a summary statement of such calculation to PacifiCorp prior to the end of the next month. Seller shall attest to the accuracy of its calculation of curtailed energy. Upon request, Seller shall promptly provide PacifiCorp with such information and data as PacifiCorp may reasonably request to confirm Seller's estimate to its reasonable satisfaction.

A2.3.4 Other interruptions in delivery of Net Output. PacifiCorp shall be excused from paying for Net Output or Excess Output (and any associated unrealized Production Tax Credits and Environmental Attributes), that it is prevented from accepting:

- (a) during times and to the extent that such energy is not delivered because of an event of Force Majeure; or
- (b) during times and to the extent that such energy is not delivered because the interconnection between the Facility and the System is

disconnected, suspended or interrupted, in whole or in part, pursuant to the Generator Interconnection Agreement; or

- (c) during times and to the extent that such energy is not delivered due to events originating on or passing from the System, including electrical disturbances.

A2.3.5 PacifiCorp as Merchant. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission or any successor Transmission Provider and that interaction between PacifiCorp and PacifiCorp Transmission are at arm's length pursuant to the Tariff and FERC Order No. 888 and related regulation.

#### A2.4 Outages.

A2.4.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule Planned Outage during any portion of the months of June, July, August, and September, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above. Seller shall, in **Exhibit D**, provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule more than one hundred fifty (150) hours of Planned Outages for each calendar year. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval may be withheld by PacifiCorp in its sole discretion.

A2.4.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or, if the Facility is a Wind Facility, such shorter period to which PacifiCorp may reasonably consent in light of then existing wind conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp. Seller shall take all reasonable measures and use best efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: June 15 through June 30, July, August, and September 1 through September 15. Seller shall include in such notice of a proposed Maintenance Outage the

expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller may provide notices under this Section A2.4.2 orally. Seller shall confirm any such oral notification in writing as soon as practicable. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with PacifiCorp's request to modify the schedule for a Maintenance Outage if such modification has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity of the Facility during such Maintenance Outage and any changes in the Maintenance Outage completion date and time. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

A2.4.3 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp, of any Forced Outage of the Facility. Such report shall include the amount of generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date and time of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. If the Forced Outage resulted in more than 15% of the Facility Capacity Rating of the Facility being unavailable, Seller shall confirm the oral report in writing as soon as practicable. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

#### A2.5 Scheduling.

A2.5.1 Cooperation and Standards. With respect to any and all scheduling requirements in this Agreement, (a) Seller shall cooperate with PacifiCorp with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder.

A2.6 Delivery Exceeding the Maximum GIA Delivery Rate. Seller shall not deliver energy from the Facility to the Point of Delivery at a rate that exceeds the Maximum GIA Delivery Rate. Seller's failure to limit such deliveries to the Maximum GIA Delivery Rate shall be a breach of a material obligation subject to A6.1.9.

### **SECTION A3: 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 E-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp

attached hereto as **Exhibit E-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 3.3. The motive force plan included, or was accompanied by, all Required Facility Documents relating to Seller's right to use the motive force as reasonably determined by PacifiCorp, which accompanying documents, if any, are attached hereto as part of **Exhibit E-1**.

#### **SECTION A4: METERING**

A4.1 Metering Equipment. PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generator Interconnection Agreement.

A4.1.1 Location of Metering Equipment. Metering shall be performed at the location and in the manner specified in **Exhibit B** and the Generator Interconnection Agreement. 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 power flowing into PacifiCorp's system at the Point of Delivery.<sup>1</sup> The loss adjustment shall be a reduction of 2% of the kWh energy production recorded on the Facility output meter until actually measured and calibrated at the meter by PacifiCorp and documented in a signed letter to Seller from PacifiCorp's QF Contracts Administrator.

A4.1.2 Maintenance of Metering Equipment. PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generator Interconnection Agreement or at the request of Seller if Seller has reason to believe metering may be off and requests an inspection in writing. Seller shall bear the cost for any Seller requests. If any of the inspections or tests discloses 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 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.

A4.1.3 Costs of Metering Equipment. To the extent not otherwise provided in the Generator Interconnection Agreement, all PacifiCorp's costs relating

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<sup>1</sup> If station service is supplied via separate facilities, PacifiCorp will deduct station service from the metered facility output to calculate Net Output.



to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

A4.2 Telemetry. Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Generator Interconnection Agreement and to PacifiCorp on a real-time basis, and will operate such equipment when requested by PacifiCorp to indicate:

- (a) instantaneous MW output at the Point of Delivery;
- (b) Net Output; and
- (c) the Facility's total instantaneous generation capacity.

#### **SECTION A5: BILLINGS, COMPUTATIONS AND PAYMENTS**

A5.1 Payment for Net Output. 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 in accordance with Section 2, 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 Generator Interconnection Agreement, any other agreement between the Parties. Any such offsets shall be separately itemized on the statement accompanying each payment to Seller.

A5.2 Corrections. PacifiCorp shall have up to thirty-six (36) months to adjust any payment made pursuant to Section A5.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output, calibration error, or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to correct the error in a reasonable time.

A5.3 Interest. Any amounts owing after the due date thereof shall bear daily 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.

A5.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Except with respect to invoices provided under Section A5.2, any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due to the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days after such determination or resolution, along with interest in accordance with Section A5.3.

A5.5 [Reserved].

#### **SECTION A6: DEFAULT AND REMEDIES**

A6.1 The following events shall constitute defaults under this Agreement:

- A6.1.1 Non-Payment. Seller's failure to make a payment when due under this Agreement or post and maintain security in conformance with the requirements of Section 5 or maintain insurance in conformance with the requirements of Section A8 of this Agreement, if the failure is not cured within ten (10) business days after the non-defaulting Party gives the defaulting Party a notice of the default.
- A6.1.2 Breach of Representation. Breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within thirty (30) days following written notice.
- A6.1.3 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generator Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.
- A6.1.4 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.
- A6.1.5 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, within fifteen (15) days from the date of such request.
- A6.1.6 Sale to Third-Party. Seller's sale of Net Output to an entity other than PacifiCorp, as prohibited by Section 3.2.
- A6.1.7 Non-Delivery. Unless excused by an event of Force Majeure, Seller's failure to deliver any Net Energy for three consecutive calendar months.
- A6.1.8 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the Minimum Annual Delivery obligation of Section 3.3 for two (2) consecutive years; else Seller's failure to satisfy the Minimum Annual Delivery obligation of Section 3.3 for one year.
- A6.1.9 A Party otherwise fails to perform any material obligation (including but not limited to failure by Seller to meet any deadline set forth in Sections 1.2 or 1.3 or both) imposed upon that Party by this Agreement if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided, however, that, upon written notice from the 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.

**A6.2 Notice; Termination.**

A6.2.1 Notice of Default. 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.

A6.2.2 Termination. If a Party fails to cure a pending default in accordance with the terms contained in the aforementioned notice, 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 A6.1.8, unless such default is material. The rights provided in this Section A6 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.

A6.2.3 PURPA Sales Subsequent to Termination. 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 Expiration Date. At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

**[This Subsection A6.3 does not apply if Seller is not being compensated for capacity]**

A6.3 Termination 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 following the date of termination, but not extending beyond the Expiration Date, 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. If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 5 to satisfy any amounts that Seller owes PacifiCorp arising from such default. Each Party agrees that (a) the damages that PacifiCorp would incur due to the Facility's failure to deliver Minimum Annual Delivery would

be difficult or impossible to predict with certainty and (b) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages.

## **SECTION A7: INDEMNIFICATION AND LIABILITY**

### **A7.1 Indemnities.**

A7.1.1 **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.

A7.1.2 **Indemnity by PacifiCorp.** PacifiCorp shall release, indemnify and hold harmless Seller, its partners, 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 partners, officers, employees, agents, lenders or representatives.

A7.2 **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.

A7.3 **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 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 A8: INSURANCE**

A8.1 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.

A8.2 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 Insurance Reports the insurance coverage specified below:

A8.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 per occurrence 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.

A8.2.2 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 Property 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.

A8.3 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.

A8.4 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.

A8.5 Commercial General Liability 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 A9: FORCE MAJEURE**

A9.1 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, 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 is in each case (i) beyond the reasonable control of such Party, (ii) by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and (iii) by the exercise of due diligence, such Party shall be unable to prevent or overcome. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force 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, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

- A9.1.1 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, including the start date of the Force Majeure, the cause of Force Majeure, whether the Facility remains partially operational and the expected end date of the Force Majeure;
- A9.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure;
- A9.1.3 the non-performing Party uses its best efforts to remedy its inability to perform; and
- A9.1.4 the non-performing Party shall provide prompt written notice to the other Party at the end of the Force Majeure event detailing the end date, cause there of, damage caused there by and any repairs that were required as a result of the Force Majeure event, and the end date of the Force Majeure.

A9.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

A9.3 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.

A9.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six (6) months after the occurrence of the event.

**SECTION A10: 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 (2) or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

**SECTION A11: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the state in which the Point of Delivery is located, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

**SECTION A12: 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 A13: 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 A14: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

PacifiCorp's compliance with the terms of this Agreement is conditioned on Seller's submission to PacifiCorp prior to the PPA Replacement Date and Seller's maintenance thereafter of copies of 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.

**SECTION A15: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law. If PURPA terminates during the term of this Agreement, Seller shall operate the Facility in conformance with the QF rules in effect prior to PURPA termination.

### **SECTION A16: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no assignment hereof by either Party shall become effective without the written consent of both Parties being first obtained. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, any entity with which PacifiCorp may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of PacifiCorp's rights, obligations, and interests under this Agreement. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. PacifiCorp shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

### **SECTION A17: ENTIRE AGREEMENT**

A17.1 This Agreement supersedes all prior inconsistent 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.

A17.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, which may have arisen prior to the Effective Date.



## APPENDIX B: Definitions

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

B.1 “**As-built Supplement**” shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, accurately describing the Facility as actually built.

B.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 or may not coincide with calendar months.

B.3 “**Capacity kW**” means the lesser of: (1) maximum 15-minute generation during On-Peak Hours; (2) the Maximum GIA Delivery Rate; and (3) the Maximum Facility Delivery Rate.

B.4 “**Commission**” means the Public Service Commission of Utah.

B.5 “**Contract Price**” means the applicable price for capacity or energy, or both capacity and energy, stated in Section 2 and **Appendix C**.

B.6 “**Contract Year**” means a twelve (12) month period commencing at 00:00 hours Mountain Prevailing Time (“MPT”) on January 1 and ending at 24:00 hours MPT on December 31; *provided, however*, that the first Contract Year shall commence immediately after the PPA Replacement Date, and end on the next succeeding December 31, and the last Contract Year shall end on the Expiration Date, unless earlier terminated as provided herein.

B.7 “**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.

B.8 “**Effective Date**” shall have the meaning set forth in Section 1.1.

B.9 “**Excess Output**” shall mean energy delivered to the Point of Delivery at a rate, on an hourly basis, exceeding the Maximum Facility Delivery Rate, but does not include Inadvertent Energy.

B.10 “**Environmental Attributes**” any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, which are deemed of value by PacifiCorp. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the

atmosphere. Environmental Attributes do not include (i) Production Tax Credits or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

B.11 “**Expiration Date**” shall have the meaning set forth in Section 1.4.

B.12 “**Facility**” shall have the meaning set forth in Recital A.

B.13 “**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility, which sum is set forth in Recital A.

B.14 “**Force Majeure**” has the meaning set forth in Section A9.

B.15 “**Forced Outage**” means an outage that requires removal of one or more generators comprising the Facility from service, another outage state or a reserve shutdown state before the end of the next weekend. Maintenance Outages and Planned Outages are not Forced Outages.

B.16 “**Generator Interconnection Agreement**” means the Generator Interconnection Agreement (the “GIA”) to be entered into separately between Seller and PacifiCorp Transmission, providing for the construction, operation, and maintenance of PacifiCorp Transmission’s Interconnection Facilities required to accommodate deliveries of Seller’s Net Output.

B.17 “**Inadvertent Energy**” means energy delivered to the Point of Delivery at a rate exceeding the Maximum GIA Delivery Rate.

B.18 “**Interconnection Facilities**” means all the facilities and ancillary equipment used to interconnect the Facility to the System, as defined in the Generator Interconnection Agreement.

B.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.

B.20 “**Licensed Professional Engineer**” means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Utah, who has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called to provide a certification, evaluation and/or opinion, 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. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with the

Seller, so long as such engineer has no other economic relationship, association or nexus with the Seller.

B.21 “**Maintenance Outage**” means any outage of one or more generators comprising the Facility that is not a Forced Outage or a Planned Outage. A Maintenance Outage is an outage that can be deferred until after the end of the next weekend, but that requires that the generator(s) be removed from service before the next Planned Outage. A Maintenance Outage may occur any time during the year and must have a flexible start date.

B.22 “**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.

B.23 “**Maximum Annual Delivery**” shall have the meaning set forth in Section 3.3.

B.24 “**Minimum Annual Delivery**” shall have the meaning set forth in Section 3.3.

B.25 “**Maximum GIA Delivery Rate**” means the maximum rate (kW) at which the Generator Interconnection Agreement allows the Facility to deliver energy to the Point of Delivery and is set forth in **Exhibit A**.

B.26 “**Maximum Facility Delivery Rate**” means the maximum instantaneous rate (kW) at which the Facility is capable of delivering Net Output at the Point of Delivery, as specified in **Exhibit A**. The Maximum Facility Delivery Rate may not exceed the Maximum GIA Delivery Rate.

B.27 “**Nameplate Capacity Rating**” means the maximum instantaneous generating capacity of any qualifying small power or cogeneration generating unit supplying all or part of the energy sold by the Facility, expressed in MW or kW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in a notice from Seller to PacifiCorp delivered before the Effective Date.

B.28 “**Net Energy**” means the energy component, in kWh, of Net Output. Net Energy does not include Inadvertent Energy or Excess Output

B.29 “**Net Output**” means all energy and capacity produced by the Facility, less station use (power used to operate auxiliary equipment in the Facility necessary for generation and for other essential electricity uses in the Facility) and less transformation and transmission losses and other adjustments, if any, to the Point of Delivery. For purposes of calculating payment under this Agreement, Net Energy shall be the amount of energy flowing through the Point of Delivery, less any station use not provided by the Facility. For purposes of calculating payment under this Agreement, Capacity kW is the capacity component of Net Output. Net Output does not include Inadvertent Energy or Excess Output.

B.30 “**Off-Peak Hours**” means all hours other than On-Peak.

B.31 “**On-Peak Hours**” means the hours from 6:00 a.m. to 10:00 p.m. Mountain Prevailing Time Monday through Saturday, excluding holidays. Holidays include only New Year’s Day, President’s Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be the holiday and will be Off-Peak.

B.32 “**PacifiCorp**” is defined in the first paragraph of this Agreement, and excludes PacifiCorp Transmission.

B.33 “**PacifiCorp Transmission**” means PacifiCorp, an Oregon corporation, acting in its interconnection and transmission function capacity or its successor.

B.34 “**Planned Outage**” means an outage of predetermined duration that is scheduled in **Exhibit D** and updated in accordance with Section A2.4.1. Boiler overhauls, turbine overhauls or inspections are typical planned outages. Maintenance Outages and Forced Outages are not Planned Outages.

B.35 “**Point of Delivery**” means the high side of the generation step-up transformer(s) located at the point of interconnection between the Facility and the System, as specified in the Generator Interconnection Agreement and in **Exhibit B**.

B.36 “**PPA Replacement Date**” shall have the meaning set forth in Recital B.

B.37 “**Previous PPA**” shall have the meaning set forth in Recital B.

B.38 “**Prime Rate**” means the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by JPMorgan Chase & Co. If a JPMorgan Chase & Co. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference 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, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

B.39 “**Production Tax Credits**” means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the term hereof or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from renewable resources and any correlative state tax credit determined by reference to renewable electric energy produced from renewable resources for which the Facility is eligible.

B.40 “**Projected Annual Capacity Factor**” equals the Minimum Annual Delivery (kWh) divided by the product of the Facility Capacity Rating (kW) multiplied by 8760.

B.41 “**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 are 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.

B.42 “**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.

B.43 “**Renewable Energy Credits**”, or “**RECs**” means (a) the Environmental Attributes associated with the energy generated from the Facility, together with (b) the Renewable Energy Credit Reporting Rights associated with such energy and Environmental Attributes. One (1) REC represents the Environmental Attributes made available by the generation of one (1) MWh from the Facility.

B.44 “**Renewable Energy Credit Reporting Rights**” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser’s discretion, and include without limitation reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program.

B.45 “**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 (a) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output; and (b) 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 purchase and deliver replacement energy to the Point of Delivery, the Replacement Price shall be the market price at the Palo Verde 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).

B.46 “**Required Facility Documents**” means all deeds, titles, leases, licenses, permits, authorizations, and agreements demonstrating that seller controls the necessary property rights and government authorizations to construct, operate, and maintain the Facility, including without limitation those set forth in **Exhibit C**.

B.47 “**Schedule 37**” means the Schedule 37 of Rocky Mountain Power’s Commission-approved tariffs, providing pricing options for Qualifying Facilities of 1,000 kW or less for cogeneration facilities and 3,000 kW or less for small power production facilities, which was in effect on December 13, 2009. A copy of that Schedule 37 is attached as **Appendix D**.

B.48 “**Summer**” means the months of June through September.

B.49 “**System**” means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generator Interconnection Agreement.

B.50 “**Tariff**” means the PacifiCorp Transmission FERC Electric Tariff Seventh Revised Volume No.11 Pro Forma Open Access Transmission Tariff or the Transmission Provider’s corresponding FERC tariff or both, as revised from time to time.

B.51 “**Transmission Provider**” means PacifiCorp Transmission or a successor, including any regional transmission organization (“RTO”).

B.52 “**Wind Facility**” means a facility that produces electric energy using wind as the primary energy source.

B.53 “**Winter**” means the months of October through May.

**APPENDIX C: Contract Pricing**

C.1 As provided in Schedule 37, Seller shall have the option to select one of the pricing options provided below. Once an option is selected it shall remain in effect for the duration of the Agreement. Seller has selected the following option (Seller to initial one):

\_\_\_\_\_ **Capacity Plus Energy, Levelized Prices:** taking the applicable capacity and average energy price payment with levelized prices, as provided below and in Schedule 37.

Capacity kW (\$/kW-Month)	Energy (¢/kWh) All kWh

\_\_\_\_\_ **Capacity Plus Energy, Non-Levelized Prices:** taking the applicable capacity and average energy price payment with non-levelized prices, as provided below and in Schedule 37.

Calendar Year	Capacity kW (\$/kW-Month)	Energy (¢/kWh) All kWh
2010	\$2.38	5.13
2011	\$4.39	4.95

\_\_\_\_\_ **On-Peak/Off-Peak, Levelized:** taking the applicable Winter and Summer energy payment for On-Peak and Off-Peak hours with levelized prices, as provided below and in Schedule 37.

Calendar Year	On-Peak Energy Prices		Off-Peak Energy Prices	
	Winter	Summer	Winter	Summer

\_\_\_\_\_ **JW On-Peak/Off-Peak, Non-Levelized:** taking the applicable Winter and Summer energy payment for On-Peak and Off-Peak hours with non-levelized prices, as provided below and in Schedule 37.

Calendar Year	On-Peak Energy Prices		Off-Peak Energy Prices	
	Winter	Summer	Winter	Summer
2010	5.64	6.12	4.97	5.45
2011	6.02	6.52	4.78	5.28

C.2 For Wind Facilities selecting the Capacity Plus Energy price option, payment shall be in the form of a reduced capacity payment equal to twenty percent (20%) of the Capacity Price multiplied by the Capacity kW.

**APPENDIX D: Commission Approved Tariff**

**Utah Schedule 37**





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**ROCKY MOUNTAIN POWER**  
**ELECTRIC SERVICE SCHEDULE NO. 37**  
**STATE OF UTAH**

---

**Avoided Cost Purchases From Qualifying Facilities**

---

**AVAILABLE:** To owners of Qualifying Facilities in all territory served by the Company in the state of Utah.

**APPLICABLE:** For power purchased from Qualifying Facilities located in the state of Utah with a design capacity of 1,000 kW for a Cogeneration Facility or 3,000 kW for a Small Power Production facility. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company. A cumulative cap of 25,000 kW shall apply to new resources contracted under this schedule.

**DEFINITIONS:**

**Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

(continued)

**ELECTRIC SERVICE SCHEDULE NO. 37 - Continued**

**DEFINITIONS** (continued)

**Wind Facility**

A facility which produces electric energy using wind as the primary energy source.

**Winter Season**

The months of October through May.

**Summer Season**

The months of June through September.

**Peak Hours**

On-peak hours are defined as 6:00 a.m. to 10:00 p.m. Monday through Saturday, excluding holidays.

Holidays include only New Year's Day, President's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be the holiday and will be Off-peak.

**Off-Peak Hours**

All hours other than On-peak.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005 the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April, and for the period between the last Sunday in October and the first Sunday in November.

**MONTHLY PAYMENTS:** The Qualifying Facility shall have the option of either: a) taking the applicable capacity and average energy price payment, or b) taking the applicable winter and summer energy payment for Peak and Off-Peak hours. Once an option is selected the option will remain in effect for the duration of the Facility's contract. Capacity kW will be the maximum 15-minute generation during Peak Hours. A Wind Facility, taking the capacity and average energy price option, will be paid a reduced capacity payment equal to 20% of the Capacity Price multiplied by the Capacity kW.

(continued)

**ELECTRIC SERVICE SCHEDULE NO. 37 - Continued**

**RATES FOR PURCHASES:** The non-levelized and levelized prices shown below are subject to change from time to time to reflect changes in the Company's determination of Utah avoided costs. The prices applicable to a Utah Qualifying Facility shall be those in effect at the time a written contract is executed by the parties. The levelized prices shown are for a 20-year contract and assume a 2006 starting date. Levelized prices for contracts which start after 2006 and are for periods of 20 years or less are available upon request.

<b>Non-Levelized Prices</b>			<b>Levelized Prices</b>	
Deliveries	Capacity	Energy	Capacity	Energy Prices
During	Price (a)	Prices	Price (a)	¢/kWh
Calendar		¢/kWh		
<u>Year</u>	<u>\$/kW - month</u>	<u>All kWh</u>	<u>\$/kW-month</u>	<u>All kWh</u>
2006	\$1.74	4.15	\$7.04	4.03
2007	\$3.12	4.37		
2008	\$1.82	5.25		
2009	\$1.40	5.15		
2010	\$2.38	5.13		
2011	\$4.39	4.95		
2012	\$9.49	2.65		
2013	\$9.73	2.77		
2014	\$9.97	2.89		
2015	\$10.22	3.04		
2016	\$10.47	3.21		
2017	\$10.73	3.39		
2018	\$11.00	3.53		
2019	\$11.27	3.72		
2020	\$11.55	3.86		
2021	\$11.85	3.94		
2022	\$12.15	4.02		
2023	\$12.47	4.11		
2024	\$12.79	4.20		
2025	\$13.12	4.30		

Note: (a) Wind Facility, taking the Capacity and energy price option, will be paid a reduced capacity payment equal to 20% of the Capacity Price multiplied by the Capacity kW.

(continued)



**ELECTRIC SERVICE SCHEDULE NO. 37 - Continued**

**Volumetric Winter and Summer Energy Prices for On-Peak and Off-Peak hours  
¢/kWh**

**Non-Levelized Prices**

Deliveries

During Calendar Year	On-Peak Energy Prices		Off-Peak Energy Prices	
	Winter	Summer	Winter	Summer
2006	4.33	4.95	3.83	4.46
2007	5.19	5.38	4.31	4.49
2008	5.64	6.02	5.13	5.50
2009	5.44	5.74	5.05	5.35
2010	5.64	6.12	4.97	5.45
2011	6.02	6.52	4.78	5.28
2012	5.33	5.33	2.65	2.65
2013	5.52	5.52	2.77	2.77
2014	5.71	5.71	2.89	2.89
2015	5.93	5.93	3.04	3.04
2016	6.17	6.17	3.21	3.21
2017	6.43	6.43	3.39	3.39
2018	6.64	6.64	3.53	3.53
2019	6.90	6.90	3.72	3.72
2020	7.13	7.13	3.86	3.86
2021	7.29	7.29	3.94	3.94
2022	7.46	7.46	4.02	4.02
2023	7.64	7.64	4.11	4.11
2024	7.82	7.82	4.20	4.20
2025	8.01	8.01	4.30	4.30

**Levelized Prices (Nominal)**

On-Peak Energy Prices		Off-Peak Energy Prices	
Winter	Summer	Winter	Summer
5.95	6.14	3.96	4.15



**ROCKY MOUNTAIN POWER**  
**ELECTRIC SERVICE SCHEDULE NO. 37**  
**STATE OF UTAH**

---

**Avoided Cost Purchases From Qualifying Facilities**

---

**AVAILABLE:** To owners of Qualifying Facilities in all territory served by the Company in the state of Utah.

**APPLICABLE:** For power purchased from Qualifying Facilities located in the state of Utah with a design capacity of 1,000 kW for a Cogeneration Facility or 3,000 kW for a Small Power Production facility. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company. A cumulative cap of 25,000 kW shall apply to new resources contracted under this schedule.

**DEFINITIONS:**

**Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

(continued)

**ELECTRIC SERVICE SCHEDULE NO. 37 - Continued**

**DEFINITIONS (continued)**

**Wind Facility**

A facility which produces electric energy using wind as the primary energy source.

**Winter Season**

The months of October through May.

**Summer Season**

The months of June through September.

**Peak Hours**

On-peak hours are defined as 6:00 a.m. to 10:00 p.m. Monday through Saturday, excluding holidays.

Holidays include only New Year's Day, President's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be the holiday and will be Off-peak.

**Off-Peak Hours**

All hours other than On-peak.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005 the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April, and for the period between the last Sunday in October and the first Sunday in November.

**MONTHLY PAYMENTS:** The Qualifying Facility shall have the option of either: a) taking the applicable capacity and average energy price payment, or b) taking the applicable winter and summer energy payment for Peak and Off-Peak hours. Once an option is selected the option will remain in effect for the duration of the Facility's contract. Capacity kW will be the maximum 15-minute generation during Peak Hours. A Wind Facility, taking the capacity and average energy price option, will be paid a reduced capacity payment equal to 20% of the Capacity Price multiplied by the Capacity kW.

(continued)

**ELECTRIC SERVICE SCHEDULE NO. 37 - Continued**

**RATES FOR PURCHASES:** The non-levelized and levelized prices shown below are subject to change from time to time to reflect changes in the Company's determination of Utah avoided costs. The prices applicable to a Utah Qualifying Facility shall be those in effect at the time a written contract is executed by the parties. The levelized prices shown are for a 20-year contract and assume a 2006 starting date. Levelized prices for contracts which start after 2006 and are for periods of 20 years or less are available upon request.

<b>Non-Levelized Prices</b>			<b>Levelized Prices</b>	
Deliveries During Calendar Year	Capacity Price (a) \$/kW - month	Energy Prices ¢/kWh All kWh	Capacity Price (a) \$/kW-month	Energy Prices ¢kWh All kWh
2006	\$1.74	4.15	\$7.04	4.03
2007	\$3.12	4.37		
2008	\$1.82	5.25		
2009	\$1.40	5.15		
2010	\$2.38	5.13		
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2014	\$9.97	2.89		
2015	\$10.22	3.04		
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2017	\$10.73	3.39		
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2021	\$11.85	3.94		
2022	\$12.15	4.02		
2023	\$12.47	4.11		
2024	\$12.79	4.20		
2025	\$13.12	4.30		

Note: (a) Wind Facility, taking the Capacity and energy price option, will be paid a reduced capacity payment equal to 20% of the Capacity Price multiplied by the Capacity kW.

(continued)



**ELECTRIC SERVICE SCHEDULE NO. 37 - Continued**

**Volumetric Winter and Summer Energy Prices for On-Peak and Off-Peak hours**  
¢/kWh

**Non-Levelized Prices**

Deliveries

During Calendar Year	On-Peak Energy Prices		Off-Peak Energy Prices	
	Winter	Summer	Winter	Summer
2006	4.33	4.95	3.83	4.46
2007	5.19	5.38	4.31	4.49
2008	5.64	6.02	5.13	5.50
2009	5.44	5.74	5.05	5.35
2010	5.64	6.12	4.97	5.45
2011	6.02	6.52	4.78	5.28
2012	5.33	5.33	2.65	2.65
2013	5.52	5.52	2.77	2.77
2014	5.71	5.71	2.89	2.89
2015	5.93	5.93	3.04	3.04
2016	6.17	6.17	3.21	3.21
2017	6.43	6.43	3.39	3.39
2018	6.64	6.64	3.53	3.53
2019	6.90	6.90	3.72	3.72
2020	7.13	7.13	3.86	3.86
2021	7.29	7.29	3.94	3.94
2022	7.46	7.46	4.02	4.02
2023	7.64	7.64	4.11	4.11
2024	7.82	7.82	4.20	4.20
2025	8.01	8.01	4.30	4.30

**Levelized Prices (Nominal)**

On-Peak Energy Prices		Off-Peak Energy Prices	
Winter	Summer	Winter	Summer
5.95	6.14	3.96	4.15



**EXHIBIT A: Description of Seller's Facility**

**[Seller to Complete]**

Seller's Facility consists of one (1) generator manufactured by Westinghouse. More specifically, the Facility consists of one (1) powerhouse, the Lower powerhouse, a run of river hydroelectric powerhouse with 415 ft gross head.

**Generator** – Westinghouse AC generator, 1000 kVA, 850 kW, 2300 volts, 60 Hz, 400 rpm (penstock size and head limit maximum possible generator output to 650 kw @ 17 cfs and 230 psi). 251 amps per terminal, 3 phase, serial #892971

**Turbine** – 52 inch Pelton, H P Goody

**Exciter** – Power Tronics SE2000 BX Static Excitor

**Governor** – Ones & Zeros MP001

**Penstock** – 24 inch, ¼ inch steel, 5091 feet

Lower powerhouse also has a GE Multipolar DC Generator, 240 volts dc, 729 amps, 400rpm that was used for oxygen production (This generator not part of the Facility under this Agreement).

**Station service requirements are described as follows:** Station Service is shown on the one line diagram attached to Exhibit B. Station Service is estimated to be 15 KW. The Station Service transfer switch is programmed to treat the generator as the preferred source for Station Service. Station Service will be provided from generator power whenever the generator is running.

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Location of the Facility is in the Little Cottonwood Canyon in Salt Lake County, Utah. The location is more particularly described as follows:

[legal description of parcel follows on next page]

**Parcel No. 2 (Main Power Plant):**

Beginning at a point which is South 80°24'36" East, 4,876.95 feet from the West quarter corner of Section 7 Township 3 South, Range 2 East, Salt Lake Base and Meridian (basis of bearing is North 89°14'29" East from the center of Section 12 to the East quarter corner of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian, said point being formerly described as South 32°31' West 392.6 feet and South 7°29' East 33.59 feet from East quarter corner of Section 7, Township 3 South, Range 2 East, Salt Lake Base and Meridian, and running thence South 82°40'00" West 105.77 feet; thence North 7°20'00" West 12.40 feet; thence South 82°40'00" West 71.87 feet; thence North 82°55'00" West, 36.62 feet; thence South 7°29'00" East 63.19 feet; thence South 74°15'00" East 66.00 feet; thence North 86°10'00" East 78.00 feet; thence North 78°09'00" East 74.90 feet; thence North 7°29'00" West 66.41 feet to the point of beginning. Together with a 20 foot pipe line easement for an existing waterline, said easement being 10 feet each side of the following described centerline; beginning at an existing water junction box and running thence North 90.0 feet more or less, to the South line of the Whitmore property; including rights of way to repair or otherwise maintain said water line and to insure Owner's full use, occupation or enjoyment of this easement. Also the full use and benefits of said water line as it proceeds from the same junction box; along the road easement from the Main Plant on the Little Cottonwood Creek to the Old Pavilion.

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): .90

**Seller Confirmation:** \_\_\_\_\_ [Seller's signature] Seller confirms that the information in this Exhibit A is correct as of \_\_\_\_\_ [date]

**EXHIBIT B: Point of Delivery/Parties' Interconnection Facilities**

[Seller to provide its own diagram and description]

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

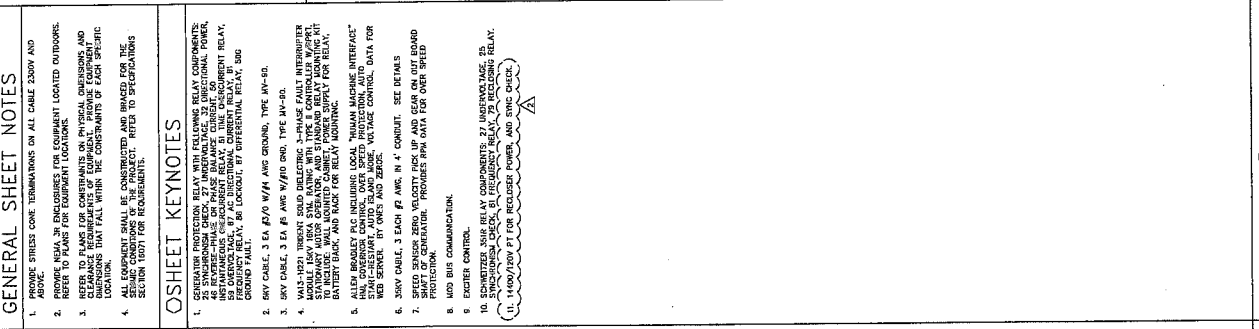
Instructions to Seller:

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.

1. Point of Delivery is at the meter located on the high side of the step-up transformer
2. Single line diagram is attached.

**Seller Confirmation:** \_\_\_\_\_[Seller's signature] Seller confirms that the information in this Exhibit B is correct as of \_\_\_\_\_[date]

12.07kV MOUTH OF THE CANYON  
 28kV LITTLE COTTONWOOD LINE  
 0.52 MILES OF 28kV REVERSE LINE  
 12.42kV TO ALTA



1. PROVIDE STRESS CORRECTION ON ALL CABLE 2300V AND ABOVE.  
 2. PROVIDE NEW OR ENLARGED FOR EQUIPMENT LOCATED OUTDOORS. REFER TO PLANS FOR CONSTRAINTS ON PHYSICAL DIMENSIONS AND CLEARANCES. INDICATE ALL WITHIN THE CONSTRAINTS OF EACH SPECIFIC LOCATION.  
 3. ALL EQUIPMENT SHALL BE CONSTRUCTED AND BUNDLED FOR THE LOCATION AND AS SHOWN IN THE DRAWINGS. REFER TO SPECIFICATIONS SECTION 10071 FOR REQUIREMENTS.

**OSHEET KEYNOTES**

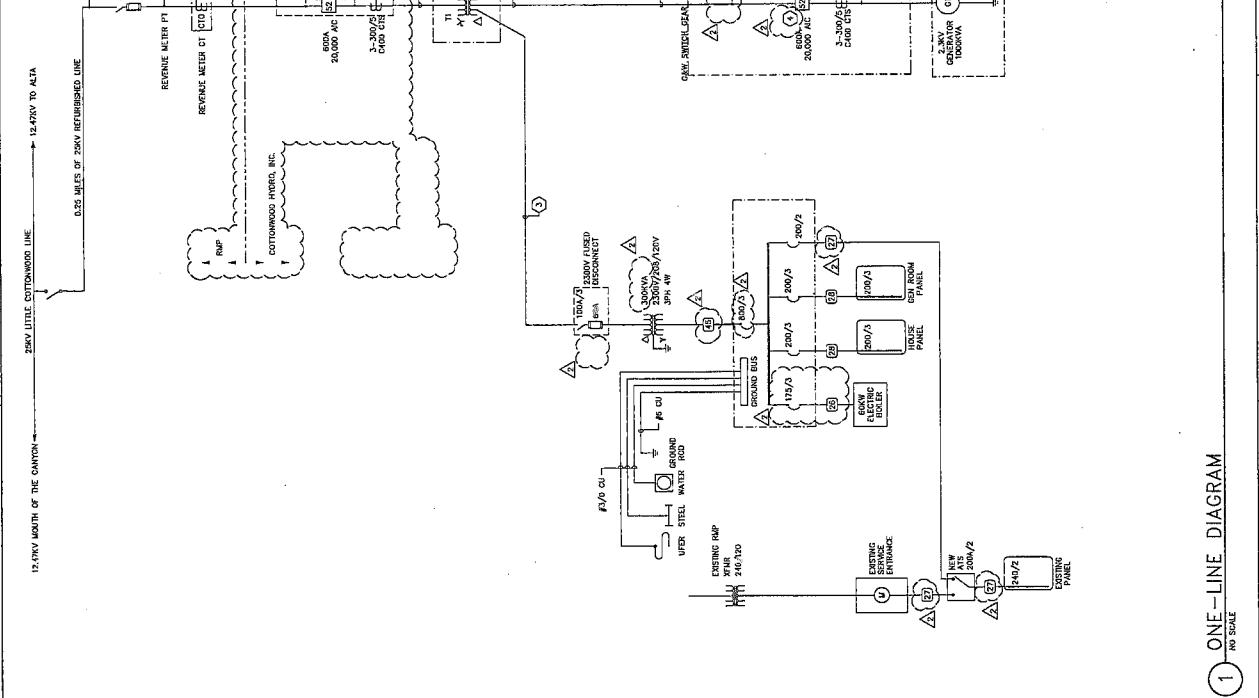
- GENERATOR PROTECTION RELAY WITH FOLLOWING RELAY COMPONENTS: 25 SYNCHRONOUS CHECK, 27 UNDERVOLTAGE, 32 OPERATIONAL POWER, 33 INSTANTANEOUS OVERCURRENT RELAY, 34 LINE DISCONNECT RELAY, 35 FREQUENCY RELAY, 36 LOCKOUT BY DIFFERENTIAL RELAY, 38G GROUND FAULT.
- 8KV CABLE, 3 EA. #2/A W/4" AND GROUND, TYPE MV-80.
- 8KV CABLE, 3 EA. #1 AND #2/A 0.00, TYPE MV-80.
- VALS-1021 THEORY SOLID STATE DELTA-3 PHASE FAULT INTERRUPTER STANDARD MOTOR OPERATOR, AND 3 PHASE RELAY MOUNTING WITH BATTERY BACK, AND RACK FOR RELAY MOUNTING.
- ALLEN BRADLEY PLC INCLUDING LOCAL "HUMAN MACHINE INTERFACE" WITH COMMUNICATIONS AND LOGIC. PROVIDE LOGIC AND DATA FOR WEB SERVER, BY WIRE AND SERVO.
- 3KV CABLE, 3 EACH #2 A.M.C. IN 4' CONDUIT. SEE DETAILS.
- SPEED SENSOR ZERO RELAY, STOP UP AND GEAR ON OUT BOARD PROTECTION.
- 4000 BUS COMMUNICATION.
- EXCITER CONTROL.
- SCHEDULED SURVIVAL RELAY COMPONENTS: 27 UNDERVOLTAGE, 25 SYNCHRONOUS CHECK, 31 FREQUENCY RELAY, 28 RECLOSING RELAY.
- 11400/120V PT FOR RECLOSURE POWER, AND SYNC CHECK.

GENERAL SHEET NOTES

COTTONWOOD HYDRO PROJECT  
 ONE-LINE DIAGRAM

PROJECT NO. 2007-00-18  
 DRAWN BY: PSS  
 CHECKED BY: TLT  
 DESIGNED BY: TLT  
 RECORD DRAWING DATE:  
 SIGNATURE:  
 © 2007 Spectrum Engineers, Inc.  
 SHEET TITLE  
 ONE-LINE DIAGRAM

12.07kV MOUTH OF THE CANYON  
 28kV LITTLE COTTONWOOD LINE  
 0.52 MILES OF 28kV REVERSE LINE  
 12.42kV TO ALTA



1 ONE-LINE DIAGRAM  
 NO SCALE

File Name: P:\2007\20070549\Drawings\Shaft\48E-601.dwg Last Plotted: 2008/05/08 @ 1:42 PM By: WJS

### **EXHIBIT C: Required Facility Documents**

#### REQUIRED OF ALL FACILITIES:

Qualifying Facility Number from FERC: QF 03-118-000  
Executed Generator Interconnection Agreement (Cover page and signature page to be included in this Exhibit C) GIA dated June 10, 2008 has been provided  
As-Built Supplement  
Fuel Supply Agreement, if applicable

#### REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN:

Deed or Lease to Facility Premises  
Preliminary Title Report of Premises  
Proof of ownership of Facility  
Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.

**EXHIBIT D: Energy Delivery Schedule**

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

<b>Month</b>	<b>Average Energy (kWh)</b>
January	200,000
February	200,000
March	200,000
April	315,000
May	315,000
June	315,000
July	315,000
August	315,000
September	315,000
October	200,000
November	200,000
December	200,000

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate. Average generation is estimated based on generation history coupled with upgrades to switchgear, nozzling system and improved distribution system connection.

**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).

**Minimum annual delivery is equivalent to 2004 annual generation of 1,000,000 KWh less 2 months of generation to replace the pelton wheel.**

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate. Maximum generation is estimated based on generation history coupled with upgrades to switchgear, nozzling system and improved distribution system connection.

**D. PLANNED OUTAGES**

Seller will provide a Planned Outage schedule annually not to exceed 150 hours per year.

**EXHIBIT E-1: Motive Force Plan**

**EXHIBIT E-2: Engineer's Certification**

(1) THAT THE MOTIVE FORCE PLAN IN EXHIBIT E-1 IS ACCURATE;

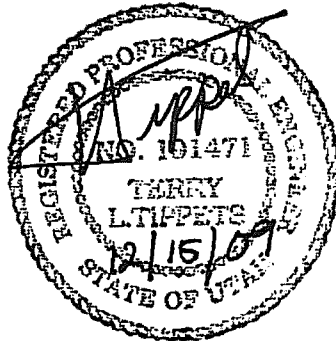
*Terry L Tippets* [Licensed Professional Engineer's certification]

(2) THAT THE MINIMUM ANNUAL DELIVERY IS 1,000,000 KWH PER YEAR IN EACH FULL CALENDAR YEAR OF THIS AGREEMENT BASED ON THE MOTIVE FORCE PLAN IN EXHIBIT F-1;

*Terry L Tippets* [Licensed Professional Engineer's certification]

(3) THAT THE FACILITY CAPACITY RATING IS 850 KW AND THE MAXIMUM FACILITY DELIVERY RATE IS \_\_\_\_\_ KW.

*Terry L Tippets* [Licensed Professional Engineer's certification]





**EXHIBIT F: Seller Authorization to Release Generation Data to PacifiCorp**

*[Interconnection Customer Letterhead]*

Transmission Services  
Attn: Director, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

**RE: Cottonwood Hydro, LLC Interconnection Request**

Dear Sir:

**Cottonwood Hydro, LLC** hereby voluntarily authorizes PacifiCorp's Transmission business unit to share **Cottonwood Hydro, LLC** 's generator interconnection information and generator meter data relating to **Cottonwood Hydro, LLC** Qualifying Facility located in the town of Sandy County, Salt Lake with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group. **Cottonwood Hydro, LLC** acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date