

KOSI 3046

**POWER PURCHASE AGREEMENT**  
**(RENEWABLE ENERGY – SOLAR 3 MEGAWATTS (AC) OR LESS)**

**BETWEEN**

**MILFORD FLAT SOLAR, LLC**

**AND**

**PACIFICORP**

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**POWER PURCHASE AGREEMENT  
(RENEWABLE ENERGY)**

THIS POWER PURCHASE AGREEMENT (RENEWABLE ENERGY) (this "Agreement"), is entered into between Milford Flat Solar, LLC, a Delaware limited liability company (the "Seller") and PacifiCorp, an Oregon corporation acting in its merchant function capacity ("PacifiCorp"). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party."

WHEREAS, Seller intends to construct, own, operate and maintain a solar-powered generation facility for the generation of electric energy located in Beaver County, Utah with an expected nameplate capacity rating of 3 MW (AC) (the "Facility").

WHEREAS, Seller intends to operate the Facility as a Qualifying Facility ("QF").

WHEREAS, Seller expects that the Facility will deliver to PacifiCorp a Net Output during each calendar year according to the estimates of monthly or annual output (as applicable) set forth in Exhibit A. Seller acknowledges that PacifiCorp will include this amount of energy in PacifiCorp's resource planning.

WHEREAS, Seller desires to sell, and PacifiCorp desires to purchase, the Net Output expected to be delivered by the Facility in accordance with the terms and conditions hereof.

WHEREAS, The rates, terms and conditions in this Agreement are in accordance with the rates, terms, and conditions approved by the Commission for purchases from Qualifying Facilities.

WHEREAS, PacifiCorp intends to designate Seller's Facility as a Network Resource for the purposes of serving network load.

WHEREAS, For purposes of inter-jurisdictional cost allocation, this Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol and, as such, its costs are allocated as a system resource unless any portion of the cost of this Agreement exceeds the cost PacifiCorp would have otherwise incurred acquiring comparable resources, in which case such excess costs shall be assigned on a situs basis.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

**SECTION 1  
DEFINITIONS, RULES OF INTERPRETATION**

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein shall have the following meanings:

“AAA” means the American Arbitration Association.

“AC” means alternating current.

"Abandonment" means (a) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement, or (b) if after commencement of the construction, testing, and inspection of the Facility, and prior to the Commercial Operation Date, there is a complete cessation of the construction, testing, and inspection of the Facility for 90 consecutive days by Seller and Seller's contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default of, or request by, PacifiCorp, or an event of Force Majeure.

"Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to PacifiCorp, Affiliate shall only include MidAmerican Energy Holdings Company and its direct, wholly owned subsidiaries.

"Agreement" is defined in the Recitals.

"As-built Supplement" is a supplement to be added to Exhibit 6.1 that describes the Facility as actually built, pursuant to Section 6.1 and includes an American Land Title Association survey of the Premises.

"Business Day" means any day on which banks in Salt Lake City, Utah are not authorized or required by Requirements of Law to be closed, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Utah.

"Capacity Rights" means any current or future defined characteristic, certificate, tag (but not Green Tags), credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce energy. Capacity Rights are measured in MW and do not include ITCs, any Tax Credits, or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

"Commercial Operation" means that not less than the Required Percentage of the Expected Nameplate Capacity Rating of the Facility is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the System, all of which shall be Seller's responsibility to receive or obtain, and which occurs when all of the following events (a) have occurred, and (b) remain simultaneously true and accurate as of the date and moment on which Seller gives PacifiCorp notice that Commercial Operation has occurred:

(i) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer that is licensed in the state of Utah stating: (1) the Nameplate Capacity Rating of the Facility at the anticipated time of Commercial Operation, of at least the Required Percentage of the Expected Nameplate Capacity Rating, and (2) that the Facility is able

to generate electric energy reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof; and, (3) Start-Up Testing of the Facility has been completed;

(ii) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, in accordance with the Generation Interconnection Agreement, all required Interconnection Facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the System in conformance with the Generation Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement.

(iii) PacifiCorp shall have received a certificate from a Licensed Professional Engineer or an opinion from an attorney licensed in the state of Utah that is not an employee of Seller (or any affiliate, parent or subsidiary) and has no financial interest in the Facility addressed to PacifiCorp stating that Seller has obtained or entered into all Required Facility Documents. Seller shall provide copies of any or all Required Facility Documents requested by PacifiCorp.

(iv) PacifiCorp has received confirmation from the Transmission Provider that the Facility has been designated as a Network Resource and PacifiCorp has received confirmation from the Transmission Provider that the transmission service request has been granted in sufficient capacity to meet or exceed the Maximum Facility Delivery Rate and the Seller has paid all costs associated with any requirements of the Transmission Service request.

Seller shall provide written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation and its Nameplate Capacity Rating accompanied by the certificates described above. PacifiCorp shall have ten (10) Business Days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PacifiCorp reasonably believes has not been satisfied. If, within such ten (10) Business Day period, PacifiCorp does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PacifiCorp notifies Seller within such ten (10) Business Day period that PacifiCorp reasonably believes the Facility has not achieved Commercial Operation, Seller shall address the concerns stated in PacifiCorp's notice to the satisfaction of PacifiCorp. In the event PacifiCorp provides notice of deficiency with regards to the information submitted to establish the Commercial Operation Date, then the Commercial Operation Date shall be the date upon which Seller has addressed the concerns stated in PacifiCorp's notice to PacifiCorp's reasonable satisfaction. If Commercial Operation is achieved at less than 100 percent of the Expected Nameplate Capacity Rating and Seller informs PacifiCorp that Seller intends to bring the Facility to 100 percent of the Expected Nameplate Capacity Rating, Seller shall provide PacifiCorp with a list of all items to be completed in order to achieve Final Completion ("Final Completion Punch List"). All items on the Final Completion Punch List must be completed on or before the 90<sup>th</sup> day after the Commercial Operation Date.

"Commercial Operation Date" means the date that Commercial Operation is achieved for the Facility but in no event earlier than 30 calendar days before the Scheduled Commercial Operation Date.

"Commission" means the Utah Public Service Commission.

"Confidential Business Information" is defined in Section 23.1.

"Contract Interest Rate" means the lesser of (a) the highest rate permitted under Requirements of Law or (b) 200 basis points per annum plus 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 Citibank, N.A. as its "prime rate." If a Citibank, N.A. 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 is being paid.

"Contract Price" means the applicable price, expressed in \$/MWh for Net Output and Capacity Rights stated in Section 5.1.

"Contract Year" means any consecutive 12-month period during the Term, commencing at 00:00 hours on the Commercial Operation Date or any of its anniversaries and ending at 24:00 hours on the last day of such 12-month period.

"Credit Requirements" means a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of (a) BBB- or greater from S&P, or (b) Baa3 or greater from Moody's; provided that if (a) or (b) is not available, an equivalent rating as determined by PacifiCorp through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party.

"Default Security" is an amount equal \$25 per KW of Nameplate Capacity Rating.

"Delay Damages" for any given day are equal to (a) the Expected Energy, expressed in MWhs per year, divided by 365, multiplied by (b) PacifiCorp's Cost to Cover.

"Effective Date" is defined in Section 2.1.

"Electric System Authority" means each of NERC, WECC, WREGIS, an RTO, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region, as such are applicable to the Seller or PacifiCorp.

"Environmental Attributes" means 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. Environmental Attributes include but are not limited to: (a) 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 (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>),

methane (CH<sub>4</sub>), 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) ITCs or any 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.

"Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

"Event of Default" is defined in Section 11.1.

"Example" means an example of certain calculations to be made hereunder. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example.

"Expected Energy" means 4,466 MWh of Net Output per year measured at the Point of Delivery, which is Seller's best estimate of the projected long-term average annual Net Output production based upon typical solar conditions at the Facility as determined by a Solar Performance Modeling Program, delivered to the Point of Delivery and the Expected Nameplate Capacity Rating. Seller estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly output set forth in Exhibit A. If at Final Completion the Facility's Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating, Expected Energy shall be reduced or prorated by 1,474 MWh per year for each full MW of Nameplate Capacity Rating below the Expected Nameplate Capacity Rating. Seller acknowledges that PacifiCorp will include Expected Energy in PacifiCorp's resource planning. PacifiCorp acknowledges that solar exposure is a variable resource and that the Facility's actual annual output of Net Output in the ordinary course in any given year will be subject to variation caused by differences in the actual solar exposure at the Facility from year to year.

"Expected Nameplate Capacity Rating" means 3 MW (AC), the expected maximum instantaneous generation capacity of the Facility.

"Expected Output" means 4,815 MWh in the first full Contract Year, reduced by an annual degradation factor of 0.8% per Contract Year.

"Facility" is defined in the Recitals and is more fully described in attached Exhibit 6.1 and includes the photovoltaic power generating equipment, including panels and inverters, and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to PacifiCorp and required to interconnect with the System.

"Facility Financing Date" means the closing date for the construction financing for the Facility between Seller or Seller's Affiliates and a Lender.

"FERC" means the Federal Energy Regulatory Commission.

"Final Completion" means the Facility is fully operational and reliable, at or greater than the Required Percentage of the Expected Nameplate Capacity Rating, and fully interconnected, fully integrated, and synchronized with the Transmission Provider's System, as evidenced (to the reasonable satisfaction of PacifiCorp) by the completion of all items set forth on the Final Completion Punch List, modified if necessary to reflect the Nameplate Capacity Rating.

"Final Completion Punch List" is defined in the definition of "Commercial Operation."

"Firm Market Price Index" means (a) 93 percent of the average price reported by Intercontinental Exchange, Inc. ("ICE") Day-Ahead Palo Verde On-Peak Index, for On-Peak Hours, and (b) 93 percent of the average price reported on the ICE Day-Ahead Palo Verde Off-Peak Index, for Off-Peak Hours. If either index is not available for a given period, for purposes of calculations hereunder, the Firm Market Price Index shall be deemed to equal the volumetrically-weighted average price derived from data published by ICE for the same number of days immediately preceding and immediately succeeding the period in which the index in question was not available, regardless of which days of the week are used for this purpose. If the Firm Market Price Index or its replacement or any component of that index or its replacement ceases to be published or available, or useful for its intended purpose hereunder, during the Term, the Parties shall agree upon a replacement Firm Market Price Index or component an index or component that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of electricity for the applicable periods.

"Force Majeure" is defined in Section 14.1.

"Forced Outage" means NERC Event Types U1, U2 and U3, as set forth in attached Exhibit B, and specifically excludes any Maintenance Outage or Planned Outage.

"Generation Interconnection Agreement" means the small generator interconnection agreement to be entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

"Governmental Authority" means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, PacifiCorp or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

"Green Tags" means (a) the Environmental Attributes associated with all Output, together with (b) the Green Tag Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified," or otherwise. One

Green Tag represents the Environmental Attributes made available by the generation of one MWh of energy from the Facility.

"Green Tags Price Component" means: (1) the price for Green Tags determined by arithmetically averaging quotes for Green Tags from three nationally recognized independent Green Tag brokers selected by PacifiCorp pursuant to which PacifiCorp could reasonably purchase substitute Green Tags similar to those Green Tags that Seller failed to deliver, with delivery terms, vintage period and any renewable program certification eligibility that are similar to those contained herein, calculated as of the date of default or as soon as reasonably possible thereafter; or (2) if after the Effective Date a liquid market for Green Tags exists, the price established for Green Tags from that established liquid market for Green Tags in a form and location that PacifiCorp determines reasonably states the market value of the Green Tags delivered hereunder.

"Green Tag 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 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 or renewable portfolio standard.

"Guaranteed Commercial Operation Date" means the date that is 90 days after the Scheduled Commercial Operation Date.

"Hazardous Materials" means any waste or other substance that is listed, defined, designated or classified as or determined to be hazardous under or pursuant to any environmental law or regulation.

"Indemnified Party" is defined in Section 6.2.3(b).

"Interconnection Facilities" means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the System, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

"Interconnection Provider" means PacifiCorp Transmission.

"Inverter" means the equipment installed at the Facility to convert direct current from the Solar Panels to alternating current, as described in Exhibit 6.1.

"ITCs" means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

"KW" means kilowatt.

"KWh" means kilowatt hour.

"Leases" means the memoranda of lease and redacted leases recorded in connection with the development of the Facility, as the same may be supplemented, amended, extended, restated, or replaced from time to time.

"Lender" means an entity lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a Tax Investor (as defined in the Lender Consent), backleverage financing or credit derivative arrangement) to Seller or Seller's Affiliates (a) for the construction, term or permanent financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) for any development financing, bridge financing, credit support, and related credit enhancement or interest rate, currency, weather, or Environmental Attributes in connection with the development, construction or operation of the Facility; or (d) for the purchase of the Facility and related rights from Seller.

"Lender Consent" means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of Exhibit 8.6.

"Letter of Credit" means an irrevocable standby letter of credit in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder that:

- (1) is issued by a Qualifying Institution;
- (2) by its terms, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;
- (3) if issued by a foreign bank with a U.S. branch, permits PacifiCorp to draw upon the U.S. branch;
- (4) permits PacifiCorp to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least 30 Business Days prior to its stated expiration date;
- (5) permits PacifiCorp to draw the entire amount available thereunder if such letters of credit are not increased or replaced as and when provided in Section 8;
- (6) is transferable by PacifiCorp to any party to which PacifiCorp may assign this Agreement; and
- (7) shall remain in effect for at least 90 days after the end of the Term.

"Liabilities" is defined in Section 12.1.1.

"Licensed Professional Engineer" means a person proposed by Seller and acceptable to PacifiCorp in its reasonable judgment who (a) to the extent mandated by Requirements of Law is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements



of Law specific to such state, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Seller and is not an employee of its members or Affiliates, other than with the prior written consent of PacifiCorp, for services previously or currently being rendered to Seller or its members or Affiliates, and (d) 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.

"Maintenance Outage" means NERC Event Type MO, as set forth in attached Exhibit B, and includes any outage involving 10 percent of the Facility's Net Output that is not a Forced Outage or a Planned Outage.

"Maximum Delivery Rate" means the maximum hourly rate of delivery of Net Output in MWh from the Facility to the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating.

"Moody's" means Moody's Investor Services, Inc.

"Mountain Prevailing Time" or "MPT" means Mountain Standard Time or Mountain Daylight Time, as applicable in Utah on the day in question.

"MW" means megawatt.

"MWh" means megawatt hour.

"Nameplate Capacity Rating" means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW (AC), when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the Solar Panels and Inverters, as set forth in a notice from Seller to PacifiCorp delivered prior to the Commercial Operation Date and, if applicable, updated in a subsequent notice from Seller to PacifiCorp as required for Final Completion. The Nameplate Capacity Rating of the Facility shall not exceed 3 MW.

"NERC" means the North American Electric Reliability Corporation.

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

"Network Resource" is defined in the Tariff.

"Network Service Provider" means PacifiCorp Transmission, as a provider of network service to PacifiCorp under the Tariff.

"Off-Peak Hours" means all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, MPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, MMPT, on Sundays and NERC designated holidays.

"On-Peak Hours" means all hours ending 07:00:00 through 22:00:00 MMPT, Monday through Saturday, excluding NERC designated holidays.

"Output" means all energy produced by the Facility.

"Output Guarantee" is defined in Section 6.12.1.

"Output Shortfall" is defined in Section 6.12.2.

"PacifiCorp" is defined in the Recitals, and explicitly excludes PacifiCorp Transmission.

"PacifiCorp Indemnitees" is defined in Section 12.1.1.

"PacifiCorp Representatives" is defined in Section 6.13.

"PacifiCorp Transmission" means PacifiCorp, an Oregon corporation, acting in its interconnection or transmission function capacity.

"PacifiCorp's Cost to Cover" means the positive difference, if any, between (a) the sum of (i) the time weighted average of the Firm Market Price Index for each day for which the determination is being made, minus (b) the Contract Price specified in Exhibit 5.1 in effect on such days, stated as an amount per MWh. If on a given day (or Contract Year in the case of calculating Output Shortfall) the difference between (a) minus (b) referenced above is zero or negative, then PacifiCorp's Cost to Cover shall be zero dollars (\$0), and Seller shall have no obligation to pay any amount to PacifiCorp on account of Section 6.12.2 or Section 11.2.1 with respect to such day (or Contract Year in the case of calculating Output Shortfall). For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (b).

"Party" and "Parties" are defined in the Recitals.

"Permits" means the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership and operation of the Facility and occupancy of the Premises, and all amendments, modifications, supplements, general conditions and addenda thereto.

"Planned Outage" means NERC Event Type PO, as set forth in attached Exhibit B, and specifically excludes any Maintenance Outage or Forced Outage.

"Point of Delivery" means the point of interconnection between the Facility and the System, as specified in the Generation Interconnection Agreement and as further described in Exhibit 9.2.

"Premises" means the real property on which the Facility is or will be located, as more fully described on Exhibit 6.1.

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

"PUHCA" means the Public Utility Holding Company Act of 2005.

"PURPA" means the Public Utility Regulatory Policies Act of 1978.

"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.

"Qualifying Institution" means the United States office of a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, or a foreign bank, having assets \$10,000,000,000 (net of reserves) and a credit rating on its long-term senior unsecured debt of at least "A" from S&P and "A2" from Moody's.

"Reporting Quarter" is defined in Section 6.10.1.

"Required Facility Documents" means the Permits and other authorizations, rights and agreements now or hereafter necessary for construction, operation, and maintenance of the Facility. Seller shall set forth all the Required Facility Documents in Exhibit 3.2.3.

"Required Percentage" means 90 percent.

"Requirements of Law" means any applicable and mandatory (but not merely advisory) federal, state and local law, statute, regulation, rule, action, order, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

"Rolling Period" is defined in Section 6.12.1.

"RTO" means any entity (including, but not limited to an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

"S&P" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.).

“Schedule 37” means Rocky Mountain Power Electric Service Schedule No. 37 as attached in Exhibit 5.1, and as approved by the Commission.

"Scheduled Commercial Operation Date" means July 31, 2015.

"Seller" is defined in the Recitals.

"Seller Indemnitees" is defined in Section 12.1.2.

"Seller's Cost to Cover" means the positive difference, if any, between (a) the Contract Price per MWh specified in Exhibit 5.1, and (b) the net proceeds per MWh actually realized by Seller from the sale to a third party of Net Output not purchased by PacifiCorp as required hereunder. If on any given day the difference between (a) minus (b) referenced above is zero or negative, then Seller's Cost to Cover shall be zero dollars with respect to such day, and PacifiCorp shall have no obligation to pay any amount to Seller on account of Section 11.2.2. For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (a).

"Senior Lenders" means Lenders being granted senior security interests on the Facility or its assets, or Seller or its equity, other than Affiliates of Seller.

"Seller Uncontrollable Minutes" means, for the Facility in any Contract Year, the total number of minutes during such Contract Year during which the Facility was unable to deliver Net Output to PacifiCorp (or during which PacifiCorp failed to accept such delivery) due to one or more of the following events, each as recorded by Seller's SCADA and indicated by Seller's electronic fault log: (a) an emergency or Force Majeure event; (b) to the extent not caused by Seller's actions, a curtailment in accordance with Section 4.4(b); (c) the System operating outside the voltage or frequency limits defined in the applicable operating manual for the Inverters installed at the Facility; (d) Planned Outages, but in no event exceeding 36 hours per Contract Year consistent with such operating manual; and (e) a default by PacifiCorp; provided, however, that if any of the events described above in items (a) through (e) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller's non-conformance with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

“Solar Array” means one or more Solar Panels connected to the same Inverter.

“Solar Panels” means the photovoltaic energy generating panels installed at the Facility as described in Exhibit 6.1.

“Solar Performance Modeling Program” means a commercially available computer modeling program that is generally accepted in the solar energy industry capable of modeling the Expected Energy and other similar outputs. Solar Performance Modeling Program includes, but is not limited to, the PVSYST program. If Seller selects a Solar Performance Modeling Program that PacifiCorp does not have access too, Seller, at its cost, shall provide

PacifiCorp access to the Solar Performance Modeling Program in order for PacifiCorp to fully analyze all modeling provided by Seller under this Agreement.

"Start-Up Testing" means the start-up tests for the Facility as set forth in Exhibit C.

"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 Generation Interconnection Agreement.

"Tariff" means the PacifiCorp FERC Electric Tariff Fifth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

"Tax Credits" means any state, local and/or federal production tax credit, tax deduction, and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.

"Technical Expert" is defined in Section 24.2.2.

"Term" is defined in Section 2.1.

"Test Energy" means any Net Output during periods prior to the Commercial Operation Date and related Capacity Rights.

"Transmission Provider" means PacifiCorp Transmission, including the Grid Operations business unit.

"Transmission Service" means, if applicable, the transmission services pursuant to which the Transmission Provider transmits Output to the Point of Delivery, as applicable.

"WECC" means the Western Electricity Coordinating Council.

## 1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity's or index's successors; (d) "herein," "hereof" and "hereunder" refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) "including" means "including, without limitation" or "including, but not limited to"; (h) all references to a particular law or statute mean that law or statute as amended from time to time; (i) all references to energy or capacity are to be interpreted as utilizing

alternating current, unless expressly stated otherwise; and (j) the word "or" is not necessarily exclusive. Reference to "days" shall be calendar days, unless expressly stated otherwise herein.

1.2.2 Terms Not to be Construed For or Against Either Party. Each term hereof shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3 Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.2.4 Examples. Example calculations and other examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

1.2.5 Interpretation with FERC Orders. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Interconnection Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the Generation Interconnection Agreement with the Interconnection Provider.

(a) The Parties acknowledge and agree that the Generation Interconnection Agreement shall be a separate and free standing contract and that the terms hereof are not binding upon the Interconnection Provider.

(b) Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation hereunder. This Agreement shall not be construed to create any rights between Seller and the Interconnection Provider or between Seller and the Transmission Provider,

(c) Seller expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an Affiliate thereof. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider.

## SECTION 2 TERM; FACILITY DEVELOPMENT

2.1 Term; Inter-jurisdictional Cost Allocation. This Agreement shall become effective when it is executed and delivered by both Parties (the "Effective Date"), and, unless earlier terminated as provided herein, shall remain in effect until July 30, 2035 (the "Term").

2.2 Adverse Order. For purposes of inter-jurisdictional cost allocation, this Agreement constitutes a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Protocol and, as such, the costs of those QF provisions are allocated as a system resource unless any portion of those costs exceed the cost PacifiCorp would have otherwise incurred acquiring comparable resources. In that event, the Revised Protocol assigns those excess costs on a situs basis to the State of Utah. The rates, terms and conditions in this Agreement are in accordance with the rates, terms and conditions approved by the Commission for purchases from qualifying facilities. In addition, for the purposes of inter-jurisdictional cost allocation, PacifiCorp represents that the costs of this Agreement do not exceed the costs PacifiCorp would have otherwise incurred acquiring resources in the market that are defined as "Comparable Resources" in Appendix A to the Inter-Jurisdictional Cost Allocation Revised Protocol.

2.3 Milestones. Time is of the essence in the performance hereof, and Seller's completion of the Facility and delivery of Net Output by the Scheduled Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones at the times indicated:

(a) On or before the Effective Date, Seller shall provide PacifiCorp with a fully executed Generation Interconnection Agreement or a letter (or other form of confirmation acceptable to PacifiCorp) from the Transmission Provider stating the Scheduled Commercial Operation Date is achievable under the standard timelines of the Transmission Provider for the Seller to complete all Interconnection Facilities and to be fully interconnected to the System. If Seller provides a letter (or other form of confirmation acceptable to PacifiCorp) from the Transmission Provider, Seller shall provide a fully executed and effective Generation Interconnection Agreement to PacifiCorp at least 90 days prior to the Scheduled Commercial Operation Date. Seller acknowledges that if it relies upon a letter from the Transmission Provider as described above, PacifiCorp is under no obligation to modify the Scheduled Commercial Operation Date if Transmission Provider, for any reason, fails to complete the Interconnection Facilities for the Facility or otherwise fails to complete the interconnection for the Facility by the date indicated in the letter;

(b) On or before the 30th day following the Effective Date, Seller shall post the Default Security (as applicable);

(c) By the Commercial Operation Date, Seller shall provide the Levelized Security required under Section 8.4;

(d) Seller shall provide PacifiCorp with documentation showing that Seller has obtained retail electric service for the Facility prior to the Commercial Operation Date;

(e) Seller shall cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date;

(f) If Commercial Operation of the Facility is achieved based on less than 100 percent of the Expected Nameplate Capacity Rating, then Seller shall cause the Facility to achieve Final Completion on or before the 90th day after the Commercial Operation Date; provided, however, that the date for achieving each of the foregoing milestones shall be extended on a day for day basis for any delay due solely to (i) PacifiCorp's delay in taking, or failure to take, any action required of it hereunder in breach of this Agreement, or (ii) an event of Force Majeure; and

(g) Seller shall provide PacifiCorp with documentation showing that Seller has obtained retail electric service for the Facility prior to the Commercial Operation Date.

#### 2.4 Project Construction and Delay Damages.

(a) On or before the later of: (i) the Facility Financing Date or (ii) excavation of the first foundation for the photovoltaic panels, Seller shall provide to PacifiCorp a certificate from a Licensed Professional Engineer confirming that the Required Facility Documents including, but not limited to the material permits, consents and agreements necessary to operate and maintain the Facility have been obtained by Seller.

(b) If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to PacifiCorp Delay Damages from and after the Scheduled Commercial Operation Date up to, but not including, the date that the Facility achieves Commercial Operation.

(c) If the Facility does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, PacifiCorp may terminate this Agreement pursuant to Section 11 (it being acknowledged and agreed that, in the event PacifiCorp terminates this Agreement pursuant to this Section 2.4(c), Delay Damages shall cease to accrue on the earlier of (i) the date of termination or (ii) 120 days after the Guaranteed Commercial Operation Date if PacifiCorp has not terminated. Nothing herein shall preclude PacifiCorp from terminating the Agreement 120 or more days after the Guaranteed Commercial Operation Date.).

(d) After the date of Final Completion, any partially completed Solar Array shall not be part of the Facility, and Seller shall not undertake to add those Solar Array or output from such Solar Array to the Facility without the prior written consent of PacifiCorp. Any output of such Solar Array or Capacity Rights associated with such output shall be treated as Net Output above the Maximum Delivery Rate and is subject to Section 6.8.

2.5 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to Seller's delay in achieving Commercial Operation or Final Completion or failure to reach Final Completion based on 100 percent of the Expected Nameplate Capacity Rating would be difficult or impossible to predict with certainty, and (b) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the



Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. The Parties agree that Delay Damages shall be PacifiCorp's exclusive remedy for a delay in achieving Commercial Operation or failure to reach Final Completion based on 100 percent of the Expected Nameplate Capacity Rating and believe that Delay Damages fairly represent actual damages. Subject to the foregoing sentence, this Section 2.5 shall not limit the amount of damages payable to PacifiCorp if this Agreement is terminated as a result of Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Any such termination damages shall be determined in accordance with Section 11.5.

2.6 Damages Invoicing. By the 10th day following the end of the calendar month in which Delay Damages begin to accrue and continuing on the 10th day of each calendar month during the period in which Delay Damages accrue (and the following months, if applicable), PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of such damages and any amount due PacifiCorp in respect thereof for the preceding calendar month. No later than 10 days after receiving such an invoice and subject to Sections 10.3 and 10.4, Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.7 PacifiCorp's Right to Monitor. During the Term, Seller shall permit PacifiCorp and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the acquisition, design, financing, engineering, construction and installation of the Facility. Between the Effective Date and 30 days following the date of Final Completion, Seller shall, on or before the 10th day of each calendar month, provide PacifiCorp with a brief monthly status report for the preceding month.

(b) Monitor the status of the acquisition, land leasing, design, financing, engineering, construction and installation of the Facility and the performance of the contractors constructing the Facility.

(c) Monitor and receive monthly updates from Seller concerning (i) the progress of Seller's negotiation and execution of contracts for the acquisition, design, financing, engineering, construction and installation of the Facility, Premises, major equipment, and warranties, and (ii) the contractors' performance and achievement of contract deliverables and all performance and other tests required to achieve Commercial Operation or contemplated by the warranty agreements between Seller and a manufacturer of the Facility's Solar Panels and Inverters and any other material items of Facility equipment that require testing for warranty agreements to be effective. Seller shall provide PacifiCorp with at least two Business Days prior notice of each such test, with the understanding that if the performance of such test is dependent on the presence of sufficient solar exposure or other variables beyond the control of Seller, the date of such test may be postponed if, on the date specified in the related notice, there is insufficient solar exposure or other circumstances beyond the control of Seller that prevent the performance of such test on the scheduled date. Seller does not herein grant PacifiCorp the right to review, comment on or approve of the terms or conditions of any contract or negotiation

between Seller and a third party, the terms and conditions of each such contract or negotiation being confidential and to be determined by Seller in its sole discretion. Conversely, nothing in this Agreement shall be construed to require PacifiCorp to review, comment on, or approve of any contract between Seller and a third party.

(d) Witness initial performance tests and other tests and review the results thereof; with Seller to make best efforts to provide PacifiCorp five Business Days' advance notice of each such major test.

(e) Perform such examinations, inspections, and quality surveillance as, in PacifiCorp's reasonable judgment, are appropriate and advisable to determine that the Facility has been properly commissioned and Commercial Operation and Final Completion have been achieved.

With respect to PacifiCorp's right to monitor under this Section 2.7, (i) PacifiCorp is under no obligation to exercise any of these monitoring rights, (ii) such monitoring shall occur subject to reasonable rules developed by Seller regarding Facility construction, access, health, safety, and environmental requirements, and (iii) PacifiCorp shall have no liability to Seller for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by PacifiCorp with respect to the Facility or any contractor. Any review or monitoring of the Facility conducted by PacifiCorp hereunder shall be performed in a manner that does not impede, hinder, postpone, or delay Seller or its contractors in their performance of the engineering, construction, design or testing of the Facility. PacifiCorp shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.7, which representatives shall have authority to act for PacifiCorp in all technical matters under this Section 2.7 as authorized by PacifiCorp but not to amend or modify any provision hereof. PacifiCorp's initial representatives and their contact information are listed in Exhibit 2.7. PacifiCorp may, by written notice to Seller, change its representatives or their contact information.

2.8 Tax Credits. Seller shall notify PacifiCorp whether Seller has elected to claim ITCs, as applicable, within 30 days following the date that Seller (or Seller's Affiliate, on a consolidated basis) files its first tax return after the Commercial Operation Date. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive ITCs or other Tax Credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Net Output, shall be effective regardless of whether the sale of Output or Net Output from the Facility is eligible for, or receives, ITCs, or other Tax Credits during the Term.

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

3.1 Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

3.1.1 Organization. It is duly organized and validly existing under the laws of the State of its organization.

3.1.2 Authority. It has the requisite power and authority to enter hereinto and to perform according to the terms hereof.

3.1.3 Corporate Actions. It has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. The execution and delivery hereof does not contravene any provision of, or constitute a default under, any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, or any valid order of any court, or any regulatory agency or other Governmental Authority having authority to which it is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

3.1.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of either Party's knowledge, threatened in writing against either Party or its members, with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened in writing against a Party, its members, or any Affiliate, the effect of which would materially and adversely affect the Party's performance of its obligations hereunder.

3.2 Seller's Further Representations and Warranties. Seller further represents, covenants, and warrants to PacifiCorp that:

3.2.1 Authority. Seller (a) has (or will have prior to the Commercial Operation Date) all required regulatory authority to make wholesale sales from the Facility; (b) has the power and authority to own and operate the Facility and be present upon the Premises for the Term; and (c) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.2 No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not and will not:

(a) contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any of Seller's members;

(b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which

are (i) set forth in Exhibit 3.2.3 or (ii) required in connection with the construction or operation of the Facility and expected to be obtained in due course;

(c) result in a breach of or constitute a default under any provision of any security issued by any of Seller's members or managers, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder, or any material agreement, instrument or undertaking to which either Seller's members or any Affiliates of Seller's members is a party or by which the property of any of Seller's members or any Affiliates of Seller's members is bound, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder.

3.2.3 Required Facility Documents. All Required Facility Documents are listed on Exhibit 3.2.3. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, or will hold by the Commercial Operation Date (or such other later date as may be specified under Requirements of Law), and will maintain for the Term all Required Facility Documents (including, but not limited to, all material authorizations, rights and entitlements) necessary to construct, own and operate the Facility and to deliver Net Output to PacifiCorp in accordance with this Agreement. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises. Following the Commercial Operation Date, Seller shall notify PacifiCorp of any additional material consent or approval that is required for the operation and maintenance of the Facility promptly after Seller makes any such determination.

3.2.4 Delivery of Energy. On or before the Commercial Operation Date, Seller shall hold rights sufficient to enable Seller to deliver Net Output at the Nameplate Capacity Rating from the Facility to the Point of Delivery pursuant to this Agreement throughout the Term.

3.2.5 Control of Premises. Seller has all legal rights necessary for the Seller to enter upon and occupy the Premises for the purpose of constructing, operating and maintaining the Facility for the Term. All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibit 3.2.6. Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the Facility as valid for the Term. Upon request by PacifiCorp, Seller shall provide copies of the memoranda of lease recorded in connection with the development of the Facility to PacifiCorp.

3.2.8 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

3.2.9 Verification. All information relating to the Facility, its operation and output provided to Buyer and contained in this Agreement has been verified by Seller and is true and accurate.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered hereinto in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter hereof.

3.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this section are made as of the Effective Date and deemed repeated as of the Commercial Operation Date. If at any time during the Term, the Seller obtains actual knowledge of any event or information that would have caused any of the representations and warranties in Section 3 to be materially untrue or misleading at the time given, 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. If at any time the Seller obtains actual knowledge that the representations and warranties in Sections 3.2.1, 3.2.2(a), 3.2.3, 3.2.4 or 3.2.5 are not true, Seller shall provide written notice to PacifiCorp. The notice required pursuant to this section shall be given as soon as practicable after the occurrence of each such event.

## **SECTION 4 DELIVERIES OF NET OUTPUT**

4.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive the entire Net Output from the Facility at the Point of Delivery. PacifiCorp shall be under no obligation to make any purchase hereunder other than Net Output, as described above. PacifiCorp shall not be obligated to purchase, receive or pay for Net Output that is not delivered to the Point of Delivery. In addition, during the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive, all Net Output from the Facility as Test Energy at the price specified in Section 5.1.1.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, energy, or Capacity Rights from the Facility to any party other than PacifiCorp; provided, however, that this restriction shall not apply during periods when PacifiCorp is in default hereof because it has failed to accept or purchase that Net Output as required to hereunder.

4.3 Title and Risk of Loss of Net Output. Seller shall deliver Net Output to the Point of Delivery and Capacity Rights free and clear of all liens, claims and encumbrances. Title to and risk of loss of all Net Output shall transfer from Seller to PacifiCorp upon its delivery to PacifiCorp at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by, all Output up to and at the Point of Delivery. PacifiCorp shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Output after the Point of Delivery.

4.4 Curtailment. PacifiCorp shall not be obligated to purchase, receive, pay for, or pay any damages associated with, Net Output if such Net Output is not delivered to the System or Point of Delivery due to any of the following: (a) the interconnection between the Facility

and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement, (b) the Transmission Provider or Network Service Provider directs a general curtailment, reduction, or redispatch of generation in the area, (which would include the Net Output) for any reason, even if such curtailment or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in order to meet its obligations to the Transmission Provider or Network Service Provider to operate within system limitations, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output. Seller shall reasonably determine the MWh amount of Net Output curtailed pursuant to this Section 4.4 after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of such curtailed energy based on (x) the time and duration of the curtailment period and (y) solar exposure conditions recorded at the Facility during the period of curtailment and the power curve specified for the Solar Panels and Inverters as shown in the manufacturer's power curve provided by Seller to PacifiCorp in accordance with Exhibit 6.1. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a curtailment described in this Section 4.4.

4.5 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.

4.6 Title to Green Tags. As a result of the Commission order in Docket No. 12-035-100 dated August 16, 2013 PacifiCorp waives any claim to Seller's ownership of Green Tags under this Agreement.

4.6.1 Purchase and Sale of Capacity Rights. For and in consideration of PacifiCorp's agreement to purchase from Seller the Facility's Net Output on the terms and conditions set forth herein, Seller transfers to PacifiCorp, and PacifiCorp accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term.

4.6.2 Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person or entity the Capacity Rights, if any. During the Term, Seller shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than PacifiCorp. PacifiCorp may at its own risk and expense report to any person or entity that Capacity Rights exclusively belong to it.

4.6.3 Further Assurances. At PacifiCorp's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Net Output or Capacity Rights, if any, to PacifiCorp.

## SECTION 5 CONTRACT PRICE; COSTS

5.1 Contract Price; Includes Capacity Rights. PacifiCorp shall pay Seller the non-levelized prices for Net Output, including Capacity Rights, contained on sheet 37.3 (effective as of July 29, 2013) of Schedule 37 in effect as of the Effective Date, up to the Maximum Delivery Rate. Schedule 37 is contained in Exhibit 5.1. Seller shall not be entitled to any compensation over and above the Contract Price or the Test Energy price, as the case may be, for any Net Output or Capacity Rights associated therewith or any Green Tags later determined to be PacifiCorp's pursuant to Section 4.6.

5.1.1 Test Energy. Between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver to PacifiCorp all Test Energy. PacifiCorp shall pay Seller for Test Energy delivered at the Point of Delivery, an amount per MWh equal to 75 percent of the Contract Price, provided, however, that Seller's right to receive payment for such Test Energy is subject to PacifiCorp's right of offset under Section 10.2 for, among other things, payment by Seller of any Delay Damages owed to PacifiCorp by Seller pursuant to Section 2.4.

5.1.2 Commercial Operation. For the period beginning on the Commercial Operation Date and thereafter during the Term, PacifiCorp shall pay to Seller the Contract Price per KWh of Net Output delivered to the Point of Delivery, as specified in the Schedule 37 effective on the Effective Date, as contained in Exhibit 5.1. The Contract Price shall not be modified if Schedule 37 is modified during the Term of this Agreement unless such modification is expressly made applicable to existing power purchase agreements by a Government Authority. If PacifiCorp requests a modification to Schedule 37, including a modification to pricing, neither Seller nor PacifiCorp shall request that any change in pricing be applicable to this Agreement.

5.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, Transmission Service, and transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider and Transmission Provider for the Interconnection Facilities. PacifiCorp shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties. Without limiting the generality of the foregoing, Seller, in accordance with the Generation Interconnection Agreement, shall bear all costs associated with the modifications to Interconnection Facilities or the System (including system upgrades) caused by or related to (a) the interconnection of the Facility with the System and (b) any increase in generating capacity of the Facility.

5.3 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself.

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Net Output, Capacity Rights or Green

Tags (if owned by PacifiCorp as provided in Section 4.6) up to and including, but not beyond, the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp shall pay or cause to be paid when due all such taxes imposed or levied by any Governmental Authority on the Net Output, Capacity Rights or Green Tags (if owned by PacifiCorp as provided in Section 4.6) beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. The Contract Price shall not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back. In the event any taxes are imposed on a Party for which the other Party is responsible hereunder, the Party on which the taxes are imposed shall promptly provide the other Party notice thereof and such other information as such Party may reasonably request with respect to any such taxes.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof and subject to Section 5.4, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or environmental attributes.

5.6 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008).

## **SECTION 6 OPERATION AND CONTROL**

6.1 As-Built Supplement. Within 90 days of completion of construction of the Facility, Seller shall provide PacifiCorp the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to Exhibit 6.1 when it has been reviewed and approved by PacifiCorp, which approval shall not be unreasonably withheld or delayed. If the proposed As-built Supplement does not accurately describe the Facility as actually built or is otherwise defective as to form in any material respect, PacifiCorp may within 15 days after receiving the proposed As-built Supplement give Seller a notice describing what PacifiCorp wishes to correct. If PacifiCorp does not give Seller such a notice within the 15 day period, the As-built Supplement shall be deemed approved. If PacifiCorp provides a timely notice requiring



corrections, Seller shall in good faith cooperate with PacifiCorp to revise the As-built Supplement to address PacifiCorp's concerns. Notwithstanding the foregoing, PacifiCorp shall have no right to require Seller to relocate, modify or otherwise change in any respect any aspect of the Facility as actually built.

## 6.2 Standard of Facility Operation.

6.2.1 General. At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (a) the applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors to the functions thereof; (b) the Permits and Required Facility Documents; (c) the Generation Interconnection Agreement; (d) all Requirements of Law; (e) the requirements hereof; and (f) Prudent Electrical Practice. Seller acknowledges that it shall have no claims hereunder against PacifiCorp with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Transmission Provider. Seller will have no claims against PacifiCorp under this Agreement with respect to the provision of station service.

6.2.2 Qualified Operator. From and after the Commercial Operation Date, Seller or an Affiliate of Seller shall itself operate the Facility or cause the Facility to be operated by an entity that has at least two years of experience in operation of solar energy facilities of comparable size to the Facility. Seller shall provide PacifiCorp 30 days prior written notice of any change in Operator.

## 6.2.3 Fines and Penalties.

(a) Without limiting a Party's rights under Section 6.2.3(b), each Party shall pay all fines and penalties incurred by such Party on account of noncompliance by such Party with Requirements of Law in respect to this Agreement, except where such fines and penalties are being contested in good faith through appropriate proceedings.

(b) If fines, penalties, or legal costs are assessed against or incurred by either Party (the "Indemnified Party") on account of any action by any Governmental Authority due to noncompliance by the other Party (the "Indemnifying Party") with any Requirements of Law or the provisions hereof, or if the performance of the Indemnifying Party is delayed or stopped by order of any Governmental Authority due to the Indemnifying Party's noncompliance with any Requirements of Law, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party against any and all losses, liabilities, damages, and claims suffered or incurred by the Indemnified Party as a result thereof. Without limiting the generality of the foregoing, the Indemnifying Party shall reimburse the Indemnified Party for all fees, damages, or penalties imposed on the Indemnified Party by any Governmental Authority, other person or to other utilities for violations to the extent caused by a default by the Indemnifying Party or a failure of performance by the Indemnifying Party hereunder.

6.3 Interconnection. Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Nameplate Capacity Rating at the Point of Delivery. Seller shall have no claims hereunder against PacifiCorp, acting in its merchant function

capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise.

6.4 Coordination with System. Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System.

6.5 Outages.

6.5.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during day light hours (sun-up to sunset) during any portion of the months of November, December, January, February, June, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement. Seller shall provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one month, but no more than three 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 any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval shall not be unreasonably withheld or delayed.

6.5.2 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 days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then-existing solar exposure 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; provided, however, that Seller shall take all reasonable measures consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the day light hours of the following periods: November, December, January, February, June 15 through June 30, July, August, and September 1 through September 15. Notice of a proposed Maintenance Outage shall include 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 shall give PacifiCorp notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. 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 any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity available to PacifiCorp as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages. Notwithstanding anything in this Section 6.5.2 to the contrary, Seller may schedule a Maintenance Outage at any time and without the requirement to notify PacifiCorp in advance during conditions of low solar exposure.

6.5.3 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any Forced Outage resulting in more than 10 percent of the Nameplate Capacity Rating of the Facility being unavailable. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. As soon as practicable, the oral report shall be confirmed in writing by notice to PacifiCorp. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.5.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform PacifiCorp, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day (except for curtailments pursuant to Section 4.4(b)) and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than 5 percent of the Nameplate Capacity Rating of the Facility.

6.5.5 Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly net output set forth on Exhibit A takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility.

## 6.6 Scheduling.

6.6.1 Cooperation and Standards. With respect to any and all scheduling requirements hereunder, (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. Each Party shall comply with the applicable variable resource standards and criteria of any applicable Electric System Authority.

6.6.2 Schedule Coordination. If, as a result hereof, PacifiCorp is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement, due to Seller's lack of standing as a "scheduling coordinator" or other RTO recognized designation, qualification or otherwise, then Seller shall acquire such RTO recognized standing (or shall contract with a third party who has such RTO recognized standing) such that PacifiCorp is no longer responsible for Seller's performance under the Generation Interconnection Agreement or RTO requirement.

## 6.7 Forecasting.

6.7.1 Long-Range Forecasts. For PacifiCorp's planning purposes, Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide an annual update to the expected long-term monthly/diurnal mean net energy estimates (12 X 24 profile).

6.7.2 Day-Ahead Forecasts and Updates. By such time as mutually agreed to by the Parties on the Business Day immediately preceding the day on which Net Output from the

Facility is to be delivered, Seller shall provide PacifiCorp with an hourly forecast of deliveries for each hour of the next day; provided, however, that a forecast provided on a day before any non-Business Day shall include forecasts for each day to and including the next Business Day. The Parties shall cooperate to implement and use automatic forecast updates. Seller shall communicate forecasts under this Section 6.7.2 in an efficient manner, including electronic mail or other such media as determined by PacifiCorp (which, at PacifiCorp's discretion, may be in lieu of or in addition to notice to PacifiCorp). PacifiCorp may, with the advance written consent of Seller and at Seller's expense, add forecasting services for Seller's Facility to PacifiCorp's existing contract with a qualified solar-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement. The Parties agree that the forecasting obligations of Seller under this Section 6.7 may be met by a solar forecast service provider engaged by PacifiCorp. Upon request by PacifiCorp, Seller shall provide a 24-hour telephone number that PacifiCorp may contact to determine the then-current status of the Facility. PacifiCorp may at its cost and without the prior consent of Seller add the Facility to PacifiCorp's existing qualified solar-energy-production forecasting vendor contract.

6.7.3 Basis of Forecasts. The forecasts called for by this Agreement shall be non-binding, good faith estimates only, and PacifiCorp expressly releases and holds harmless Seller from any liability for forecasting errors. Seller shall prepare such forecasts and updates by utilizing a solar exposure model or service that is (a) commercially available or proprietary to Seller or an Affiliate of Seller, and (b) comparable in accuracy to models or services commonly used in the solar energy industry, so long as such model or service is available at a commercially reasonable cost and is satisfactory to PacifiCorp in the exercise of its reasonable discretion. On or prior to May 1 during each calendar year in the Term, Seller shall determine in good faith which such model or service to utilize after consultation with PacifiCorp.

6.8 Increase in Nameplate Capacity Rating; New Project Expansion or Development. Without limiting any restrictions herein on Nameplate Capacity Rating, if Seller elects to increase, at its own expense, the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate through any means, including replacement or modification of Facility equipment or related infrastructure, PacifiCorp shall not be required to purchase any Net Output above the Maximum Delivery Rate. If Seller or any Affiliate elects to build an expansion or additional solar project within one mile of the Facility (measured from the nearest generation equipment at both locations), Seller shall have no rights pursuant to this Agreement to require PacifiCorp to purchase (and PacifiCorp shall have no obligation to purchase pursuant to this Agreement) the output of any such expansion or additional facility. Any such expansion or additional facility may not materially and adversely impact the ability of either Party to fulfill its obligations pursuant hereto.

6.9 Electronic Communications.

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

- (a) instantaneous MW output at the Point of Delivery;

- (b) Net Output; and
- (c) the Facility's total instantaneous generation capacity.

Seller shall also transmit or cause to be transmitted to or make accessible to PacifiCorp any other data from the Facility that Seller receives on a real time basis, including meteorological data, solar exposure data and Net Output data. Such real time data shall be provided to or be made accessible to PacifiCorp on the same basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp shall also receive the data in four second intervals).

6.9.2 Transmission Provider Consent. Seller shall execute a consent, in the form required by Transmission Provider, to provide that PacifiCorp can read the meter and receive any and all data from the Transmission Provider relating to transmission of Output or other matters relating to the Facility without the need for further consent from Seller.

6.9.3 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between PacifiCorp and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

#### 6.10 Reports and Records.

6.10.1 Quarterly Reports. Commencing on the Commercial Operation Date, within 30 days after the end of each calendar quarter during the Term (each, a "Reporting Quarter"), Seller shall provide to PacifiCorp a report in electronic format, which report shall include (a) summaries of the Facility's solar insolation and actual and predicted output data for the Reporting Quarter in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Quarter; and (c) any supporting information that PacifiCorp may from time to time reasonably request (including historical solar exposure data for the Facility). PacifiCorp, in its discretion, may waive by providing written notice to Seller, the quarterly reporting requirements required in this Section 6.10.1 if Seller provides sufficient real time data to meets the informational requirements of PacifiCorp.

6.10.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the Commercial Operation Date. Seller shall provide PacifiCorp with a copy of the electronic fault log within 30 days after the end of the calendar month to which the fault log applies.

6.10.3 Other Information to be Provided to PacifiCorp. Seller shall provide to PacifiCorp the following information concerning the Facility:

- (a) Upon the request of PacifiCorp, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

(b) A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of PacifiCorp any of the technical data obtained in connection with such maintenance;

(c) Before Final Completion, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month;

(d) Before Final Completion, a monthly report containing a brief summary of construction activity contemplated for the next calendar month;

(e) At any time from the Effective Date, one year's advance notice of the termination or expiration of any material agreement, including Leases, pursuant to which the Facility or any material equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any land lease. In the event Seller has less than one year's advance notice of such termination or expiration, Seller shall provide the notice contemplated by this Section to PacifiCorp within 15 Business Days of Seller obtaining knowledge of the termination or expiration.

6.10.4 Information to Governmental Authorities. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required by PacifiCorp or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to PacifiCorp copies of all submittals to Governmental Authorities or Electric System Authorities directed by PacifiCorp and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use best efforts to provide this information to PacifiCorp with sufficient advance notice to enable PacifiCorp to review such information and meet any submission deadlines imposed by the requesting organization or entity. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year (this amount shall escalate at 2.5 percent per Contract Year), if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.4.

6.10.5 Data Request. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review it and meet any submission deadlines. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year (this amount shall escalate at 2.5 percent per Contract Year), if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.5.

6.10.6 Documents to Governmental Authorities. After sending or filing any statement, application, and report or any document with any Governmental Authority or Electric

System Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to PacifiCorp a copy of the same.

6.10.7 Environmental Information. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data reasonably requested by PacifiCorp relating to environmental information under the Required Facility Documents. Seller shall further provide PacifiCorp with information relating to environmental impact mitigation measures it is taking in connection with the Facility's construction or operation that are required by any Governmental Authority. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year (this amount shall escalate at 2.5 percent per Contract Year), if any, incurred in connection with PacifiCorp's requests for the foregoing information under this Section 6.10.7. As soon as it is known to Seller, Seller shall disclose to PacifiCorp, the extent of any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises.

6.10.8 Operational Reports. Seller shall provide PacifiCorp quarterly (on a calendar year basis) operational reports in a form and substance reasonably acceptable to PacifiCorp, and Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all operational data requested by PacifiCorp with respect to the performance of the Facility and delivery of Net Output or Capacity Rights therefrom.

6.10.9 Notice of Material Adverse Events. Seller shall promptly notify PacifiCorp of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided herein.

6.10.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, or proceeding before any court or Governmental Authority against Seller or its members with respect to this Agreement or the transactions contemplated hereunder, Seller shall promptly give notice to PacifiCorp of the same. Following its receipt of written notice or actual knowledge of the commencement of any action, suit or proceeding before any court or Governmental Authority against Seller, its members or any Affiliate, the effect of which would materially and adversely affect Seller's performance of its obligations hereunder, Seller shall promptly give notice to PacifiCorp of the same.

6.10.11 Additional Information. Seller shall provide to PacifiCorp such other information respecting the condition or operations of Seller, as such pertains to Seller's performance of its obligations hereunder, or the Facility as PacifiCorp may, from time to time, reasonably request.

6.10.12 Confidential Treatment. The monthly reports and other information provided to PacifiCorp under this Section 6.10 shall be treated as Confidential Business Information if such treatment is requested in writing by Seller at the time the information is provided to PacifiCorp, subject to PacifiCorp's rights to disclose such information pursuant to Sections 6.10.4, 6.10.5, 6.10.7, 9.5, 9.6, 23.2 and 23.3, and pursuant to any applicable Requirements of Law. Seller shall have the right to seek confidential treatment of any such information from the Governmental Authority entitled to receive such information.

6.11 Financial and Accounting Information. If PacifiCorp or one of its Affiliates determines that, under (i) the Accounting Standards Codification (ASC) 810, Consolidation of Variable Interest Entities, and (ii) Requirements of Law that it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon PacifiCorp's written request, sufficient financial and ownership information so that PacifiCorp or its Affiliate may confirm whether a variable interest does exist under ASC 810 and Requirements of Law. If PacifiCorp or its Affiliate determines that, under ASC 810, it holds a variable interest in Seller, Seller hereby agrees to provide, upon PacifiCorp's written request, sufficient financial and other information to PacifiCorp or its Affiliate so that PacifiCorp may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 and Requirements of Law. PacifiCorp shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.11. The information provided to PacifiCorp under this Section 6.11 shall be treated as Confidential Business Information if at the time the Seller provides such information to PacifiCorp the Seller provides written notice that the information is Confidential Business Information. Seller shall have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information. Information provided pursuant to this Section is subject to PacifiCorp's rights to disclose such information pursuant to Sections 6.10.4, 6.10.5, 6.10.7, 9.5, 9.6, 23.2 and 23.3, and pursuant to any applicable Requirements of Law.

6.12 Output Guarantee.

6.12.1 Output Guarantee. Seller is obligated to deliver a quantity of Net Output during each Rolling Period which is equal to the Output Guarantee. For purposes of this Agreement, "Output Guarantee" for any Rolling Period means the sum of (i) 85% of the Expected Output of the Facility for such Rolling Period, less (ii) any quantities of Output that were not delivered to the Point of Delivery (or accepted by PacifiCorp) in such Rolling Period during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the actual Nameplate Capacity Rating). For purposes of this Agreement, "Rolling Period" means any two consecutive Contract Years occurring during the Term.

6.12.2 Liquidated Damages for Output Shortfall.

(a) If the quantity of Net Output delivered by the Facility during any Rolling Period is equal to or greater than the Output Guarantee for such Rolling Period, Seller's delivery obligation for such Rolling Period shall be deemed satisfied for such Rolling Period.



(b) If the quantity of Net Output delivered by the Facility during any Rolling Period is less than the Output Guarantee for such Rolling Period, the Seller shall determine the resulting shortfall, if any, for the first Contract Year occurring during such Rolling Period (the "Output Shortfall"). The Output Shortfall shall be expressed in MWh and calculated in accordance with the following formula:

Output Shortfall = (85% of the Expected Output for the Contract Year).

*less*

Any quantities of Output that were not delivered to the Point of Delivery (or accepted by PacifiCorp) in such Contract Year during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the actual Nameplate Capacity Rating),

*less*

The Net Output for the Contract Year

(c) If the product of the Output Shortfall calculation set forth in Section 6.12.2(b) is a positive number, Seller shall pay PacifiCorp liquidated damages equal to the product of (a) the Output Shortfall for that Contract Year, multiplied by (b) PacifiCorp's Cost to Cover for that Contract Year. If the product of the Output Shortfall calculation set forth in Section 6.12.2(b) is a negative number, Seller shall not be obligated to pay PacifiCorp liquidated damages for such Contract Year.

(d) Each Party agrees and acknowledges that (i) the damages that PacifiCorp would incur due to the Facility's failure to achieve the Output Guarantee would be difficult or impossible to predict with certainty and (ii) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages.

6.12.3 Annual Invoicing. On the thirtieth day following the end of each Rolling Period, Seller shall deliver to PacifiCorp a report (and supporting data) detailing whether Seller achieved the Output Guarantee for the most recently completed Rolling Period. In the case of the Seller failing to achieve the Output Guarantee in the prior Rolling Period, Seller shall also provide a report (and supporting data) to PacifiCorp detailing the Output Shortfall for the first Contract Year occurring during such Rolling Period. Seller shall provide documentation to support all data and calculations used in each report to calculate the percent Expected Output. Thirty days after PacifiCorp has received the report and all support data, if applicable, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of liquidated damages calculated pursuant to Section 6.12.2. In preparing such invoices, PacifiCorp shall utilize the meter data provided to PacifiCorp for the Contract Year in question, but may also rely on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation, if the meter data for such Contract Year is then incomplete or otherwise not available. To the extent required, PacifiCorp shall true up any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Year. Seller shall pay

to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, and shall within 30 days after receiving the invoice raise any objections regarding any disputed portion of the invoice. All disputes regarding such invoices shall be subject to Section 10.4. Objections not made by Seller within the 30-day period shall be deemed waived.

6.13 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide PacifiCorp and its authorized agents, employees and inspectors ("PacifiCorp Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) to provide tours of the Facility to customers and other guests of PacifiCorp (not more than 12 times per year), (d) for purposes of implementing Sections 2.7 or 10.5, and (e) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp shall release Seller against and from any and all Liabilities resulting from actions or omissions by any of the PacifiCorp Representatives in connection with their access to the Facility, except to the extent that such damages are caused ~~or~~ by the intentional or grossly negligent act or omission of Seller.

6.14 Facility Images. PacifiCorp shall be free to use any and all images from or of the Facility for promotional purposes, subject to Seller's consent (not to be unreasonably withheld or delayed, and which consent may consider Requirements of Law relating to Premises security, obligations to outside vendors (including any confidentiality obligations), and the corporate policies of Seller's Affiliates). Upon PacifiCorp's request and at PacifiCorp's expense, Seller shall install imaging equipment at the Facility as PacifiCorp may request, including video and or web-based imaging equipment subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety. PacifiCorp shall retain full discretion on how such images are presented including associating images of the Facility with a PacifiCorp-designated corporate logo.

## **SECTION 7 QUALIFYING FACILITY STATUS**

7.1 Seller's QF Status. Seller covenants that, during the Term and before delivering Net Output to PacifiCorp hereunder, Seller shall cause the Facility to be a QF.

7.2 QF Facility. Seller shall provide PacifiCorp with copies of the appropriate certification (which may include a FERC self-certification) within ten (10) days of filing or receiving the certification. During the Term, Seller shall, to the extent required to prevent Seller from being regulated as a "Public Utility" pursuant to PUHCA or otherwise, maintain its QF status, and shall not seek to change the Contract Price as a result of its status as a QF. At any time during the term of this Agreement, PacifiCorp may require Seller, at Seller's sole cost, to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing before a state bar in the United States, and (b) has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing

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

## **SECTION 8 SECURITY AND CREDIT SUPPORT**

8.1 Default Security. Default Security is not required if Seller provides as of the Effective Date and maintains for the Term all of the following representations and warranties:

8.1.1 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.

8.1.2 Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.

8.1.3 Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.

8.1.4 Seller owns, and will continue to own for the Term, 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.

8.1.5 Seller shall provide within five Business Days from receipt of a written request from PacifiCorp all reasonable financial records and other documents necessary for PacifiCorp to confirm Seller satisfies the representations and warranties contained in this Section 8.1.

8.1.6 Seller hereby declares (Seller initial one only):

  xx   Seller affirms and adopts all representations and warranties of this Section 8.1, and therefore is not required to post security under Section 8; or

           Seller does not affirm and adopt all representations and warranties of this Section 8.1, and therefore Seller elects to post the security specified in Section 8.

8.2 Unless Seller has adopted the creditworthiness warranties contained in Section 8.1, Seller shall provide Default Security to PacifiCorp in the form of a cash escrow or letter of credit.

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

8.2.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, (substantially in the form attached as Exhibit 8.2.2) 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 and any party providing a guaranty for Seller shall provide within five Business Days from receipt of a written request from PacifiCorp all reasonable financial records necessary for PacifiCorp to confirm Seller and/or the guarantor satisfies the Credit Requirements.

8.3 Return of Default Security. PacifiCorp shall return any remaining Default Security to Seller within 60 days of the termination of the Agreement.

8.4 Levelized Security (Only Applicable if Seller Elects Levelized Pricing).

8.4.1 Duty to Post Levelized Security. Beginning on the dates specified in Section 2.3(c), at any time during the Term when Seller has elected to receive levelized pricing and does not satisfy the Credit Requirements, Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from an entity that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its reasonable discretion, (substantially in the form attached as Exhibit 8.2.2) (b) a Letter of Credit, or (c) cash escrow (established in the same manner as described in Section 8.2.1, except the amount shall be consistent with the requirements on this Section 8.4) (the "Levelized Security"), as provided in this Section 8.4. In the event Seller posts Levelized Security and thereafter satisfies the Credit Requirements, as demonstrated to the reasonable satisfaction of PacifiCorp, then Seller shall be entitled to a release by PacifiCorp of the Levelized Security for so long as Seller continues to satisfy the Credit Requirements. Seller and any party providing a guaranty for Seller shall provide within five Business Days from receipt of a written request from PacifiCorp all reasonable financial records necessary for PacifiCorp to confirm Seller and/or the guarantor satisfies the Credit Requirements.

8.4.2 Amount of Levelized Security. The total amount of the Levelized Security required by Section 8.4.1 shall be the amount set forth in Exhibit 8.4.2 for each calendar year. On or before the Commercial Operation Date, Seller shall provide the Levelized Security for the first partial and full calendar year of the Term as set forth in Exhibit 8.4.2. Thereafter and throughout the Term, Seller shall maintain throughout the applicable calendar year the Levelized Security amount in Exhibit 8.4.2.

8.4.3 Duty of Levelized Security to Pay Amounts Due to PacifiCorp. If Seller fails to pay any amount due to PacifiCorp within the time provided for payment under this Agreement, PacifiCorp shall be entitled to and shall draw upon the Levelized Security. PacifiCorp shall also be entitled to draw upon the Levelized Security for damages arising if this Agreement is terminated under Section 11 because of Seller's default. Such damages to PacifiCorp may include, but shall not be limited to, the difference, if any, between the levelized avoided cost price paid by PacifiCorp under this Agreement versus the avoided cost price PacifiCorp would have paid the Seller pursuant to Schedule 37 as such was in effect as of the Effective Date.

8.5 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 8: (a) constitutes security for, but is not a limitation of, Seller's obligations hereunder and (b) shall not be PacifiCorp's exclusive remedy for Seller's failure to perform in accordance with this Agreement. Seller shall maintain security as required by Sections 8.2, 8.3 and 8.4. PacifiCorp may draw on any security PacifiCorp holds from Seller in the event Seller fails, within the time provided in this Agreement, to pay any damages or other payment due to PacifiCorp under this Agreement. To the extent that PacifiCorp draws on any security, Seller shall, on or before the first day of the Contract Year following such draw, replenish or reinstate the security to the full amount then required under this Section 8, unless a shorter period for security replenishment is otherwise provided in this Agreement, in which case the shorter replenishment period shall apply. If at any time the Seller or Seller's credit support provider(s) fails to meet the Credit Requirements, then Seller shall provide replacement security meeting the requirements set forth in Section 8 within 10 Business Days after the earlier of (x) Seller's receipt of notice from any source that Seller or the credit support provider(s), as applicable, no longer meets the Credit Requirements or (y) Seller's receipt of written notice from PacifiCorp requesting the posting of alternate security.

8.6 Senior Lender Protective Provisions. PacifiCorp agrees to enter into a consent to collateral assignment in substantially the form of the Lender Consent attached hereto as Exhibit 8.6 for the benefit of the Senior Lenders, and to reasonably cooperate with the reasonable requests of such Senior Lenders in conjunction with any financing of the Facility; provided, however, that except as provided in the form of the Lender Consent, in no event shall PacifiCorp be required to agree to any modification hereof; and provided further, however, that if and to the extent any Lenders request (a) changes to the form of the Lender Consent (or otherwise attempt to negotiate the form of consent), (b) any additional documents or assurances, or (c) any legal opinion from PacifiCorp with regard hereto, then Seller shall reimburse PacifiCorp for its reasonable out-of-pocket costs in making any such changes or providing any such additional documents or legal opinion, with such costs to be paid to PacifiCorp at the closing of the financing as a condition to the effectiveness of PacifiCorp's consents, documents and opinions.

## **SECTION 9 METERING**

9.1 Installation of Metering Equipment. Metering equipment shall be designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Generation Interconnection Agreement; provided, however, that PacifiCorp acting in its merchant function capacity shall be under no obligation, pursuant hereto, to bear any expense relating to such metering equipment.

9.2 Metering. Metering shall be performed at the location and in the manner specified in Exhibit 9.2, the Generation Interconnection Agreement and as necessary to perform Seller's obligations hereunder. All quantities of Net Output purchased hereunder shall reflect the net amount of energy flowing into the System at the Point of Delivery.

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall have the right to periodically inspect, test, repair and replace the metering equipment that are provided for in the Generation Interconnection Agreement, without PacifiCorp assuming any obligations

thereunder. If any of the inspections or tests disclose an error exceeding 0.5 percent, 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 months, 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. Such correction, when made, shall constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to PacifiCorp, acting in its merchant function capacity hereunder, having any obligations to Seller, or any other person or entity, pursuant to or under the Generation Interconnection Agreement.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs (including PacifiCorp's costs) relating to all metering equipment installed to accommodate Seller's Facility.

9.5 Meter Data. Within 10 days of the Effective Date, Seller may request the Interconnection Provider or Transmission Provider in writing in a form similar to that found in Exhibit 9.5 to provide any and all meter or other data associated with the Facility or Net Output directly to PacifiCorp. Should Seller refuse to provide a release similar to that found in Exhibit 9.5, Seller shall establish a mechanism at its expense that allows PacifiCorp, in its merchant function, to obtain all necessary meter and other data to fully perform and verify Seller's performance under this Agreement. Notwithstanding any other provision hereof, PacifiCorp shall have the right to provide such data to any Electric System Authority.

9.6 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility.

## **SECTION 10 BILLINGS, COMPUTATIONS AND PAYMENTS**

10.1 Monthly Invoices. On or before the 10th day following the end of each calendar month, Seller shall deliver to PacifiCorp a proper invoice showing Seller's computation of Net Output delivered to the Point of Delivery during such month. When calculating the invoice, Seller shall provide computations showing the portion of Net Output that was delivered during On-Peak Hours and the portion of Net Output that was delivered during Off-Peak Hours. If such invoice is delivered by Seller to PacifiCorp, then PacifiCorp shall send to Seller, on or before the later of the 20th day following receipt of such invoice or the 30th day following the end of each month, payment for Seller's deliveries of Net Output to PacifiCorp.

10.2 Offsets. Either Party may offset any payment due hereunder against amounts owed by the other Party pursuant hereto. Either Party's exercise of recoupment and set off rights shall not limit the other remedies available to such Party hereunder.

10.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid.

10.4 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 6.12.3, any such notice shall be provided within two 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 the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

10.5 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Net Output delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two years after the date of such statement or payment.

## **SECTION 11 DEFAULTS AND REMEDIES**

11.1 Defaults. The following events are defaults (each a "default" before the passing of applicable notice and cure periods, and an "Event of Default" thereafter) hereunder:

11.1.1 Defaults by Either Party.

(a) A Party fails to make a payment when due hereunder if the failure is not cured within 10 days after the non-defaulting Party gives the defaulting Party a notice of the default.

(b) A Party (i) makes a general assignment for the benefit of its creditors; (ii) 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 60 days after such filing; (iii) becomes insolvent; or (iv) is unable to pay its debts when due.

(c) Subject to the limitations set forth in Section 3.4, a Party breaches a representation or warranty made by it herein if the breach is not cured within 30 days after the non-defaulting Party gives the defaulting Party a notice of the default; provided, however, that,

upon written notice from the defaulting Party, this 30 day period shall be extended by an additional 60 days if (i) the failure cannot reasonably be cured within the 30 day period despite diligent efforts, (ii) the default is capable of being cured within the additional 60 day period, and (iii) the defaulting Party commences the cure within the original 30 day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

(d) A Party otherwise fails to perform any material obligation hereunder if the failure is not cured within 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, the 30 day period shall be extended by an additional 60 days if (i) the failure cannot reasonably be cured within the 30 day period despite diligent efforts, (ii) the default is capable of being cured within the additional 60 day period, and (iii) the defaulting Party commences the cure within the original 30 day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

#### 11.1.2 Defaults by Seller.

(a) Seller fails to post, increase, or maintain the Levelized Security or Default Security as required under, and by the applicable dates set forth in, Section 2 and Section 8 and such failure continues for fifteen (15) days after Seller's receipt of written notice thereof from PacifiCorp.

(b) Seller fails to (i) cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, or (ii) complete all items included on the Final Completion Punch List by 90 days after the Commercial Operation Date.

(c) Seller sells Output or Capacity Rights from the Facility to a party other than PacifiCorp in breach of Section 4.2, if Seller does not permanently cease such sale and compensate PacifiCorp for the damages arising from the breach within 10 days after PacifiCorp gives Seller a notice of default.

(d) PacifiCorp receives notice of foreclosure of the Facility or any part thereof by a Lender, mechanic or materialman, or any other holder, of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten (10) days of the date of the notice received by PacifiCorp.

(e) After the Commercial Operation Date, Seller fails to maintain any Required Facility Documents or Permits necessary to own or operate the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from PacifiCorp; provided, however, that, upon written notice from Seller, the thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the Thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) Seller commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

(f) Seller's Abandonment of construction or operation of the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from



PacifiCorp, except to the extent caused by an event of Force Majeure or a default by PacifiCorp.

(g) Seller fails to maintain insurance as required by the Agreement and such failure continues for fifteen (15) days after Seller's receipt of written notice thereof from PacifiCorp.

(h) Seller fails to meet the Output Guarantee for three consecutive years.

## 11.2 Remedies for Failure to Deliver/Receive.

11.2.1 Remedy for Seller's Failure to Deliver. Upon the occurrence and during the continuation of a default of Seller under Section 11.1.2(c), Seller shall pay PacifiCorp within five Business Days after invoice receipt, an amount equal to (a) PacifiCorp's Cost to Cover multiplied by the Net Output delivered to a party other than PacifiCorp, (b) additional transmission charges, if any, reasonably incurred by PacifiCorp in moving replacement energy to the Point of Delivery or if not there, to such points in PacifiCorp's control area as are determined by PacifiCorp, and (c) any additional cost or expense incurred as a result of Seller's default under Section 11.1.2(c), as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

11.2.2 Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to receive or purchase all or part of the Net Output required to be purchased pursuant hereto and such failure is not excused under the terms hereof or by Seller's failure to perform, then Seller shall perform under Section 11.6 and PacifiCorp shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five Business Days after invoice receipt, an amount equal to Seller's Cost to Cover multiplied by the amount of Net Output so not purchased, less amounts received by Seller pursuant to Section 11.6. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

11.2.3 Remedy for Seller's Failure to Sell/Deliver Capacity Rights. Seller shall be liable for PacifiCorp's actual damages in the event Seller fails to sell or deliver all or any portion of the Capacity Rights to PacifiCorp.

11.3 Termination and Remedies. From and during the continuance of an Event of Default, the non-defaulting Party shall be entitled to all remedies available at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than 15 Business Days before such termination date. The notice required by this Section 11.3 may be provided in the notice of default (and does not have to be a separate notice) so long as it complies with all other terms of this Section 11.3. As a precondition to Seller's exercise of this termination right, Seller must also provide copies of such notice to the notice addresses of then-current President and General Counsel of PacifiCorp set forth in Section 22. Such copies shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested. In addition, Seller's termination notice shall state prominently therein in typefont no smaller than 14-point all-capital

letters that "THIS IS A TERMINATION NOTICE UNDER A SOLAR PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions. Seller will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within the 15 Business Days of receipt of such notice. Further, from and after the date upon which Seller fails to remedy a default within the time periods provided in Section 11.1, and until PacifiCorp has recovered all damages incurred on account of such default by Seller, without exercising its termination right, PacifiCorp may offset its damages against any payment due Seller. Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy, upon termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.5). The rights contemplated by this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. In the event of a termination hereof:

(a) Each Party shall pay to the other all amounts due the other hereunder for all periods prior to termination, subject to offset by the non-defaulting Party against damages incurred by such Party.

(b) The amounts due pursuant to Section 11.3(a) shall be calculated and paid within 30 days after the billing date for such charges and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due hereunder.

(c) Before and after the effective date of termination, the non-defaulting Party may pursue, to the extent permitted by this Agreement, any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.5).

(d) Without limiting the generality of the foregoing, the provisions of Sections 4.5, 5.4, 5.5, 6.10.4, 6.10.5, 6.10.7, 10.3, 10.4, 10.5, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, and Section 12, Section 13, Section 23, and Section 24 shall survive the termination hereof.

11.4 Termination of Duty to Buy; Memorandum of Agreement. If this Agreement is terminated because of a default by Seller, neither Seller nor its Affiliates, nor any successor to Seller with respect to the ownership of the Facility or Premises, may thereafter require or seek to require PacifiCorp to make any purchases from the Facility or any electric generation facility constructed on the Premises under PURPA, or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PacifiCorp to do so. On or before the Effective Date, the Parties shall execute and record, in the appropriate real property records of the Counties in which the Facility or Premises is situated, and any federal agency as applicable, a memorandum in the form of Exhibit 11.4 to provide constructive notice to third parties of Seller's agreements under this Section 11.4.

11.5 Termination Damages. If this Agreement is terminated as a result of an Event of Default by one of the Parties, termination damages shall be determined. The amount of termination damages shall be calculated by the non-defaulting Party within a reasonable period

after termination of the Agreement. Amounts owed pursuant to this section shall be due within five Business Days after the non-defaulting Party gives the defaulting Party notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default.

11.6 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance hereof. "Commercially reasonable efforts" (a) by Seller shall include requiring Seller to (i) use commercially reasonable efforts to maximize the price for Net Output received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Net Output (and associated Green Tags) not purchased or accepted by PacifiCorp (only during a period PacifiCorp is in default), and (ii) offer to sell to PacifiCorp (prior to selling to any third party) the Green Tags at the Green Tags Price Component, (b) by PacifiCorp shall include requiring PacifiCorp to use commercially reasonable efforts to minimize the price paid to third parties for energy purchased to replace Net Output not delivered by Seller as required hereunder.

11.7 Security. If this Agreement is terminated because of Seller's default, PacifiCorp may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any security held by PacifiCorp in whatever form to reduce any amounts that Seller owes PacifiCorp arising from such default.

11.8 Cumulative Remedies. Except in circumstances in which a remedy provided for in this Agreement is described as a sole or exclusive remedy, the rights and remedies provided to PacifiCorp hereunder are cumulative and not exclusive of any rights or remedies of PacifiCorp.

## **SECTION 12 INDEMNIFICATION AND LIABILITY**

### 12.1 Indemnities.

12.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Seller shall release, indemnify and hold harmless PacifiCorp, its divisions, Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "PacifiCorp Indemnitees") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility or Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the PacifiCorp Indemnitees. Seller shall be solely responsible for (and shall defend and hold PacifiCorp harmless against) any damage that may occur as a direct result of Seller's breach of the Generation Interconnection Agreement.

12.1.2 Indemnity by PacifiCorp. To the extent permitted by Requirements of Law and subject to Section 12.1.5, PacifiCorp shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Seller Indemnitees") against and from any and all Liabilities actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by PacifiCorp of its obligations hereunder for or on account of (a) injury, bodily or otherwise, to, or death of, or (b) for damage to, or destruction or economic loss of property of, any person or entity within the Seller Indemnitees, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Seller Indemnitees.

12.1.3 Additional Cross Indemnity. Without limiting Sections 12.1.1 and 12.1.2, Seller shall release, indemnify and hold harmless the PacifiCorp Indemnitees from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Delivery, and PacifiCorp shall release, indemnify and hold harmless the Seller Indemnitees from and against all Liabilities related to Net Output once delivered to PacifiCorp at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the gross negligence or willful misconduct or a breach of this Agreement by any member of the PacifiCorp Indemnitees or the Seller Indemnitees, respectively, seeking indemnification hereunder.

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

12.1.5 Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN ANY LIQUIDATED DAMAGES, DELAY DAMAGES, PACIFICORP AND SELLER COST TO COVER DAMAGES, SECTION 11.2.3 CAPACITY RIGHTS LOSS DAMAGES, INDEMNIFICATION FOR THIRD PARTY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, 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 13 INSURANCE**

13.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry the insurance coverage specified on Exhibit 13 during the Term or longer period if specified in Exhibit 13.

## SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. "Force Majeure" or "an event of Force Majeure" means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; civil disturbance; sabotage; strikes; lock-outs; work stoppages; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or PacifiCorp's ability to purchase energy or capacity at a more advantageous price than is provided hereunder; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of the Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure, (v) the imposition upon a Party of costs or taxes allocated to such Party under Section 5, (vi) delay or failure of Seller to obtain or perform any Required Facility Document unless due to a Force Majeure event, (vii) any delay, alleged breach of contract, or failure by the Transmission Provider, Network Service Provider or Interconnection Provider unless due to a Force Majeure event, (viii) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving the Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a result of an event of Force Majeure); (ix) Seller's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to transmission owner, Transmission Provider or Interconnection Provider, unless due to a Force Majeure event; or (x) any event attributable to the use of Interconnection Facilities for deliveries of Net Output to any party other than PacifiCorp. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, steel, labor, or transportation constitute an event of Force Majeure.

14.2 Suspension of Performance. Neither Party shall be liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure during the continuation of the event of Force Majeure, for the same number of days that the event of Force Majeure has prevailed, provided that:

(a) the Party affected by the Force Majeure, shall, within five days after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

(b) the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and

(c) the affected Party shall use diligent efforts to remedy its inability to perform.

14.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

14.4 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding 180 consecutive days prior to the Commercial Operation Date or, after the Commercial Operation Date, for a period exceeding 210 consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the Force Majeure event, with respect to its obligations hereunder, may terminate this Agreement by giving 10 days' prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising hereunder before the effective date of such termination.

## **SECTION 15 SEVERAL OBLIGATIONS**

Nothing contained herein shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties.

## **SECTION 16 CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Utah, applying any choice of law rules that may direct the application of the laws of another jurisdiction.

## **SECTION 17 PARTIAL INVALIDITY**

The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms hereof shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

**SECTION 18  
NON-WAIVER**

No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

**SECTION 19  
GOVERNMENTAL JURISDICTION  
AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, or ownership of the Facility.

**SECTION 20  
SUCCESSORS AND ASSIGNS**

20.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

20.2 Permitted Assignments. Notwithstanding Section 20.1, either Party may, without the need for consent from the other Party (but with notice to the other Party, including the names of the assignees): (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with project financing for the Facility; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of such Party (and, with respect to Seller, Seller shall be required to transfer or assign this Agreement to any party succeeding to all or substantially all of the assets of Seller); provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of PacifiCorp without the prior written consent of PacifiCorp. Except with respect to collateral assignments for financing purposes in every assignment permitted under this Section 20.2, the assignee must agree in writing to be bound by the terms and conditions hereof and must possess the same or similar experience, and possess the same or better creditworthiness, as the assignor. PacifiCorp may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that PacifiCorp ceases to be a load-serving entity, in which event PacifiCorp shall be released from liability hereunder upon approval of PacifiCorp ceasing to be a load-serving entity by the Commission. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

**SECTION 21  
ENTIRE AGREEMENT**

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter

hereof. No modification hereof shall be effective unless it is in writing and executed by both Parties.

## SECTION 22 NOTICES

22.1 Addresses and Delivery Methods. All notices, requests, statements or payments shall be made to the addresses set out below. In addition, copies of a notice of termination of this Agreement under Section 11.3 shall contain the information required by Section 11.3 and shall be sent to the then-current President and General Counsel of PacifiCorp. Notices required to be in writing shall be delivered by letter, facsimile or other tangible documentary form. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. Notice by hand delivery shall be deemed to have been given when received or hand delivered. Notice by facsimile is effective as of transmission to each and all of the telefacsimile numbers provided below for a Party, but must be followed up by notice by registered mail or overnight carrier to be effective. Notice by overnight mail shall be deemed to have been given the Business Day after it is sent, if sent for next day delivery to a domestic address by a recognized overnight delivery service (e.g., Federal Express or UPS). Notice by certified or registered mail, return receipt requested, shall be deemed to have been given upon receipt.

To Seller:

Milford Flat Solar, LLC  
179 Lincoln Street, Suite 500  
Boston, MA 02111  
Attention: Secretary  
Facsimile: (617) 960-2889  
Telephone: (617) 960-9582  
Email: mbeasley@firstwind.com

with a copy to:

Milford Flat Solar, LLC  
c/o First Wind Energy, LLC  
179 Lincoln Street, Suite 500  
Boston, MA 02111  
Attention: General Counsel  
Facsimile: (617) 960-2889



To PacifiCorp: PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, Oregon 97232- 2315  
Attn: Sr. Vice President, Commercial & Trading  
Telefacsimile (503) 813-6260

with a copy to: PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315  
Attn: Director of Contract Administration, C&T  
Telefacsimile (503) 813-6291

with copies to: PacifiCorp Energy Legal Department  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315  
Attn: Assistant General Counsel  
Telefacsimile (503) 813-6761

and termination notices to PacifiCorp: PacifiCorp Energy  
1407 West North Temple  
Suite 320  
Salt Lake City, Utah 84116  
Attn: President

and to: PacifiCorp Energy  
1407 West North Temple  
Suite 320  
Salt Lake City, Utah 84116  
Attn: General Counsel

22.2 Changes of Address. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this section.

22.3 Notices to Senior Lenders. The requirements concerning notice by PacifiCorp to Senior Lenders, if any, are set forth in the Lender Consent, if any.

## **SECTION 23 CONFIDENTIALITY**

23.1 Confidential Business Information. The following constitutes "Confidential Business Information," whether oral or written: (a) the Parties' proposals and negotiations concerning this Agreement, made or conducted prior to the Effective Date, (b) the actual charges billed to PacifiCorp hereunder, and (c) any information delivered by PacifiCorp to Seller prior to the Effective Date relating to the market prices of energy or Green Tags and methodologies for their determination or estimation. Seller and PacifiCorp each agree to hold such Confidential Business Information wholly confidential, except as otherwise expressly provided in this Agreement. "Confidential Business Information" shall not include information that (x) is in or enters the public domain through no fault of the Party receiving such information, or (y) was in

the possession of a Party prior to the Effective Date, other than through delivery thereof as specified in subsections (a) and (c) above. A Party providing any Confidential Business Information under this Agreement shall clearly mark all pages of all documents and materials to be treated as Confidential Business information with the term "Confidential" on the front of each page, document or material. If the Confidential Business Information is transmitted by electronic means the title or subject line shall indicate the information is Confidential Business Information. All Confidential Business Information shall be maintained as confidential, pursuant to the terms of Section 23, for a period of two years from the date it is received by the receiving Party unless otherwise agreed to in writing by the Parties.

23.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its Affiliates, accountants, auditors, counsel, consultants, lenders, prospective lenders, employees, officers and directors), without the prior written consent of the other Party, provided that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required (i) by Requirements of Law, (ii) in order for PacifiCorp to receive regulatory recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof, and (b) notwithstanding any other provision hereof, PacifiCorp may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Sections 23.1(b) or 23.1(c). In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party shall to the extent possible promptly notify the other Party of the obligation to disclose such information.

23.3 PacifiCorp Regulatory Compliance. The Parties acknowledge that PacifiCorp is required by law or regulation to report certain information that is or could otherwise embody Confidential Business Information from time to time. Such reports include models, filings, reports of PacifiCorp's net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1, Form 12, or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, WECC, Pacific Northwest Utility Coordinating Committee, WREGIS, or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, PacifiCorp will from time to time be required to produce Confidential Business Information. PacifiCorp may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. PacifiCorp may submit Confidential Business Information in regulatory proceedings without notice to Seller.

23.4 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 23 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

23.5 News Releases and Publicity. Except as otherwise provided in Section 6.14, before either Party issues any news release or publicly distributed promotional material regarding the Facility that mentions the Facility, such Party shall first provide a copy thereof to the other

Party for its review and approval. Any use of either Party's name in such news release or promotional material must adhere to such Party's publicity guidelines then in effect; any use of Berkshire Hathaway's name requires PacifiCorp's prior written consent.

## **SECTION 24 DISAGREEMENTS**

24.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within 10 days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within 30 days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within 15 days after such referral, either Party may initiate any legal remedies available to the Party. All negotiations pursuant to this clause are confidential.

### 24.2 Mediation; Technical Expert.

24.2.1 Mediation. If the dispute is not resolved within 30 days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within 15 days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on the date a Party requests mediation (the "Mediation Procedures").

(a) The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing ("Mediation Notice") of such Party's desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party's written agreement to such mediation.

(b) The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

(c) The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator. If the Parties cannot agree on a mediator within five days after the date of the Mediation Notice, then the AAA's arbitration administrator shall send a list and resumes of three available mediators to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both Parties have failed to respond to the AAA's arbitration administrator within five days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's arbitration administrator will choose the mediator from the remaining names. If the designated mediator

shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 24.2.1, and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

(d) The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 24.2.1(f). The costs of the mediation, including fees and expenses, shall be borne equally by the Parties.

(e) All verbal and written communications between the Parties and issued or prepared in connection with this Section 24.1 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(f) The initial mediation meeting between the Parties and the mediator shall be held within 20 days after the Mediation Notice. Either Party may terminate the mediation process upon or after the earlier to occur of (i) the failure of the initial mediation meeting to occur within 20 days after the date of the Mediation Notice, (ii) the passage of 30 days after the date of the Mediation Notice without the dispute having been resolved, or (iii) such time as the mediator makes a finding that there is no possibility of resolution through mediation.

(g) All deadlines specified in this Section 24.2.1 may be extended by mutual agreement.

24.2.2 Technical Expert. If the dispute regards (a) whether or not Commercial Operation has been achieved, or (b) the disputed amount of any invoice, the Parties may, in lieu of mediation, have such dispute resolved pursuant to this Section 24.2.2. Any such dispute will be determined by an independent technical expert, who shall be a mutually acceptable third party with training and experience in the disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion (the "Technical Expert"), which determination shall be (x) made in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on the date a Party provides notice of its intent to submit the dispute to a technical expert, and (y) binding upon the Parties.

(a) Either Party may commence the technical dispute process with AAA by notifying AAA and the other Party in writing ("Technical Dispute Notice") of such Party's desire that the dispute be resolved through a determination by a technical expert.

(b) The determination shall be conducted by a sole Technical Expert. The Parties may select any mutually acceptable Technical Expert. If the Parties cannot agree on a Technical Expert within five days after the date of the Technical Dispute Notice, then the

AAA's arbitration administrator shall send a list and resumes of three available technical experts meeting the qualifications set forth in Section 24.2.2 to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the Technical Expert. If more than one name remains, either because one or both Parties have failed to respond to the AAA's arbitration administrator within five days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's arbitration administrator will choose the Technical Expert from the remaining names. If the designated Technical Expert shall die, become incapable or, unwilling to, or unable to serve or proceed with the determination, a substitute technical expert shall be appointed in accordance with the selection procedure described above, and such substitute Technical Expert shall have all such powers as if he or she has been originally appointed herein.

(c) Within 30 days of the appointment of the Technical Expert pursuant to the foregoing sub-section, each Party shall submit to the Technical Expert a written report containing its position with respect to the dispute, and arguments therefor together with supporting documentation and calculations. Discovery shall be limited to Facility documentation relating to the disputed matter. Within 60 days from receipt of such submissions, the Technical Expert shall select one or the other Party's position with respect to the dispute, whereupon such selection shall be a binding determination upon the Parties for all purposes hereof. The costs of the determination by the Technical Expert of any dispute, including fees and expenses, shall be borne by the Party whose position was not selected by the Technical Expert. If the Technical Expert fails to render a decision within 90 days from receipt of each Party's submissions, either Party may initiate litigation in accordance with the provisions herein.

(d) All verbal and written communications between the Parties and issued or prepared in connection with this Section 24.2.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(e) All deadlines specified in this Section 24.2.2 may be extended by mutual agreement of the Parties.

24.3 Place of Contract Formation; Choice of Forum. Seller and PacifiCorp acknowledge and agree that this Agreement has been made and entered into as of the date executed by both Parties in Salt Lake City, Utah. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the United States District Court for the District of Utah in Salt Lake City, Utah, or if such court does not have jurisdiction, in the 3<sup>rd</sup> Judicial District (Salt Lake County) Court of the state of Utah. By execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any

such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, and), (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein, and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

24.4 Settlement Discussions. No statements of position or offers of settlement made in the course of the dispute process described in this section will be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

24.5 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

24.6 Specific Performance. Each Party shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of the other Party hereunder. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of the other Party hereunder, and that any liability limits contained herein shall not operate to limit the exercise of PacifiCorp's remedies in equity to cause Seller to perform its obligations hereunder. Seller agrees that it will not assert as a defense to PacifiCorp's action for specific performance of, or injunctive relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense. Seller shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets and Required Facility Documents relating to the Facility to the extent necessary to prevent a material adverse effect on PacifiCorp's right to specific performance or injunctive relief.

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

MILFORD FLAT SOLAR, LLC

By: First Wind Utah Renewables, LLC, its Member

By: 

Name: ARTHUR J. SNELL

Title: ASSISTANT SECRETARY

Date: October 18, 2013

PACIFICORP

By: 

Name: Bruce Griswold

Title: Director, Short Term Origination and QF Contracts

Date: October 7<sup>th</sup> 2013

## EXHIBIT A

### ESTIMATED MONTHLY OUTPUT

#### EXPECTED ENERGY – MONTHLY - YEAR ONE

<b>PERIOD</b>	<b>EXPECTED ENERGY (MWH)</b>
<b>January</b>	262
<b>February</b>	290
<b>March</b>	448
<b>April</b>	468
<b>May</b>	520
<b>June</b>	515
<b>July</b>	491
<b>August</b>	477
<b>September</b>	449
<b>October</b>	401
<b>November</b>	279
<b>December</b>	215
<b>First Year Total</b>	4,815

Seller to provide one (1) electronic and hard copy of the solar plant performance estimation report using PVSYST or a comparable solar performance modeling program including, at a minimum, estimated hourly kW generation output in kWh/h for the site and Facility. Upon Commercial Operations, Seller shall provide updated Exhibit A based on completed construction and Seller's designated Licensed Professional Engineer will provide certification as part of Commercial Operations (i)(2) that the estimated energy output included in this Exhibit A are correct as calculated using PVSYST or comparable solar performance modeling program.

Expected Energy for each year of the term is included on the following page



**EXPECTED ENERGY – TERM (INCLUDING DEGRADATION)**

<b>PERIOD</b>	<b>EXPECTED ENERGY (MWH)</b>
Year 0-1	4,815
Year 1-2	4,776
Year 2-3	4,738
Year 3-4	4,700
Year 4-5	4,663
Year 5-6	4,625
Year 6-7	4,588
Year 7-8	4,552
Year 8-9	4,515
Year 9-10	4,479
Year 10-11	4,443
Year 11-12	4,408
Year 12-13	4,373
Year 13-14	4,338
Year 14-15	4,303
Year 15-16	4,268
Year 16-17	4,234
Year 17-18	4,200
Year 18-19	4,167
Year 19-20	4,133

Midland Flat Solar Energy Output

Project: Midland Flat Solar

Date: 29-Aug-2013

Prepared By: First Wind

Comments: Average Energy Output Monthly (kW) - First Year

Module Type: 300 or equivalent

Inverter: 5kW 750 or equivalent

Tracking: Solar Fix Rack or equivalent

DC Capacity: 3,370 kW

AC Capacity: 3,000 kW

Net Annual Energy AC Output: 4,814,989 kWh

Hour	Month												Average (kWh)	Total (kWh)	
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec			
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	4	0	0	0	0	0	0	0	0	0
6	0	0	0	30	146	166	75	41	2	0	0	0	0	0	123
7	0	8	242	489	715	730	621	570	469	272	31	0	0	0	14,062
8	230	378	806	1077	1238	1265	1122	1094	1043	891	381	305	0	0	126,810
9	537	930	1362	1594	1690	1675	1561	1497	1512	1360	906	564	0	0	299,934
10	1014	1359	1728	1878	1980	1960	1855	1848	1805	1684	1302	804	0	0	585,028
11	1512	1366	1907	2025	2031	2159	2040	1994	1868	1911	1432	1073	0	0	649,597
12	1456	1503	1959	2020	1923	1887	1911	1851	1947	1826	1518	1375	0	0	644,985
13	1551	1416	1971	1844	1872	1957	1792	1837	2021	1779	1511	1136	0	0	630,086
14	1004	1314	1753	1728	1818	1813	1684	1810	1753	1513	1300	795	0	0	556,629
15	723	1219	1396	1377	1516	1555	1332	1343	1339	1122	675	648	0	0	433,302
16	420	674	901	967	1083	1137	1061	925	869	594	248	225	0	0	277,151
17	0	111	411	537	606	655	594	496	353	0	0	0	0	0	114,823
18	0	0	0	27	145	200	183	93	0	0	0	0	0	0	19,859
19	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
21	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Average (kWh)	352	428	602	650	698	715	660	642	624	540	388	289			549.3
Total (kWh)	261,844	290,358	447,530	467,799	519,642	514,877	490,801	477,379	449,439	401,484	279,140	214,695			4,814,989

### Grid-Connected System: Simulation parameters

**Project :** Milford\_Flat

**Geographical Site** Milford3 **Country** USA

**Situation** Latitude 38.6°N Longitude 113.0°W  
 Time defined as Legal Time Time zone UT-7 Altitude 1523 m  
 Albedo 0.20

**Meteo data :** Milford3, NREL TMY3

**Simulation variant :** milford\_flat\_20130429  
 Simulation date 01/05/13 08h48

**Simulation parameters**

**Collector Plane Orientation** Tilt 22° Azimuth 0°

**13Sheds** Pitch 6.41 m Collector width 3.92 m  
 Inactive band Top 0.02 m Bottom 0.02 m  
 Shading limit angle Gamma 28.16 ° Occupation Ratio 61.2 %  
 Shadings electrical effect Cell size 15.6cm Strings in width 2

**Models used** Transposition Perez Diffuse Measured

**Horizon** Average Height 2.5°

**Near Shadings** Mutual shadings of sheds Electrical effect

**PV Array Characteristics**

**PV module** Si-poly Model **YL300P-35b (1000V)**  
 Manufacturer FW Yingli Solar

Number of PV modules In series 18 modules In parallel 624 strings  
 Total number of PV modules Nb. modules 11232 Unit Nom. Power 300 Wp  
 Array global power Nominal (STC) **3370 kWp** At operating cond. 2980 kWp (50°C)  
 Array operating characteristics (50°C) U mpp 586 V I mpp 5081 A  
 Total area Module area **21906 m²** Cell area 19676 m²

**Inverter** Model **Sunny Central 750CP-US**  
 Manufacturer SMA

Characteristics Operating Voltage 545-820 V Unit Nom. Power 750 kW AC  
 Inverter pack Number of Inverter 4 units Total Power 3000 kW AC

**PV Array loss factors**

Thermal Loss factor U<sub>c</sub> (const) 25.0 W/m²K U<sub>v</sub> (wind) 1.2 W/m²K / m/s  
 => Nominal Oper. Coll. Temp. (G=800 W/m², Tamb=20°C, Wind=1 m/s.) NOCT 47 °C

Wiring Ohmic Loss Global array res. 2.6 mOhm Loss Fraction 2.0 % at STC

Array Soiling Losses

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
9.2%	9.1%	8.3%	8.0%	5.7%	4.7%	4.7%	3.1%	8.5%	7.7%	7.8%	8.1%

Module Quality Loss Loss Fraction 1.5 %  
 Module Mismatch Losses Loss Fraction 2.0 % at MPP  
 Incidence effect, ASHRAE parametrization IAM = 1 - bo (1/cos i - 1) bo Parameter 0.05

### Grid-Connected System: Simulation parameters (continued)

**System loss factors**

AC loss, transfo to injection	Grid Voltage	12 kV		
	Wires	855 m 3x50 mm <sup>2</sup>	Loss Fraction	0.9 % at STC
External transformer	Iron loss (24H connection)	3306 W	Loss Fraction	0.1 % at STC
	Resistive/Inductive losses	0.4 mOhm	Loss Fraction	1.0 % at STC

**User's needs :** Unlimited load (grid)

### Grid-Connected System: Horizon definition

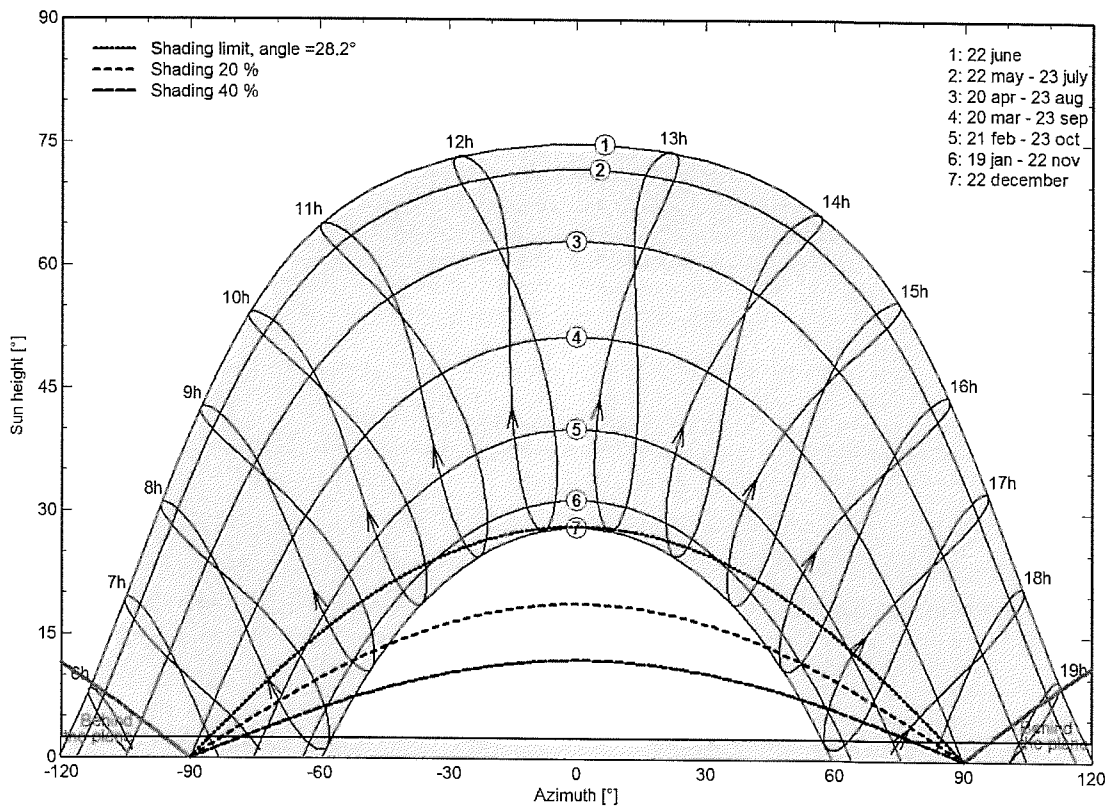
**Project :** Milford\_Flat  
**Simulation variant :** milford\_flat\_20130429

<b>Main system parameters</b>	System type	<b>Grid-Connected</b>	
<b>Horizon</b>	Average Height	2.5°	
PV Field Orientation	Sheds disposition, tilt	22°	azimuth 0°
PV modules	Model	YL300P-35b (1000V)	Pnom 300 Wp
PV Array	Nb. of modules	11232	Pnom total <b>3370 kWp</b>
Inverter	Model	Sunny Central 750CP-US	Pnom 750 kW ac
Inverter pack	Nb. of units	4.0	Pnom total <b>3000 kW ac</b>
User's needs	Unlimited load (grid)		

<b>Horizon</b>	Average Height	2.5°	Diffuse Factor	0.99
	Albedo Factor	100 %	Albedo Fraction	0.88

Height [°]	2.5	2.5	2.5
Azimuth [°]	-120	0	120

### Horizon line at Milford3



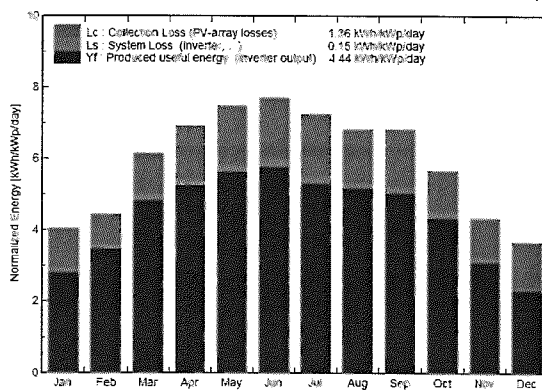
### Grid-Connected System: Main results

**Project :** Milford\_Flat  
**Simulation variant :** milford\_flat\_20130429

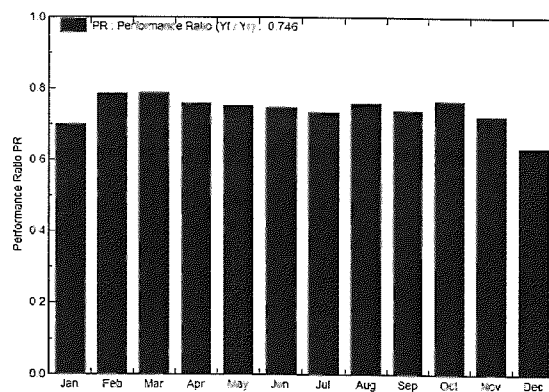
<b>Main system parameters</b>	<b>System type</b>	<b>Grid-Connected</b>		
<b>Horizon</b>	<b>Average Height</b>	2.5°		
<b>PV Field Orientation</b>	<b>Sheds disposition, tilt</b>	22°	<b>azimuth</b>	0°
<b>PV modules</b>	<b>Model</b>	YL300P-35b (1000V)	<b>Pnom</b>	300 Wp
<b>PV Array</b>	<b>Nb. of modules</b>	11232	<b>Pnom total</b>	<b>3370 kWp</b>
<b>Inverter</b>	<b>Model</b>	Sunny Central 750CP-US	<b>Pnom</b>	750 kW ac
<b>Inverter pack</b>	<b>Nb. of units</b>	4.0	<b>Pnom total</b>	<b>3000 kW ac</b>
<b>User's needs</b>	<b>Unlimited load (grid)</b>			

**Main simulation results**  
**System Production**      **Produced Energy** **5460 MWh/year**      **Specific prod.** 1620 kWh/kWp/year  
**Performance Ratio PR** 74.6 %

Normalized productions (per Installed kWp): Nominal power 3370 kWp



Performance Ratio PR



milford\_flat\_20130429  
Balances and main results

	GlobHor	T_Amb	GlobInc	GlobEff	EArray	E_Grid	EffArrR	EffSysR
	kWh/m²	°C	kWh/m²	kWh/m²	MWh	MWh	%	%
January	81.6	-3.43	125.4	102.3	306.7	296.6	11.16	10.80
February	92.0	-0.74	124.1	115.2	340.4	329.0	12.52	12.10
March	157.2	4.82	190.7	162.0	524.7	507.3	12.58	12.14
April	189.5	11.26	207.2	197.5	548.7	530.5	12.09	11.69
May	231.0	16.55	232.3	220.9	609.2	589.6	11.97	11.59
June	236.6	20.56	231.7	221.1	603.9	584.2	11.90	11.51
July	227.8	23.96	225.0	214.2	575.3	557.0	11.67	11.30
August	200.5	22.09	211.5	201.5	560.0	541.5	12.09	11.69
September	173.7	15.68	204.6	196.2	526.7	509.9	11.75	11.37
October	132.6	10.08	176.0	167.2	470.4	455.1	12.20	11.81
November	86.6	4.68	129.8	112.6	327.1	316.2	11.50	11.12
December	70.4	-3.40	113.5	83.2	251.6	243.0	10.12	9.78
Year	1881.6	10.23	2171.8	2014.0	5644.7	5439.8	11.87	11.48

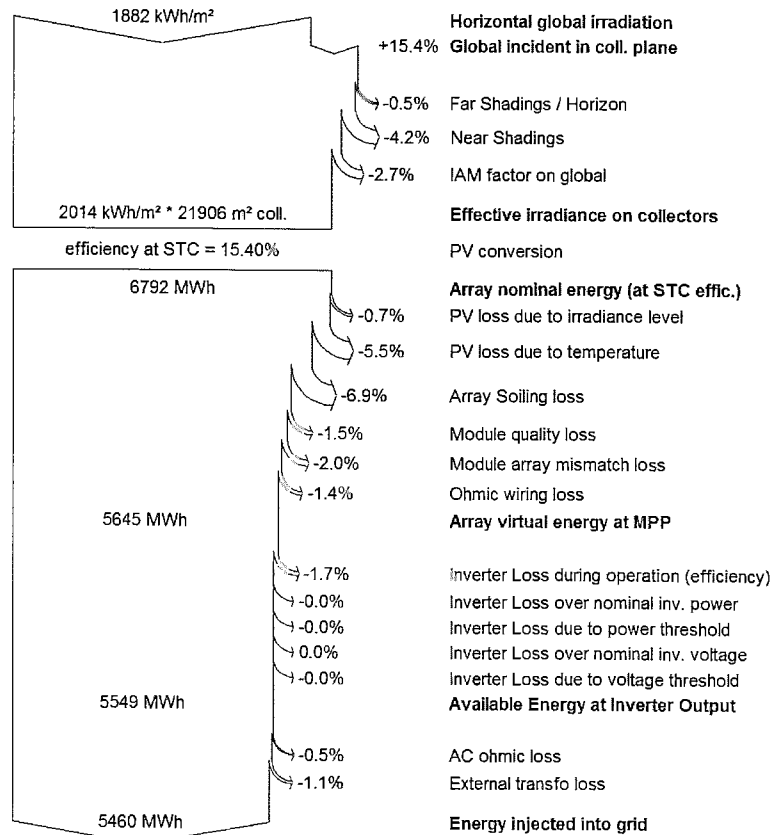
Legends: GlobHor Horizontal global irradiation      EArray Effective energy at the output of the array  
T\_Amb Ambient Temperature      E\_Grid Energy injected into grid  
GlobInc Global incident to coll. plane      EffArrR Effic. Eout array / rough area  
GlobEff Effective Global, corr. for IAM and shadings      EffSysR Effic. Eout system / rough area

### Grid-Connected System: Loss diagram

**Project :** Milford\_Flat  
**Simulation variant :** milford\_flat\_20130429

<b>Main system parameters</b>	<b>System type</b>	<b>Grid-Connected</b>	
<b>Horizon</b>	Average Height	2.5°	
PV Field Orientation	Sheds disposition, tilt	22°	azimuth 0°
PV modules	Model	YL300P-35b (1000V)	Pnom 300 Wp
PV Array	Nb. of modules	11232	Pnom total <b>3370 kWp</b>
Inverter	Model	Sunny Central 750CP-US	Pnom 750 kW ac
Inverter pack	Nb. of units	4.0	Pnom total <b>3000 kW ac</b>
User's needs	Unlimited load (grid)		

#### Loss diagram over the whole year



Additional losses were assigned to the PVSYST output due to commercially available and enforceable energy guarantees and warranties. The energy injected into the grid reported in the PVSYST model does not include these additional losses.

## EXHIBIT B

### NERC EVENT TYPES

Event Type	Description of Outages
U11	<u>Unplanned (Forced) Outage—Immediate</u> – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2 <sup>1</sup>	<u>Unplanned (Forced) Outage—Delayed</u> – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3 <sup>1</sup>	<u>Unplanned (Forced) Outage—Postponed</u> – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF <sup>1</sup>	<u>Startup Failure</u> – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, Solar Array replacement or inspections are typical planned outages.)
PE	<u>Planned Outage Extension</u> – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.



## EXHIBIT C

### START-UP TESTING

Start-Up Testing shall consist of the Quality Assurance/Quality Control plans and procedures developed by the EPC Contractor.

Contractor shall submit to Owner a final copy of its quality assurance/quality control (QA/QC) plan for review not later than 45 days after contract execution for Owner review and comment. The QA/QC program shall include, but is not limited to, such procedures and systems as the following:

- Road construction
- Rebar and conduit placement
- Concrete placement and testing
- All wire insulation testing—Megger testing or very low frequency testing
- Mechanical system—trackers, mounting structures, tracker controls
- Factory testing of inverters and transformers by the manufacturer
- PV source open-circuit measurements—VOC at combiner boxes
- Fuse tests
- Termination pull testing
- All visual inspections
- Grounding continuity testing
- Earth-ground resistivity testing
- PV module inspection and manufacturer documentation of factory test per the manufacturer's existing program
- Metering and instrumentation calibration testing
- Step-up transformer field testing
- Inverter phase rotation and matching with utility
- Relay settings/transfer trip/etc. at the point of interconnection to Owner
- Other Contractor-prescribed procedures

All QA/QC testing procedures onsite shall be witnessed and documented by a qualified representative of Contractor. Owner shall observe and witness QA/QC as necessary and at its discretion. A qualified field engineer/QA representative of Contractor shall date and sign documentation indicating completion and acceptance of each onsite QA/QC test procedures.

Following installation, Contractor shall provide a proposed commissioning and startup plan for the Plant.

Contractor shall coordinate with Owner to develop an acceptable commissioning plan that includes a checkout and startup procedure. This work will assure: that systems are activated in a manner that is safe for personnel as well as for the equipment, that Contractor work is complete and according to the contract documents, and that the systems perform as required by the contract documents and are ready to be turned over to Owner. As the construction and installation of the systems nears completion, Contractor shall prepare punch lists and conduct system walk-downs, sub-system and system checkouts, startups, testing, and turnovers.

The final approved Commissioning Procedures shall, at minimum, include the following:

- Safety plan during startup and commissioning
- Review of all QA/QC testing on the DC and AC sides of inverters
- Detailed procedure for PV Plant startup, including switching sequencing
- Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected
- Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.
- Testing the system control and monitoring system to verify that it is performing correctly
- Testing the communication system for offsite monitoring
- Testing the Plant metering and protective relaying in conjunction with the utility during energization procedures
- Detailed procedure for interface and initialization with the grid
- Documentation of successful startup and commissioning procedure
- Written notification submitted by Contractor to Owner that the completion of Commissioning has occurred

Upon successful completion of energizing and startup, the Plant will be considered operable.

**EXHIBIT 2.7**

**PACIFICORP'S INITIAL DESIGNATED REPRESENTATIVES**

Authorized Representatives:

PacifiCorp: Senior Vice President—Commercial & Trading  
PacifiCorp Energy  
825 NE Multnomah St., Suite 600  
Portland, OR 97232-2315  
Fax 503-813-6271

With a copy to: Manager, Marketing and Trading Contracts  
PacifiCorp Commercial and Trading  
825 NE Multnomah St., Suite 600  
Portland, OR 97232-2315  
Fax 503-813-6271

## EXHIBIT 3.2.3

### REQUIRED FACILITY DOCUMENTS

1. **Obtained Required Facility Documents:**

Permits:

Land Rights:

Memorandum of Lease: L, H and K Dairy as Lessors

2. **To Be Obtained (Prior to Commercial Operation) Required Facility Documents:**

Licenses, Permits and Authorizations:

Qualifying Facility Certification from FERC

Beaver County Conditional Use Permit

Beaver County Building Permit

Interconnect/Insurance:

Small Generator Interconnection Agreement

Retail Electric Service Agreement

Proof of Insurance

Construction Agreements:

Engineering, Procurement and Construction Agreement (Redacted)

Operations and Maintenance Agreements:

Service and Maintenance Agreement (Redacted) *[if contracted to a third party]*

**SUCH LIST MAY BE UPDATED PURSUANT TO SECTION 3.2.3**

**EXHIBIT 3.2.6**

**LEASES**

Memorandum of Lease

Lessor: L, H and K Dairy

Acres: 45

Memorandum of Lease attached on following pages

K0313035

**WHEN RECORDED, RETURN TO:**

PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Attention: Kerry L. Owens

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Space above for County Recorder's Use

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE ("Memorandum"), is made effective as of the 12<sup>th</sup> day of March, 2013, by and between L, H and K Dairy, A Utah partnership with an address at PO Box 85, Minersville, UT 84752 (together with its successors and assigns, collectively the "Lessor"), and Milford Flat Solar, LLC, a Delaware limited liability company with an address at 179 Lincoln Street, Suite 500, Boston, MA 02111, c/o First Wind Energy, LLC, 179 Lincoln Street, Suite 500, Boston, MA 02111 (together with its successors and assigns, the "Lessee"), with respect to the following:

1. TERM AND PREMISES. For the initial term of forty (40) years and upon the provisions set forth in that certain Land Lease Agreement dated March 12, 2013 between Lessor and Lessee ("Lease"), all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein, Lessor leases to Lessee and Lessee leases from Lessor those certain premises (the "Premises") located in Beaver County, Utah as more particularly described on Exhibit "A" attached hereto.

2. OPTIONS TO EXTEND TERM. Reference is particularly made to Section 9.1 of the Lease wherein Lessee is given the option to renew the Lease on the terms and conditions set forth therein for two (2) successive periods of ten (10) years each.

3. EXCLUSIVE USE. Reference is particularly made to Section 5 of the Lease wherein Lessee is granted exclusive rights with respect to the exploitation of solar energy occurring on the Premises. Section 5 of the Lease also provides the Lessor covenants not to convey or authorize the exploitation of solar energy occurring on the Premises or otherwise to grant or suffer any conflicting rights with respect to the Premises.

4. RIGHT TO PURCHASE. Reference is particularly made to Section 20 of the Lease wherein Lessee has the right during the initial term or any extension thereof to purchase the Premises pursuant to the terms and conditions set forth therein.

5. PURPOSE OF MEMORANDUM. This Memorandum is prepared for the purposes of recording a notification as to the existence of the Lease but in no way modifies the express and particular provisions of the Lease. In the event of a conflict between the terms of the Lease and the terms of this Memorandum, the terms of the Lease shall control.

6. ADDITIONAL INFORMATION. Additional information regarding the Lease may be obtained by contacting any of the following:

Lessor: L, H and K Dairy  
PO Box 85  
Minersville, UT 84752

Lessee: Milford Flat Solar, LLC  
c/o First Wind Energy, LLC  
179 Lincoln Street, Suite 500  
Boston, MA 02111  
Attention: General Counsel

7. COUNTERPARTS. This Memorandum may be executed in any number of counterpart originals, each of which shall be deemed an original instrument for all purposes, but all of which shall comprise one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

WITNESS:

LESSOR:

L, H and K Dairy, a Utah partnership

\_\_\_\_\_

By: Kent Marshall  
Name: Kent Marshall  
Title: Partner

WITNESS:

\_\_\_\_\_

By: Hayward Marshall  
Name: HAYWARD MARSHALL  
Title: PARTNER

WITNESS:

LESSEE:

Milford Flat Solar, LLC a Delaware limited liability company

By: First Wind Utah Renewables, LLC, its member

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

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

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



Arthur J. Snell

Assistant Secretary





Acknowledgment of Lessee

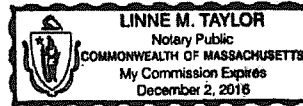
COMMON WEALTH OF MASSACHUSETTS )  
: ss.  
COUNTY OF SUFFOLK )

On this 17 day of March, 2013, personally appeared before me Arthur J. S. Wells, who, being by me duly sworn, did say that he/she is the Asset Sec'y of First Wind Utah Renewables, LLC, the member of Milford Flat Solar, LLC, a Delaware limited liability company and that the foregoing instrument was signed by him/her on behalf of said limited liability company, by authority, and said limited liability company executed the same.

Linne M. Taylor  
NOTARY PUBLIC  
Residing at: Bridgewater MA

My Commission Expires:

Dec. 2, 2016



**EXHIBIT A  
TO  
MEMORANDUM OF LEASE**

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DESCRIPTION OF PREMISES

The real property referenced in the foregoing instrument is located in Beaver County, Utah, and is more particularly described as:

Tax ID Number: 02-0051-0002

The West half of the Southwest quarter of the Northwest quarter, and the West half of the East half of the Southwest quarter of the Northwest quarter, and the Southwest quarter of the Northwest quarter of the Northwest quarter, and West half of the Southeast quarter of the Northwest quarter of the Northwest quarter of Section 17, Township 29 South, Range 10 West, Salt Lake Base and Meridian.

## EXHIBIT 4.6

### QUALIFIED REPORTING ENTITY SERVICES AGREEMENT

C & T Master v2.2a; 032613

This Qualified Reporting Entity Services Agreement (this “Agreement”) is entered into by and between PacifiCorp (“PacifiCorp”) and \_\_\_\_\_ (“Counterparty”; PacifiCorp and Counterparty may be referred to individually herein as “Party” and collectively as “Parties”) as of the date signed by both Parties with reference to the following:

WHEREAS, Counterparty represents to PacifiCorp that it owns or otherwise has the rights to all or part of the non-energy attributes of the generation from that certain electric generation facility as such rights are defined in that power purchase agreement between PacifiCorp and Counterparty for the Facility more particularly described on Exhibit A hereto (the “Facility”), or other rights respecting the Facility itself enabling it to lawfully enter hereinto; and

WHEREAS, The Western Renewable Electricity Generation Information System (“WREGIS”) is a system tracking quantities of renewable energy generation generated by electric generating facilities in the nature of the Facility, as a Facility pursuant to WREGIS Terms of Use (“TOU”); and

WHEREAS, WREGIS requires that each Facility have a designated Qualified Reporting Entity; and

WHEREAS, Counterparty is an Account Holder in WREGIS and wishes to register the Facility with WREGIS; and

WHEREAS, Counterparty wishes to retain PacifiCorp to act as its WREGIS-defined Qualified Reporting Entity (“QRE”) for the Facility;

NOW THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

#### I. Definitions; Rules of Construction.

1.1 Initially capitalized terms used and not otherwise defined herein are defined in the in the Operating Rules or in Attachment 1 *Definitions* of the WREGIS TOU.

1.2 “Affiliate” means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to PacifiCorp, Affiliate shall only include MidAmerican Energy Holdings Company and its direct, wholly owned subsidiaries.

1.3 “Business Day” means a day of the week other than Saturday, Sunday, or a federal holiday.

1.4 “Electric System Authority” means each of NERC, WECC, WREGIS, an RTO, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region.

1.5 “FERC” means the Federal Energy Regulatory Commission.

1.6 “Generation Interconnection Agreement” means the agreement entered into separately between Counterparty and Interconnection Provider concerning the Interconnection Facilities.

1.7 “Facility” is defined in the Preamble.

1.8 “Interconnection Facilities” means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the System, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

1.9 “Interconnection Provider” means the FERC-regulated or United States Department of Energy entity with whom the Facility has contracted for interconnection to the electric transmission grid; in the event Interconnection Provider is PacifiCorp, PacifiCorp would be the Interconnection Provider operating in its regulated transmission function, and not as the party hereto.

1.10 “Metering External Webpage” means a website owned and operated by PacifiCorp that PacifiCorp may at its option, but without being obligated to do so, make available and operate for the display of all data that will be included in the Monthly Generation Extract File.

1.11 “Monthly Generation Extract File” means a data file that contains generation data from Counterparty’s Points of Metering and conforms to the characteristics and requirements set forth in the WREGIS Interface Control Document.

1.12 “NERC” means the North American Electric Reliability Corporation.

1.13 “Points of Metering” means the points at which electric generation is measured.

1.14 “Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical

Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.15 “QRE” means a WREGIS-defined Qualified Reporting Entity.

1.16 “Renewable” is defined in section 2 of the WREGIS Operating Rules.

1.17 “Requirements of Law” means any applicable federal, state and local law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

1.18 “Settlement Estimation Procedures” means a calculation based on standard utility estimation rules using algorithms developed and approved by PacifiCorp’s billing department.

1.19 “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 Generation Interconnection Agreement.

1.20 “Tariff” means PacifiCorp FERC Electric Tariff Fifth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff.

1.21 “Transmission Provider” means the FERC-regulated or United States Department of Energy entity with whom the Facility has contracted for electric transmission at and away from the Facility to any point on, or interconnection with, the electric transmission grid; in the event Transmission Provider is PacifiCorp, PacifiCorp would be the Interconnection Provider operating in its regulated transmission function, and not as the party hereto.

1.22 “Wholesale Generation Also Serving On-Site Loads” is defined in section 2 of the WREGIS Operating Rules.

1.23 “WECC” means the Western Electricity Coordinating Council.

1.24 “WREGIS” means the Western Renewable Energy Generation Information System.

1.25 “WREGIS Certificate” or “Certificate” means “Certificate” as defined by the WREGIS Operating Rules.

1.26 “WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS, including the TOU.

1.27 General Rules of Interpretation. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to

“Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not limited to”; (h) all references to a particular law or statute mean that law or statute as amended from time to time; and (i) the word “or” is not necessarily exclusive.

1.28 Interpretation with FERC Orders. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that each of Transmission Provider’s and Interconnection Provider’s transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. Counterparty agrees to conduct itself and operate the Facility in accordance with all Requirements of Law, all requirements of all applicable Electric System Authorities, and all requirements of the Interconnection Agreement.

1.28.1 Counterparty agrees to enter into the Generation Interconnection Agreement with the Interconnection Provider. The Generation Interconnection Agreement shall be a separate and free standing contract and the terms hereof are not binding upon the Interconnection Provider or Transmission Provider, although both are express third party beneficiaries hereof.

1.28.2 Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Counterparty on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties’ rights, duties, and obligation hereunder. Likewise, nothing herein or connected with the performance by PacifiCorp hereof shall affect or impair the rights of Interconnection Provider or Transmission Provider, under the Interconnection Agreement or otherwise. This Agreement shall not be construed to create any rights between Counterparty and the Interconnection Provider or between Counterparty and the Transmission Provider.

1.28.3 Counterparty expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an affiliate thereof. Counterparty acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider. Nothing in this Agreement shall operate to diminish, nor shall this Agreement extend to, Interconnection Provider or Transmission Provider’s use, retention, or disclosure of Counterparty or Facility information (including information within the scope of this Agreement)

in connection with PacifiCorp operating in its transmission function, including its carrying out of its obligations and business practices as a Balancing Authority or activities undertaken pursuant to the Tariff.

## II. Term and Termination.

2.1 This Agreement shall be effective upon execution by the Parties and shall continue in effect until such time as either Party, upon providing 60 days written notice to the other Party, chooses to terminate. PacifiCorp may initiate any regulatory proceedings it deems appropriate to terminate this Agreement prior to the effectiveness of such termination. Notwithstanding the foregoing, (a) Counterparty may terminate this Agreement upon an event of default by PacifiCorp if PacifiCorp does not cure such event of default within 10 days of written notice; (b) PacifiCorp may terminate this Agreement upon an event of default by Counterparty if Counterparty does not cure such event of default within 10 days of written notice, (c) PacifiCorp may terminate this Agreement if the Facility fails to meet the requirements of Section 3.1 hereof and such failure is not cured within 30 days, and (d) Either Party may terminate this Agreement immediately upon notice to the other if Counterparty or the Facility fail to comply with Section 1.28. This Agreement may also be terminated as otherwise set forth herein.

## III. QRE Services.

3.1 QRE Services. PacifiCorp will, on the terms set forth herein, serve as a QRE for the Facility so long as the Facility meets the definition of Renewable, is within the metered boundaries of both PacifiCorp's Balancing Authority and is equipped with either: (1) Transmission Provider or Interconnection Provider (as applicable) owned and operated meters; or (2) meters that meet the Interconnection Provider's requirements and (3) meet all applicable WREGIS requirements.

3.2 Compensation to PacifiCorp. In exchange for the services performed by PacifiCorp hereunder, Counterparty shall pay PacifiCorp as follows: Counterparty shall pay PacifiCorp a one-time initial setup fee of \$280, which shall be due upon execution of this Agreement. The Counterparty shall pay PacifiCorp a monthly reporting fee of \$50 per generating unit for which PacifiCorp reports output to WREGIS, provided that PacifiCorp may, in its discretion, assess and bill for all fees due hereunder on an annual, rather than monthly, basis. Other than the initial setup fee, which shall be due in advance, all other fees due hereunder shall be due within ten days of PacifiCorp's issuance of an invoice for such fees. PacifiCorp will review costs associated with this service on an annual basis, and may make necessary adjustments to the monthly reporting fee charged herein. Any change in the monthly reporting fee will become effective only after a minimum thirty (30) days prior written notice to Counterparty. In the event WREGIS, WECC, or any other entity with the ability or jurisdiction to modify the QRE reporting process requires a change that materially increases the costs to PacifiCorp of providing QRE services, PacifiCorp may pass those costs to the Counterparty by increasing the monthly reporting fee. PacifiCorp will use best efforts to provide Counterparty with prior notice before billing Counterparty for such increased costs. The fees set forth herein relate to PacifiCorp serving as a QRE for Counterparty pursuant to the terms of this Agreement. The necessary metering is a prerequisite for this service and is not covered in the fees described above.



3.3 Points of Metering. The Points of Metering that PacifiCorp will use are set forth in Exhibit A. Counterparty certifies that all Points of Metering listed in Exhibit A measure data only from Facility that meet the definition of Renewable. Counterparty shall notify PacifiCorp at least thirty (30) Business Days prior to making any proposed material changes to the Points of Metering. Following such notification, the Parties will decide whether such changes are mutually acceptable. If such changes are not acceptable to PacifiCorp, PacifiCorp may terminate this Agreement.

3.4 Expenses. Except as otherwise provided in the Interconnection Agreement (and in such case, only vis-à-vis Interconnection Provider), Counterparty shall bear all costs and expenses, including those incurred by PacifiCorp, relating to all metering or other equipment installed to accommodate Counterparty's Facility.

3.5 Reporting. Counterparty hereby grants to PacifiCorp sole and exclusive permission and authority to report Data and Output to WREGIS and warrants and represents that neither Counterparty nor any other person or entity acting on behalf of Counterparty has granted, or will hereafter grant during the term hereof any similar data reporting authority or permission to any other QRE or WREGIS Account Holder or to any other party or Agent for use in WREGIS, or any other energy tracking system, for the Facility. As a precondition for PacifiCorp to be able to perform hereunder, Counterparty shall submit Counterparty's Output data to PacifiCorp by allowing PacifiCorp to collect such data, at the Points of Metering, and report such data in the manner set forth herein.

3.5.1 Monthly Generation Extract File. Once a month PacifiCorp shall submit a Monthly Generation Extract File to WREGIS on Counterparty's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document.

3.5.2 Reporting Cycle. PacifiCorp shall submit the Monthly Generation Extract File to WREGIS no sooner than the last business day of each month for data collected during the previous month, or previous portion of month. PacifiCorp shall submit such data no later than sixty days following the end date of the output being reported.

3.5.3 Verification. Should PacifiCorp choose at its option to operate and make available a Metering External Webpage, PacifiCorp may in its reasonably exercised discretion grant Counterparty access for Counterparty to verify such information as prescribed by PacifiCorp from time to time, and to timely notify PacifiCorp in writing of any errors Counterparty detects.

3.5.4 Adjustments. After PacifiCorp submits the Monthly Generation Extract File to WREGIS, any information contained in the Monthly Generation Extract File shall be final for purposes of WREGIS reporting, subject only to the adjustment procedures set forth in the WREGIS Operating Rules, which shall be Counterparty's responsibility to implement if necessary.

3.6 Obligations of Counterparty. Counterparty shall report and provide to PacifiCorp accurate and complete generation Data and Output information for the Facility. Counterparty shall send the Data and other Output Information in a format and in compliance with any protocols which PacifiCorp may specify to Counterparty. Counterparty has a continuing duty to immediately notify PacifiCorp, if and when any generation Data or Output information has been sent in error or ceases to be truthful, accurate, or complete and to supply the corrected data as soon as practical, but not later than five (5) Business Days from the date Counterparty discovers that discrepancy in the Data or Output information.

3.7 WREGIS Fees. Counterparty is solely responsible for the payment directly to WREGIS of any and all WREGIS fees and costs that are required to register Counterparty's Facility and, to the extent the Generator Owner is a WREGIS Account Holder, Counterparty is responsible for the payment directly to WREGIS of all other WREGIS fees incident to the reporting of Generator Data and Output to WREGIS. Counterparty acknowledges and agrees that PacifiCorp shall have no obligation to advance or make payment of WREGIS fees or costs on Counterparty's behalf. Upon request by PacifiCorp made if PacifiCorp has received such a request from WREGIS or any regulator or third party, Counterparty shall provide PacifiCorp with evidence of payment of WREGIS fees and costs; failure to provide such information to PacifiCorp, upon request, shall constitute an event of default under this Agreement.

3.8 WREGIS Accounts. Counterparty will be solely responsible to make arrangements and registrations and for entering into any such agreements that are necessary to establish transfer of Certificates directly to proper Accounts or Subaccounts of Counterparty. Counterparty agrees that such arrangements shall preclude the need for PacifiCorp to act as custodian of such Certificates or to be responsible in any way to hold such Certificates in any Account or Subaccount of PacifiCorp or bear any responsibility, possession, obligation, or risk of loss with respect to Certificates created, held, or owned, with respect to the Facility. Counterparty acknowledges that, pursuant to section 11 of the WREGIS TOU, any generation data that PacifiCorp, acting as a QRE, provides to WREGIS shall reside in WREGIS and Counterparty will have no control over such data's use other than that provided for under the WREGIS TOU.

3.9 Obligations of PacifiCorp. PacifiCorp shall specify for Counterparty the protocols, reporting frequency, data file formats, and communication protocols for reporting generating Data, or Output, as necessary. PacifiCorp shall timely report to WREGIS Counterparty Data and/or Output information as specified in the most current WREGIS Interface Control Document (ICD). PacifiCorp shall not use or disclose Counterparty generation Data for any other purpose than reporting the Data to WREGIS, except as may be required by law, the Public Utility Commission of Oregon, any other state, federal, municipal or other regulator or governmental authority with jurisdiction over PacifiCorp or any of its assets, or a court of competent jurisdiction or as required under the terms of an existing agreement between the Parties. PacifiCorp shall not use Generator Owner generation Data for any other purpose. Notwithstanding the foregoing, PacifiCorp shall not be responsible for handling, account administration, transfer, evidence of, or any determination of Counterparty Certificate ownership or any other obligations for Certificates of Counterparty with regard to Certificates; and Counterparty shall bear all responsibility for such handling, account administration, evidence of,

or any determination of Counterparty Certificate ownership and all other obligations pertaining to creation and ownership of such Certificates.

### 3.10 Measurement.

3.10.1 Meter Data. Counterparty authorizes PacifiCorp's metering services organization to provide Counterparty's meter data directly to WREGIS in the form of the Monthly Generation Extract File. Counterparty authorizes PacifiCorp to gather data from the Points of Metering listed in Exhibit A. All such data is considered data which Counterparty has created and submitted to PacifiCorp, notwithstanding that PacifiCorp, rather than Counterparty will gather it.

3.10.2 Wholesale Generation Also Serving On-Site Loads. If Counterparty has any Wholesale Generation Also Serving On-Site Loads (as defined in Article One above), such Facility will need to have the on-site load generation metered (and registered) separately from the generation that is supplied to the grid, in accordance with the WREGIS Operating Rules. Otherwise, PacifiCorp will not report any data from such Facility. If such Facility exist, they must be specified in Exhibit A.

3.10.3 Estimates. When meter readings are not available due to meter hardware failure or data that is determined to be invalid due to meter malfunction or calibration or configuration error, to the extent deemed by PacifiCorp to be appropriate and permitted pursuant to WREGIS TOU, PacifiCorp will, if possible, rely on readings from redundant meters whether such meters are PacifiCorp owned or not. If readings from redundant meters are not possible, PacifiCorp will estimate and report meter data according to PacifiCorp's Settlement Estimation Procedures.

3.10.4 Responsibility. Counterparty is solely responsible for the data created and submitted to PacifiCorp, acting as a QRE, to forward to WREGIS.

3.11 Regulatory Requirements. PacifiCorp may release information provided by Counterparty hereunder, or gathered by PacifiCorp in connection herewith, to comply with any regulatory requirements applicable to PacifiCorp or if requested by a PacifiCorp regulator or if required by any other federal law or court order. Counterparty waives all applicable provisions of the Tariff which require PacifiCorp to hold confidential information with respect to the Generator Owner and the Facility, to the extent necessary for PacifiCorp to report, as a QRE, generation Data and Output regarding the Generation Unit(s) and to carry out PacifiCorp's obligations under this Agreement. This provision shall survive any termination of this Agreement.

3.12 Grant by Counterparty. Counterparty hereby grants to, permits, and authorizes PacifiCorp the following:

3.12.1 PacifiCorp is hereby authorized to communicate and transact with WREGIS as Counterparty's sole and exclusive reporting source of generation data for the Facility, and WREGIS is hereby authorized to communicate and transact directly with

PacifiCorp regarding any generation data issues for the Facility. PacifiCorp is hereby authorized to act on behalf of Counterparty, but only to the extent that PacifiCorp has lawful, contractual access to WREGIS.

3.12.2 PacifiCorp is hereby authorized to provide WREGIS with all generation data for the Facility that WREGIS requires, including, but not limited to, data required for preparation of required reports and billing.

3.12.3 PacifiCorp is authorized to undertake all actions which are reasonable and necessary to carry out the obligations set forth in the subsections above.

3.12.4 Counterparty retains all other rights and responsibilities and all other obligations to WREGIS.

#### IV. Indemnity and Hold Harmless by Counterparty.

4.1 Indemnity. To the extent permitted by Requirements of Law, Counterparty hereby indemnifies and agrees to hold PacifiCorp, its officers, employees, agents, or representatives, harmless for any and all liability that is in any way associated with PacifiCorp's performance hereunder. This includes liability arising from: the data contained in the Monthly Generation Extract File, or any other financial injury, or damage to persons or property. Without limiting the generality of the foregoing:

4.1.1 Waiver of Causes of Action and Claims for Damages. Counterparty hereby waives any and all causes of action arising under or in respect to this Agreement, whether in contract, tort or any other legal or equitable theory (including strict liability) against PacifiCorp. In no event shall PacifiCorp be liable to Counterparty its board of directors, employees, agents, or representatives for any demands, direct costs, lost or prospective profits or any other losses, liabilities or expenses, whether special, punitive, exemplary, consequential, incidental, or indirect in nature, that are in any way associated with PacifiCorp's performance of the QRE function or otherwise under or in respect of this Agreement.

4.2 Indemnity by Counterparty. Counterparty shall release, indemnify and hold harmless PacifiCorp, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "PacifiCorp Indemnities") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorney's fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") resulting from, or arising out of, or in any way connected with, the performance by Counterparty of its obligations hereunder, or relating to the Facility, for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the PacifiCorp Indemnities.

4.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, COUNTERPARTY ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING

FROM (1) THE FAILURE TO SEND DATA IN A FORMAT SPECIFIED BY PACIFICORP, (2) THE FAILURE TO USE PROTOCOLS SPECIFIED BY PACIFICORP OR (3) THE SENDING OF ERRONEOUS, UNTRUTHFUL, INACCURATE, AND/OR INCOMPLETE GENERATING DATA TO PACIFICORP OR THE SENDING OF ERRONEOUS, UNTRUTHFUL, INACCURATE, AND/OR INCOMPLETE DATA BY PACIFICORP TO WREGIS. IN NO EVENT SHALL PACIFICORP BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR OTHER INDIRECT LOSS OR DAMAGES RESULTING FROM ANY BREACH OF THIS AGREEMENT, WHETHER CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACTIONS OF PACIFICORP (AND/OR ITS CONTRACTORS, AGENTS, AND EMPLOYEES), REGARDLESS OF WHETHER SUCH CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL PACIFICORP BE LIABLE FOR ANY LOSS OR HARM SUFFERED BY COUNTERPARTY OR ANY THIRD PARTY DUE TO ANY ACTION OR INACTION BY PACIFICORP TAKEN HEREUNDER THAT CAUSES A FACILITY TO LOSE ANY CREDENTIALS, REGISTRATION OR QUALIFICATION UNDER THE RENEWABLE PORTFOLIO STANDARD OR SIMILAR LAW OF ANY STATE OR OTHER JURISDICTION.

4.4 PACIFICORP WILL NOT BE RESPONSIBLE FOR ANY DAMAGES RESULTING FROM ECONOMIC LOSS, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, LOSS OF PROFIT, LOSS OF PRODUCTION TAX CREDITS, LOSS OF SAVINGS OR REVENUE, LOSS OF GOODWILL, THE CLAIMS OF THIRD PARTIES (INCLUDING CUSTOMERS AND SHAREHOLDERS OR OTHER EQUITY OWNERS), PERSONAL INJURIES OR PROPERTY DAMAGES SUSTAINED BY THE COUNTERPARTY OR ANY THIRD PARTIES, EVEN IF PACIFICORP HAS BEEN NOTIFIED BY COUNTERPARTY (OR BY ANY THIRD PARTY) OF SUCH DAMAGES.

4.5 PACIFICORP DISCLAIMS ANY LIABILITY FOR AND COUNTERPARTY WAIVES ANY CLAIM FOR LOSS OR DAMAGE RESULTING FROM ERRORS, OMISSIONS, OR OTHER INACCURACIES IN ANY PART OF WREGIS OR THE REPORTS, CERTIFICATES OR OTHER INFORMATION COMPILED OR PRODUCED BY AND FROM OR INPUT INTO WREGIS USING COUNTERPARTY SUPPLIED GENERATION DATA, WHETHER OR NOT SUCH ERRORS, OMISSIONS OR INACCURACIES ARE DUE TO ERRONEOUS, UNTRUTHFUL, INCOMPLETE, OR INACCURATE INFORMATION INPUT BY PACIFICORP INTO WREGIS.

4.6 COUNTERPARTY HEREBY RELEASES PACIFICORP AND ANY OF ITS CONTRACTORS, AGENTS, AND EMPLOYEES FROM ANY AND ALL LIABILITY WITH RESPECT TO DAMAGES OR INJURIES INCURRED BY GENERATOR OWNER AS RELATES TO THE FOREGOING, EXCLUDING ANY ARISING AS A RESULT OF TORTIOUS AND INTENTIONALLY KNOWING OR RECKLESS CONDUCT BY PACIFICORP.

4.7 COUNTERPARTY ACKNOWLEDGES AND AGREES THAT, IN THE EVENT OF BREACH OF THIS CONTRACT OR ANY OTHER ACTION RESULTING IN

LOSS OR POTENTIAL LOSS OR DAMAGE TO COUNTERPARTY, THE SOLE RECOURSE TO GENERATOR/OWNER IS TERMINATION OF THIS AGREEMENT.

4.8 Counterparty agrees to defend, indemnify, and hold harmless PacifiCorp and its directors, officers, employees, and agents from and against any and all claims (including third-party claims); causes of action, whether in contract, tort, or any other legal theory (including strict liability); demands; damages; costs; liabilities; losses and expenses (including reasonable attorney's fees and court costs) of any nature whatsoever, whenever arising, arising out of, resulting from, attributable to, or related to Counterparty generation Data our Output for: any inaccuracy, error, or delay in or omission of (i) any Data, information, or service, or (ii) the transmission or delivery of any Data, information, or service; any interruption of any such Data, Output, information, or service (whether or not caused by PacifiCorp); or any financial, business, commercial, or other judgment, decision, act, or omission made by any person or entity based upon or related to the information.

4.9 Interconnection. Counterparty shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise. Counterparty shall defend, indemnify and hold PacifiCorp harmless against any liability arising due to Counterparty's performance or failure to perform under the Generation Interconnection Agreement. Counterparty's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not a Force Majeure.

4.10 THIS ARTICLE SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH TERMINATION IS BY PACIFICORP OR COUNTERPARTY, AND WHETHER OR NOT SUCH TERMINATION IS ON ACCOUNT OF A DEFAULT.

V. Further Counterparty Obligations.

5.1 No Sale. Nothing herein constitutes a sale or purchase of energy or renewable energy certificates to or by PacifiCorp.

5.2 PTCs. Counterparty shall bear all risks, financial and otherwise throughout the Term, associated with Counterparty's or the Facility's eligibility to receive production tax credits ("PTCs") or qualify for accelerated depreciation for Counterparty's accounting, reporting or tax purposes.

5.3 Further Assurances. At PacifiCorp's request, the Parties shall execute such documents and instruments as may be reasonably required to effect the essential intent and purposes hereof.

5.4 Station Service. Counterparty shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof, Counterparty shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or renewable energy certificates.

5.6 Coordination with System. Counterparty shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System, and shall be solely responsible for (and shall defend and hold PacifiCorp harmless against) any damage that may occur as a direct result of Counterparty's breach of the Generation Interconnection Agreement.

5.7 Data Request. Counterparty shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data reasonably required for information requests from any Governmental Authorities, state or federal agency intervenor or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any governmental authority. Counterparty shall use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review it and meet any submission deadlines.

5.8 Additional Information. Counterparty shall provide to PacifiCorp such other information respecting Counterparty or the Facility as PacifiCorp may, from time to time, reasonably request.

5.9 No Dedication. Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party hereto. No undertaking by one Party to the other under any provision hereof shall constitute the dedication of PacifiCorp's facilities or any portion thereof to Counterparty or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Counterparty as an independent individual or entity.

5.10 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Counterparty hereunder, Counterparty shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified in the Generation Interconnection Agreement.

## VI. Representations and Warranties.

6.1 Mutual Representations and Warranties. Each Party represents and warrants to the other that: (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization; (ii) it has the corporate, governmental and other legal capacity and authority to enter hereinto and to perform its obligations hereunder; (iii) such execution and performance do not violate or conflict with any law, order or agreement applicable to it; (iv) it has all governmental and other authorizations that are required to have been obtained or

submitted by it with respect hereto, and they are in full force and effect; (v) its obligations hereunder are valid, binding and enforceable in accordance with their terms (subject to bankruptcy or similar laws affecting creditors' rights generally); and (vi) no Event of Default, or event which with notice and/or lapse of time would constitute such an Event of Default, has occurred and is continuing or would occur as a result of its entering into or performing its obligations hereunder.

6.2 Representations and Warranties of Counterparty. Counterparty hereby represents and warrants to PacifiCorp: (i) it is not relying upon any representations of PacifiCorp other than those expressly set forth herein; (ii) it has entered hereinto with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks; (iii) it has made its trading and investment decisions based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by PacifiCorp; (iv) it has not received from PacifiCorp any assurances or promises regarding any financial results or benefits hereunder; (v) service hereunder is not a utility service within the meaning of Section 466 of the United States Bankruptcy Code; and (vi) Counterparty holds legal title to the Facility or otherwise holds the legal right to cause the Facility to enter into this Agreement.

## VII. Financial Responsibility.

7.1 Adequate Assurances. Without limiting PacifiCorp's rights under Article VIII hereof, if Counterparty has failed to make a timely payment hereunder, and PacifiCorp has reasonable grounds for insecurity regarding the performance of any obligation of Counterparty hereunder (whether or not then due), PacifiCorp may demand Adequate Assurances of Performance. "Adequate Assurances of Performance" means sufficient security in the form, amount, by an issuer or guarantor, and for the term reasonably acceptable to PacifiCorp, including, but not limited to, cash, a standby irrevocable letter of credit, a prepayment, a security interest in government securities, an asset or a performance bond or guaranty. Such Adequate Assurances of Performance shall be provided within three business days after a written demand is made by PacifiCorp.

## VIII. Events of Default; Remedies.

8.1 Event of Default. "Event of Default" means, with respect to a Party (the "Defaulting Party"):

8.1.1 the failure to render when due any payment or performance hereunder, if such failure is not remedied within five days after written notice;

8.1.2 the failure to timely provide adequate assurances required pursuant to Article VII hereof;

8.1.3 any such Party's representation or warranty proves to have been incorrect or misleading in any material respect when made;



8.1.4 the failure to perform any other covenant set forth herein if such failure is not remedied within five days after written notice;

8.1.5 its bankruptcy, if adequate assurances acceptable to PacifiCorp and approved by the Bankruptcy Court are not provided;

8.1.6 the expiration or termination of any credit support of Counterparty's obligations hereunder (other than in accordance with its terms) prior to the satisfaction of all obligations of Counterparty without the written consent of PacifiCorp; or

8.1.7 In the case of Counterparty:

8.1.7.1 Counterparty fails to report generation Data or Output information to PacifiCorp for the Facility or Counterparty fails to send the data in a format and use the protocols specified by PacifiCorp as determined by PacifiCorp to be required to meet the requirements of the WREGIS Operating Rules;

8.1.7.2 Counterparty is delinquent in payment to WREGIS of any WREGIS fees for registration or maintenance of Accounts or Subaccounts, which payment impairs the ability of PacifiCorp to report Generator Data, Output, or other information to WREGIS regarding the Facility, which delinquency continues for a period of thirty (30) days;

8.1.7.3 Counterparty fails to comply with a request by PacifiCorp to provide evidence of payment of WREGIS fees pertaining to the Facility; or

8.1.7.4 Counterparty knowingly or intentionally falsifies or misrepresents any Data, Output information, or other information required by WREGIS.

8.2 Remedies Upon Event of Default. In the Event of Default by a Party and for so long as the Event of Default is continuing, the non-defaulting Party (the "Performing Party") shall have the right to do any or all of the following: (1) upon two business days' written notice to the Defaulting Party, terminate this Agreement; (2) withhold any payments or performance due in respect of this Agreement; and (3) exercise such other remedies as may be available at law or in equity or as otherwise provided for herein, to the extent such remedies have not been otherwise waived or limited pursuant to the terms hereof.

8.3 Setoff. If an Event of Default occurs, the Performing Party may, at its election, set off any or all amounts which the Defaulting Party owes to it or any Affiliate of the Performing Party (whether under this Agreement or otherwise and whether or not then due) against any or all amounts which it or any Affiliate of the Performing Party owes to the Defaulting Party (whether under this Agreement or otherwise and whether or not then due).

8.4 Payment of Damages. Any amounts due on account of default shall be paid by the close of business on the next business day following the Defaulting Party's receipt of the Performing Party's written termination notice setting forth the termination payment due.

8.5 Limitation of Liability. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED HEREIN SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. LIABILITY THAT HAS NOT BEEN OTHERWISE EXCLUDED PURSUANT TO THE TERMS HEREOF SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AS THE SOLE AND EXCLUSIVE REMEDY. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

8.6 Survival. This Article survives the expiration or termination hereof.

#### IX. Force Majeure.

9.1 Except with regard to a Party's obligation to make payments hereunder, in the event either Party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect hereto, then upon such Party's (the "Claiming Party") giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing or by facsimile to the other Party, then the obligations of the Claiming Party shall, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party shall not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure shall have until the end of the Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure. "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations hereunder, which event or circumstance was not anticipated, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Counterparty's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not a Force Majeure.

9.2 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

9.3 Strikes. Notwithstanding any other provision hereof, 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.

#### X. Miscellaneous.

10.1 CHOICE OF LAW. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

10.2 Restriction on Assignments. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment in violation hereof shall be void ab initio. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

10.3 Notices. All notices, requests, statements or payments shall be made to the addresses set out on the Notices Exhibit. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section.

10.4 Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties. This Agreement may be executed in counterparts, including by telefacsimile transmission, each of which is an original and all of which taken together constitute one and the same original instrument. This Agreement completely and fully supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof. If any provision of this Agreement is determined to be invalid, void or unenforceable by any court of competent jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.

10.5 No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default, nor shall any delay by a Party in the exercise of any right under this Agreement be considered as a waiver or relinquishment thereof.

10.6 Jurisdiction. Any judicial action arising out of, resulting from or in any way relating to this Agreement shall be brought only in a state or federal court of Multnomah County, Oregon. In the event such judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its costs and attorneys' fees incurred in connection with such proceedings.

10.7 Jury Trial Waiver. THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING HERETO, ANY GREEN TAGS OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH

ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

10.8 No Third Party Beneficiaries. With the exception of Transmission Provider and Interconnection Provider, who are express third party beneficiaries hereof, this Agreement confers no rights whatsoever upon any person other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person not a Party hereto.

10.9 Relationship of the Parties. Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the date last below written.

PacifiCorp	<COUNTERPARTY>
By: _____	By: _____
Name: <u>Bruce Griswold</u>	Name: _____
Title: <u>Director, Short-Term Origination and QF Contracts</u>	Title: _____
Date: _____	Date: _____

Exhibit A  
Facility and Generation Data

For Facility enter the following information:

Facility Name and Address or Location

Meter Number (Device ID)

Facility's WREGIS Generator ID

EIA or QF ID#

One-line diagram that includes description of meter locations at the facility – voltage and location

NOTICES EXHIBIT

To Counterparty:

[to be provided]

To PacifiCorp:

PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315  
Attn: Sr. Vice President,  
Commercial & Trading  
Telefacsimile (503) 813-6260  
E-mail:  
[stefan.bird@pacificorp.com](mailto:stefan.bird@pacificorp.com)

with a copy to:

PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315  
Attn: Director of Contract  
Administration, C&T  
Telefacsimile (503) 813-6291  
E-mail: [cntadmin@pacificorp.com](mailto:cntadmin@pacificorp.com)

with  
copies  
to: PacifiCorp Energy Legal  
Department  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315  
Attn: Assistant General Counsel  
Telefacsimile (503) 813-6761  
E-mail: [jeff.erb@pacificorp.com](mailto:jeff.erb@pacificorp.com)

**EXHIBIT 5.1**

**SCHEDULE 37**

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

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**Avoided Cost Purchases From Qualifying Facilities**

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**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)



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**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 Sunday, the Monday following the holiday 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 2013 starting date. Levelized prices for contracts which start after 2013 and are for periods of 20 years or less are available upon request.

Deliveries During Calendar Year	Non-Levelized Prices		Levelized Prices	
	Capacity Price (a) \$/kW-Mo	Energy Price ¢/kWh All kWh	Capacity Price (a) \$/kW-Mo	Energy Price ¢/kWh All kWh
2013	\$4.67	3.419	\$8.01	3.974
2014	\$3.96	3.084		
2015	\$4.83	3.148		
2016	\$5.72	3.210		
2017	\$5.82	3.373		
2018	\$6.77	3.482		
2019	\$6.89	3.720		
2020	\$7.02	4.138		
2021	\$8.04	4.670		
2022	\$9.10	5.339		
2023	\$8.35	5.857		
2024	\$11.66	4.171		
2025	\$11.88	4.173		
2026	\$12.10	4.305		
2027	\$12.32	4.301		
2028	\$12.54	4.459		
2029	\$12.78	4.592		
2030	\$13.02	4.627		
2031	\$13.27	4.668		
2032	\$13.52	4.756		
2033	\$13.78	4.848		
2034	\$14.04	4.936		
2035	\$14.31	5.030		
2036	\$14.58	5.130		
2037	\$14.86	5.224		

(continued)

Issued by authority of Report and Order of the Public Service Commission of Utah in Advice No. 13-08

**FILED:** May 31, 2013

**EFFECTIVE:** July 29, 2013

**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
2013	4.655	4.629	3.432	3.406
2014	4.174	4.041	3.129	2.996
2015	4.356	4.555	3.082	3.281
2016	4.623	4.913	3.113	3.403
2017	4.769	5.187	3.233	3.651
2018	5.063	5.676	3.277	3.890
2019	5.228	6.159	3.410	4.341
2020	5.652	6.663	3.801	4.812
2021	6.597	7.178	4.477	5.058
2022	7.603	8.015	5.202	5.614
2023	7.879	8.418	5.677	6.216
2024	7.246	7.246	4.171	4.171
2025	7.307	7.307	4.173	4.173
2026	7.498	7.498	4.305	4.305
2027	7.551	7.551	4.301	4.301
2028	7.768	7.768	4.459	4.459
2029	7.964	7.964	4.592	4.592
2030	8.063	8.063	4.627	4.627
2031	8.169	8.169	4.668	4.668
2032	8.324	8.324	4.756	4.756
2033	8.483	8.483	4.848	4.848
2034	8.640	8.640	4.936	4.936
2035	8.805	8.805	5.030	5.030
2036	8.977	8.977	5.130	5.130
2037	9.144	9.144	5.224	5.224

**Levelized Prices (Nominal)**

On-Peak Energy Prices		Off-Peak Energy Prices	
Winter	Summer	Winter	Summer
5.996	6.270	3.883	4.156

Issued by authority of Report and Order of the Public Service Commission of Utah in Advice No. 13-08

**FILED:** May 31, 2013

**EFFECTIVE:** July 29, 2013

**EXHIBIT 6.1**  
**Description of Seller's Facility**

The current design of the Seller's Facility incorporates 11,232 panels rated at 300 watts DC, manufactured by Yingli, four -inverters manufactured by SMA, and a Fixed-Tilt racking system manufactured by Solar Flex Rack. This design is subject to change and optimization in layout and technology based on the final design process and input received in the final Small Generator Interconnection Agreement.

The Facility will include the following equipment (or similar/equivalent):

A. Manufacturer's Nameplate Data: ~3370 KW DC, 3000 KW AC

Solar Panels

Manufacturer: Yingli or equivalent  
Model: 300P-35b or equivalent  
Power rating (Watts DC @ STC): 300  
Number of Modules: 11,232  
Number of Modules per string: 18  
Module warranty (year 10) (% of new): 91.2%  
Module warranty (year 25) (% of new): 80.7%

Inverters

Manufacturer: SMA or equivalent  
Model: 750CP-US or equivalent  
Inverter Rating (AC, kW): 750  
Number of Inverters: 4 (assuming final constructed design incorporates 750kW inverters)  
Inverter Efficiency at Full Power Rating (%): 98.6%  
Inverter Capacity for Site (AC, kW): 3000  
Operation Voltage (Volts): 545  
Maximum System Design Voltage - (Volts): 820  
Number of Phases: 3

Mounting

Fixed tilt or Single-axis Tracking: Fixed-Tilt  
Proposed Module orientation: Portrait  
Tilt Angle (Degrees): 22  
Azimuth (Degrees): 0 (due south)  
Pitch (Row Spacing) (Feet): ~21' (subject to site layout and optimization)  
Row Width (Feet): ~12'  
Row Length (Feet): ~188'  
Max/min rotation (if tracking) (Degrees): NA

Ground Coverage Ratio: ~52%

Power Consumption requirements (for tracking) (kWh/Day): N/A – Fixed-Tilt

PV Array Characteristics – Current Design:

Rated Output (kW): 3370 KW DC / 3000 KW AC

Rated Output (kVA): 3300 kVA/3300 kVA

Transformation

Number of Step-up transformers: 2

Size of Step-up Transformers (kVA): 1500kVA

Low Side voltage of Step-up transformer (volts): ~342V

High Side voltage of Step up transformer (volts): Interconnect voltage (12.47kV)

Total land required: ~30 acres

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR): PF= .8

Leading: .8 Lagging: .8

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

Maximum kW Output ("Maximum Facility Delivery Rate"): 3000 kW AC

Minimum kW Output: 0 kW Estimated kW Output during daylight hours: 1125 kW AC

Maximum Generator Interconnection Agreement Delivery Rate: 3000 kW Instantaneous

Nameplate Capacity Rating: 3000 KW AC at 25° C

Station service requirements are described as follows: Estimated station service for lighting and other auxiliary energy requirements is estimated to be approximately 38,300 kWh annually.

C. PV Panel output degradation factor: 0.8% per year modeled / warranted included above

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## Project Description – Milford Flat Solar

### Location

Location of the Facility: Beaver County, Utah. The West half of the Southwest quarter of the Northwest quarter, and the West half of the East half of the Southwest quarter of the Northwest quarter, and the Southwest quarter of the Northwest quarter of the Northwest quarter, and West half of the Southeast quarter of the Northwest quarter of the Northwest quarter of Section 17, Township 29 South, Range 10 West, Salt Lake Base and Meridian.

The project is located on an approximately 30 acre site near the Town of Milford, Utah.

The project will have a design output of 3.0 MW<sub>ac</sub> (the “PV System”). The system will consist of crystalline (c-Si) panels with a nominal DC rating of 300 watts per panel and an aggregate nameplate capacity of approximately 3,370 MW<sub>dc</sub>. The current design has the panels mounted on a fixed-tilt racking system, and connected to four (4) 750 kW<sub>ac</sub> SMA inverters (or equivalent). The project will utilize fixed-tilt racks manufactured by Solar Flex Rack or equivalent. The perimeter of the site will be fenced (6’ chain link with 1’ barbed wire).

The panel supports/racking system will be mounted approximately four (4) feet above ground level on driven galvanized steel support posts. Each row will be level, but the height of the rows within a tracker block will generally follow existing surface topography (if applicable). Given a fixed system is currently selected, there will be no motorized tracker system included.

The PV modules will be attached to the racking/torque tubes using mounting clamp assemblies.

The PV modules selected are manufactured by Yingli (or equivalent) which have an STC rated output of 300 watts DC. The PV modules are currently configured in 624 module strings.


The output from each inverter is will be wired to the step-up padmount transformer. The transformers for the units to be installed for the entire PV System will be connected through switchgear. Final switchgear, relay, instrument transformers, etc. design will be in concert with the Interconnecton Agreement.

The Small Generator Interconnection Agreement will define the local interconnect arrangement, but is assumed to be a 3 or 4-pole disconnect, metering, protection, and RTU cabinet package. The point of interconnection is on-site, and is a 12.47 kV distribution feeder line.

Plant control (station power) will be provided from a station service transformer that is fed off from the Facility or the Facility will request as a separate service feed from a station service transformer installed by the utility.

The system will incorporate a monitoring system platform (Draker, or similar), including interconnection communications required by the Interconnection Agreement. The plant will also be monitored from the Seller’s 24/7 remote monitoring center. The monitoring system will

capture at minimum energy generation data, historical data, and meteorological data. The system will be configured to provide data updates at least every fifteen minutes. A weather station will also be supplied that will provide current weather data, including wind speed and directional data, temperature and irradiance. Alarms and notices can instantly alert the system manager to potential system problems and outages.

**Seller Confirmation:**  [Seller's signature] Seller confirms that the information in this Exhibit 6.1 is correct as of 10-18-13 [date]

**ARTHUR J. SNELL  
ASSISTANT SECRETARY**

## **EXHIBIT 6.1 — Attachments**

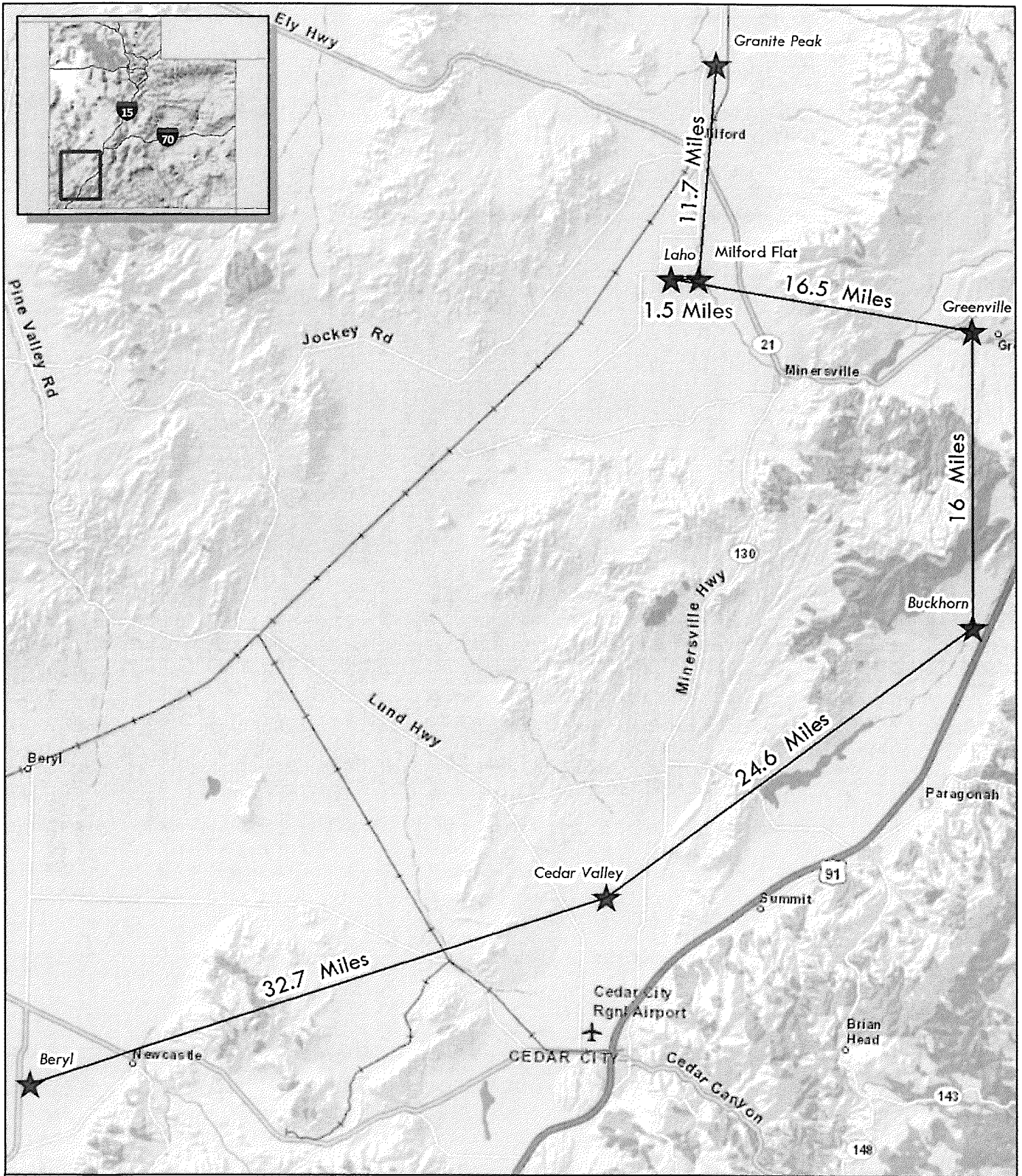
1. FirstWind Site Maps
2. Distance Between Solar Panels of Adjacent Qualifying Facilities [\*\*Note to Drafter – may not be applicable to the extent there may not be a requirement for spacing of solar generation facilities.\*\*]

The current site plan for the Milford Flat Solar project is contained on the following page. Also provided is a FirstWind map that shows distances between each FirstWind project.

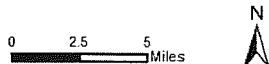


# Milford Flat Solar – General Site Plan





- Distances
- ★ Solar Project



First Wind  
Utah Solar

Project: Southwestern Utah

Drawn By: TM

Date: 05/15/2013

Map Scale  
1 centimeter = 4.387 meters

**EXHIBIT 8.2.2**  
**FORM OF GUARANTY — CREDIT SUPPORT SECURITY**

THIS GUARANTY AGREEMENT (this "Guaranty"), dated as of \_\_\_\_\_, 20\_\_, is issued and delivered by \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Guarantor"), for the account of \_\_\_\_\_, a \_\_\_\_\_ limited liability company (the "Obligor"), and for the benefit of PacifiCorp, an Oregon corporation (the "Beneficiary").

Background Statement

WHEREAS, the Beneficiary and Obligor entered into that certain Power Purchase Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Agreement"); and

WHEREAS, Guarantor delivers to the Beneficiary this Guaranty as an inducement to Beneficiary to enter into the Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guaranty; Limitation of Liability. Subject to any rights, setoffs, counterclaims and any other defenses of Obligor under the Agreement that the Guarantor expressly reserves to itself under this Guaranty (except as set forth below), the Guarantor absolutely and unconditionally guarantees the timely payment of the Obligor's payment obligations under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed Expenses as defined in Section 12, plus (a) \_\_\_\_\_ U.S. Dollars (U.S. \$ \_\_\_\_\_) for the period from the date that is ten (10) days after the effective date of the Agreement, through but not including the date that is three (3) months after the effective date of the Agreement, (b) \_\_\_\_\_ (U.S.\$ \_\_\_\_\_) for the period from the date that is three (3) months after the effective date of the Agreement through but not including the Commercial Operation Date (as defined in the Agreement), and (c) \_\_\_\_\_ U.S. Dollars (U.S. \$ \_\_\_\_\_) for the period from the Commercial Operation Date (as defined in the Agreement) through the Expiration Date.

2. Subject to the other terms of this Guaranty, the liability of the Guarantor under this Guaranty is limited to Expenses as defined in Section 12, and payments expressly required to be made by Obligor under the Agreement, and except as specifically provided therein, the Guarantor shall not be liable for or required to pay any consequential or indirect loss (including but not limited to loss of profits), exemplary damages, punitive damages, special damages, or any other damages or costs.

3. Effect of Amendments. The Guarantor agrees that the Beneficiary and the Obligor may modify, amend and supplement the Agreement and that the Beneficiary may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or

extend the date on which any act must be performed by the Obligor thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Beneficiary.

4. Waiver of Rights. The Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, (iii) demand for payment of any of the Guaranteed Obligations; (iv) any right to assert against Beneficiary any defense (legal or equitable), counter-claim, set-off, cross-claim or other claim that Guarantor may now or at any time hereafter have (a) against Obligor or (b) acquired from any other party, not affiliated with Guarantor, to which Beneficiary may be liable; and (v) any defense arising by reason of any claim or defense based upon an election of remedies by Beneficiary which in any manner impairs, affects, reduces, releases, destroys or extinguishes Guarantor's subrogation rights, rights to proceed against Obligor for reimbursement, or any other rights of the Guarantor to proceed against Obligor or against any other person, property or security.

5. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Obligor may have to payment of all or any portion of the Guaranteed Obligations except defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Obligor and other defenses expressly waived in this Guaranty.

6. Settlements Conditional. If any monies paid to the Beneficiary in reduction of the indebtedness of the Obligor under the Agreement have to be repaid by the Beneficiary by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force, the liability of the Guarantor under this Guaranty shall be computed as if such monies had never been paid to the Beneficiary.

7. Subrogation. The Guarantor shall be subrogated to all rights of the Beneficiary against the Obligor in respect of any amounts paid by the Guarantor pursuant to this Guaranty; provided, however, that the Guarantor hereby postpones all rights of subrogation, reimbursement, indemnity and recourse (including, without limitation, any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509, or otherwise) until such time as all amounts due under the Agreement are paid in full and Section 6 hereof fully, finally, and indefeasibly performed. If (i) the Guarantor shall perform and shall make payment to the Beneficiary of all or any part of the Guaranteed Obligations and (ii) all the then outstanding obligations under the Agreement have been paid in full, Beneficiary shall, at the Guarantor's request, execute and deliver to the Guarantor documents to evidence the transfer by subrogation to the Guarantor of any interest in the obligations under the Agreement resulting from such payment by the Guarantor.

8. Notice. The Beneficiary will provide written notice to the Guarantor if the Obligor defaults under the Agreement.

9. Primary Liability of the Guarantor. The Guarantor agrees that the Beneficiary may enforce this Guaranty without the necessity at any time of resorting to or exhausting any other security or collateral, howsoever arising. This is a continuing Guaranty of payment and not merely of collection.

10. Term of Guaranty. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been finally and indefeasibly discharged in full, and (ii) \_\_\_\_\_ (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

11. Governing Law. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of Utah.

12. Expenses. The Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts; provided, however, that the Guarantor's aggregate liability for such expenses shall not exceed two hundred fifty thousand U. S. Dollars (U.S. \$250,000) ("Expenses").

13. Waiver of Jury Trial. The Guarantor and the Beneficiary, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

14. Entire Agreement; Amendments. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary.

15. Headings. The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

16. No Third-Party Beneficiary. This Guaranty is given by the Guarantor solely for the benefit of the Beneficiary, and is not to be relied upon by any other person or entity.

17. Assignment. Neither the Guarantor nor the Beneficiary may assign its rights or obligations under this Guaranty without the prior written consent of the other, which consent may not be unreasonably withheld or delayed, except that:

(i) the Guarantor may make such an assignment without such consent if the assignee meets the Credit Requirements as defined in the Agreement, provided that the Guarantor's obligations hereunder must be expressly assumed in writing, in a form reasonably acceptable to the Beneficiary; provided further that such assumption shall be deemed to release the Guarantor from all of its obligations under this Guaranty automatically and without further action by the Guarantor or the Beneficiary, and

(ii) the Beneficiary may, upon 30 days prior written notice, make such an assignment without such consent if in conjunction with any assignment of the Agreement by the Beneficiary permitted under the Agreement. Any purported assignment in violation of this Section 17 shall be void and without effect.

18. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by facsimile to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

With a copy to:

If to the Beneficiary, at:

PacifiCorp  
825 NE Multnomah Street, Suite 700  
Portland, OR 97232  
Attn: Credit Manager  
Facsimile No.: 503-813-5609

With a copy to:

PacifiCorp Office of the General Counsel  
825 NE Multnomah Street, Suite 700  
Portland, OR 97232  
Attn: Jeff Erb and Jeremy Weinstein  
Facsimile No.: 503-813-6260 and 925-943-3105

or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by transmission confirmation report, if sent by facsimile and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by transmission confirmation report, if sent by facsimile and received after 4 pm local time of recipient.

19. Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the day and year first above written.

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT 8.4.2**

**LEVELIZED SECURITY**

Not applicable given Seller has selected non-levelized pricing as outlined in Section 5.1.



## EXHIBIT 8.6

### FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this "Consent"), dated as of \_\_\_\_\_, 20\_\_, is entered into by and among PacifiCorp, an Oregon corporation, acting in its merchant function capacity (together with its permitted successors and assigns, "PacifiCorp"), \_\_\_\_\_, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, "Administrative Agent"), and \_\_\_\_\_, a \_\_\_\_\_ formed and existing under the laws of the State of \_\_\_\_\_ (together with its permitted successors and assigns, "Borrower"). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately \_\_\_ MW solar-powered electric generating facility located \_\_\_\_\_, known as the \_\_\_\_\_ Solar Generation Project (the "Project").

WHEREAS, In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [**Financing Agreement,**] dated as of \_\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), among Borrower, the financial institutions from time to time parties thereto (collectively, the "Lenders"), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

WHEREAS, Borrower anticipates that, prior to the completion of construction of the Project, it will seek an additional investor (the "Tax Investor") to make an investment in Borrower to provide additional funds to finance the operation and use of the Project.

WHEREAS, PacifiCorp and Borrower have entered into that certain Power Purchase Agreement, dated as of \_\_\_\_\_ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "PPA").

WHEREAS, pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the "Financing Documents"), all of its right, title and interest in, to and under the PPA to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

#### SECTION 1. CONSENT TO ASSIGNMENT

PacifiCorp acknowledges the assignment referred to in the 5th Recital-E above, consents to an assignment of the PPA pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the PPA, subject to applicable notice and cure periods provided in the PPA. Upon receipt of notice from Administrative Agent, PacifiCorp agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the PPA and this Consent. Upon receipt of Administrative Agent's written instructions, PacifiCorp agrees to make directly to Administrative Agent all payments to be made by PacifiCorp to Borrower under the PPA from and after PacifiCorp's receipt of such instructions, and Borrower consents to any such action.

(B) PacifiCorp will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the PPA, except as provided in the PPA, or (iii) amend or modify the PPA in any manner materially adverse to the interest of the Lenders in the PPA as collateral security under the Security Agreement.

(C) PacifiCorp agrees to deliver duplicates or copies of all notices of default delivered by PacifiCorp under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. PacifiCorp may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have: (a) the same period of time to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to PacifiCorp which are due and payable by Borrower under the PPA, except that if PacifiCorp does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent, or (b) the later of the applicable cure period under the PPA or ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to PacifiCorp, so long as Administrative Agent continues to perform any monetary obligations under the PPA, Section 11.1.2(c) of the PPA is not being breached, and all other obligations under the PPA are performed by Borrower or Administrative Agent or its designees or assignees. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designees or assignees declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designees or assignees will be allowed a reasonable period to complete such proceedings. PacifiCorp consents to the transfer of Borrower's interest under the PPA to the Lenders or Administrative Agent or their designees or assignees or any of them or a purchaser or grantee pursuant to the terms of the Financing Documents upon enforcement of

such security at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, PacifiCorp shall recognize the Lenders or Administrative Agent or their designees or assignees or any of them or other purchaser or grantee as the applicable party under the PPA (provided that such Lenders or Administrative Agent or their designees or assignees or purchaser or grantee assume the obligations of Borrower under the PPA, including satisfaction and compliance with all requirements of Article 8 of the PPA, and provided further that PacifiCorp's subordinated lien rights with respect to the Project are preserved in the event of any such transfer of Borrower's interest under the PPA).

(D) Notwithstanding subparagraph 1(C) above, in the event that the PPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the PPA is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designees or assignees as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, PacifiCorp and the Lenders or Administrative Agent or their designees or assignees will enter into a new contract. Such new contract shall be on substantially the same terms and conditions as the original PPA for the remaining term of the original PPA before giving effect to such termination, provided, however that such terms shall be modified to the extent PacifiCorp reasonably determines such modifications are necessary to comply with any laws, rules or regulations applicable to Borrower, PacifiCorp or Lender, including any state, and federal constitutions, statutes, rules, regulations, published rates, and orders of governmental bodies and all judicial orders, judgments and decrees (hereinafter "Applicable Law") in effect at such time. Lenders or Administrative Agent or their designees or assignees shall cure any payment defaults then existing under the original PPA prior to entering into a new contract.

(E) In the event Administrative Agent, the Lenders or their designees or assignees elect to perform Borrower's obligations under the PPA as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of PacifiCorp against Administrative Agent, Lenders or their designees and assignees shall be limited to such parties' interests in the Project, the credit support required under Article 8 of the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract.

(F) In the event Administrative Agent, the Lenders or their designees or assignees succeed to Borrower's interest under the PPA, Administrative Agent, the Lenders or their designees or assignees shall cure any then-existing payment and performance defaults under the PPA, except any performance defaults of Borrower itself which by their nature are not susceptible of being cured and do not impair PacifiCorp's rights under the PPA. Administrative Agent, the Lenders and their designees or assignees shall have the right to assign all or a pro rata interest in the PPA or the new contract entered into pursuant to subparagraph 1(d) above to a person or entity to whom Borrower's interest in the Project is transferred, provided such transferee assumes the obligations of Borrower under the PPA. Upon such assignment, Administrative Agent and the Lenders and their designees or assignees (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

SECTION 2. REPRESENTATIONS AND WARRANTIES [PacifiCorp shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent]

PacifiCorp, acting in its merchant function capacity (and therefore specifically excluding the knowledge of PacifiCorp, acting in its transmission function capacity (“PacifiCorp Transmission”), as to any of the matters stated below, and without imputation to PacifiCorp of any knowledge whatsoever relating to the PacifiCorp Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(B) the execution, delivery and performance of this Consent and the PPA have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(C) each of this Consent and the PPA is in full force and effect;

(D) each of this Consent and the PPA has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited as set forth in Section 3.1.5 of the PPA;

(E) there is no litigation, arbitration, investigation or other proceeding pending for which PacifiCorp has received service of process or, to PacifiCorp’s actual knowledge, threatened, against PacifiCorp relating solely to this Consent or the PPA and the transactions contemplated hereby and thereby;

(F) the execution, delivery and performance by it of this Consent and the PPA, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(G) neither PacifiCorp nor, to PacifiCorp’s actual knowledge, any other party to the PPA, is in default of any of its obligations thereunder;

(H) to the best of PacifiCorp’s actual knowledge, (i) no event of Force Majeure exists under, and as defined in, the PPA and (ii) no event or condition exists which would either

immediately or with the passage of any applicable grace period or giving of notice, or both, enable either PacifiCorp or Borrower to terminate or suspend its obligations under the PPA; and

(I) the PPA and the documents and instruments contemplated therein and this Consent are the only agreements between Borrower and PacifiCorp with respect to the Project.

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

SECTION 3. NOTICES

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to PacifiCorp:

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Telephone No.: [ \_\_\_\_\_ ]  
Telecopy No.: [ \_\_\_\_\_ ]  
Attn: [ \_\_\_\_\_ ]

If to Administrative Agent:

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Telephone No.: [ \_\_\_\_\_ ]  
Telecopy No.: [ \_\_\_\_\_ ]  
Attn: [ \_\_\_\_\_ ]

If to Borrower:

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Telephone No.: [ \_\_\_\_\_ ]  
Telecopy No.: [ \_\_\_\_\_ ]  
Attn: [ \_\_\_\_\_ ]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from PacifiCorp by providing written notice to PacifiCorp of Tax Investor's address for notices. PacifiCorp's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

**SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW**

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). PacifiCorp agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to PacifiCorp with respect to its interest in the PPA to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of PacifiCorp hereunder. Any purported assignment or transfer of the PPA not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 5. COUNTERPARTS

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY

In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the PPA, PacifiCorp may perform as set forth herein and that neither the execution of this Consent, the performance by PacifiCorp of any of the obligations of PacifiCorp hereunder, the exercise of any of the rights of PacifiCorp hereunder, or the acceptance by PacifiCorp of performance of the PPA by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the PPA, (2) constitute a consent by PacifiCorp to, or impute knowledge to PacifiCorp of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by PacifiCorp of any of its rights under the PPA. Borrower and Administrative Agent acknowledge hereby for the benefit of PacifiCorp that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the PPA. Borrower shall have no rights against PacifiCorp on account of this Consent.

SECTION 8. JURY TRIAL WAIVER

THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

PacifiCorp,  
an Oregon corporation

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

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

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

\_\_\_\_\_,

a \_\_\_\_\_

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

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

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

\_\_\_\_\_,

as Administrative Agent for the Lenders

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

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

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



**EXHIBIT 9.2**  
**POINT OF DELIVERY/INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

Instructions to Seller:

1. Include description of point of metering, and Point of Interconnection

The project will interconnect to Pacificorp's local distribution at approximately Post # 113-29-10, 170401, which is located near the southeast corner of the southwest quarter of the northwest quarter of Section 17, Township 29 South, Range 10 West, Salt Lake Base and Meridian

2. Include description of Point of Delivery

Same as Point of Interconnection

3. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Interconnection.

A single line is attached on the following page; a project specific design will be finalized after the interconnection studies are complete.

4. Provide transmission single line drawing of the transmission path from the Point of Interconnection to the Point of Delivery as the path is defined in the Transmission Agreement(s). Specify any changes of ownership along the transmission path. Specify the Transmission Agreement(s) governing each segment of Seller's transmission path, from the Point of Interconnection to the Point of Delivery.

There will be no transmission or additional facilities between the POI and the POD. The Project will connect directly into the RMP distribution network and no additional transmission facilities or agreements are necessary, (except as otherwise identified in the agreement).

5. Describe Seller's arrangements for station service to the facility and show on one-line diagram how station service will be provided and metered.

The Project will either supply its own station service needs (transformer from the AC collection system) after applying for a retail service account with RMP and the station service needs will then be measured at the Project revenue meter. This meter will have bidirectional metering to allow for the metering of both power injected into the distribution system and power consumed by the project from the distribution circuit when the Project is not producing. Alternatively, the Project may request a separate station service feed directly from the on-site distribution line.

6. Specify the maximum hourly rate (MW) at which Seller is permitted to deliver energy to the Point of Delivery and in compliance with Seller's transmission rights between the Point of Interconnection and the Point of Delivery ("Maximum Transmission Rate"):

3.0 MW.

7. Substation Metering One-Line Diagram

- NOTES:
- INTERCONNECTION PER IACS AND CGA AND SUBJECT TO ROCKY MOUNTAIN POWER REQUIREMENTS.
  - SYSTEM SIZE: 3MWAC
  - MODULE, INVERTER, AND TRANSFORMER SIZE AND QUANTITY SUBJECT TO CHANGE BASED ON FINAL DESIGN.

**CONFIDENTIALITY STATEMENT:**  
 THIS DRAWING IS THE PROPERTY OF BLUE OAK ENERGY, INC. AND IS NOT TO BE REPRODUCED, COPIED, OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF BLUE OAK ENERGY, INC.

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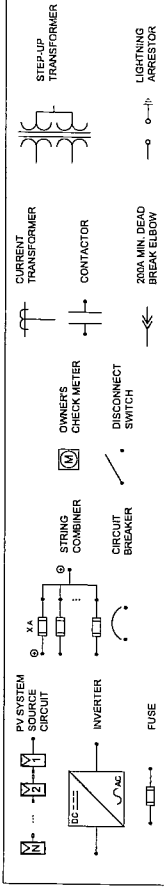
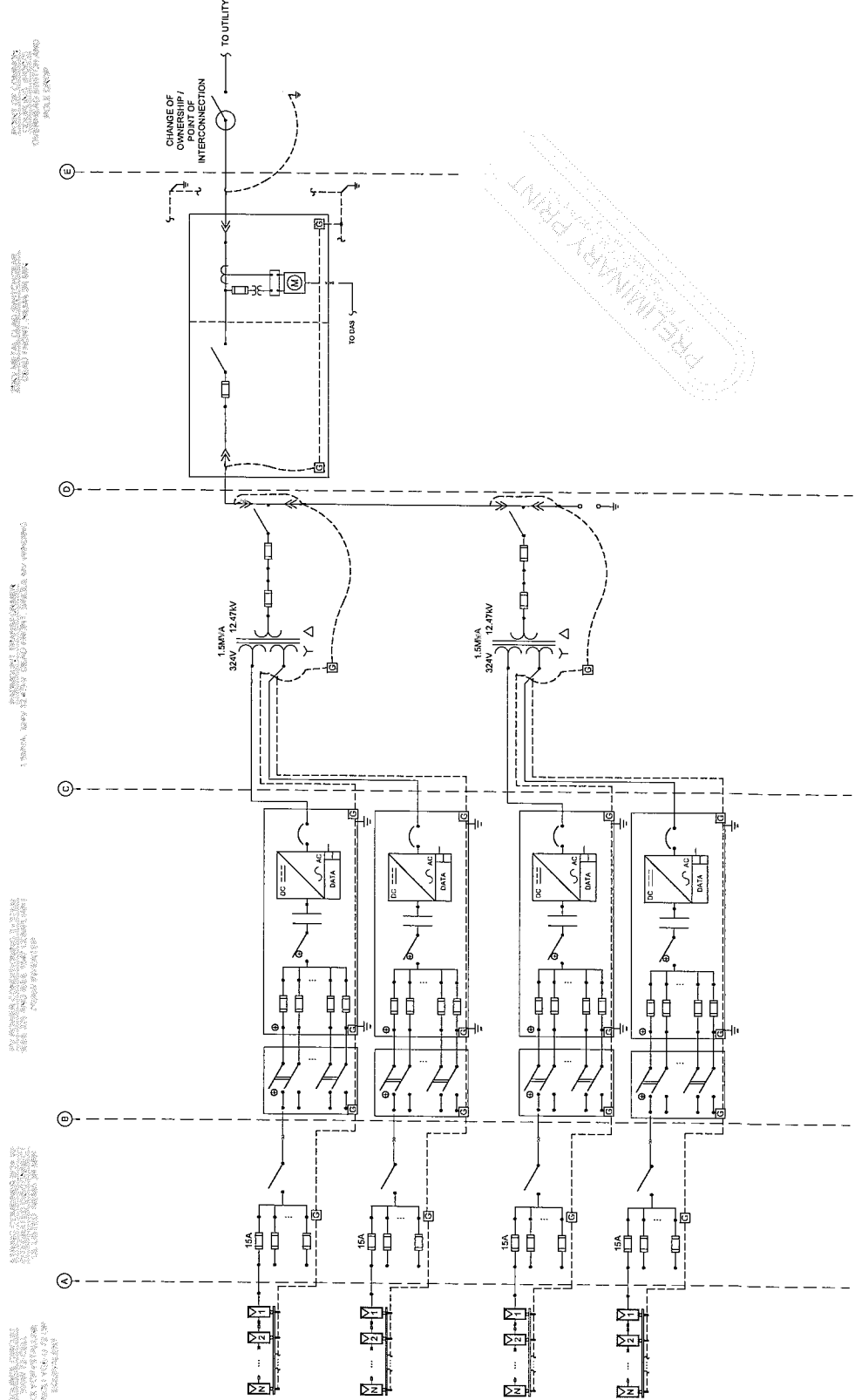
NO.	DESCRIPTION	DATE	BY
1	EQUIPMENT FUNCTIONAL	06.11.13	MB
2	FOR INTERCONNECTION APPLICATION	01.11.13	MB

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 PROJECT # 10000000000000000000  
 FILE NAME 10000000000000000000  
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**BLUE OAK ENERGY**  
 1560 Drive Avenue, Davis, CA 95618  
 www.blueoakenergy.com - Phone: 530.747.2028

**firstwind**  
 SPECIAL ENERGY PLANT GROUP

**MILFORD FLAT PV PROJECT**  
 SINGLE LINE DIAGRAM  
 DRAWING NO. W-801



POINT OF COMMON CONNECTION FOR ALL CHARGES AND DISCHARGES

ENCLOSURE CLASSIFICATION: CLASS 1 DIV 2 GROUP C

ENCLOSURE CLASSIFICATION: CLASS 1 DIV 2 GROUP C

ENCLOSURE CLASSIFICATION: CLASS 1 DIV 2 GROUP C

ENCLOSURE CLASSIFICATION: CLASS 1 DIV 2 GROUP C

ENCLOSURE CLASSIFICATION: CLASS 1 DIV 2 GROUP C

**EXHIBIT 9.5**

**SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO PACIFICORP**

See attached consent letter



**Seller Authorization to Release Generation Data to PacifiCorp**

Transmission Services  
Attn: Senior Vice President, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

**RE: Milford Flat Solar, LLC Interconnection Report**

Dear Sir:

Milford Flat Solar, LLC hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Milford Flat Solar, LLC's generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to, those in the Commercial and Trading group solely for the purposes of analyzing any issues that might affect the Power Purchase Agreement with Milford Flat Solar, LLC. Milford Flat Solar, LLC acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent. This Waiver shall have a duration of six (6) months from the execution date hereof and at the expiration of such six (6) month period shall be deemed null and void.

Milford Flat Solar, LLC

By: First Wind Utah Renewables, LLC



\_\_\_\_\_

Name: Arthur J. Snell

\_\_\_\_\_

Title: Assistant Secretary

5-14-13

\_\_\_\_\_

Date

## EXHIBIT 11.4

### FORM OF MEMORANDUM OF POWER PURCHASE AGREEMENT

WHEN RECORDED, MAIL TO:

PACIFICORP

825 NE Multnomah, Suite 2000

Portland, Oregon 97232-2315

Attn: Sr. Vice President, Commercial Trading and Director of Contract Administration

#### MEMORANDUM OF POWER PURCHASE AGREEMENT

THIS MEMORANDUM OF POWER PURCHASE AGREEMENT ("Memorandum"), dated as of \_\_\_\_\_, 20\_\_, is made by and between \_\_\_\_\_ a \_\_\_\_\_ limited liability company ("Seller"), and PACIFICORP, an Oregon corporation acting in its merchant function capacity ("PacifiCorp"). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party".

#### RECITALS

A. Seller and PacifiCorp have entered into that certain Power Purchase Agreement on the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Agreement"), pursuant to which Seller has agreed to construct, own, operate and maintain a solar-powered generation facility for the generation of electric energy to be located in \_\_\_\_\_ County, in the State of Utah (as more particularly defined in the Agreement, the "Project"), and upon completion of said Project, to sell to PacifiCorp the electric energy and capacity to be produced by the Project, all on the terms and conditions set forth in the Agreement. The real property on which the Project is to be constructed (the "Premises") is more particularly described in the attached Exhibit "A".

B. Seller and PacifiCorp desire to provide record notice of (i) certain terms and conditions of the Agreement pertaining to the Parties' respective rights and obligations under the Agreement in the event the Agreement is terminated due to a default by Seller.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in the Agreement and this Memorandum, Seller and PacifiCorp agree as follows:

#### TERMS

1. The Premises. Seller acknowledges and agrees that the real property comprising the Premises, and all improvements and fixtures to be constructed thereon, including without limitation, the Project, is and will be leased by Seller and shall hereafter be held, transferred, assigned, subleased, , encumbered, occupied and used subject to and in accordance with the provisions of Section 11.4 of the Agreement, the underlying lease for the Premises and this Memorandum.

2. Covenants Running with the Land. The provisions of Section 11.4 of the Agreement are and shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of Seller and PacifiCorp and their respective successors and permitted assigns, including without limitation any person acquiring or owning an interest in the Premises or the Project, and their respective heirs, executors, successors, permitted assigns, administrators, devisees and representatives.

3. Notice.

a. Termination for Default. If the Agreement is terminated due to a default by Seller, neither Seller nor Affiliate, nor any successor to Seller with respect to the ownership of the Facility or Premises, may thereafter require or seek to require PacifiCorp to make any purchases from the Facility or any electric generation facility constructed on the Premises under PURPA, or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, pursuant to Section 11.4 of the Agreement, has, on behalf of itself, its Affiliates and its successors, waived its rights to require PacifiCorp to so purchase such energy or capacity from the Project in the event of such termination.

b. Survival. The terms and provisions of Section 11.4 of the Agreement shall survive the termination of the Agreement.

4. 5. Effect of Memorandum. This Memorandum, and the rights and obligations of the parties hereunder, are subject to all of the terms and conditions of the Agreement. The Agreement is hereby incorporated by reference as if fully set forth herein.

6. Counterparts. This Memorandum may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument.

7. Further Information. Further information regarding the specific terms and conditions of the Agreement may be requested from PacifiCorp at 825 NE Multnomah, Suite 2000, Portland, Oregon 97232-2315, Attn: Sr. Vice President, Commercial & Trading. Disclosure of any such information shall be subject to the terms and conditions of a written confidentially agreement acceptable to PacifiCorp in its sole and absolute discretion.

IN WITNESS WHEREOF, Seller and PacifiCorp have executed and acknowledged this Memorandum as of the day and year first above written.

PACIFICORP,  
an Oregon corporation

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of PACIFICORP, an Oregon corporation.

\_\_\_\_\_  
NOTARY PUBLIC



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Exhibit "A"

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Legal Description of the Premises

The real property referenced in the foregoing instrument is located in Beaver County, Utah, and is more particularly described as:

Tax ID Number: 02-0051-0002

The West half of the Southwest quarter of the Northwest quarter, and the West half of the East half of the Southwest quarter of the Northwest quarter, and the Southwest quarter of the Northwest quarter of the Northwest quarter, and West half of the Southeast quarter of the Northwest quarter of the Northwest quarter of Section 17, Township 29 South, Range 10 West, Salt Lake Base and Meridian.

## EXHIBIT 13

### REQUIRED INSURANCE

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

1.1.1 Workers' Compensation. Seller shall comply with any applicable laws or statutes, state or federal jurisdiction, where Seller performs work.

1.1.2 Employers' Liability. Seller shall maintain employers' liability insurance with minimum limits covering bodily injury for: \$500,000 – each accident, \$500,000 by disease – each employee, and \$500,000 by disease – policy limit.

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

1.1.4 Business Automobile Liability. Seller shall secure and continuously carry business automobile liability insurance with a minimum single limit of \$1,000,000 each accident covering bodily injury and property damage with respect to Seller's vehicles whether owned, hired or non-owned.

1.1.5 Umbrella/excess Liability. Seller shall maintain umbrella or excess liability insurance on an occurrence and following form basis with a minimum limits as follows:

- (a) Facility Capacity Rating under 200 KW - \$1,000,000
- (b) Facility Capacity Rating at or above 200 KW - \$5,000,000

1.1.6 Property Insurance. Seller shall maintain property insurance covering equipment and structures in an amount at least equal to the full replacement value for "all risks" of physical loss or damage, including coverage for earth movement, flood, boiler and machinery, and business interruption. The policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. Property insurance will be maintained in accordance with terms available in the insurance market for similar facilities.

1.2 Additional Provisions or Endorsements:

1.2.1 Except for workers' compensation and property insurance, the policies required herein shall include provisions or endorsements as follows:

- (a) naming PacifiCorp, parent, divisions, officers, directors and employees as additional insureds;
- (b) 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

(c) cross liability coverage or severability of interest.

1.2.2 Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against PacifiCorp.

1.3 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) confirming Seller's compliance with the insurance requirements hereunder. Insurance certificate confirming compliance shall be provided to PacifiCorp by Seller at least annually and each time a new insurance policy is issued or becomes effective.

1.4 Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate, and Seller 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.

1.5 Periodic Review. PacifiCorp may review this schedule of insurance as often as once every two (2) years. PacifiCorp may in its discretion require Seller to make reasonable changes to the policies and coverages described in this Exhibit to the extent reasonably necessary to cause such policies and coverages to conform to the insurance policies and coverages typically obtained or required for power generation facilities comparable to the Facility at the time PacifiCorp's review takes place.