



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

PUBLIC AFFAIRS

July 30, 2010

In reply refer to: DK-7

Dan Seligman  
Attorney at Law  
Columbia Research Corporation  
PO Box 99249  
Seattle, WA 98139

### **RE: BPA-2010-01579-F**

Dear Mr. Seligman:

This is a partial response to your request for information that you made to the Bonneville Power Administration (BPA) under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

#### **You requested the following:**

1. The BPA power purchase agreement, #02PB-11093, with Northwestern Wind Power LLC for energy from the Klondike wind project ("Klondike I") in Oregon ("the agreement").
2. All Federal Register notices or other notices (e.g. posted on the BPA web site) inviting entities to submit bids or proposals to sell wind power to BPA prior to BPA signing the above agreement.
3. The BPA Record of Decision ("ROD") accompanying the above agreement.
4. The BPA press release(s) announcing the execution of the above agreement.

#### **Response:**

1. BPA will submit a final response to you upon its completion of the Exemption 4 release determination process.
2. BPA has no responsive documents.
3. BPA has no responsive documents.
4. BPA has no responsive documents.

I appreciate the opportunity to assist you. Please contact Laura M. Atterbury, FOIA/Privacy Act Specialist, at (503) 230-7305 with any questions about this letter.

Sincerely,

*/s/Christina J. Munro*

Christina J. Munro  
Freedom of Information Act/Privacy Act Officer



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

PUBLIC AFFAIRS

December 17, 2010

In reply refer to: DK-7

Dan Seligman  
Attorney at Law  
Columbia Research Corporation  
PO Box 99249  
Seattle, WA 98139

**RE: BPA-2010-01579-F**

Dear Mr. Seligman:

This is a final response to your request for information that you made to the Bonneville Power Administration (BPA) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. A partial response was provided to you on July 30, 2010, with regard to items 2 thru 4.

**You requested the following:**

1. The BPA power purchase agreement, #02PB-11093, with Northwestern Wind Power LLC for energy from the Klondike wind project ("Klondike I") in Oregon ("the agreement").
2. All Federal Register notices or other notices (e.g. posted on the BPA web site) inviting entities to submit bids or proposals to sell wind power to BPA prior to BPA signing the above agreement.
3. The BPA Record of Decision ("ROD") accompanying the above agreement.
4. The BPA press release(s) announcing the execution of the above agreement.

**Response:**

BPA has provided a redacted version of the Klondike Wind Project Power Purchase Agreement with information withheld under Exemption 4 of the FOIA.

If you are dissatisfied with this determination, you may make an appeal within thirty (30) days of receipt of this letter to the Director of Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Both the envelope and the letter must be clearly marked "Freedom of Information Act Appeal." There is no charge for your request.

I appreciate the opportunity to assist you. Please contact Laura M. Atterbury, FOIA/Privacy Act Specialist, at (503) 230-7305 with any questions about this letter.

Sincerely,

*/s/ Christina J. Munro*

Christina J. Munro  
Freedom of Information Act/Privacy Act Officer

Enclosure: Responsive Document

REDACTED BY  
IBERDROLA 12/10

BPA Contract No. 02PB-11093

KLONDIKE WIND PROJECT  
POWER PURCHASE AGREEMENT

by and between

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

Acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

NORTHWESTERN WIND POWER, LLC

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## Exhibits

Exhibit A	Project Configuration
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Exhibit C	Purchase Price and Maximum Delivery Rate
Exhibit D	Methodology for Determining Liquidated Damages for Unexcused Non-Performance
Exhibit E	Calculation of Mechanical Availability

## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this "Agreement") is effective as of June 1, 2002 (the "Effective Date") by and between NORTHWESTERN WIND POWER, LLC, an Oregon limited liability company, and the UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, acting by and through the BONNEVILLE POWER ADMINISTRATION ("BPA" or the "Purchaser"). Seller and Purchaser are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS:

Seller has developed and desires to sell energy output and associated environmental attributes from the Klondike wind project (the "Project"), which is defined in section 1 below.

Purchaser is authorized by the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501 to acquire sufficient capacity and energy (where "power" may herein refer to either or both terms) from power production facilities, including wind energy facilities, to meet the electric power requirements placed on Purchaser and to pursue Purchaser's green power marketing objectives.

Purchaser's obligation hereunder is not, nor shall it be construed to be, a general obligation of the United States, nor is it intended to be or is it secured by the full faith and credit of the United States.

The Parties agree that Purchaser in no way enabled the Project to be constructed.

### AGREEMENT

1. **Definitions.** As used in this Agreement, capitalized terms shall have the definitions given below, in the exhibits, or in context.

“Adequate Credit Support”:

**REDACTED**

“Adequate Guaranty”:

**REDACTED**

“Affiliate”: With respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“BPA Delivery Point”: The point, more specifically described in Exhibit A, where Energy is made available to the Transmission Provider at BPA’s DeMoss Springs substation.

“BPA Metered Output”: The Energy output metered by the Transmission Provider’s metering equipment installed in the Seller’s Klondike School House Substation, on the 69 kV or the 115 kV (high) side of Seller’s transformer. If, subsequent to the Effective Date, additional generating projects are completed and routed through this substation, then the metering equipment will be moved to the 34.5 kV (low) side of the Seller’s transformer. Such Energy output will be adjusted for losses for transformation and transmission to the BPA Delivery Point from the Transmission Provider’s metering equipment.

“BPA Scheduled Deliveries”: The amount of energy scheduled by Seller to the BPA Delivery Point on each hour.

“Business Day”: A regular day of business as recognized by both Parties, excluding Saturdays, Sundays, and Federal holidays.

“Contract Year”: The days from January 1 through December 31, inclusive, of a given calendar year during the Term.

“Energy”: The electrical energy from the Project delivered to the BPA Delivery Point.

“Environmental Attributes”: Any and all credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, howsoever entitled, attributable to the Project during the Term, excluding only the Tax Benefits.

“FERC”: The Federal Energy Regulatory Commission and its successor agencies.

“Force Majeure Event”: Subject to section 18.7, any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event is reasonably unforeseeable, beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, including without limitation an act of God or the elements, strike or work stoppage, including the threat of imminent strike or work stoppage where necessary to safely and efficiently shut down Project operations in anticipation of such imminent strike or work stoppage, an interruption of transmission service by the Transmission Provider or any transmission provider beyond the BPA Delivery Point, or any order by any governmental authorities, whether federal, state or local; *provided, however*, that for purposes of energy generation and operation of the Turbines, wind conditions that are not Non-Generating Wind Conditions shall never be Force Majeure Events. Neither the unavailability of

funds or financing, nor conditions of national or local economies or markets shall be considered a Force Majeure Event. A Force Majeure Event does not include any known or reasonably foreseeable environmental regulations. The economic hardship of either Party shall not constitute a Force Majeure Event. Nothing contained in this provision shall be construed to require either Party to settle any strike or work stoppage in which it may be involved under unreasonable terms.

“Forced Outage”: An occurrence, other than a Force Majeure Event, as declared by Seller to Purchaser, of an unplanned reduction or suspension of Energy in response to mechanical, electrical or hydraulic control system trips or operator-initiated trips or shutdowns in response to unit alarms or equipment malfunction at the Project.

“Generation Imbalance Service”: The service provided by the Transmission Provider to Seller to either supply or absorb the difference between scheduled and actual energy delivered from generation resources to the BPA Delivery Point in the Transmission Provider's control area and for which charges are imposed or credits are paid under applicable tariffs and rate schedules.

“Guarantor”:

**REDACTED**

“Interconnection Agreement”: The interconnection agreement between the Transmission Provider and Seller pursuant to which the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities will be constructed, operated and maintained during the Term.

“Investment Grade”: This term means with respect to the credit rating of an entity or its debt (i) in the case of Moodys Investor's Service (or its successor), a rating of “Baa3” (or its

future equivalent) or better; (ii) in the case of Standard & Poors Rating Services (or its successor), a rating of "BBB-" (or its future equivalent) or better; and, (iii) in the case of Fitch, Inc. (or its successor), a rating of "BBB-" (or its future equivalent) or better.

"Market Index Price": The measure used to determine the cost basis used by the Transmission Provider as its incremental cost of energy used to provide Generation Imbalance Service in its applicable tariffs and rate schedules as such tariffs and rate schedules may be modified from time-to-time. As of the Effective Date, the Market Index Price is "BPA's incremental cost" as defined in Section II. D.I.b.(1) of BPA's 2002 Generation Service Rate.

"Market True-Up Price": For each Contract Year, the positive difference, if any, between (i) the time weighted average price per MWh of electricity (on peak and off peak) at Mid-Columbia for the delivery of firm energy for the prior Contract Year (as published in the Dow Jones Mid-Columbia Electricity Index or its successor) and (ii) the Purchase Price for that prior Contract Year. An example illustrating the calculation of Market True-Up Price under certain stated assumptions is included in Exhibit B.

"Maximum Delivery Rate": The maximum hourly rate of delivery for BPA Scheduled Deliveries as specified in Exhibit C.

"Mean Project Output": **REDACTED** for the first Contract Year and **REDACTED** for each Contract Year thereafter.

"Mechanical Availability": For each Turbine and for each Contract Year is the number calculated for such Turbine using the methodology set forth in Exhibit E.

“Mechanical Availability Percentage”: A percentage calculated, for any period and for all Turbines combined, in accordance with the following formula:

$$\text{Mechanical Availability Percentage} = 100 \times \frac{\text{(sum of the Mechanical Availability for each Turbine in the Project)}}{\text{(number of Turbines in the Project)}}$$

“Non-Generating Wind Conditions”: Wind velocity at a Turbine that is less than three (3) meters per second or greater than twenty-five (25) meters per second at Turbine hub height.

“PBL”: This term means the Power Business Line of BPA.

“Person”: An individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company or any other entity of whatever nature.

“Prime Rate”: The rate published in The Wall Street Journal as the “Prime Rate” from time to time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by applicable law.

“Project”: A wind generation facility located in Sherman County, Oregon, consisting of 16 1.5-MW Enron wind turbines and related equipment, step-up transformers, circuit breakers, electric lines, protective and associated equipment; structural improvements, interconnection facilities, and other tangible and intangible assets, property, and access rights and contract rights necessary for the construction, operation, and maintenance of the facility that is further described in Exhibit A.

“Prudent Utility Practices”: Those practices, methods, and equipment, as changed from time-to-time, that (i) when engaged in are commonly used in prudent electrical engineering and operations to operate electrical equipment lawfully and with safety, reliability, efficiency, and

expedition; or (ii) in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency, and expedition. Prudent Utility Practices are not limited to optimum practice, method, selection of equipment, or act, but rather are a range of acceptable practices, methods, selections of equipment, or acts.

“Purchase Price”: This term shall be as defined in section 7.1.

“Rating Agency”: This term means either Moodys Investor’s Service or Standard & Poors Ratings Services (or their respective successors in interest), and, if neither such entity provides current ratings as provided in the definition of “Investment Grade”, Fitch, Inc. (or its successor in interest).

“Scheduled Maintenance”: Any scheduled maintenance of the Project conducted in accordance with Prudent Utility Practices.

“Scheduled Maintenance Outage”: Any planned outage for Scheduled Maintenance that results in reduced generating capability by the Project, other than a Forced Outage.

“Seller”: Northwestern Wind Power, LLC, or in the event of a transfer under section 15.1, the permitted transferee.

“Seller’s Interconnection Facilities”: The interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Transmission System in order to effectuate the purposes of this Agreement up to, and on the Seller’s side of, the BPA Delivery Point.

“System Emergency”: A condition on transmission facilities (as declared by the Transmission Provider or any transmission provider), at the Project, or on transmission facilities used to deliver Energy from the Project to the BPA Delivery Point, which condition is likely to

result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

“Tax Benefits”: Any tax credit or other ability of Seller to reduce tax liability under applicable tax law, and which may not be resold by the Purchaser as an Environmental Attribute.

“TBL”: This term means the Transmission Business Line of BPA.

“Transmission Provider”: The TBL, or any successor to such Person’s transmission facilities that are interconnected to the Project at the BPA Delivery Point, or any successor operator of such Person’s transmission facilities.

“Transmission Provider’s Interconnection Facilities”: The interconnection facilities, related control and protective devices, and metering facilities required to connect the Project to the Transmission System in order to effectuate the purposes of this Agreement up to, and on the Transmission Provider’s side of, the BPA Delivery Point.

“Transmission System”: The transmission facilities, now or hereafter in existence, owned or operated by the Transmission Provider.

“Turbine”: Each of the single wind turbine generating systems (including its tower, pad, transformer, and controller system) as described on Exhibit A and included in the Project.

“Unexcused Non-Performance”: The failure by Purchaser to perform its obligations under this Agreement, if such non-performance is not excused by the occurrence of a Force Majeure Event; or a Default by Seller or other condition which would excuse Purchaser’s performance under this Agreement.

“WECC”: Those portions of the United States, Canada, and Mexico that comprise the Western Electricity Coordinating Council, or its successor organization.

2. **Term and Termination; Filings.**

2.1 Term. This Agreement shall be effective on the Effective Date and shall terminate at 2400 hours on May 31, 2022, unless terminated earlier pursuant to section 12.

2.2 Seller's Regulatory Filings. Seller shall file this Agreement with FERC if Seller is required to do so. Seller may, in its sole discretion, request that this Agreement be given confidential treatment by FERC.

3. **Project Configuration.**

The Project consists of 16 Turbines and is configured as set forth in Exhibit A.

4. **Purchase and Sale of Energy and Environmental Attributes.**

4.1 Notice of Generation Schedule. No later than 48 hours prior to the first hour that Seller shall begin BPA Scheduled Deliveries, Seller shall provide to Purchaser a Project generation schedule that specifies the date and hour when BPA Scheduled Deliveries will commence. Seller reasonably expects to begin BPA Scheduled Deliveries within two (2) Days following the Effective Date.

4.2 Purchase and Sale of Energy. In accordance with the terms and conditions of this Agreement, commencing on the date and hour specified by Seller pursuant to section 4.1 above, and continuing through the Term, Seller shall deliver at the BPA Delivery Point, the Energy from all Turbines specified in Exhibit A-1, and sell BPA Scheduled Deliveries to Purchaser. Purchaser shall purchase and accept from Seller at the BPA Delivery Point, the BPA Scheduled Deliveries; *provided, however,* that the BPA Scheduled Deliveries on any hour shall not exceed the Maximum Delivery Rate. Seller shall not change the number or size of Turbines

connected to the BPA Delivery Point without the prior written consent of Purchaser.

4.3 Generation Imbalance Service.

**REDACTED**

4.5 Purchase and Sale of Environmental Attributes. Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all rights, title, and interest in and to the Environmental Attributes. At Purchaser's request, Seller shall provide information with respect to such Environmental Attributes. Seller agrees to take any actions required by Purchaser to maintain auditable metering and Project data. The costs of data management shall be born by Seller and may be used by BPA to certify and maintain such Environmental Attributes. If BPA requests third party certification and certification can only be done by Seller, then, at Purchaser's expense, Seller shall apply and pay for the direct certification expenses required by Purchaser.

4.6 Title and Risk of Loss. Title to and risk of loss of (i) BPA Scheduled Deliveries and (ii) Environmental Attributes sold to Purchaser under this Agreement, shall pass from Seller to Purchaser when the Transmission Provider receives the BPA Scheduled Deliveries at the BPA Delivery Point.

5. **Scheduling of Energy.**

5.1 General. Seller shall preschedule Energy to the BPA Delivery Point consistent with Transmission Provider scheduling procedures. Seller shall submit to Purchaser a preschedule of expected hourly deliveries of Energy for the next Day or Days no later than 10 a.m. on the immediately preceding Business Day before the Day on which Energy deliveries are to be made; *provided, however*, that for scheduling of deliveries on weekends and holidays (as defined by the North American Electric Reliability Council), Seller and Purchaser shall follow prevailing Transmission Provider scheduling procedures within the WECC with regard to multiple Day scheduling. Seller shall make commercially reasonable efforts to provide accurate schedules given then-available information and forecasting methods. Seller may update hourly schedules of Energy from the Project up to 30 minutes prior to the hour of delivery as forecasts of wind conditions change. Seller shall, by the fifteenth of December, provide Purchaser with a non-binding written estimate of the monthly amounts of Energy to be provided in the subsequent calendar year.

5.2 Substantive Changes to Transmission Provider Scheduling Practices. If Transmission Provider scheduling practices for energy change after the Effective Date in a way that causes a conflict with the provisions of this section 5, the

Parties shall make commercially reasonable efforts to amend this section 5 to conform to the then prevailing Transmission Provider scheduling practices.

5.3 Transmission and Delivery. Purchaser shall, at its sole risk and expense, enter into one or more agreements with the Transmission Provider and/or with others that provide for the receipt of the BPA Scheduled Deliveries at the BPA Delivery Point and any subsequent disposition of such Energy.

5.4 Emergency Curtailment.

5.4.1 Purchaser acknowledges that Seller may curtail deliveries of Energy if Seller reasonably believes that curtailment is necessary in connection with an emergency condition likely to result in significant damage to Turbines or to the Project's equipment or is deemed necessary by Seller to protect life or property.

5.4.2 Purchaser acknowledges that Seller shall curtail deliveries of Energy if notified by the Transmission Provider pursuant to the Interconnection Agreement that a System Emergency exists (or by any other transmission provider pursuant to any interconnection agreement related to the Project), but only for so long as such System Emergency continues and only to the extent required by the Transmission Provider (or by any other transmission provider).

5.4.3 Seller shall resume deliveries of Energy as soon after curtailment as is reasonably possible and safe.

5.5 Project Availability Log. Seller shall maintain a log showing operations of the Project during each hour of the Term beginning as of the Commercial Operation

Date. Such log shall include all information reasonably required to confirm the Project availability and may be reviewed and copied by Purchaser during normal business hours upon giving at least five (5) Business Days' advance written notice of its intent to do so.

6. **Project Operation, Maintenance, and Availability**

- 6.1 Operating Standards. Seller shall operate and maintain the Project in accordance with Prudent Utility Practices and consistent with any interconnection agreement related to the Project.
- 6.2 Site Visits. Upon Purchaser's prior request provided to Seller at least five (5) Days in advance, Seller shall permit representatives of Purchaser to visit the Project and/or to ascertain the condition of the Project, all at Purchaser's sole risk and expense. Purchaser shall defend, indemnify and hold Seller harmless against any claims, demands, or liabilities of any nature whatsoever asserted against Seller or any of its representatives on account of any personal injury or property damage suffered by Purchaser or its representative while visiting the Project.
- 6.3 Inspections, Maintenance, and Repairs. Seller shall (a) devise and implement a plan of inspection, maintenance and repair for the Project and its components in order to maintain such equipment in safe and reliable operating conditions, and (b) keep records with respect to inspections, maintenance, and repairs to the Project. Seller shall permit Purchaser to inspect the plan and records during Seller's regular business hours upon at least five (5) Business Days' notice.
- 6.4 Scheduled Maintenance Schedule. Seller shall deliver to Purchaser a Scheduled Maintenance schedule for the Project for a Contract Year at least sixty (60) Days

before the beginning of that Contract Year. Such schedule shall identify Scheduled Maintenance Outages for the upcoming Contract Year, including a good faith estimate of the duration and timing of such outages. Seller shall use commercially reasonable efforts to accommodate any outage schedule adjustment requested by Purchaser.

6.5 Mechanical Availability Guaranty

6.5.1

**REDACTED**

6.5.2 For each percentage point (rounded to the nearest 1/100 of one percent) that the Mechanical Availability Percentage is lower than 75 percent, Seller shall pay Purchaser an amount equal to

**REDACTED**

6.5.3 Within thirty (30) Days after the end of a Contract Year in which the Mechanical Availability Percentage set forth in this section 6.5 is not achieved, Seller will pay Purchaser the Guarantee Payment. If Seller fails to pay Purchaser the Guarantee Payment when due, then, in addition to any

other remedy available to Purchaser, Purchaser may setoff the amount due from Seller, including interest consistent with section 18.8, from any unpaid invoice from Seller until the amount of the Guarantee Payment has been paid in full.

6.6 Exclusiveness and Non-Duplication of Remedies. The remedies provided for in section 6.5 above shall be Purchaser's sole and exclusive remedy for Seller's failure to achieve a Mechanical Availability Percentage of at least 75 percent.

6.7 Wind Data Collection. Seller shall make available to Purchaser wind and power output data from the Project as follows:

(a) Unless the Parties agree otherwise, the data shall be provided in the form of a Microsoft Excel spreadsheet, or in another form as mutually agreed to by the Parties, and shall include:

- 1) Wind data averaged over one-minute intervals. Wind data shall include wind speed and direction. The data shall be global positioning system time synchronized.
- 2) Power output of the Turbines averaged over one-minute intervals.
- 3) The number of Turbines in service during the one-minute interval.

(b) Seller shall provide the data to Purchaser on a daily basis by electronic mail and monthly on a compact disk, or in another form as mutually agreed to by the Parties.

(c) Seller agrees to authorize the Transmission Provider to give Purchaser access to output data. Such authorization shall occur no later than 10 Business Days after the Effective Date.

7. **Purchase Price; Seller Obligations.**

7.1 Purchase Price. The price for BPA Scheduled Deliveries and the Environmental Attributes delivered under this Agreement shall be as shown in Exhibit C (the "Purchase Price").

7.2 Payment by Purchaser. Purchaser shall pay Seller the Purchase Price for the BPA Scheduled Deliveries and the Environmental Attributes delivered by Seller to Purchaser under this Agreement. Except as otherwise provided for in this Agreement, if Purchaser fails to accept BPA Scheduled Deliveries, such BPA Scheduled Deliveries shall be deemed delivered for purposes of calculating Purchaser's monthly invoice.

7.3 Seller Obligations.

7.3.1 Initial Representation. Pursuant to the "Agreement to Engineer, Procure, and Construct Wind Generation Energy System" between Seller and Enron Wind Constructors Corp. effective July 17, 2001, and as a condition precedent to the commencement of Purchaser's obligations under this Agreement, Seller hereby represents and warrants that the Turbines are covered by Parts and Construction Warranties, a Power Curve Warranty and an Availability Warranty from Enron Wind Constructors Corp. for the period including the fifth anniversary of the Turbine Final Completion Date (the "Turbine Warranty Period") and that the Turbines and related property and systems are covered by "Operating All Risks Including Mechanical and Electrical Breakdown" insurance with an aggregate policy limit of \$25,000,000 and "Business Interruption" insurance with an annual

policy limit of \$2,964,384 using WindPro Generic Policy Form conditions and underwritten by Royal & Sun Alliance Insurance (U.K.).

7.3.2 Seller Obligation to Maintain Warranties and Insurance. Seller shall perform all obligations required of Seller to maintain the warranties specified in section 7.3.1 above for the entire duration of the Turbine Warranty Period. Seller shall maintain equivalent insurance policies and associated policy limits specified in section 7.3.1 above for the entire term of this Agreement; *provided, however*, that if equivalent insurance and associated policy limits become unavailable, then the Parties shall negotiate a commercially reasonable alternative to such insurance and associated policy limits acceptable to Purchaser.

7.3.3 Other Seller Obligations. Seller shall comply with all applicable permits for the Project, maintain all land rights associated with the Project, and comply with all requirements of the Transmission Provider under the Interconnection Agreement and applicable tariffs and rate schedules.

7.3.4 Failure to Perform Obligations. The failure of Seller to perform any of its obligations under this section 7.3 shall be a default of this Agreement under section 12.

7.3.5 Information. At Purchaser's written request, Seller shall furnish the Purchaser with information as may be reasonably required to determine whether warranties and/or insurance are being maintained.

7.4 Taxes. All applicable taxes assessed to support the sale and delivery of Energy and Environmental Attributes to Purchaser shall be paid by Seller.

8. **Measurement and Metering.**

8.1 Metering Equipment. Seller shall have accurate metering and data processing equipment required for the registration, recording, and transmission of information regarding the energy generated by the Project and delivered to the BPA Delivery Point, real and reactive power output, voltage output, current output, and other related parameters that are required for computing the payments due to Seller from Purchaser (“Seller’s Meters”). Seller’s Meters shall be installed in Seller’s Klondike School House Substation, located prior to the BPA Delivery Point. Seller shall use transmission loss factors provided by the Transmission Provider in order to adjust the BPA Metered Output as measured by Seller’s Meters. Seller shall, if requested by Purchaser and at the sole cost and expense of Purchaser, make such information available to Purchaser on a real-time basis by remote access.

8.2 Check Meters. Purchaser may instruct Seller to install, maintain, and operate Seller’s own metering, telemetry and communication equipment for the purpose of comparison with Project metering equipment and observation of the Energy generation at the Project (collectively, the “Check Meters”). The Check Meters shall be installed at Purchaser’s expense. Seller shall bill Purchaser monthly for Seller’s costs of installing, maintaining and operating the Check Meters, all in accordance with section 9. Purchaser acknowledges that the Check Meters may not interfere with the installation, maintenance and operation of Seller’s metering equipment or Seller’s Interconnection Facilities. Seller shall use commercially

reasonable efforts to arrange for a location within or near Seller's Meters, accessible to Seller and Purchaser, for the installation of the Check Meters.

8.3 Measurements. Readings of Seller's Meters shall be conclusive as to the amount of Energy delivered under this Agreement; *provided, however*, that if any of Seller's Meters is out of service or is determined, pursuant to section 8.4, to be registering inaccurately, measurement of Energy delivered under this Agreement shall be determined in the following sequence:

8.3.1 by the Check Meters, if they have been installed and are operational pursuant to section 8.2; or

8.3.2 by using Seller's RTU (pulse accumulator meter) history data and applying appropriate transformer loss factors once the RTU and Seller's Meters are proved to be within the accuracy specifications for each instrument; or

8.3.3 by using the integrated instantaneous MW value used to monitor the composite Turbine output from the computer monitoring system; or

8.3.4 by using the MWh history files stored in the substation relays and applying appropriate transformer loss factors; or

8.3.5 by the computer monitoring system for each Turbine, using a mathematical calculation to adjust the output thereof to account for electrical losses in the gathering system and Turbine transformers and substation transformers up to the BPA Delivery Point; or

8.3.6 by Seller's estimating by reference to the measurements made during other comparable time periods having similar wind-generating conditions when the Seller's Meters were registering accurately; or

8.3.7 if no reliable information exists as to the period over which such Meter was registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (ii) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Meter through the date of the adjustments, *provided, however*, that, in the case of clause (ii), the period covered by the correction shall not exceed six (6) months.

8.4 Testing. Seller shall (a) test and verify the accuracy of Seller's Meters at least every two (2) years, and (b) enable Purchaser to test and verify the accuracy of Seller's Meters' measurements and recordings. Purchaser acknowledges that if Check Meters are installed in accordance with section 8.2, Seller will be obligated (at Purchaser's expense) to test and verify such Check Meters at least annually.

8.5 Meter Accuracy. Each meter shall be accurate to within a two percent (2%) variance.

8.6 Meter Corrections. Following testing, corrections will be made as follows: (a) If any meter is found to be accurate or to be in error by not more than the permitted two percent (2%) variance, previous recordings of such Meter shall be considered accurate in computing deliveries under this Agreement, and the Meter shall be promptly adjusted to record correctly. If any Meter is found to be in error by an amount exceeding the two percent (2%) variance, then such Meter shall be promptly adjusted to record correctly and any previous recordings by such Meter

shall be adjusted in accordance with section 8.3. If the difference of the payments actually made by Purchaser minus the adjusted payment is a positive number, Seller shall pay the difference to Purchaser; if the difference is a negative number, Purchaser shall pay the difference to Seller. In either case, the Party paying such difference shall also pay interest at the Prime Rate, and such payment (including such interest) shall be made within thirty (30) Days of receipt of a corrected invoice.

8.7 Maintenance and Records. Within thirty (30) Days after the end of each Month, Seller shall provide to Purchaser a written monthly report, which shall include information on the Mechanical Availability Percentage, summaries of production of all Turbines, and any other material events related to the operation of all such Turbines, and any supporting information that Purchaser may reasonably request.

9. **Billing and Payment.**

9.1 Billing. Seller shall bill Purchaser no later than the fifteenth (15<sup>th</sup>) Day of each Month for charges determined under sections 4, 6, 7, 8, and 20 for the preceding Month(s) and shall transmit the invoice to Purchaser by fax, or by other means as may be agreed to by the Parties. Seller shall include in each faxed invoice sufficient detail to allow Purchaser to verify the invoice. In order to provide adequate time for review, backup documentation shall be provided by Seller to Purchaser as soon as such information becomes available from the Transmission Provider. Such backup documentation includes, but is not limited to, hourly data associated with BPA Scheduled Output, BPA Metered Output, and Generation Imbalance Service charges.

9.2 Payment. Purchaser shall pay the amount specified in the invoice by wire transfer of immediately available funds on the twentieth (20<sup>th</sup>) Day of the invoicing month or the tenth (10) Day after receipt of the invoice, whichever is later. If the due date falls on a non-Business Day of either Party, then the payment shall be due on the next following Business Day. Payment shall be in accordance with written wire transfer instructions noticed by Seller to Purchaser from time to time; *provided, however,* that any changes to such wire transfer instructions shall not be effective until two (2) Business Days after the date on which notice of the change is sent to Purchaser. Purchaser reserves the right to make an estimated payment prior to it being a final payment.

9.3 Resolution of Alleged Billing Errors. Each Party shall keep complete and accurate records and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates, or statements of charges submitted hereunder for until the later of (i) a period of at least two (2) years from the date the invoice was received by the other Party, or (ii) if there is a dispute relating to an invoice, the date on which the dispute is resolved. Each Party has two (2) years from the date on which an invoice is received to audit that invoice.

In the case of a billing dispute, the Purchaser shall note the disputed amount and pay its bill when due; *provided, however,* such payment shall not waive Purchaser's right to dispute the invoice in the future as provided for under this section. If a potential billing error is discovered after a bill has been paid, Purchaser shall notify the Seller of the billing dispute as soon as reasonably

possible, but in any event within the two (2) year period contemplated by this section 9.3.

- 9.4 Interest on Unpaid Amounts. If a Party fails to pay the full amount due on or before the close of business on the due date, the owing Party shall pay interest on the unpaid amount consistent with section 18.8.

If it is found that the disputed amount noted in the disputed bill is in error, the Seller shall pay, or credit, to Purchaser such amount plus interest as provided in section 18.8, calculated from the date due.

10. Audit Rights. Subject to section 17 below, Seller shall provide Purchaser, upon reasonable notice to Seller and during Seller's regular business hours, access to all of Seller's records to audit the reports, data, calculations, and invoices that Seller is to provide to Purchaser under this Agreement. Purchaser shall bear the costs of the audit; *provided, however,* that Seller agrees to cooperate with the audit and shall not charge Purchaser for any reasonable costs (including without limitation the cost of photocopies) that Seller may incur as a result of such audit.
11. Notices. Except as specifically provided below, any notice or notification required, permitted or contemplated hereunder shall be in a signed writing (which expressly excludes email correspondence), shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be deemed to have been validly served, given or delivered (i) five (5) Business Days following deposit in the United States mail, with proper first class postage prepaid, (ii) the next Business Day after such notice was delivered to a regularly scheduled overnight delivery carrier with delivery fees either

prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) upon receipt of notice given by fax or personal delivery:

To Seller: Mr. Allen Barkley, General Manager  
Northwestern Wind Power LLC  
3313 West Second Street  
The Dalles, OR 97058  
Phone: (541) 298-0864  
Fax: (541) 298-0800

With a copy to: Mr. Gerald F. Miller, Vice President and General Counsel  
Goldendale Aluminum Company  
7710 NE. Vancouver Mall Drive, Suite G  
Vancouver, WA 98662  
Phone: (360) 944-9755  
Fax: (360) 944-9930

To Purchaser: Wind Program Manager  
Bonneville Power Administration  
P.O. Box 3621, Routing – PT-5  
Portland, OR 97208  
*-or-*  
905 NE. 11th  
Portland, OR 97232  
Phone: (503) 230-4386  
Fax: (503) 230-3681

With a copy to: Scott Wilson, Account Executive  
Bonneville Power Administration  
P.O. Box 3621, Routing - PT-5  
Portland, OR 97208  
Phone: (503) 230-7638  
Fax: (503) 230-3681

## 12. **Defaults and Remedies.**

12.1 **Defaults.** The following events shall constitute defaults under this Agreement:

12.1.1 Failure of a Party to make payments when due under this Agreement;

12.1.2 Filing of a petition in bankruptcy by or against a Party if such petition is not withdrawn or dismissed within sixty (60) Days after it is filed;

- 12.1.3 Assignment by a Party for the benefit of creditors;
- 12.1.4 Allowance by a Party of the appointment of a receiver or trustee of all or any part of its property if such receiver or trustee is not discharged within sixty (60) Days after such appointment;
- 12.1.5 The failure of a Party to perform any other material duty imposed upon that Party by this Agreement, including, but not limited to, the obligations described in section 7.3, and the representations, covenants, and warranties contained in sections 16.1 and 16.2.
- 12.2 Notice of Default. The Party in default under this Agreement shall be referred to as the “Defaulting Party,” and the other Party shall be referred to as the “Non-Defaulting Party.” The Non-Defaulting Party shall have the right to give the Defaulting Party a written Notice of Default, which shall describe the default in reasonable detail and state the date by which the default must be cured.
- 12.3 Opportunity to Cure.
- 12.3.1 In the case of a default described in sections 12.1.2, 12.1.3, and 12.1.4, there will be no cure period and no opportunity to cure.
- 12.3.2 In the case of a default described in Section 12.1.1 (failure to pay money when due), the default must be cured within ten (10) Days after the Defaulting Party’s receipt of the Notice of Default by payment of the amount due plus interest as provided in section 18.8 from the date due until paid.
- 12.3.3 In the case of a default described in section 12.1.5, the default must be cured within thirty-five (35) days after the Defaulting Party’s receipt of the

Notice of Default; *provided, however*, that if the Default is not capable of cure within thirty-five (35) days then, by mutual agreement, the period for cure may be extended.

12.3.4 If the default is not cured within the applicable cure period, then the Non-Defaulting Party may exercise the remedies set forth in section 12.4.

#### 12.4 Rights upon Default.

12.4.1 After providing notice and an opportunity to cure as provided in sections 12.2 and 12.3, the Non-Defaulting Party shall have the right (but not the duty) to terminate this Agreement by giving written notice to the Defaulting Party.

12.4.2 If (1) Seller defaults in its obligation to sell and deliver the BPA Scheduled Deliveries and the Environmental Attributes, or (2) if Purchaser defaults in its obligation to accept and pay for such BPA Scheduled Deliveries and Environmental Attributes, then the Non-Defaulting Party shall have the right (but not the duty) to terminate this Agreement. In addition, the Defaulting Party shall be liable to the Non-Defaulting Party for its reasonable cost to cover. Subject to the dispute resolution procedures of section 14, the Non-Defaulting Party shall submit its written determination of such cost to cover to the Defaulting Party (together with supporting explanation and information) and the Defaulting Party shall pay such amount to the Non-Defaulting Party within thirty (30) Days after receiving the written determination. If either Party suffers damages under this Agreement from such default, the Non-Defaulting Party shall be

entitled to recover its cost to cover damages suffered by the Non-Defaulting Party for the period during which the Defaulting Party was in default, regardless of whether the Defaulting Party thereafter cures the default.

12.5 Remedies Not Exclusive. Except as limited by sections 6.5, 13, and 18.14 each and every power and remedy given to the Non-Defaulting Party shall be in addition to every other power and remedy available to the Non-Defaulting Party at law or in equity. No delay or omission in the exercise of any power or remedy and no renewal or extension of any performance due under this Agreement shall impair any such power or remedy or waive any default. Notwithstanding any termination of this Agreement, all obligations that have accrued under this Agreement shall remain until paid or satisfied.

12.6 Net Out of Payables Upon Termination for Default. Without limiting a Party's remedies at law or in equity for the other Party's failure to perform obligations set forth in this Agreement (including a Party's right to terminate this Agreement under section 12.4 and obtain cover damages under section 12.4), upon termination of this Agreement for default, the Non-Defaulting Party may in its sole discretion elect to aggregate all payments due and amounts otherwise owing under this Agreement into a single amount by: netting out (a) all payments and other amounts that are due to the Defaulting Party under this Agreement, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to section 7, against (b) all payments and other amounts that are due to the Non-Defaulting Party under this

Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Default Termination Payment") payable by one Party to the other within thirty (30) Days of the date on which the Non-Defaulting Party notifies the Defaulting Party of the amount of the Default Termination Payment. The Default Termination Payment shall be payable to or from the Non-Defaulting Party, as appropriate.

12.7 Closeout and Other Setoffs. After calculation of the Default Termination Payment in accordance with section 12.6, if the Defaulting Party would be owed the Default Termination Payment, the Non-Defaulting Party shall be entitled, in its sole discretion, to set off against such Default Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The setoff provided in the prior sentence shall not be the exclusive right of setoff under this Agreement and each Party retains all other rights of setoff, offset and recoupment otherwise available to it.

12.8 Termination Due to Unexcused Non-Performance. The Parties acknowledge that as an agency of the United States Government, Purchaser may as a matter of law determine not to perform this Agreement for its full term under circumstances which do not excuse Purchaser's non-performance and that the sole remedy available to Seller in the event of breach, Default or Unexcused Non-Performance by Purchaser is money damages. In the event that Purchaser determines that it will not perform the duties imposed on Purchaser by this Agreement for its full term due to Unexcused Non-Performance, this Agreement shall terminate at 2400

hours on December 31 of any Contract Year (effective date of termination) if Purchaser has provided Seller notice of such Unexcused Non-Performance no later than twenty-four (24) months prior to such effective date of termination. Prior to the effective date of termination, the Parties shall negotiate in good faith liquidated damages, using the methodology described in Exhibit D, payable by Purchaser to Seller for such termination due to Unexcused Non-Performance, which liquidated damages are intended by the Parties to make Seller whole in terms of the value of this Agreement. Such liquidated damages shall be due and payable by Purchaser on the effective date of termination. If the Parties are unable to agree on the liquidated damages within twelve (12) months after the date of Purchaser's notice, either Party may resort to dispute resolution under section 14. After Purchaser delivers the notice provided for in this subsection 12.8, Seller shall have the obligation to mitigate its liquidated damages, and the right to enter into a replacement agreement or agreements for the sale of Energy and Environmental Attributes commencing after the effective date of termination, before such effective date of termination. If, for any reason, Unexcused Non-Performance begins prior to the effective date of termination as provided in this subsection 12.8, then, during the period when Unexcused Non-Performance begins until the effective date of termination, the Purchaser shall pay Seller the full Purchase Price specified in Exhibit C for all energy that Purchaser agreed to purchase and accept from Seller under Section 4.2, less the actual price obtained by Seller from the commercially reasonable cover sale of such energy and Environmental Attributes consistent with Seller's obligation to mitigate damages,

net of any reasonable expense incurred by Seller necessary to make such cover sale.

13. **Limitation of Liability.**

Except as otherwise provided in this Agreement, neither Party shall be liable for special, incidental, exemplary, indirect or consequential damages, whether based on contract or tort (including such Party's own negligence) or under any legal theory and including, but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, or claims of customers of Seller or of Purchaser for such damages.

14. **Dispute Resolution.**

14.1 **Representatives.** Each Party shall appoint a representative to coordinate with the other Party the implementation of this Agreement (each a "Representative" and collectively the "Representatives"). If any dispute arises with respect to either Party's performance under this Agreement, the Representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within five (5) Business Days after the written request of either Representative. If the Representatives are unable to resolve such dispute, a senior officer of Purchaser and a senior officer of Seller shall meet, either in person or by telephone, within ten (10) Business Days after either Representative provides written notice that the Representatives have been unable to resolve such dispute.

14.2 **Consent to Jurisdiction.** Any disputes arising out of, in connection with or with respect to this Agreement, the subject matter hereof, the performance or non-performance of any obligation hereunder, that cannot be resolved in

accordance with section 14.1, shall be adjudicated in an appropriate federal court of the United States and of competent civil jurisdiction. Each of the Parties irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any court of the federal courts of the United States of America having subject matter jurisdiction and, by execution and delivery of this Agreement and such other documents executed in connection herewith, each Party (i) accepts the exclusive jurisdiction of the aforesaid courts, (ii) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (iii) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceedings brought in any such court has been brought in any inconvenient forum, (iv) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth below, and (v) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or limit the right to bring any suit, action or proceeding in any other jurisdiction. Seller understands and agrees that power contract claims against Purchaser are subject to the Contract Disputes Act of 1978, 41 U.S.C. 601 et seq.

14.3 Attorneys' Fees. If any action at law or in equity is taken to enforce or interpret the terms of this Agreement, each Party shall bear its own costs, including attorneys' fees.

15. Assignment.

15.1 Restriction on Assignment by Seller. Except as expressly provided in this section 15.1, Seller may not assign its rights, delegate its duties or otherwise transfer or permit the transfer of (collectively, "Transfer") this Agreement without Purchaser's prior written consent, not to be unreasonably withheld, delayed or conditioned. Without limiting Purchaser's right to withhold consent to Transfer, the Parties acknowledge that Purchaser may conclusively withhold its consent if Seller proposes to Transfer this Agreement to any Person that is rated below Investment Grade by any Rating Agency or is not rated by any Rating Agency, unless the performance of such Person is guaranteed by an Adequate Guaranty or Adequate Credit Support. If Seller wishes to Transfer this Agreement, it shall provide Purchaser with a detailed description of the nature and duration of the proposed Transfer and information concerning the proposed transferee. If Purchaser consents to Transfer to a person that is rated Investment Grade by any Rating Agency or whose performance is guaranteed by an Adequate Guaranty or Adequate Credit Support, and Purchaser and the transferee agree to terms comparable to terms in other power purchase agreements of Purchaser that adequately assure to Purchaser that it will receive either full performance of this Agreement or the economic value to Purchaser of performance, then section 19 and all references to section 19 below shall become void and shall have no further

effect thereafter. In addition, notwithstanding this section 15.1, and, if applicable, subject to the terms of section 19 below, Seller may from time to time grant one or more security interests in its interest in this Agreement to banks or other lending institutions without Purchaser's consent; *provided, however*, that Seller shall notify Purchaser in writing of each security interest granted by Seller; *provided, further*, that this Agreement may not be ultimately assigned to a Person that has a credit rating from a Rating Agency that is below Investment Grade without Purchaser's consent, unless the performance of such Person is guaranteed by an Adequate Guaranty or Adequate Credit Support. If section 19 has not become void as provided above in this section 15.1, then, with respect to the superior lien to secure financing from the Financing Providers for the Project Financing contemplated by section 19 of this Agreement, Purchaser will, if requested by Seller, negotiate with the Financing Providers commercially reasonable agreements necessary to provide the Financing Providers customary rights and protections to protect the Financing Providers' interest in the Project Financing. If Purchaser is required to incur out-of-pocket expenses as a result of any such negotiation, then Seller shall reimburse Purchaser for such expenses.

- 15.2 Restriction on Assignment by Purchaser. Purchaser may not Transfer this Agreement without Seller's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Without limiting Seller's right to withhold consent to Transfer, the Parties acknowledge that Seller may conclusively withhold its consent (i) if Purchaser proposes to Transfer this Agreement to any Person that is rated below Investment Grade by any Rating

Agency or is not rated by any Rating Agency, unless the performance of such Person is guaranteed by Adequate Credit Support or (ii) if such Transfer would violate an obligation of Seller under a loan agreement secured by this Agreement. If Purchaser wishes to Transfer this Agreement, it shall provide Seller with a detailed description of the nature and duration of the proposed Transfer and information concerning the proposed transferee.

15.3 Assumption of and Release from Liabilities. Any permitted assignee or transferee of a Party's interest in this Agreement shall assume, as a condition to the effectiveness of the Transfer, all existing and future obligations of that Party to be performed under this Agreement. If the Party consents or is deemed to have consented to a proposed transferee (including an Affiliate), the transferor shall be released from its obligations under this Agreement upon the transferee's assumption of this Agreement.

15.4 Binding Effect. This Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns.

15.5 No Waiver. A Party's consent to a Transfer shall not be construed or deemed to be a waiver of the restrictions contained in this section 15 or to be a consent to any later Transfer.

15.6 Void Transfers. Attempted Transfers that are made in breach of this section 15 are void.

16. **Representations, Covenants, and Warranties.**

16.1 Purchaser's Representations, Covenants, and Warranties. If requested by Seller, Purchaser shall provide to Seller true and accurate copies of all necessary agency

action (including without limitation delegation of signatory authority to the person executing this Agreement on Purchaser's behalf) regarding its due authority in executing and performing this Agreement.

16.2 Seller's Representations, Covenants, and Warranties. Seller represents, covenants, and warrants to Purchaser that:

16.2.1 Corporate Organization. Northwestern Wind Power, LLC is a company duly organized and validly existing under the laws of Oregon.

16.2.2 Due Authorization. Seller's management has taken all actions required to be taken necessary to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

16.2.3 No Violation. The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any Affiliate of Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller or any Affiliate of Seller is subject.

16.2.4 Enforceability. This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally, and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general

principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

17. **Confidentiality.**

17.1 **Certain Definitions.** For purposes of this section 17, "**Proprietary Information**" means all written, recorded or oral information furnished to a Party ("**Recipient**") by the other Party or its affiliates ("**Disclosing Party**"), furnished on or after the Effective Date and labeled "confidential", together with all copies, reproductions, summaries, analyses or extracts thereof or based thereon in the possession of Recipient or in the possession of any of Recipient's agents or representatives. Proprietary Information does not, however, include information that (a) is or becomes generally available to the public other than as a result of a disclosure by Recipient or Recipient's agents or representatives, (b) was available to Recipient in prior written documents on a nonconfidential basis prior to its disclosure by the Disclosing Party, or (c) becomes available to Recipient on a nonconfidential basis from a person who is not otherwise bound by a confidentiality agreement with the Disclosing Party or is not otherwise prohibited from transmitting the information to Recipient.

17.2 **Confidentiality Covenant.** During the Term and until two (2) years after the termination of this Agreement, each Recipient shall keep Proprietary Information confidential, except to the extent that such information becomes generally available to the public other than as a result of a disclosure by the Recipient in violation of this section 17. Disclosure to an attorney, consultant, assessor, lender or potential lender as necessary in the ordinary course of business is permitted

under this section to the extent that such attorney, consultant, assessor or lender agrees to keep such Proprietary Information confidential. If a Recipient is required by applicable law, including without limitation by the Freedom of Information Act, 5 U.S.C. §§ 552 et seq., to disclose any such information, it shall provide the Disclosing Party with prompt written notice of the request or requirement so that the Disclosing Party may, in its sole judgment, either (a) seek an appropriate protective order or other remedy, or (b) consult with the Recipient concerning steps to resist or narrow the scope of such request or requirement, to the extent permitted by law. If Recipient, in the written opinion of its legal counsel, is compelled to disclose such information, it may do so without liability under this section 17 as long as it discloses only such information as it is compelled to disclose.

18. **Miscellaneous.**

18.1 **Partial Invalidity and Severability.** If any of the terms of this Agreement is finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect; *provided, however,* that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties.

18.2 **Forward Contract.** The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Seller is a

“forward contract merchant” within the meaning of the United States Bankruptcy Code.

- 18.3 Amendment. No modification, amendment, or other change to this Agreement or its Exhibits will be effective unless consented to in writing by each of the Parties.
- 18.4 Waiver. Failure, delay or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies. No Party shall be deemed to have waived or forborne any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing and signed by an authorized officer of such Party.
- 18.5 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.
- 18.6 Choice of Law. This Agreement shall be governed by United States federal law.
- 18.7 Effect of Force Majeure. Except for obligations to pay money and other accrued rights and obligations, the performance of any obligation required under this Agreement shall be excused during the continuation of any Force Majeure Event suffered by the Party whose performance is required in respect thereof, and the time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure Event shall be extended by the number of days of the Force Majeure Event. Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to void, nullify, overcome or otherwise to mitigate in all material respects the effects of any Force Majeure Event suffered by either of them and the Parties agree to meet to seek and

coordinate appropriate mitigation measures. Nothing in this Agreement shall be deemed to obligate the Party affected by an Event of Force Majeure to forestall or settle any strike, lock-out or other labor dispute against its will.

- 18.8 Interest on Amounts Due. Any amount owing after the due date of such amount shall bear interest at the Prime Rate from the date due until paid.
- 18.9 Further Assurances. The Parties shall do and shall perform all such acts and things and shall execute all such deeds, documents and writings and shall give all such further assurances as may be necessary to carry out the intent of this Agreement. In particular, if any governmental or administrative approval, permit, order or other authorization shall be necessary relative to any provision of this Agreement or any transaction contemplated by this Agreement, each Party shall use all commercially reasonable efforts to assist in the obtaining of such approval, permit, order or other authorization.
- 18.10 No Third-Party Beneficiaries. Except for Persons to whom this Agreement is assigned in compliance with section 15, there are no third-party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any Person that is not a Party.
- 18.11 Time. Unless otherwise specified in this Agreement, all references to specific times under this Agreement shall be references to Pacific Prevailing Time.
- 18.12 Headings. The various headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the provisions.

- 18.13 Interpretation. Because both Parties have participated in the drafting of this Agreement, the rule of contract construction that resolves ambiguities against the drafter shall not apply.
- 18.14 Liquidated Remedies. The Parties acknowledge that it is extremely impractical and difficult to assess actual damages in the event that Seller fails to perform its obligation under section 6.5.1, or this Agreement terminates due to Unexcused Non-Performance by Purchaser under section 12.8, and the Parties therefore agree that the payment of the Guarantee Payment as contemplated in section 6.5, and the payment of Liquidated Damages under section 12.8 and as may be agreed to pursuant to Exhibit D, each constitute a fair and reasonable calculation of actual damages to Purchaser in the event that Seller fails to perform its obligation under section 6.5.1 or to Seller in the event this Agreement terminates due to Unexcused Non-Performance by Purchaser.
- 18.15 Entire Agreement. This Agreement (including the attached Exhibits, which are incorporated by this reference) contains the complete agreement between the Parties with respect to the subject matter contained in this Agreement and supersede all other prior agreements, statements and understanding (whether written or oral) with respect to the subject matter hereof.
- 18.16 No Additional Credit Enhancements for Wind Projects. All obligations, if any, for BPA to provide Seller, Golden Northwest Aluminum, or any Affiliate of Seller or Golden Northwest Aluminum, with credit enhancements or any other support to facilitate wind resources as referred to in Amendment No. 1 to Contract No. 00PB-12197 are fully satisfied upon execution of this Agreement.

**19. Special Provisions Relating to Seller.**

19.1 Bankruptcy Remoteness.

19.1.1 Seller will not engage in any activities other than owning and leasing the real and personal property comprising the Project, financing the Project, operating and maintaining the Project, selling and marketing power generated by the Project and engaging in other activities that are incidental to the foregoing; provided that, until the initial Financial Closing (as defined in Section 19.2.1 below) has occurred, Seller may own and acquire options to lease, and leasehold interests in, real property other than the site on which the Project is located (the "Unrelated Leases").

19.1.2 Except for the Unrelated Leases, Seller will not acquire any assets or assume or incur (or permit to exist) any liabilities other than assets and liabilities relating to the real and personal property comprising the Project, financing the Project, operating and maintaining the Project, selling and marketing power generated by the Project and engaging in other activities that are incidental to the foregoing.

19.1.3 On or before August 1, 2002, and thereafter during the term of this agreement, Seller will include in its articles of incorporation, certificate of formation or similar formation documents as may be applicable, statements to the effect provided in Sections 19.1.1 and 19.1.2.

19.1.4 On or before the occurrence of the initial Financial Closing, Seller will transfer or cause to be transferred to one or more Affiliates of Seller each of the Unrelated Leases on terms and conditions that provide for the

assumption by the transferee of all liabilities associated therewith.  
Purchaser hereby consents to any such transfer.

19.2 Subordinated Lien in favor of Purchaser.

19.2.1 Seller hereby grants a lien against and security interest in substantially all of the assets comprising the Project (the "Project Assets") to Purchaser to secure Seller's obligation to pay any damages to which Purchaser is entitled in the event of a breach by Seller of its obligations under this Agreement. In the event Seller intends to grant a lien against and security interest in the Project Assets to secure financing for the Project (the "Project Financing"), Purchaser shall release such lien and security interest on the date on which such financing closes (the "Financial Closing"), provided that Seller will at such time grant to Purchaser a lien against the Project Assets which is subordinated only to a lien and security interest securing the Project Financing, on the following terms and conditions:

- (a) The lien in favor of Purchaser shall secure Seller's obligation to pay any damages to which Purchaser is entitled in the event of a breach by Seller of its obligations under this Agreement.
- (b) Seller shall enter into a deed of trust and security agreement (the "Security Agreement") in form and substance reasonably satisfactory to Purchaser and Seller that grants to Purchaser a lien against the Project Assets to secure the obligations referred to in paragraph (a) above, which Security Agreement shall contain no representations and warranties or covenants other than (i) those, if

any, necessary for Purchaser to enforce its lien against the Project Assets and (ii) a prohibition on the grant by Seller of any lien against or security interest in the Project Assets other than the lien and security interest securing the Project Financing and any lien or security interest that is subordinate to the lien in favor of BPA. Seller shall take all actions as may be necessary to perfect Purchaser's lien and security interest in the Project Assets; provided that Seller shall not be required, in respect of the lien in favor of Purchaser, to obtain any consents or agreements from the ground lessors of the Project site or their lenders or to pay the cost of any title insurance policy.

- (c) As a condition to, and concurrently with, the execution and delivery of the Security Agreement, Purchaser shall enter into a subordination agreement with Seller and the Persons providing the Project Financing (the "Financing Providers"), in form and substance reasonably satisfactory to Purchaser, Seller and the Financing Providers, pursuant to which Purchaser shall agree (i) to subordinate Purchaser's lien and security interest in the Project Assets to the lien and security interest in favor of the Financing Providers and to subordinate the indebtedness owed to Purchaser to the Project Financing, (ii) to standstill and not exercise any remedies in respect of its lien and security interest as provided herein, including commencing foreclosure or other realization

proceedings and filing an involuntary bankruptcy petition against Seller, and (iii) in connection with any sale or disposition of the Project or the equity interests in Seller by the Financing Providers or in any foreclosure or other realization proceeding, to waive any right that Purchaser may have to consent to such sale or disposition (and any of the terms thereof) and to release its lien and security interest in the Project (but not in any net proceeds from the sale thereof), it being understood that the sole purpose of the grant of the lien and security interest to Purchaser is to entitle Purchaser to receive any proceeds remaining after repayment of the Project Financing prior to any unsecured creditors of Seller.

- (d) As a condition to, and concurrently with, the execution and delivery of the Security Agreement, Purchaser shall enter into a consent agreement with Seller and the Financing Providers, on terms and conditions reasonably satisfactory to the Financing Providers, pursuant to which Purchaser will consent to the assignment to the Financing Providers of this Agreement, will agree to give the Financing Providers notice of certain defaults and other events, will grant the Financing Providers an opportunity to cure any Seller default and will agree to such other lender protection provisions as are reasonable and customary for such types of financings.

The provisions of this Section 19.2 shall apply to the Project Financing issued concurrently with the granting of the lien and security interest to Purchaser and to any renewal or restatement of or replacement or refinancing of such Project Financing, and Purchaser agrees to enter into any renewal or confirmation of or replacement for the subordination agreement and the consent agreement referred to in paragraphs (c) and (d) above, respectively, in connection with any such renewal, restatement, replacement or refinancing of the Project Financing.

19.3 Covenants Regarding Project Financing.

19.3.1 Financing Providers. Seller may incur any Project Financing secured by a lien on and security interest in Project Assets senior to the lien and security interest in favor of Purchaser only to a Project Lender that is any bank, savings association, or insurance company that is subject to regulation by any agency or authority of the United States or any state thereof or by any agency or authority of any other country or any province or political subdivision thereof, having a net worth of at least \$25,000,000; *provided, however,* that such bank, savings association, or insurance company is not an affiliate of Seller. Any Financing Provider that does not satisfy the requirements of this section 19.3.1 shall be subject to approval by Purchaser.

19.3.2 Project Financing Amount. Seller shall not have outstanding in any Contract Year any Project Financing secured by a lien on, or security interest in, Project Assets senior to or on parity with the lien in favor of Purchaser in an amount greater than the Senior Debt Amount.

“Senior Debt Amount” means, for Contract Years 2002 through 2007, \$21 million, and for Contract Years 2008 through the remaining term of this Agreement, \$16 million.

**20. Seller Interconnection Obligation**

20.1 New Interconnection. Subject to obtaining financing for the Project, Seller shall construct, or cause to be constructed, a 115-kV interconnection between Seller’s Klondike Schoolhouse Substation and Purchaser’s DeMoss Substation. Upon completion of such interconnection, the BPA Delivery Point shall move from the point shown on Exhibit A-3-1 to the point shown on Exhibit A-3-2 and Energy will no longer flow over Transmission Provider’s DeMoss-Maupin 69-kV transmission line. If Seller has not completed construction of such interconnection prior to 24 months following the Effective Date, then Purchaser may construct, or cause to be constructed, such interconnection and may thereafter set off amounts otherwise payable to Seller under this Agreement to reimburse Purchaser for the cost of such construction.

20.2 Curtailment of Output. If such interconnection has not been completed by 2400 hours on September 30, 2002, and Purchaser has complied with its obligations under section 19.1, then Purchaser or the Transmission Provider may curtail generation interconnected to the DeMoss-Maupin 69-kv transmission line to the extent needed to avoid exceeding the limits of such line and the substations connected therewith, and Purchaser’s obligation to pay for BPA Scheduled Deliveries shall be adjusted as provided in this section 20.2. For the purposes of this section 20, curtailment shall not include reduction or stoppage of output

deliveries to the DeMoss-Maupin 69-kV transmission line due to System Emergency, Force Majeure, or to disruptions, breakdowns, electrical system failures and/or mechanical failures, maintenance, or repair of the Transmission System.

For each MWh that the output of the Condon Wind Power Project ("Condon") is curtailed as provided in this section 20.2, Seller shall reduce the charge for one MWh of BPA Scheduled Deliveries delivered on such hour to one-half of the otherwise applicable Purchase Price for such MWh. In no event shall the price reduction as a result of a curtailment of the output of Condon on any hour apply to more MWhs than the BPA Scheduled Deliveries for such hour. Such reduction in charge shall be credited to Purchaser's invoice for the month following the month in which Seller receives documentation from Purchaser evidencing the curtailment of Condon.

**21. Reassignment of Transmission.**

Seller will reassign its 24 MW transmission reservation from BPA's DeMoss Substation to Northwest Market Hub to Purchaser beginning June 1, 2002, and continuing through the term of the transmission reservation. During the term of this Agreement, Seller will release to Purchaser its rights to the 24 MW reservation and Purchaser will become contractually obligated to TBL for the 24 MW transmission reservation. Upon termination of this Agreement, Purchaser will reassign back to Seller the 24 MW transmission reservation from the DeMoss 115-kV line to the Northwest Market Hub originally purchased from TBL by Seller.



**EXHIBIT A  
PROJECT CONFIGURATION**

**Exhibit A-1**

**PROJECT DESCRIPTION**

1. **Project Location**

The Project is located on private agricultural land located approximately 7 miles east of the City of Wasco, near Klondike Lane and Gossen Road, in Sherman County, Oregon.

The property involves three separate ownerships described by the Sherman County Assessor's records as Tax Lots 2000, 3101, and 3900 in Township 1 North, Range 18 East, Section 9, 15, 16, and 22, Willamette Meridian, all in Sherman County, Oregon. The property also consists of a substation at Klondike, approximately 2.4 miles north of the proposed turbine site on Tax Lot 1800, Section 8, Township 1 North, Range 18 East, Willamette Meridian.

A map showing the Project location is in Exhibit A-2.

Seller has obtained wind energy leases or other possessory real estate rights with the landowners. The real estate rights allows the Seller to construct and operate wind generation facilities for a defined term; and in exchange, each landowner receives financial compensation.

2. **Project Facilities**

The wind generation facilities include the wind turbines and the electrical system. The Project consists of one string of 16 wind turbines manufactured by Enron Wind. Each turbine is a three-blade, upwind horizontal-axis turbine with a capacity of 1.5 MW. Each turbine is approximately 213 feet (65 meters) tall at the hub, with a blade diameter of approximately 230 feet (70.5 meters). The mean annual net energy production of the Project is expected to be 64,413,400 kWh.

3. **Project Collector System, Transmission Line, and Substation**

The collector system consists of the padmount transformers and the 34.5 kV electric cables. Each Turbine will generate power at 575 volts. A transformer adjacent to each tower will transform the power to 34.5 kV. Transformers are located on concrete pads that are approximately 5 feet from each tower pad. From there, power is transmitted via underground 34.5-kV electric cables to an existing overhead transmission line located parallel to Klondike Lane. The overhead transmission line connects to the Project substation, which is located on Klondike Lane, about one-half mile east of the existing Wasco Electric Coop substation.

4. **BPA Delivery Point**

Exhibit A-3-1 describes the interconnection facilities and the BPA Delivery Point as of the Effective Date. Exhibit A-3-2 describes the interconnection facilities and the BPA Delivery Point following the completion of a new 115-kV interconnection, pursuant to section 20.1 of the body of this Agreement.

Exhibit A-2

PROJECT MAP

REDACTED

**REDACTED**

**REDACTED**

Exhibit A-3-1

LOCATION OF BPA DELIVERY POINT<sup>1/</sup>

REDACTED

REDACTED

LOCATION OF BPA DELIVERY POINT<sup>2/</sup>

REDACTED

REDACTED

**EXAMPLES**

**REDACTED**

**PURCHASE PRICE  
AND  
MAXIMUM DELIVERY RATE**

**REDACTED**

---

<sup>1</sup> The Purchase Price is designated confidential and proprietary by Seller.

**METHODOLOGY FOR DETERMINING LIQUIDATED DAMAGES FOR  
UNEXCUSED NON-PERFORMANCE**

**REDACTED**

**REDACTED**

**REDACTED**

**CALCULATION OF MECHANICAL AVAILABILITY**

**REDACTED**



**Department of Energy**

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

POWER BUSINESS LINE

January 10, 2003

In reply refer to: PTS-5

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Amendment No. 1  
Contract No. 02PB-11093  
POWER PURCHASE AGREEMENT

Brett Wilcox  
Northwestern Wind Power, LLC  
3313 West Second Street  
The Dalles, OR 97058

Dear Mr. Wilcox:

This letter agreement (Amendment No. 1) constitutes an amendment to Contract No. 02PB-11093 (Power Purchase Agreement) between the Bonneville Power Administration (BPA) and Northwestern Wind Power, LLC (NWP). This Amendment No. 1 amends the Power Purchase Agreement to reflect the assignment of such agreement to Klondike Wind Power LLC, a wholly owned subsidiary of PacifiCorp Power Marketing, Inc. (Klondike).

1. **EFFECTIVE DATE.** This Amendment No. 1, when signed by the Parties, shall become effective on the effective date of the assignment of the Power Purchase Agreement to Klondike, at which time Klondike shall become the "Seller" hereunder.
2. **AMENDMENT OF POWER PURCHASE AGREEMENT.** The Power Purchase Agreement is amended as follows:
  - (a) The definition of "Adequate Credit Support" in section 1 is deleted and replaced by the following:

**"Adequate Credit Support":**

**REDACTED**

- (b) The definition of "Force Majeure Event" in section 1 is deleted and replaced by the following:

**"Force Majeure Event"**: Subject to section 18.7, any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event is reasonably unforeseeable, beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, including without limitation an act of God or the elements, strike or work stoppage, including the threat of imminent strike or work stoppage where necessary to safely and efficiently shut down Project operations in anticipation of such imminent strike or work stoppage, an interruption of transmission service by the Transmission Provider or any transmission provider beyond the 115 kV high side of the transformer at Seller's Klondike School House Substation, or any order by any governmental authorities, whether federal, state or local; *provided, however*, that for purposes of energy generation and operation of the Turbines, wind conditions that are not Non-Generating Wind Conditions shall never be Force Majeure Events. Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered a Force Majeure Event. A Force Majeure Event does not include any known or reasonably foreseeable environmental regulations; provided that for the purpose of this definition, a future change to or application of species protection laws or regulations that forecloses continued operation of the Project shall not be considered to be a "known or reasonably foreseeable environmental regulation." The economic hardship of either Party shall not constitute a Force Majeure Event. Nothing contained in this provision shall be construed to require either Party to settle any strike or work stoppage in which it may be involved under unreasonable terms.

- (c) The definition of "Tax Benefits" in section 1 is deleted and replaced by the following:

**"Tax Benefits"**: The production tax credits under section 45 of the Internal Revenue Code and the Oregon Business Energy Tax Credits, each as in effect on the date of this Agreement or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any other tax credit or other ability of Seller to reduce tax liability under applicable tax law which may not be resold by Purchaser as an Environmental Attribute including the right to claim generation from the Project as "wind energy."

(d) Section 6.7(a) is deleted and replaced by the following:

“(a) Unless the Parties agree otherwise, the data shall be provided in the form of a Microsoft Excel spreadsheet, or in another form as mutually agreed to by the Parties, and shall include:

- (1) Wind data averaged over one-minute intervals. Wind data shall include wind speed and direction. The data shall be global positioning system time synchronized.
- (2) Power output of the Turbines averaged over one-minute intervals.
- (3) The number of Turbines in service during the one-minute interval.

If the data described in (1), (2), or (3) above is not available to Seller in one-minute intervals, then such data shall be averaged into the shortest time intervals available to Seller.”

(e) Section 7.3.1 is deleted and replaced by the following:

“7.3.1 **Initial Representation.** Pursuant to the “Agreement to Engineer, Procure, and Construct Wind Generation Energy System” between Seller and Enron Wind Constructors Corp. effective July 17, 2001, and as a condition precedent to the commencement of Purchaser's obligations under this Agreement, Seller hereby represents and warrants that the Turbines are covered by Parts and Construction Warranties, a Power Curve Warranty, and an Availability Warranty from Enron Wind Constructors Corp. for the period including the fifth anniversary of the Turbine Final Completion Date (the “Turbine Warranty Period”) and that the Turbines and related property and systems are covered by “Operating All Risks Including Mechanical and Electrical Breakdown” insurance with an aggregate policy limit of \$25,000,000.”

(f) A new section 7.3.6 is added as follows:

“7.3.6 **Seller's Obligation to Maintain Adequate Credit Support or Adequate Guaranty.** Seller shall maintain Adequate Credit Support or Adequate Guaranty. The failure of Seller to maintain Adequate Credit Support or Adequate Guaranty for a period of three (3) consecutive Business Days shall be a default of this Agreement under section 12.”

- (g) Section 12.3.3 is deleted and replaced by the following:

"12.3.3 In the case of a default as described in section 12.1.5, other than a default under section 7.3.6, the default must be cured within thirty-five (35) days after the Defaulting Party's receipt of the Notice of Default; *provided, however*, that if the default is not capable of cure within thirty-five (35) days then, upon mutual agreement by the Parties, the period for cure may be extended."

- (h) A new section 12.3.5 is added as follows:

"12.3.5 In the case of a default described in section 7.3.6, the default must be cured within ten (10) days after Seller's receipt of the Notice of Default."

- (i) Section 15.1 is deleted and replaced by the following:

"15.1 **Restriction on Assignment by Seller.** Except as expressly provided in this section 15.1, Seller may not assign its rights, delegate its duties or otherwise transfer or permit the transfer of (collectively, "Transfer") this Agreement without Purchaser's prior written consent, not to be unreasonably withheld, delayed, or conditioned. Without limiting Purchaser's right to withhold consent to Transfer, the Parties acknowledge that Purchaser may conclusively withhold its consent if Seller proposes to Transfer this Agreement to any Person that is rated below Investment Grade by any Rating Agency or is not rated by any Rating Agency, unless the performance of such Person is guaranteed by an Adequate Guaranty or Adequate Credit Support. If Seller wishes to Transfer this Agreement, it shall provide Purchaser with a detailed description of the nature and duration of the proposed Transfer and information concerning the proposed transferee."

- (j) Section 18.16 is deleted in its entirety.
- (k) Section 19 is deleted in its entirety.
- (l) Section 20 is deleted in its entirety.

(m) Section 21 is deleted and replaced by the following:

**"21. Reassignment of Transmission.**

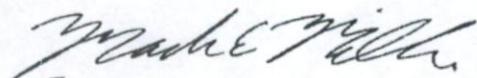
Upon termination of this Agreement, Purchaser will assign to Seller the 24 MW transmission reservation from the DeMoss 115-kV line to the Northwest Market Hub."

(n) Exhibit A-3-1 is deleted in its entirety.

If this Amendment No. 1 is acceptable to NWP, please so indicate by signing both originals and return one original to me. The remaining original is for your files.

Sincerely,

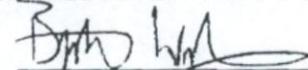
ACCEPTED:



For  
Scott K. Wilson  
Account Executive

Date 01/10/03

NORTHWESTERN WIND POWER, LLC

By 

Name Brett Wilcox

Title Manager

Date 1/10/03

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## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

POWER SERVICES

April 26, 2007

In reply refer to: PTL-5

Amendment No. 2  
Contract No. 02PB-11093  
POWER PURCHASE AGREEMENT

Contract Administrator  
PPM Wind Energy, LLC  
1125 NW Couch St., Ste 700  
Portland, OR 97209

This letter agreement ("Amendment No. 2") constitutes an amendment to the Power Purchase Agreement, Contract No. 02PB-11093, ("Agreement") between the Bonneville Power Administration ("BPA") and Klondike Wind Power, LLC ("Klondike"), (also known individually as "Party" or collectively as "Parties") dated June 1, 2002. This Amendment No.2 sets forth the revised terms and conditions by which Klondike delivers BPA Scheduled Deliveries.

1. **EFFECTIVE DATE.** This Amendment No. 2 shall become effective when signed by all Parties. The parties agree that the terms of the Agreement shall be amended to reflect the change in the BPA Delivery Point (such amendments are described in detail in section 2 below), upon occurrence of both of the following: (a) the 230 kV transmission line between the Klondike 230 kV School House Substation and John Day Substation becomes operational and BPA's facilities interconnecting to such Klondike 230 kV School House Substation have been energized (Klondike shall provide the Purchaser with notice of Klondike 230 kV School House Substation energization no later than ten (10) days prior to the energization date); and (b) BPA accepts Transmission Provider's revision to Contract No. 02TX-11144 that provides for the redirect of 24 MW of transmission service.
2. **AMENDMENT OF POWER PURCHASE AGREEMENT.** The Agreement is amended as follows:
  - (a) The definition of "BPA Delivery Point" in Section 1 of the Agreement is deleted in its entirety and replaced by the following:

**"BPA Delivery Point:** The point, more specifically described in Exhibit A, where Energy is made available to the Transmission Provider at the BPA dead-end structure just outside of the Klondike 230 kV School House Substation.

- (b) The definition of "BPA Metered Output" in Section 1 of the Agreement is deleted in its entirety and replaced by the following:

**"BPA Metered Output:** The Energy output metered by the Transmission Provider's metering equipment installed in the Klondike School House Substation, on the 34.5 kV (low) side of Seller's transformer. Such Energy output will be adjusted for losses for transformation and transmission to the BPA Delivery Point from the Transmission Provider's metering equipment."

- (c) Section 8.1 of the Agreement is deleted in its entirety and replaced by the following:

**"8.1 Measurement and Metering.**

**Metering Equipment.** Seller shall provide for accurate metering and data processing equipment required for the registration, recording, and transmission of information regarding the energy generated by the Project and delivered to the BPA Delivery Point, real and reactive power output, voltage output, current output, and other related parameters that are required for computing the payments due to Seller from Purchaser ("Transmission Provider's Meters"). Transmission Provider's Meters shall be installed in Seller's Klondike School House Substation, located prior to the BPA Delivery Point. Seller shall use transmission loss factors provided by the Transmission Provider, and agreed to by BPA and Klondike, in order to adjust the BPA Metered Output as measured by Transmission Provider's Meters."

- (d) Section 8.2 of the Agreement is deleted in its entirety and replaced by the following:

**"8.2 Check Meters.** Seller may elect to install, maintain, and operate Seller's own metering, telemetry and communication equipment for the purpose of comparison with the Transmission Providers Metering equipment and observation of the Energy generation at the Project (collectively, the "Check Meters"). Such Check Meters shall be installed at Seller's expense. Purchaser acknowledges that the Check Meters may not interfere with the installation, maintenance and operation of Transmission Provider's metering equipment or Seller's Interconnection Facilities."

- (e) Section 8.3 of the Agreement is amended as follows:

References to "Seller's Meters" is replaced with "Transmission Provider's Meters."

- (f) Section 8.4 of the Agreement is amended as follows:

References to "Seller's Meters" is replaced with "Transmission Provider's Meters."

- (g) Section 21 of the Agreement is deleted in its entirety and replaced by the following:

**"21. Reassignment of Transmission.**

Seller will reassign to Purchaser its 24 MW transmission reservation from BPA's DeMoss Substation to Northwest Market Hub beginning June 1, 2002, and continuing through the term of the transmission reservation. Purchaser will redirect the 24 MW point-to-point transmission reservation from the BPA DeMoss Substation to Northwest Market Hub, to point-to-point transmission from the Klondike 230 kV School House Substation to Northwest Market Hub, once the 230 kV transmission line between the Klondike 230 kV School House Substation and John Day Substation is operational and BPA's facilities interconnecting to such Klondike 230 kV School House Substation have been energized. During the term of this Agreement, Seller shall release to Purchaser its rights to the 24 MW reservation and Purchaser will become contractually obligated to TBL for the 24 MW transmission reservation, including the receipt of any applicable transmission credits from TBL to Purchaser. Purchaser agrees to return to Seller all transmission credits received by Purchaser as a result of the Seller's assignment, to the Purchaser, of its right to receive Transmission Credits under the Seller's interconnection agreement at School House Substation. Upon termination of this Agreement, Purchaser will reassign back to Seller the 24 MW of transmission reservation from the Klondike 230 kV School House Substation to the Northwest Market Hub (originally the DeMoss to Northwest Market Hub transmission pathway) purchased from TBL by Seller."

- (h) Section 4 of Exhibit A-1 of the Agreement is deleted in its entirety and replaced by the following:

**"4. BPA Delivery Point**

Exhibit A-3-3 describes the interconnection facilities and the BPA Delivery Point as of the Effective Date of Amendment No. 2 of this Agreement."

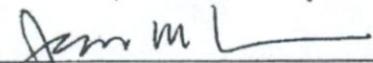
- (i) Exhibit A-3-2 is deleted in its entirety
- (j) Exhibit A-3-3 is added as a new exhibit to the Agreement.

If this Amendment No. 2 is acceptable to Klondike, please so indicate by signing both originals and return one original to BPA. The remaining original is for your files.

ACCEPTED:  
PPM Wind Energy LLC, the Managing  
Member of Aeolus Wind Power I LLC, the  
sole member

Sincerely,



By 

Account Executive

Title Vice President

Name Mark Miller

*p.w.*

Name Jean Wilson

Date 4/27/07

Date 2 - May - 2007

**KLONDIKE WIND POWER PROJECT  
SIMPLIFIED ONE LINE DIAGRAM**

Exhibit A-3-3

ATTACHMENT NO. 1 APPENDIX A  
CONTRACT NO. LGIA 06TX-12409

**REDACTED**

**REDACTED**



**PPM Energy**  
A ScottishPower Company

**LETTER AGREEMENT**

Wind Program Manager  
Bonneville Power Administration  
P.O. Box 3621, Routing PT-5  
Portland, OR 97208

This Letter Agreement ("Amendment No. 3") constitutes an amendment to the Power Purchase Agreement, Contract No. 02PB-11093, ("Agreement") between the Bonneville Power Administration ("BPA") and Klondike Wind Power, LLC ("Klondike"), (also known individually as "Party" or collectively as "Parties") dated June 1, 2002. This Amendment No. 3 sets forth revised terms and conditions by which Klondike shall deliver to BPA the Scheduled Deliveries.

Effective Date: This Amendment No. 3 shall become effective on the date that Klondike begins to make deliveries to BPA at the dead-end structure just outside of the Klondike 230 kV Schoolhouse substation, which date is expected to be on or about October 12<sup>th</sup>, 2007.

The definition of "BPA Delivery Point" in Section 1 of the Agreement is deleted in its entirety and replaced by the following:

BPA Delivery Point: The point, more specifically described in Exhibit A of Amendment No.2 of the Agreement, where Energy is made available to the Transmission Provider at the BPA dead-end structure just outside of the Klondike 230kV Schoolhouse substation. If, for any reason, Klondike is unable to make deliveries at the BPA dead-end structure just outside the Klondike 230kV Schoolhouse substation, the Parties, by mutual agreement, may elect to temporarily change the BPA Delivery Point to the BPA Demoss Springs substation, or other acceptable BPA Delivery Points as they become available. BPA acknowledges that delivery to the BPA Demoss Springs substation is dependent on transmission capacity available to Klondike from Wasco Electric Cooperative.

All other terms and conditions of the Agreement, as amended, remain the same and in full effect. Please indicate your acceptance of this Amendment No. 3 by signing two copies of it in the place(s) provided below and returning a single executed copy to the following address:

PPM Energy  
1125 NW Couch, Suite 700  
Portland, OR 97209  
Attention: Nick Finke; Asset Management

Please contact Nick Finke at 503.478.6325 if you have any questions.

**Bonneville Power Administration**

**PPM Wind Energy LLC, the Manager of Aeolus  
Wind Power I LLC, the Sole Member and  
Manager of Klondike Wind Power, LLC**

Authorized Signature

Signature: *Mark Miller*

Name: Mark Miller

Title: Account Executive

Date: 10/25/07

Authorized Signature

Signature: *Barrett Stambler*

Name: Barrett Stambler  
Title: Vice President

Date: 10/22/07

Approved as to form

*Joan Aguirre*

bcc:

M. Hansen (CCIS) – KSC-4

C. Olive – LP-7

L. Blasdel – PT-5

J. O'Leary – PT-5

K. Humphrey – PTK-5

M. Miller – PTL-5

M. Pedersen-Mainzer – PTL-5