

Contract No. 00PB-10692

November 7, 2001

AUTHENTICATED (REDACTED)

POWER PURCHASE AGREEMENT

Executed by the

UNITED STATES OF AMERICA,

DEPARTMENT OF ENERGY

acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

CONDON WIND POWER, LLC

(Condon Wind Power Project)

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This POWER PURCHASE AGREEMENT (this "Agreement") is dated as of November 7, 2001 (the "Effective Date") by and between CONDON WIND POWER, LLC, a Delaware limited liability company ("Seller"), and the UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, acting by and through the BONNEVILLE POWER ADMINISTRATION and its permitted successors and assigns ("BPA"). Both Seller and BPA are sometimes referred to herein individually as "Party" and collectively as "Parties."

WHEREAS, BPA is authorized by Federal law, including the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, the "Northwest Power Act") and other applicable laws, to acquire sufficient capacity and energy (where "power" may herein refer to either or both terms) from power production facilities, including wind powered production facilities, to meet the electric power requirements placed on BPA by its regional customers.

WHEREAS, Seller desires to construct, own, and operate a wind powered electric generating project to be located in Gilliam County, Oregon.

WHEREAS, Seller desires to sell to BPA all of the Energy Output generated by the Facility (as defined below), and BPA desires to buy the same from Seller.

WHEREAS, BPA'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.

WHEREAS, BPA desires to utilize the Facility in studies to assess the impacts of integrating large amounts of windpower into BPA's power system and to analyze the feasibility of forecasting and scheduling short term future deliveries of Energy Output to be generated by the Facility.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

1. Definitions

The terms listed in this Section shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. The plain meaning of terms not listed in this Section and otherwise used in this Agreement shall apply, unless such unlisted terms have meanings as commonly used in Good Utility Industry Practice, in which case the Good Utility Industry Practice meaning shall apply.

"Actual Average Annual Output" means the actual amount of average annual Energy Output generated by the Facility during any given twenty-four (24) month rolling period.

"Agreement" means this Power Purchase Agreement between Seller and BPA, including the exhibits attached hereto.

"Appeal" has the meaning given in Section 11(b).

“Availability Factor” means the aggregate of the total number of hours that all of the Wind Turbines were in service and able to perform during the preceding twelve (12) month period, divided by the product of the number of Wind Turbines times 8,760 hours.

“Billing Dispute” has the meaning given in Section 8 (d)(1).

“BPA” has the meaning given in the preamble.

“BPA Interconnection Facilities” means all the land rights, materials, equipment, and facilities installed for the purpose of interconnecting the Facility to the Point of Delivery, including, but not limited to, electrical interconnection, switching, metering, relaying, communication, and safety equipment. The BPA Interconnection Facilities, which include the BPA Meter located in Seller’s control house at the Facility Substation, are generally described in Exhibit A, and more particularly described in the Generation Interconnection Agreement. The BPA Interconnection Facilities shall be owned, operated and maintained by Transmission System Operator in accordance with the Generation Interconnection Agreement.

“BPA Meter” has the meaning given in Section 5(c)(2)(i).

“BPA Restructuring Event” has the meaning given in Section 22(n).

“Business Day” means each Monday through and including Friday during the Term other than nationally recognized holidays.

“Capacity Factor” means the expected long-term mean annual net energy projection for the Facility as given in the Report, divided by four hundred thirty-six thousand two hundred forty-eight (436,248) megawatt-hours.

“Charges” has the meaning given in Section 5(e).

“Commercial Operation” means when a particular Wind Turbine in the Facility is (i) ready for regular, daily operation; (ii) has been connected to the Grid; and (iii) is capable of producing Energy Output in accordance with Good Utility Industry Practice.

“Commercial Operation Date” means, with respect to a particular Wind Turbine, the first day on which Commercial Operation occurs.

“Commission(s)” means any of the state or Federal regulatory agencies having jurisdiction over BPA or Seller including, but not limited to, the Federal Energy Regulatory Commission (“FERC”), or successor agencies.

“Contract Year” means any consecutive twelve (12) month period commencing with the Facility Completion Date or its anniversary.

“Control Area Service(s)” has the meaning given in the Transmission Rate Schedule.

“Delivery Arrangements Agreement” has the meaning given in Section 5(b).

“Disclosing Party” has the meaning given in Section 20(a).

“Effective Date” has the meaning given to it in the preamble.

“EIS” means the environmental impact statement related to the Facility, as required under regulations implementing the National Environmental Policy Act (40 C.F.R. Parts 1500-1508).

“Emergency” means a physical condition or situation that, in the judgment of the Transmission System Operator, affects or will affect the ability of the Grid to accept Energy Output from the Facility at the Point of Delivery.

“Energy Output” means the amount of electrical energy generated by all or any portion of the Wind Turbines and delivered and received at the Point of Delivery. Energy Output shall be metered in whole kilowatt-hours (kWh) by the Meter(s) installed in the Facility Substation. Energy Output delivered to BPA at the Point of Delivery shall be deemed to be equal to the energy measured by the applicable Meter in accordance with Section 5(c).

“Energy Payment Rate” has the meaning given in Section 7(a).

“EPRI” means the Electric Power Research Institute, or such other entity or consultant acceptable to both Parties.

“Event of Default” means an event as defined in Section 10 that confers a contractual right upon the non-defaulting Party to terminate the Agreement.

“Facility” means the Condon wind project, which includes all of the following, the purpose of which is to produce and sell electricity: Seller’s equipment, property, the Wind Turbines, step-up transformer(s), circuit breakers, electric lines, protective and associated equipment, structural improvements, the Project Interconnection Facilities (including the Facility Substation and the Facility Transmission Line) and other tangible and intangible assets, property and access rights and contract rights reasonably necessary for the construction, operation, and maintenance of the electric wind generating facility to be located at the site specified in Section 4.

“Facility Completion Date” means the first day of the calendar month immediately following the Phase 2 Completion Date.

“Facility Sale Price” means the total amount paid and/or financed by a purchaser or purchasers for the membership interest in Seller.

“Facility Substation” means the 30/40/50 MVA transformer and associated electrical system components necessary to transfer and transmit the Energy Output to the Facility Transmission Line, as further described in Exhibit A.

“Facility Transmission Line” means the transmission line connecting the Facility Substation to BPA’s DeMoss-Condon Transmission Line at the Point of Delivery, as further described in Exhibit A.

“Failure to Accept Delivery” has the meaning given to it in Section 7(f).

“First Delivery Date” means the first date on which the BPA Interconnection Facilities are energized and capable of accepting delivery of Energy Output at the Point of Delivery.

“First Party” has the meaning given in Section 16(b).

“Force Majeure” has the meaning given in Section 14(a).

“Generation Imbalance Charge(s)” means a charge to Seller by the Transmission System Operator when the scheduled amount exceeds the Energy Output delivered from the Facility during a schedule hour.

“Generation Imbalance Credit(s)” means a payment to the Seller by the Transmission System Operator when the scheduled amount is less than the Energy Output delivered from the Facility during a schedule hour.

“Generation Interconnection Agreement” means the Generation Interconnection Agreement between Seller and Transmission System Operator that contains the rights and obligations of the Parties with respect to the interconnection of the Facility to BPA’s DeMoss-Condon transmission line and the methods and procedures for the safe operation and maintenance of the BPA Interconnection Facilities.

“Good Utility Industry Practice(s)” means the practices, methods, and acts (including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Facility, Good Utility Industry Practice(s) include, but are not limited to, taking reasonable steps to ensure that:

- (1) equipment, materials, resources, and supplies are reasonably available on-site or off-site to meet the Facility’s needs;
- (2) sufficient operating personnel are available in person during regular business hours on each Business Day or by telephone or other means at all other times during the Term and are adequately experienced, trained and licensed as necessary to operate the Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the Facility;
- (3) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- (4) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- (5) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or contrary to environmental laws or regulations or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and

- (6) the equipment will function properly under both normal and reasonably expected Emergency conditions at the Facility.

“Grid” means the electrical transmission system that is on the BPA side of the Point of Delivery inclusive of the BPA Interconnection Facilities.

“Inflation Adjustment Factor” means an amount equal to two and one-half percent (2.5%) per year.

“Information” has the meaning given in Section 20(a).

“Lost Production” has the meaning given in Section 7(f).

“Meter(s)” means any of the electronic kilowatt-hour meters, including the BPA Meter, used to measure the Energy Output from the Facility, as described in Section 5(c)(2) and shown in Exhibit A.

“Non-Billing Dispute” means any and all disputes between the Parties other than Billing Disputes.

“Non-Curable Defaults” has the meaning given in Section 19(b)(2).

“North American Electric Reliability Council” means the council of nine regional reliability councils formed by the electric utility industry in 1968 and incorporated in 1975 to promote reliable and adequate supplies of bulk electric power.

“Northwest Power Act” has the meaning given in the recitals.

“On-Peak Month” means the calendar months of September, October, November, December, January, and February.

“Operating Committee” means the committee comprised of one delegate each from BPA and Seller pursuant to Section 9(f)(1).

“Operating Procedures” has the meaning given in Section 9(f)(2).

“Overpayment” has the meaning given in Section 5(e).

“Party” and/or “Parties” means Seller, BPA, or Seller and BPA.

“Phase 1” means that portion of the Facility that is comprised of the Phase 1 Wind Turbines and associated facilities, equipment, and construction necessary to generate and deliver Energy Output to the Point of Delivery.

“Phase 2” means that portion of the Facility that is comprised of the Phase 2 Wind Turbines and associated facilities, equipment, and construction necessary to generate and deliver Energy Output to the Point of Delivery.

“Phase 1 Completion Date” means the date when all of the Phase 1 Wind Turbines have achieved Commercial Operation and the conditions precedent set forth in Section 9(a) have been satisfied.

“Phase 2 Completion Date” means the date when all of the Phase 2 Wind Turbines have achieved Commercial Operation and the conditions precedent set forth in Section 9(b) have been satisfied.

“Phase 1 Conditions Precedent” has the meaning given in Section 9(a).

“Phase 2 Conditions Precedent” has the meaning given in Section 9(b).

“Phase 1 Wind Turbines” means the forty-one (41) Wind Turbines scheduled to achieve Commercial Operations no later than December 31, 2001.

“Phase 2 Wind Turbines” means the forty-two (42) Wind Turbines scheduled to achieve Commercial Operations no later than June 1, 2002.

“Point of Delivery” means the point on BPA’s DeMoss-Condon transmission line where Seller makes the Energy Output available to BPA and at which point title to Energy Output and risk of loss with respect to Energy Output shall transfer from Seller to BPA, as defined and further described in Exhibit A.

“Power Business Line” means BPA’s Power Business Line.

“Power Curve” means the specified Energy Output of a Wind Turbine at varying wind speeds as adjusted for varying conditions and as further described in Exhibit E.

“Predevelopment Agreement” means the Predevelopment Agreement between BPA and SeaWest WindPower, Inc. (“SeaWest”), identified as BPA Contract No. 00PB-10670, including amendments thereto.

“Project Interconnection Facilities” means those facilities that are owned by Seller and located on Seller’s side of the Point of Delivery (including the Facility Substation and the Facility Transmission Line), all as described in Exhibit A.

“PTC” means the renewable electricity production credit established under Section 45 of the Internal Revenue Code.

“PTC Component” has the meaning given in Section 7(f).

“Receiving Party” has the meaning given in Section 20(a).

“Record of Decision” means the decision issued by BPA with respect to its intention and authority to execute this Agreement.

“Replacement Agreement” has the meaning given in Section 19(b)(6).

“Report” has the meaning given in Section 7(d).

“Representative(s)” has the meaning given in Section 13(a).

“Second Party” has the meaning given in Section 16(b).

“Seller’s Computer Monitoring System” means the computer-based monitoring system comprised of computer hardware, software, and private communication system extending to each Wind Turbine, which system gathers, archives and reports turbine operating data.

“Seller” means Condon Wind Power, LLC, a Delaware limited liability company and its successors and assigns.

“Senior Lender” means any person providing vendor, construction and/or term financing to Seller for the Facility, and any agent, trustee or collateral agent for the benefit of persons providing such financing.

“Term” means the period of time specified in Section 2(a) during which this Agreement shall remain in force and effect.

“Transmission and Transportation Agreement” means that certain agreement regarding transmission, transportation and delivery of Energy Output to points beyond the Point of Delivery, which as of the date hereof will be (i) between the Power Business Line and Transmission System Operator, (ii) the agreement referenced in the last sentence of Section 2(a), and (iii) the agreement expected to be titled the “Transmission Services Agreement.”

“Transmission Rate Schedule” means the 2002 Transmission and Ancillary Service Rate Schedules and General Rate Schedule Provisions, issued by Transmission System Operator and effective October 1, 2001, or successor schedule of transmission rates and policies approved by the Federal Energy Regulatory Commission.

“Transmission System Operator” means BPA’s Transmission Business Line or any successor that controls and operates the Grid.

“Wind Generation Benefits” means any and all credits and benefits (environmental, economic, or otherwise, but excluding the PTCs), emissions reductions, and environmental air quality credits relating to, arising from or connected with Energy Output or with the Facility during the Term, including without limitation all emissions reduction credits, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Facility or the generation, purchase, sale or use of energy from or by the Facility, in each case during the Term.

“Wind Turbine(s)” mean each and all of the eighty-three (83) Mitsubishi Heavy Industries Ltd. Model MWT-600 wind turbine generators, or a replacement or substitute therefore reasonably acceptable to the Parties, which constitute part of the Facility and are dedicated to producing Energy Output for sale to BPA pursuant to this Agreement.

“WSCC” means the Western Systems Coordinating Council, which is a group that coordinates power supply and transmission systems in the western United States.

2. Term

(a) Effectiveness; Basic Term

This Agreement shall become effective as of the Effective Date and shall remain in effect for a period of twenty (20) years from the Facility Completion Date, subject to the early termination provisions set forth in Section 11(a).

Notwithstanding the foregoing but without limiting the effect of Sections 7(f) and 14(d), the performance by both Seller and BPA of their respective obligations hereunder shall be conditioned upon, and shall immediately commence upon, the execution of the Transmission and Transportation Agreement. BPA shall immediately notify Seller of the execution of the Transmission and Transportation Agreement.

(b) **Survival of Terms and Conditions**

Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings and adjustments related to the period prior to termination, including repayment of any money due and owing to or by BPA pursuant to this Agreement.

3. Exhibits

The exhibits listed in the Index to Sections are incorporated into this Agreement by reference.

4. Facility Description

(a) **Summary Description**

Seller shall construct, operate, and maintain the Facility. Exhibit A provides a complete description of the Facility, including identification of the Wind Turbines and other equipment and components that comprise the Facility; provided that (i) Seller shall have the right to modify the description of the Facility in Exhibit A by written notice to BPA from time to time, so long as the aggregate megawatt capacity of the Wind Turbines is maintained; (ii) Seller shall first resolve and/or fully mitigate any issues arising from such proposed modifications or amendments with respect to the EIS, which resolution and/or mitigation shall be at Seller's sole expense; (iii) such modification or amendments shall first be approved by BPA, which approval shall not be unreasonably withheld, conditioned or delayed, and (iv) such modification or amendments shall not otherwise affect the rights and obligations of the Parties hereunder.

(b) **Site**

The Facility shall be located at the area generally described as:

Facility Name: Condon Wind Project

Location: In Township 3 South, Range 20 East: the SE $\frac{1}{4}$, and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$, Section 13; that portion of the NE $\frac{1}{4}$, Section 22 Lying East of State Highway 206; all of Sections 23, 24 and 25; that portion of Section 26 lying East of Highway 206; and the E $\frac{1}{2}$, Section 35.

In Township 4 South, Range 20 E: the SW $\frac{1}{4}$, and the S $\frac{1}{2}$ of the NW $\frac{1}{4}$, Section 1; lots 1 and 2, the S $\frac{1}{2}$, S $\frac{1}{2}$ of the NW $\frac{1}{4}$, and S $\frac{1}{2}$ of the NE $\frac{1}{4}$; Section 2; and the N $\frac{1}{2}$, and the N $\frac{1}{2}$ of the S $\frac{1}{2}$, Section 12.

In Township 4 South, Range 21 E: all of Section 7; and the N $\frac{1}{2}$, Section 18.

Excepting therefrom any portion of the above-described tracts within state highways or county roads and those properties

conveyed by documents recorded as follows: Bk. 33, Pg. 308, Bk. 47, Pg. 497, M 60-168, M 60-241, (Tax Lot 4S-20-300), and (Grange Hall).

County/State: Gilliam County, Oregon.

A scaled map that identifies the location of the Facility, the Wind Turbines, the Project Interconnection Facilities, and significant ancillary facilities, including the facilities located at the Point of Delivery and the BPA Interconnection Facilities, is included in Exhibit A. Seller may, by written notice to BPA, amend Exhibit A from time to time to alter the location of the Wind Turbines, the Project Interconnection Facilities and the ancillary facilities within the site described in this Section 4(b); provided, however, that (i) Seller shall first resolve and/or fully mitigate any issues arising from such proposed amendments with respect to the EIS (which resolution and/or mitigation shall be at Seller's sole expense), (ii) such amendments shall first be approved by BPA, which approval shall not be unreasonably withheld, conditioned or delayed, and (iii) such amendments shall not otherwise affect the rights and obligations of the Parties hereunder.

(c) **General Design and Construction of the Facility**

Seller shall construct the Facility in a workmanlike, professional manner according to Good Utility Industry Practice(s). The Facility shall be:

- (1) capable of supplying Energy Output in compliance with the requirements of the Generation Interconnection Agreement;
- (2) capable of operating at power levels as specified in the Generation Interconnection Agreement; and
- (3) equipped with protective devices and generator control systems designed and operating in accordance with the Generation Interconnection Agreement and Good Utility Industry Practice(s).

5. BPA Interconnection Facilities and Metering

(a) **Generation Interconnection Agreement**

Seller shall negotiate in good faith and enter into a Generation Interconnection Agreement that is reasonably acceptable to Power Business Line for the purposes, and in accordance with the schedules, set forth in this Section 5(a). Power Business Line shall diligently cooperate with Seller in these negotiations.

- (1) The Generation Interconnection Agreement shall address and describe (i) the switching, metering, relaying, communications and safety equipment that will constitute the BPA Interconnection Facilities, (ii) the processes, procedures for, and timing of the procurement, construction, testing and placement into operation of the BPA Interconnection Facilities and their connection to the Point of Delivery, (iii) the billing and payment schedules for the construction, operation and maintenance of the BPA Interconnection Facilities, (iv) the operating procedures and requirements

of the BPA Interconnection Facilities, including the requirements for the Facility to be capable of immediate disconnection from the Point of Delivery in accordance with Good Utility Industry Practice(s) or in the event of Emergency, and (v) the terms, conditions and other requirements relating to the construction, operation and maintenance of the BPA Interconnection Facilities. All expenses associated with the procurement, construction, installation and operation of the BPA Interconnection Facilities shall be paid by Seller in accordance with the Generation Interconnection Agreement.

- (2) It is an objective of this Agreement that the First Delivery Date occur no later than November 15, 2001, provided that such date shall be extended day-for-day by any Force Majeure or any delay caused by Power Business Line. Seller shall give Power Business Line fifteen (15) calendar days written notice prior to the First Delivery Date. If the Phase 1 Completion Date occurs more than one hundred and twenty (120) days after the First Delivery Date, irrespective of the occurrence of any Force Majeure and otherwise not due to the negligence or fault of BPA, then Seller shall reimburse BPA for payments made for transmission services for the period commencing on the day following the one hundred and twentieth (120th) day after the First Delivery Date and continuing until the Phase 1 Completion Date; provided that Power Business Line shall act in a commercially reasonable manner to minimize costs related to such transmission services.

(b) Delivery Arrangements Agreement

Power Business Line shall be solely responsible for negotiating and maintaining during the Term any required agreements with the Transmission System Operator and/or with others to provide for the receipt of the Energy Output at the Point of Delivery and for the transmission and delivery of such Energy Output to points beyond the Point of Delivery (such agreements, including the Transmission and Transportation Agreement, shall constitute the "Delivery Arrangements Agreement"). Seller shall diligently cooperate with Power Business Line in these negotiations. Power Business Line shall be responsible and liable to pay for all transformation, transmission and delivery charges associated with the Energy Output beyond the Point of Delivery as such Energy Output is delivered and sold by Seller under this Agreement.

(c) Other Provisions Related to Interconnection

(1) Access to Facility

During the Term, appropriate representatives of BPA shall, at all reasonable times, including weekends and nights, and with reasonable prior notice, have access to the Facility, including the control room, the Project Interconnection Facilities and the BPA Meter, to read and maintain the BPA Meter and to perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of

this Agreement. While at the Facility, such representatives shall observe such reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the construction, operation or maintenance of the Facility.

(2) **Meters**

- (i) All Meters used to measure the Energy Output under this Agreement shall be subject to approval by BPA. The primary Meter used to measure Energy Output shall be owned by Transmission System Operator, and installed in Seller's control house in accordance with the Generation Interconnection Agreement (the "BPA Meter"). Seller shall, at Seller's expense, install communication equipment that allows BPA to read the BPA Meter from a remote location (such as BPA headquarters) at any time. The BPA Meter shall be maintained directly by Transmission System Operator or by agents or subcontractors directly under the Transmission System Operator's control. All Meters used to measure the Energy Output under this Agreement shall be sealed and the seal may be broken only when such Meters are to be inspected, and tested and/or adjusted. The number, type, and location of such Meters shall be specified in the Generation Interconnection Agreement.
- (ii) All Meters shall be maintained, calibrated, and tested in conformance with the policies of the Transmission System Operator and the terms of the Generation Interconnection Agreement. Seller shall arrange for the Transmission System Operator to test the BPA Meter at least once per calendar year. Power Business Line, at its own expense, may require that Seller initiate testing and inspection of any Meter. Seller shall permit a representative of Power Business Line to witness and verify such inspections and tests, provided, however, that Power Business Line shall comply with all of the Transmission System Operator's safety standards. Seller shall provide Power Business Line with copies of any periodic or special inspection or testing reports relating to the Meters.
- (iii) Each of Seller and Power Business Line may elect to install and maintain, at its own expense, independent Meter and data-gathering and communication equipment used to monitor, record, or transmit data relating to the Energy Output from the Wind Turbines. Seller shall arrange for a location within the Facility Substation control house accessible to Seller and Power Business Line, for such data-gathering and communication equipment that may be installed.

- (iv) Each Party shall notify the other Party within 48 hours of its receiving actual notice of any inaccuracy or defect in a Meter. Seller shall cause, or shall request the Transmission System Operator to cause, as applicable, such Meters to be adjusted, repaired, replaced, and/or recalibrated as near as practicable (given industry standard tolerances) to a condition of zero error at the expense of the Party owning the defective or inaccurate Meter.

(3) **Adjustment for Inaccurate Meters**

If a Meter fails to register or is found upon testing to be inaccurate by more than a quarter of one percent (0.25%), an adjustment shall be made correcting all measurements by the inaccurate or defective Meter, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

- (i) In the event that the BPA Meter is found to be defective or inaccurate and an adjustment factor for the BPA Meter cannot be reliably calculated, the Parties shall use the measurements from the Power Business Line-owned Meter if it has been installed, is fully operational and has been calibrated pursuant to Section 5(c)(2). If the Power Business Line-owned Meter has not been installed or, if installed, is not fully operational or calibrated, the Parties shall use production data from Seller's Meter if it has been installed, is fully operational and has been calibrated pursuant to Section 5(c)(2). Otherwise the Parties shall use production data from Seller's Computer Monitoring System to determine the amount of such inaccuracy.
- (ii) In the event that Seller's Computer Monitoring System is found to be inaccurate by more than two percent (2.0%), the Parties shall estimate the amount of the necessary adjustment using the Facility meteorological information for the period of the inaccuracy based upon deliveries of Energy Output from the Wind Turbines during periods of similar operating conditions when the Meter was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.
- (iii) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (1) the last one-half of the period from the last previous test of the Meter to the test that found the Meter to be defective or inaccurate, or (2) the 180-day period immediately preceding the test that found the Meter to be defective or inaccurate.
- (iv) To the extent that the adjustment period overlaps with a period of deliveries for which payment has already been made to Seller by BPA, BPA shall use the corrected measurements as determined in

accordance with this Section 5(c)(3) to recalculate the amount due for the period of the inaccuracy and shall subtract the previous payments by BPA for such period from such recalculated amount. If the difference is a positive number, the difference shall be paid by BPA to Seller; if the difference is a negative number, that difference shall be paid by Seller to BPA, or at BPA's discretion such difference may take the form of an offset to payments due Seller by BPA. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless BPA elects payment via an offset.

(4) **Reliability Standards**

Seller shall operate the Wind Turbines in a manner that complies with the operating requirements set forth in the Generation Interconnection Agreement.

(5) **Station Service**

Seller shall purchase all electricity to serve the electric loads of the Facility from a local supplier. Seller shall follow procedures established by the Transmission System Operator to measure the amount of electricity supplied by the local supplier.

(d) **Scheduling Requirement**

[REDACTED: CONTAINS CONFIDENTIAL COMMERCIAL INFORMATION]

(e) **Generation Imbalance Charges and Generation Imbalance Credits**

[REDACTED: CONTAINS CONFIDENTIAL COMMERCIAL INFORMATION]

6. Obligation to Sell and Purchase Energy Output; Wind Generation Benefits

(a) **Conditional Obligation to Purchase**

Seller shall achieve the Facility Completion Date by no later than September 30, 2002, or such later date permitted due to Force Majeure or any delay caused by Power Business Line. In any event, irrespective of Force Majeure, Seller shall achieve the Facility Completion Date no later than December 31, 2002. Breach of this Section 6(a) shall constitute an Event of Default as provided under Section 10(a)(1) and BPA may pursue any and all remedies available to it under this Agreement and at law or in equity, including those available pursuant to Section 10(d).

(b) **Sale and Purchase**

Beginning on the date when the first Wind Turbine delivers Energy Output, Seller shall supply from the Facility and sell to the Power Business Line, and the Power Business Line shall receive and purchase, the entire Energy Output of the Wind Turbines in accordance with the terms of this Agreement. Seller shall deliver the Energy Output to, and make such Energy Output available to the Power Business Line at, the Point of Delivery. To the extent the Facility is available to operate, all of its Energy Output shall be available for delivery and sale to the Power Business Line at the Point of Delivery and, except as provided in Section 5(d)(3) above and Section 6(d) below, shall be delivered and sold by Seller to the Power Business Line at the Point of Delivery, and the Power Business Line shall accept and purchase the entirety of the Energy Output made available by Seller at the Point of Delivery. Neither Party shall curtail or interrupt delivery, acceptance, sale and/or purchase of Energy Output for economic reasons.

(c) **Intentionally Omitted**

(d) **Exception**

BPA shall not be obligated to purchase Energy Output that cannot be received due to disruptions, breakdowns, electrical system failures and/or mechanical failures, maintenance or repair, including, for reasons of Force Majeure, to the BPA Interconnection Facilities and/or the Grid; provided that such inability to receive is not due, in whole or in part, to BPA's negligence, or its breach of, or default under, this Agreement, the Generation Interconnection Agreement or the Delivery Arrangements Agreement. Seller shall not be entitled to recover lost revenues for events covered in this Section 6(d) from BPA (other than as referred to in the proviso in the previous sentence).

(e) **Purchase and Sale of Wind Generation Benefits**

In consideration of the payment of Energy Payment Rate, Seller hereby transfers and sells to BPA all present and future right, title and interest of Seller in and to the Wind Generation Benefits, to the extent (i) Seller will have such right, title, and interest in and to such Wind Generation Benefits under applicable law, and (ii) such transfer and sale to BPA is not in violation of any applicable law at the time of such transfer and sale. Notwithstanding whether such Wind Generation Benefits are transferable to BPA under any applicable law, Seller covenants that it has not and will not transfer any portion of such right, title and interest in and to the Wind Generation Benefits to any third party. Seller shall take such action as may be necessary to transfer and evidence the transfer of the Wind Generation Benefits to BPA or its designee (provided that BPA shall be solely responsible for the marketing, sale and transfer of any such Wind Generation Benefits to third parties). Seller shall also cooperate with BPA's third-party sales of the Wind Generation Benefits as reasonably requested by and at the expense of BPA, and shall provide such information and permit such monitoring and verification with respect thereto as BPA shall reasonably request; provided that BPA shall reimburse Seller for any reasonable administrative and monitoring expenses with

respect to Wind Generation Benefits incurred by Seller in connection with a request by BPA in excess of any expenses that would have been incurred by Seller in the absence of such a request by BPA. Notwithstanding the foregoing, in no event shall Wind Generation Benefits include anything that Seller reasonably believes may expose Seller to liability or the threat of liability. Without limiting the generality of the preceding sentence, nothing herein shall constitute an assumption by Seller of any obligation that BPA may have as a purchaser and seller to third parties of the Wind Generation Benefits.

7. Payment for Energy Output

[REDACTED: CONTAINS CONFIDENTIAL COMMERCIAL INFORMATION]

8. Billing and Payment

(a) Billing Statement and Invoices

The monthly billing period shall be the calendar month. Statements and invoices shall be sent to the address specified in Section 12(a). Seller shall prepare separate invoices for Energy Output and Generation Imbalance Charges and Credits in the following manner:

- (1) Except as provided in Section 8(a)(2) with respect to payments to Seller by Power Business Line for Generation Imbalance Charges, no later than fifteen (15) calendar days after the end of each calendar month, Seller shall prepare, and provide to BPA, a statement showing Energy Output and an invoice for any amounts due from BPA to Seller under the terms of this Agreement, for the previous monthly billing period and any credits outstanding and owing BPA pursuant to Sections 5(e)(3) and 8(a)(2). The form of the invoice for Energy Output shall be as shown in Exhibit C.
- (2) Upon receipt of an invoice for Generation Imbalance Charges and Generation Imbalance Credits from the Transmission System Operator in accordance with the Generation Interconnection Agreement, Seller shall prepare a statement calculating the amount of Generation Imbalance Charges and Generation Imbalance Credits allocable to each Party in accordance with this Agreement and shall submit such statement to Power Business Line. If it is determined that any amounts are owed Seller by Power Business Line, then Seller shall also submit to Power Business Line an invoice along with a copy of such statement.

(b) Metered Billing Data

All billing data based on metered deliveries to BPA shall be collected by the Meters in accordance with Section 5(c)(2).

(c) **Payment Dates; Late Payments**

Payments due Seller or BPA (including, but not limited to, any payments due pursuant to Section 11(a), but excluding any reimbursement payments to Seller by Power Business Line for Generation Imbalance Charges pursuant to Section 5(e)(1)), as the case may be, shall be due and payable by electronic funds transfer, or by wire transfer, as designated by the owed Party, on or before the thirtieth (30th) calendar day following owing Party's receipt of owed Party's proper billing invoice. Notwithstanding anything to the contrary herein, payments to Seller by Power Business Line for Generation Imbalance Charges pursuant to Section 5(e)(1) shall be due and payable by electronic funds transfer, or by wire transfer, within ten (10) calendar days after the Power Business Line receives Seller's invoice and statement pursuant to Section 8(a)(2). If the amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next invoice. Such late payment charge shall be calculated based on an annual interest rate consistent with the Prompt Payment Act (31 U.S.C. §§ 3901-3909) and effective in the month in which the invoice is rendered.

(d) **Billing Disputes**

- (1) Either BPA or Seller may contest invoiced amounts if a reasonable basis exists therefore (a "Billing Dispute"). The contesting Party's representative shall notify in writing the representative of the other Party of a Billing Dispute within thirty (30) calendar days from the receipt of a disputed invoice rendered under Section 8.
- (2) Uncontested portions of invoiced amounts shall be paid on or before the due date or shall be subject to the late payment interest charges set forth above.

9. Operations and Maintenance

(a) **Conditions Precedent to Phase 1 Completion Date**

Seller shall advise BPA in writing when Seller believes that all of the Phase 1 Conditions Precedent have been or will shortly be completed. In so doing, Seller shall provide evidence reasonably requested by BPA of the satisfaction or occurrence of all Phase 1 Conditions Precedent. BPA shall use its best efforts to respond in writing within two (2) Business Days (but in any event shall respond within six (6) Business Days) of Seller's written notification either confirming to Seller that all of the Phase 1 Conditions Precedent have been satisfied or have occurred or stating with specificity those Phase 1 Conditions Precedent that BPA believes, in good faith, have not been satisfied or have not occurred. BPA's confirmation shall not be unreasonably withheld, delayed, or conditioned, and BPA's failure to respond within six (6) Business Days of Seller's written notification shall be deemed to constitute BPA's written confirmation to Seller of the satisfaction or occurrence of all Phase 1 Conditions Precedent. The

occurrence of each of the following shall be "Phase 1 Conditions Precedent" to the Phase 1 Completion Date:

- (1) Seller has certified to BPA in writing that all of the Phase 1 Wind Turbines in the Facility have achieved Commercial Operation and the Commercial Operation Date of each Phase 1 Wind Turbine.
- (2) Phase 1 is in compliance with the Generation Interconnection Agreement;
- (3) certificates of insurance coverages or insurance policies required by Section 16 have been obtained and submitted to BPA;
- (4) all construction and testing of the BPA Interconnection Facilities have been completed in accordance with the standards of the Generation Interconnection Agreement and Good Utility Industry Practices; and
- (5) Seller is in all material respects in compliance with the terms and conditions of this Agreement.

(b) **Conditions Precedent to Phase 2 Completion Date**

Seller shall advise BPA in writing when Seller believes that all of the Phase 2 Conditions Precedent have been or will shortly be completed. In so doing, Seller shall provide evidence reasonably requested by BPA of the satisfaction or occurrence of all Phase 2 Conditions Precedent. BPA shall use its best efforts to respond in writing within two (2) Business Days (but in any event shall respond within six (6) Business Days) of Seller's written notification either confirming to Seller that all of the Phase 2 Conditions Precedent have been satisfied or have occurred or stating with specificity those Phase 2 Conditions Precedent that BPA believes, in good faith, have not been satisfied or have not occurred. BPA's confirmation shall not be unreasonably withheld, delayed, or conditioned, and BPA's failure to respond within six (6) Business Days of Seller's written notification shall be deemed to constitute BPA's written confirmation to Seller of the satisfaction or occurrence of all Phase 2 Conditions Precedent. The occurrence of each of the following shall be "Phase 2 Conditions Precedent" to the Phase 2 Completion Date:

- (1) All of the Phase 1 Conditions Precedent have occurred.
- (2) Seller has certified to BPA in writing that all of the Phase 2 Wind Turbines in the Facility have achieved Commercial Operation and the Commercial Operation Date of each Phase 2 Wind Turbine.
- (3) the Facility is in compliance with the Generation Interconnection Agreement;
- (4) certificates of insurance coverages or insurance policies required by Section 16 have been obtained and submitted to BPA (inclusive of the Phase 2 Wind Turbines);
- (5) Seller is in all material respects in compliance with the terms and conditions of this Agreement; and

- (6) Seller has provided BPA with copies of all material land leases and major permits needed to construct and operate the Facility, provided that Seller may delete or remove confidential commercial terms contained therein.

(c) **Facility Operation and Reliability Standards**

Seller shall maintain the Facility in a manner that complies with the rules for safety and reliability set forth in the Generation Interconnection Agreement and Good Utility Industry Practice. Seller shall comply with all applicable local, state, and Federal laws, regulations, and ordinances, including, but not limited to, all applicable Federal, state, and local environmental laws and regulations presently in effect or which may be enacted during the Term. Seller shall staff, control, and operate the Facility consistent at all times with the Operating Procedures referenced below in this Section.

- (1) Seller shall provide a maintenance schedule for the Facility for the first year of operation at least thirty (30) days prior to the Facility Completion Date. Thereafter, Seller shall submit to BPA annual maintenance schedules no later than October 1 of each year that cover the next twelve (12) month period starting January 1 and ending December 31 and a long-term maintenance schedule that will encompass the immediately ensuing four (4) maintenance years. BPA shall provide written notice of any reasonable objections to the proposed annual maintenance schedule within ten (10) Business Days of receipt thereof, and failure to so object shall be deemed approval of the annual maintenance schedule. Seller shall furnish BPA with reasonable advance notice of any change in the annual maintenance schedule. Reasonable advance notice of any change in the annual maintenance schedule involving any shutdown of the entire Facility is as follows:

| <u>Scheduled Outage</u> | <u>Expected Duration</u> | <u>Advance Notice to BPA</u> |
|-------------------------|--------------------------|------------------------------|
|-------------------------|--------------------------|------------------------------|

- | | | |
|-----------------------------------|--|-------------------|
| (1) Less than 2 days | | at least 24 hours |
| (2) 2 to 5 days | | at least 7 days |
| (3) Major overhauls (over 5 days) | | at least 90 days |

- (2) Seller shall not schedule any planned maintenance outages for the entire Facility during any Business Day of an On-Peak Month without the prior written approval of BPA not to be unreasonably withheld, delayed or conditioned.

(d) **Operations Record**

[REDACTED: CONTAINS CONFIDENTIAL COMMERCIAL INFORMATION]

(e) **Monthly Reports**

Seller shall provide to BPA a monthly report, by no later than thirty (30) days after the end of each calendar month, with such information and in such form as BPA shall reasonably request, by electronic mail and in hard copy, regarding the operations of the Facility. Each monthly report shall include: all reporting information maintained in the operations record; data on the wind during the month, a comparison of the available wind energy compared to the actual wind energy generated during the month, and hourly output of the Wind Turbines. The monthly report shall also include an estimate of monthly output for the calendar year and such other information related to the operation of the Facility that BPA reasonably requests.

(f) **Operating Committee and Operating Procedures**

- (1) BPA and Seller shall each appoint one delegate and one alternate delegate to act on matters relating to the operation of the Facility under this Agreement. Such delegates shall constitute the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement.
- (2) The Operating Committee shall, acting reasonably, develop mutually agreeable written operating procedures ("Operating Procedures") in draft form no later than thirty (30) days prior to the expected Facility Completion Date. Operating Procedures shall include, but not be limited to: method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; operating and maintenance scheduling and reporting; operations log; and such other matters as may be mutually agreed upon by the Parties. The agreed upon Operating Procedures shall be provided and distributed within ninety (90) days following the Facility Completion Date.

(g) **Wind Data Collection and Usage**

Subject to the terms of this Section 9(g), Seller shall make available to EPRI all wind data collected by the anemometer located on meteorological tower No. 1 at the Facility. All such wind data shall be provided in electronic form whenever possible and shall be used by EPRI solely for purposes of analyzing the feasibility of, and preparing a process for, forecasting and scheduling short-term future deliveries of energy to be generated by the Facility. Each Party shall be entitled to use the results of the EPRI analysis and process; provided that such use shall be at such Party's own risk; and further provided that such analysis and process shall not affect the provisions of this Agreement or either Party's performance of its obligations hereunder. All wind data made available to EPRI shall remain the property of Seller and shall not be distributed to any other person or entity (including BPA) without the prior written consent of Seller. Seller shall have no obligation to provide wind data pursuant to this section until the Parties first enter

into a confidentiality agreement with EPRI on terms reasonably acceptable to both Seller and BPA.

10. Default and Termination

(a) Events of Default of Seller

- (1) The occurrence of any of the following shall constitute an immediate Event of Default and there shall be no opportunity to cure:
 - (i) Seller dissolution or liquidation;
 - (ii) Seller assignment of this Agreement or any of its rights under it for the benefit of creditors except as permitted under Sections 18(a) and 19;
 - (iii) Seller permanent abandonment or termination of construction and/or operation of the Facility;
 - (iv) Seller filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Seller voluntarily taking advantage of any such law or act by answer or otherwise; or
 - (v) Seller's failure to meet the Facility Completion Date as set forth in Section 6(a) (subject to the extensions of time available to Seller under Section 6(a)).
- (2) The occurrence of any of the following shall constitute an Event of Default of Seller unless Seller shall have cured the same within ninety (90) days after receipt by Seller of written notice thereof from BPA or if cure cannot be completed within such ninety (90) day period, Seller shall have commenced its cure of the same within such ninety (90) day period and shall have diligently pursued such cure until completed; provided, however, that such additional cure period shall not exceed ninety (90) days commencing from the expiration of the initial ninety (90) day cure period without an express written consent of BPA:
 - (i) Seller's assignment of this Agreement or any of Seller's rights under this Agreement or the sale or transfer of voting control of Seller or Seller's sale or other transfer of any material portion of its interest in the Facility without obtaining BPA's prior written consent pursuant to Section 18;
 - (ii) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any other affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within ninety (90) days of the date of such filing;

- (iii) After the Facility Completion Date, Seller tampering with or adjusting any Meter in ways not expressly permitted by Sections 5(c)(2) and 5(c)(3);
 - (iv) After the Facility Completion Date, the sale by Seller to a third party, or diversion by Seller for any use, of the Energy Output committed to BPA by Seller absent BPA's prior written consent to such diversion or use;
 - (v) After the Facility Completion Date, Seller's failure to maintain in effect any material agreements required to deliver the Energy Output to the Point of Delivery;
 - (vi) Commencing on the first (1st) anniversary of the Facility Completion Date, Seller's failure to use commercially reasonable efforts to obtain, for the Wind Turbines, an average Availability Factor greater than seventy-five percent (75%) in the immediately preceding twelve (12) consecutive months; provided that such failure is not the result of Force Majeure;
 - (vii) Seller's failure to timely acquire or maintain material permits needed to construct and operate the Facility;
 - (viii) Seller's failure to timely acquire or maintain material land rights needed to access, construct, and operate the Facility; or
 - (ix) Seller's failure to comply with any other material obligation under this Agreement.
- (3) Seller's failure to make any payment when required under this Agreement shall constitute an Event of Default of Seller unless (1) Seller shall have cured the same within thirty (30) days after receipt by Seller of written notice thereof from BPA or (2) Seller has filed in good faith a Billing Dispute with respect to such unpaid amounts and complied with Section 8(d).

(b) Lender Right to Cure Default of Seller

BPA will accept a cure to a Seller default performed by Senior Lender as set forth in Section 19 or as BPA otherwise agrees in writing with Senior Lender.

(c) Events of Default of BPA

- (1) The occurrence of any of the following shall constitute an immediate Event of Default of BPA without the opportunity to cure:
 - (i) BPA's dissolution or liquidation, provided that division of BPA into multiple entities shall not constitute dissolution or liquidation;
 - (ii) BPA's general assignment of this Agreement or any of its rights hereunder for the benefit of creditors; or

- (iii) BPA's filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any State, or BPA voluntarily taking advantage of any such law or act by answer or otherwise.
- (2) The following shall constitute Events of Default of BPA upon their occurrence unless cured within ninety (90) days after the receipt by BPA of written notice thereof from Seller or if cure cannot be completed within such ninety (90) day period, BPA shall have commenced its cure of the same within such ninety (90) day period and shall have diligently pursued such cure until completed; provided, however, that such additional cure period shall not exceed ninety (90) days commencing from the expiration of the initial ninety (90) day cure period without an express written consent of Seller:
- (i) BPA fails to purchase the entire Energy Output of the Wind Turbines in accordance with Section 6(b);
 - (ii) BPA defaults on any of its obligations under the Delivery Arrangements Agreement or the Generation Interconnection Agreement, and such default renders BPA or Transmission System Operator unable to receive the Energy Output at the Point of Delivery or affects Seller's right to be paid under this Agreement for delivery at the Point of Delivery for its Energy Output; provided, however, that Seller, in seeking remedies for such default by BPA, shall exhaust its remedies against Transmission System Operator available to Seller under the Generation Interconnection Agreement before enforcing any remedies against BPA under this Agreement;
 - (iii) BPA's assignment of this Agreement or any of BPA's rights under this Agreement without obtaining Seller's prior written consent pursuant to Section 18;
 - (iv) The filing of a case in bankruptcy or any proceeding under any other insolvency law against BPA that materially and adversely affects BPA's ability to perform its obligations hereunder; provided, however, that BPA does not obtain a stay or dismissal of the filing within the ninety (90) days of the date of such filing; or
 - (v) BPA's failure to comply with any other material obligation under this Agreement after receipt of notice thereof.
- (3) BPA's failure to make any payment when required under this Agreement shall constitute an Event of Default unless (1) BPA shall have cured the same within thirty (30) days after receipt by BPA of written notice thereof or (2) BPA has filed in good faith a Billing Dispute with respect to such unpaid amounts and complied with Section 8(d).

(d) **Termination for Cause**

In addition to any other right or remedy available at law or in equity or pursuant to this Agreement, including the right to seek damages for breach of this Agreement, the non-defaulting Party may, upon written notice to the other Party, terminate this Agreement if any one or more of the Events of Default described in this Section occur and are not cured within the time periods set forth herein. In the event of a termination by BPA due to an Event of Default under Section 10(a)(1)(v), neither Party shall have any further liability or obligation to the other Party with respect to this Agreement, except Seller shall, after receipt of a detailed, written itemization and description, reimburse BPA for reasonable and reasonably documented payments made by BPA pursuant to the Delivery Arrangements Agreement. Neither Party shall have the right to terminate this Agreement except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this Agreement. Except as expressly provided in this Agreement, all remedies in this Agreement shall survive termination or cancellation of this Agreement and are cumulative.

11. Termination for Convenience; Consequences of Appeal

(a) **Termination by BPA for Convenience**

Subject to the following provisions, BPA may provide notice of its intent to terminate this Agreement no earlier than on the fifth (5th) anniversary of the Facility Completion Date or thereafter by submitting such notice to Seller at least ninety (90) days prior to the actual date of termination. If a termination occurs under this Section 11(a), BPA shall pay Seller the amount specified in Exhibit D and, upon full and complete payment of such amount by BPA, Seller shall transfer to BPA or BPA's trustee all right, title, and interest in the Facility, including the Wind Turbines and all other major equipment and the wind leases, and the termination payment shall be understood to include all amounts necessary to pay off any and all debt financing associated with the Facility. Termination of this Agreement pursuant to this Section 11(a) shall relieve the Parties of all further obligations under this Agreement upon full and complete payment by BPA of all amounts due and owing pursuant to Section 11 and Exhibit D.

(b) **Consequences of Appeal of the EIS**

In the event that a legal challenge is filed in the Ninth Circuit Court of Appeals with respect to (1) the Record of Decision, (2) the final EIS with respect to this Agreement or the Facility, or (3) the execution of this Agreement by BPA (an "Appeal"), and, as a consequence of such Appeal, BPA is unable to perform its obligations under this Agreement during the time in which the Appeal is being adjudicated, then BPA shall be responsible for all financing, construction and operation costs and expenses associated with the Facility incurred during such period, including any principal, interest or fees payable by Seller with respect to any financing of the Facility, until such time as BPA is able to perform its obligations under this Agreement. Such costs and expenses shall be paid

according to the payment procedures described in Section 8. If such Appeal is upheld, and BPA does not have any other legal recourse to allow it to execute this Agreement with Seller, then Seller shall have the sole discretion to choose one of the following two options:

- (1) BPA shall pay to Seller the difference between the Facility Sale Price and the net amount recovered through the disposal and/or liquidation of the Facility assets; provided that BPA may alternatively elect to purchase all right, title, and interest in the Facility, including the Wind Turbines and all other major equipment and the wind leases for an amount equal to the Facility Sale Price, in which case, Seller shall cooperate in the transfer of such right, title, and interest to BPA or to any agent of BPA. Seller shall provide to the BPA documentation reasonably satisfactory to the BPA that evidences the amount of the Facility Sale Price, which documentation shall include, without limitation, a copy of any acquisition agreement(s) for the sale of the membership interest in Seller and any loan documentation evidencing the amount of any term financing relating to the Facility. Any payment pursuant to this Section 11(b)(1) shall be made in accordance with Section 8. In the event of the disposal and/or liquidation of the Facility assets, BPA shall be responsible for restoring the site to its original condition before the Facility was developed. The Parties shall use commercially reasonable efforts to cooperate with each other in order to maximize the value of any disposal and/or liquidation of the assets of the Facility under this Section 11(b)(1). After the obligations of the Parties under this Section 11(b)(1) have been discharged, the Parties shall have no further obligations under this Agreement and the Agreement shall terminate.
- (2) Upon receipt by BPA of written notice from Seller of Seller's intent to terminate pursuant to this section, this Agreement shall terminate, BPA shall reimburse Seller for Seller's Predevelopment Costs in accordance with Section 7 of the Predevelopment Agreement, and BPA shall have no further rights with respect to the Facility.

12. Contract Administration and Notices

(a) Notices

All notices, demands or other communications required from or given by a Party pursuant to this Agreement shall be provided to the other Party in accordance with the requirements set forth in this Section 12(a). All notices, demands or other communications required hereunder shall be given or made in writing and shall be delivered personally, sent by facsimile (fax), sent by a courier service, or mailed by registered or certified mail, postage prepaid to the Parties at the following addresses, or at such other address as may be designated by notice given pursuant hereto:

If to Seller: Condon Wind Power, LLC
c/o SeaWest WindPower, Inc.
1455 Frazee Road, Suite 900
San Diego, CA 92108
Attn: Senior Vice President – Project Transactions
Ph: (619) 293-3340
Fax: (619) 293-3347

Copies to: Condon Wind Power, LLC
c/o SeaWest WindPower, Inc., as Operator
1455 Frazee Road, Suite 900
San Diego, CA 92108
Attn: Vice President – Asset Management
Ph: (619) 293-3340
Fax: (619) 293-3347

If to BPA: Bonneville Power Administration
905 N.E. 11th Street (97232)
P.O. Box 3621
Portland, OR 97208-3621
Attn: Wind Project Manager – PT-5
Bulk Power Marketing
Phone: 503-230-4386
Fax: 503-230-3681

If to Senior Lender: To be provided by Seller

Notices given by hand, telegraphically transmitted, or sent by telecopy shall be deemed given the day so given, transmitted or sent. Notices mailed or sent by a courier service as provided herein shall be deemed given on the third Business Day following the date so mailed or on the date of actual receipt, whichever is earlier.

(b) **Representatives for Notice**

Each Party shall maintain a designated representative to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the Operating Committee, or a different person. Either Party may, by written notice to the other Party, pursuant to Section 12(a) above, change the representative or the address to which such notices and communications are to be sent.

(c) **Authority of Representatives**

The Parties' representatives designated in Section 12(b) above shall have authority to act for their respective principals in all technical or operational matters relating to performance of this Agreement and to attempt to resolve

disputes or potential disputes. However, they shall not have the authority to amend or modify any provision of this Agreement.

(d) **Operating Records**

Seller and BPA shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including such records as may be required by state or Federal regulatory authorities.

(e) **Billing and Payment Records**

To facilitate payment and verification, each Party shall keep all books and records necessary for billing and payments in accordance with the provisions of Section 8 and grant the other Party reasonable access to those records.

(f) **Examination of Records**

Each Party may examine the billing and operating records and data kept by the other Party relating to transactions under, and administration of, this Agreement at any time during the period for which the records are required to be maintained, upon reasonable request and during normal business hours.

13. Dispute Resolution

(a) **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 BPA 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.

(b) **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 13(a), 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 of the courts 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 affected 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.

(c) **Waiver of Jury Trial**

EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

(d) **Attorneys' Fees**

If any action at law or in equity is taken to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled, including fees and expenses on appeal.

14. Force Majeure

(a) **Definition of Force Majeure**

The term "Force Majeure," as used in this Agreement, means any act, event or circumstance beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, wind speeds in excess of safe working limits, or tornadoes; sabotage; vandalism beyond that which could reasonably be prevented by Seller; terrorism; war; riots; fire; explosion; severe cold or hot weather or snow or other extreme or severe weather conditions; blockage, insurrection, strike, slow down, or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group);

and requirements, actions or failures to act by Transmission System Operator, but only if such requirements, actions or failures to act prevent or delay performance; the adoption or change in any rule or regulation or judicial decision lawfully imposed by Federal, state, or local government bodies; inability, despite due diligence, to obtain required licenses, permits, or approvals for the construction and operation of the Facility under the terms of this Agreement (except as otherwise provided herein); and the mechanical or equipment breakdown of the Grid to the extent not caused by the Party claiming the Force Majeure. The term "Force Majeure" does not include any full or partial curtailment in the Energy Output that is caused by or arises from the act or acts of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such act or acts is or are itself or themselves excused by reason of Force Majeure or unless such third party is a Federal, state or local governmental body. The term "Force Majeure" does not include any full or partial curtailment in the Energy Output that is caused by or arises from a mechanical or equipment breakdown of the Facility, or fires, explosions, or other mishap or events or conditions attributable to normal wear and tear or flaws related to the Facility, unless caused by a Force Majeure event specifically listed in the first sentence of this Section 14(a).

(b) **Applicability of Force Majeure**

Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement due to conditions or events of Force Majeure (except that any and all obligations to pay money shall not be delayed or excused by conditions or events of Force Majeure).

In connection with a Force Majeure event:

- (1) the non-performing Party shall give the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- (2) the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure;
- (3) the non-performing Party shall proceed with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- (4) the non-performing Party shall provide written notice of its ability to resume performance of its obligations under this Agreement.

(c) **Limitations on Effect of Force Majeure**

In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated term. In the event of any delay or failure of performance caused by conditions or events of Force Majeure, which would otherwise constitute an Event of Default pursuant to Section 10, the cure provisions of Section 10 shall apply and the cure period shall be extended day-for-day for the duration of the Force Majeure event; provided

that such delay or failure shall become an Event of Default one (1) year from the date of notice provided for in Section 10. The other Party may, at any time following the end of such one-year period, terminate this Agreement upon written notice to the affected Party, without further obligation by the terminating Party except as to costs and unpaid balances incurred prior to the effective date of such termination. The other Party may, but shall not be obligated to, extend such one year period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

(d) Delays Attributable to BPA

Seller shall be excused from delays in meeting performance deadlines under this Agreement, on a day-for-day basis, for any delays attributable to BPA, including, without limitation, for BPA's negligence or omission, delays in BPA obtaining any required permits, consents, or approvals and agreements, including, without limitation, the Delivery Arrangements Agreement or the Generation Interconnection Agreement, from governmental authorities or third parties required for BPA to perform its obligations under this Agreement. Seller shall provide BPA with timely written notice that a delay allegedly attributable to BPA has occurred or is expected to occur. The notice shall specify the length of any extension to a performance deadline to which Seller feels entitled.

15. Representations and Warranties

(a) Seller's Representations and Warranties

Seller hereby represents and warrants that as of the date hereof:

- (1) Seller is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to perform its obligations under this Agreement in Oregon and in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.
- (2) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary corporate action of Seller, and BPA shall have received a certificate of Seller dated as of the date hereof attaching the resolutions of Seller authorizing the execution, delivery and performance of this Agreement and attesting to the authenticity of such resolutions and their validity and effectiveness as of the date hereof. The execution, delivery, and performance of its obligations under this Agreement by Seller do not and will not:
 - (i) require any consent or approval of Seller's members other than that which has been obtained and is in full force and effect;

- (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any charter documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;
 - (iii) result in a breach or constitute a default under Seller's charter documents, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or
 - (iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligation under this Agreement.
- (3) This Agreement is a valid and binding obligation of Seller.
 - (4) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.
 - (5) To its best knowledge, all approvals, authorizations, consents, or other action required by any governmental authority to authorize Seller's execution, delivery, and performance under this Agreement have been duly obtained and are in full force and effect.

(b) **BPA's Representations and Warranties**

BPA hereby represents and warrants the following:

- (1) BPA is authorized by Federal law, including the Northwest Power Act and other applicable laws, to dispose of electric power and benefits generated by wind energy facilities.
- (2) The execution, delivery and performance of BPA's obligations under this Agreement have been duly authorized by all necessary agency action. Seller shall have received a certificate of BPA dated as of the date hereof attaching a copy of a written delegation demonstrating that the BPA signatory to this Agreement has full authority to bind BPA hereunder and

such certificate shall attest to the authenticity of such delegation order and its validity and effectiveness as of the date hereof. The execution, delivery and performance of BPA's obligations under this Agreement do not and will not:

- (i) except as set forth in Section 11(b) require any further agency consent or approval;
 - (ii) to the knowledge of BPA, violate any provision of Federal law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to BPA, or conflict with or constitute a breach or default under any contract or agreement of any kind to which BPA is a party, the violation, conflict, or breach or default of which could have a material adverse effect on the ability of BPA to perform its obligations under this Agreement.
- (3) This Agreement is a valid and binding obligation of BPA.

16. Insurance and Indemnity

(a) Evidence of Insurance

- (1) During the construction of the Facility, Seller shall, at Seller's expense, maintain or cause to be maintained property damage insurance covering materials, equipment, and personal property at the Facility on an "all-risk" basis, for their full replacement value.
- (2) Commencing on the Facility Completion Date, Seller shall, at Seller's expense, maintain or cause to be maintained appropriate property and casualty loss insurance for the value of the Facility, and other appropriate insurance for the Facility in accordance with prudent wind industry practice, including as follows:
 - (i) Commercial General Liability covering bodily injury and property damage, boiler and machinery, products/completed operations, contractual and personal injury liability, with limits not less than \$5,000,000 combined single limit per occurrence;
 - (ii) All-risk property insurance including earthquake, tornado, and flood, subject to appropriate sublimits, covering physical loss or damage to all real and personal property located at the Facility.
- (3) The insurance shall acknowledge BPA, its officers, agents, employees, and successors in interest as additional insureds.
- (4) The insurance shall not affect Seller's liability under the indemnity provisions of this Agreement and shall not be terminated, expire nor be materially altered except on thirty (30) days prior written notice to BPA and with BPA's written approval, not to be unreasonably withheld.

- (5) As evidence that policies do in fact provide the required coverages and limits of insurance and are in full force and effect, Seller, and/or its contractor or representative, shall, no later than fourteen (14) days after the Effective Date and at least fourteen (14) days prior to the Facility Completion Date, furnish to BPA certificates of insurance as applicable.

(b) **Limitation on Liability**

Neither BPA nor Seller ("First Party") shall be liable, whether in warranty, tort or strict liability or under any legal or equitable theory whatsoever, to the other Party ("Second Party") for any injury or death to any person, or for any loss or damage to any property, caused by or arising out of any electric disturbance of the First Party's electric system, whether or not such electric disturbance resulted from the First Party's negligent act or omission. Each Second Party shall release the First Party from, and shall indemnify and hold harmless the First Party from, any such liability. As used in this Section, (1) the term "Party" means, in addition to such Party itself, its agents, directors, officers, contractors and employees; (2) the term "damage" means all damage, including consequential damage; and (3) the term "persons" means any person, including those not connected with either Party to this Agreement.

17. Regulatory Jurisdiction and Compliance

(a) **Governmental Jurisdiction and Regulatory Compliance**

Each Party shall at all times comply with all laws, ordinances, rules, and regulations applicable to it. As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

(b) **Provision of Support**

Seller shall make available, upon BPA's reasonable request, any personnel of Seller and any records relating to the Facility to the extent that BPA requires the same in order to fulfill any regulatory reporting requirements, or to assist BPA in litigation, including, but not limited to, proceedings before utility regulatory commissions. BPA shall make available, upon Seller's reasonable request, any personnel of BPA and any records relating to the Facility to the extent that Seller requires the same in order to fulfill any regulatory reporting requirements, or to assist Seller in litigation, including, but not limited to, proceedings before utility regulatory commissions.

18. Assignment and Other Transfer Restrictions

(a) **No Assignment Without Consent**

This Agreement shall be binding upon and inure to the benefit of, or may be performed by, the successors and assigns of the Parties. No Party may assign or

otherwise transfer its rights or obligations under this Agreement unless it has obtained the prior written consent of the other Party. Seller may assign and/or delegate, or transfer or permit the transfer of all or any portion of its interests in the Facility or this Agreement, to any person or entity after obtaining the prior written consent of BPA, which shall not be unreasonably withheld, delayed or conditioned; provided that such other person or entity assumes, or is otherwise bound to perform, all of Seller's obligations under this Agreement. No assignment, delegation, pledge, or transfer shall relieve or release Seller to any extent of any of its pre-transfer obligations under this Agreement. No assignment, pledge, or other transfer of this Agreement by any Party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Agreement unless consent to the release, which shall not be unreasonably withheld, delayed or conditioned, is given in writing by the other Party.

(b) **Liability for Subcontracting**

Seller may subcontract any of its duties or obligations under this Agreement without the prior written consent of BPA; provided that such subcontracting is to a person who is objectively qualified to perform the subcontracted duties or obligations and provided that, in any event, no such subcontract shall relieve Seller of any of its obligations hereunder. Seller shall notify BPA of any such material subcontracts except for those subcontracts that relate to the construction of the Facility.

19. Protections for Senior Lender

Notwithstanding the provisions of Section 10, Senior Lender, for so long as any indebtedness or other obligation of Seller to Senior Lender is outstanding or unsatisfied and Senior Lender has a security interest in this Agreement, shall be entitled to the following protections.

(a) **Right to Assign, Right to Enforce and Right to Foreclose.**

Senior Lender shall have the absolute right:

- (1) to assign its security interest in this Agreement;
- (2) to enforce its lien by any lawful means;
- (3) to foreclose its security interest on the Facility and this Agreement and to take possession of and operate the Facility or any portion thereof and to perform all obligations to be performed by Seller hereunder or to cause a receiver to be appointed to do so (provided that Senior Lender or, if applicable, such receiver has, at the time possession, cured any Events of Default of Seller pursuant to Section 19(b); and further provided that Senior Lender's choice of such receiver shall be reasonably satisfactory to BPA); and
- (4) to acquire Seller's interest in this Agreement by an assignment in lieu of foreclosure and thereafter to assign or transfer, consistent with Section 18,

such interest in the Agreement to a third party in connection with any sale of the Facility (provided that Senior Lender has, at the time possession, cured any Events of Default of Seller pursuant to Section 19(b)).

(b) Notice of Default and Opportunity to Cure; Obligations of Senior Lender.

As a condition to exercising any rights or remedies as a result of any alleged default by Seller, BPA shall give written notice of the default to Senior Lender concurrently with delivery of such notice to Seller in respect of Section 10(a)(1), specifying in detail the alleged event of default and the required remedy. If BPA gives such a written notice of default, the following provisions shall apply:

- (1) Senior Lender shall have the same period after receipt of notice of default to remedy the default, or to cause the same to be remedied, as is given to Seller after Seller's receipt of notice of default, plus an additional thirty (30) days (ten (10) days in the case of monetary defaults); provided that such thirty (30) day period for non-monetary defaults (including any default under Section 10(a)(1)) only shall be extended for the time reasonably required for Senior Lender to take possession of the Facility (including possession by a receiver that has been approved by BPA), if possession of the Facility is required for such cure by Senior Lender, and provided further that Senior Lender acts with reasonable and continuous diligence to obtain possession of the Facility and, thereafter, complete such cure. In no event, however, shall the time available to Senior Lender to cure a Seller non-monetary default exceed one hundred eighty (180) days from the date of default. Senior Lender shall have the absolute right to substitute itself for Seller under the Agreement and perform the duties and obligations of Seller hereunder for purposes of curing such defaults. BPA expressly consents to such substitution, and agrees to accept such performance. BPA shall not terminate the Agreement prior to expiration of the cure periods available to Senior Lender as set forth in this Section 19(b)(1).
- (2) During any period of possession of the Facility by Senior Lender (or a receiver requested by Senior Lender and approved by BPA) and/or during the pendency of any foreclosure proceedings instituted by Senior Lender, Senior Lender or such receiver shall perform or cause to be performed all duties and obligations of Seller under this Agreement. Following acquisition of Seller's interest in the Agreement by Senior Lender or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, the Agreement shall continue in full force and effect and Senior Lender or party acquiring title to Seller's interest in the Agreement shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently proceed with such cure until such default is cured within the cure periods set forth in Section 10(a)(2), whereupon BPA's right to terminate this Agreement based upon such defaults shall be deemed to have been withdrawn; provided, however, Senior Lender or

party acquiring title to Seller's interest in the Agreement shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party and which are no longer material to BPA, in BPA's reasonable discretion ("Non-Curable Defaults"). Upon request, BPA shall identify in writing any such Non-Curable Defaults prior to completion of foreclosure proceedings or acquisition of Seller's interest in the Agreement by such party and any immaterial Non-Curable Defaults so identified by BPA shall be deemed waived upon said identification.

- (3) Senior Lender or any other party who acquires Seller's interest in the Agreement pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Seller by this Agreement incurred or accruing after such party no longer has an interest in the Agreement if the party that acquired Senior Lender's position has agreed in writing to perform all of Seller's duties and obligations under this Agreement and BPA has consented to assignment of the interest to such other party under subsection 18(a).
- (4) Notwithstanding any other provision of this Section 19, Senior Lender shall not be entitled to acquire Seller's interest in this Agreement, unless it has given BPA prior written notice during the thirty (30) day cure period referred to in Section 19(b)(1) in which it or its designee or assignee agrees to perform such duties and obligations of Seller hereunder arising after such notice. It is further agreed that delivery of such notice and performance of such duties and obligations will be with respect to Senior Lender or its designee or assignee a cure of a default under Section 10(a)(1)(i) through 10(a)(1)(iv) or 10(a)(2)(ii). In addition, without delivery of such notice, or incurring any duties or obligations under this Agreement, Senior Lender may perform any such duties and obligations on behalf of Seller during the cure periods referred to in Section 19(b)(1).
- (5) Nothing herein shall be construed to extend the Agreement beyond its Term or to require Senior Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and Senior Lender discontinues foreclosure proceedings, the Agreement shall continue in full force and effect.
- (6) If this Agreement is rejected or terminated as a result of any bankruptcy or insolvency proceeding involving Seller or for any reason other than a default subject to the cure periods available to Seller under this Agreement or the additional cure periods available to Senior Lender under Section 19(b)(1) that Seller or Senior Lender failed to timely cure within said applicable cure periods for any reason, Senior Lender or its designee or assignee may, within thirty (30) days after such rejection or termination, certify in writing to BPA that it intends to perform and is capable of performing the obligations of Seller arising after the date of such certification as and to the extent required under this Agreement. Provided

that BPA has been reimbursed by any person for all amounts due and payable by Seller to BPA under this Agreement (except to the extent that such amounts are due and payable for prospective damages to BPA directly resulting from the rejection or termination of this Agreement in any bankruptcy or insolvency proceeding), BPA shall execute and deliver to Senior Lender or its designee or assignee a new power purchase agreement (a "Replacement Agreement") which shall be for the balance of the remaining Term under such rejected Agreement. The Replacement Agreement shall contain the same conditions, agreements, terms, provisions and limitations as the original Agreement (except for any requirements which have been fulfilled by Seller and BPA prior to such rejection or termination), and except that in the Replacement Agreement Senior Lender or its designee or assignee will be substituted for instances where "Seller" is referenced in this Agreement. Upon the execution and delivery of such Replacement Agreement by Senior Lender in its capacity as Seller under such Replacement Agreement, none of the provisions of this Section 19 shall apply to such Senior Lender. Nothing in this Agreement shall prevent BPA from filing a proof of claim in any such bankruptcy or insolvency proceeding.

- (7) If Senior Lender or its designee(s), or any purchaser, transferee, grantee or assignee of the interests of Senior Lender or its designee(s) in the Facility assume or become liable under the Agreement, liability for any and all obligations of any such party under the Agreement shall be limited solely to recourse against such party and such party's interest in the Facility.

(c) Senior Lender's Consent to Amendment and Termination.

Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as there exists an unpaid or unsatisfied indebtedness or obligation owed to Senior Lender, without the prior written consent of Senior Lender, not to be unreasonably withheld (a) this Agreement shall not be materially modified or amended, and (b) BPA shall not accept a termination or cancellation of this Agreement from Seller prior to expiration of the Term unless BPA has received a notice from Seller containing Senior Lender's written consent to such termination or cancellation. This provision is for the express benefit of, and shall be enforceable by, Senior Lender. Nothing in this Section 19(c) is intended to affect BPA's rights or remedies, including its right to terminate this Agreement, upon a Seller Event of Default as provided in Section 10, or as otherwise expressly permitted under this Agreement.

(d) Further Amendments.

At Seller's request, BPA shall amend this Agreement to include any provision which may reasonably be requested by Senior Lender; provided, however, that such amendment does not, in BPA's sole judgment, impair any of BPA's rights under this Agreement or increase the burdens or obligations of BPA hereunder or decrease the burdens or obligations of Seller hereunder. Upon the request of

Senior Lender, BPA shall provide written acknowledgement evidencing Senior Lender's then existing rights under this Agreement, as interpreted by BPA.

20. Confidential Information

(a) Availability

The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Facility (collectively, "Information") which they consider confidential and proprietary. Notwithstanding the confidential and proprietary nature of such Information, BPA and Seller (each, the "Disclosing Party") may make this Information available to the other (each, a "Receiving Party") subject to the provisions of this section.

(b) Designation

At the time of furnishing or making available for inspection such confidential or proprietary Information, the Disclosing Party shall expressly designate by label, stamp, or orally communicate (to be confirmed in writing) the Information which it considers to be confidential and/or proprietary.

(c) Obligations

The Receiving Party's obligations with respect to the use or disclosure of such Information thereafter will be as set forth in this section.

(d) Conditions and Restrictions

Upon receiving or learning of Information designated as confidential and/or proprietary by the Disclosing Party, the Receiving Party shall:

- (1) treat such Information as confidential and use reasonable care not to divulge such Information to any third party except as required by law, subject to the restrictions set forth below;
- (2) restrict access to such Information to employees (and others who agree to be bound by this Agreement) whose access is reasonably necessary in developing the Facility and for the purposes of this Agreement;
- (3) use such Information solely for the purpose of developing the Facility and for the purposes of this Agreement; and
- (4) upon the termination of this Agreement, destroy or return any such Information in written or other tangible form and any copies thereof, if asked to do so in writing by the Disclosing Party.

(e) Exceptions

The restrictions in this section do not apply to:

- (1) the contents of this Agreement, which becomes a public document upon execution;

- (2) information which is, or becomes, publicly known or available otherwise than through the action of the Receiving Party in violation of this Agreement;
- (3) information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or is independently developed by the Receiving Party; provided that the person or persons developing same have not had access to such Information; or
- (4) information which is, in the reasonable written opinion of counsel to the Receiving Party, required to be disclosed pursuant to applicable law or regulation (including any Freedom of Information Act request); provided, however, that the Receiving Party, prior to such disclosure, shall provide reasonable advance notice to the Disclosing Party of the time and scope of the intended disclosure in order to permit the Disclosing Party opportunity to obtain a protective order or otherwise seek to prevent or limit the scope or otherwise impose conditions upon such disclosure.

(f) **Term of Obligations**

The obligations of the Parties under this section shall remain in full force and effect for two (2) years following the termination of this Agreement.

21. FERC Regulatory Matters

Seller shall make such filings with FERC as are required by applicable law or regulation; Seller and BPA shall both make best efforts to have FERC promptly accept or approve jurisdictional provisions of this Agreement without change, modification or condition. Seller and BPA agree that their respective unilateral rights and obligations regarding the arrangements described in this Agreement should be governed by the terms of this Agreement and to the fullest extent permitted by applicable law and regulation, both Seller and BPA waive their respective unilateral rights to seek, request or accept any changes, modifications or conditions to the rates or other material terms and conditions in this Agreement under any provisions of the Federal Power Act specifically, including, but not limited to, Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 824e.

22. Miscellaneous

(a) **Waiver**

The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

(b) **Taxes**

Seller shall be responsible for any and all present or future Federal, state, municipal, or other lawful taxes applicable by reason of the ownership and operation of the Facility and the sale of energy under this Agreement and all ad valorem taxes relating to the Facility and any portion of the Project Interconnection Facilities.

(c) **Disclaimer of Third Party Beneficiary Rights**

In executing this Agreement, BPA does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this Agreement.

(d) **Relationship of the Parties**

This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to its employment of persons, including all Federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by either Party shall be considered employees of the other Party for any purpose; nor shall either Party permit any of its employees to represent to any person that he or she is or shall become an employee of the other Party.

(e) **Survival of Obligations**

Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, including, without limitation, warranties, remedies, or indemnities.

(f) **Severability**

In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in force and effect, provided that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

(g) **Interpretation**

Unless the context of this Agreement otherwise requires, (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement including Exhibits; (d) the terms “Section” or “Exhibit” refer to the specified Section or Exhibit of this Agreement; and (e) any reference to the entirety or any part of this Agreement shall refer to any amendment, supplement or replacement of the same. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

(h) **Complete Agreement; Amendments**

The terms and provisions contained in this Agreement and referenced documents constitute the entire Agreement between BPA and Seller and shall supersede all previous communications, representations, or agreements, either verbal or written, between BPA and Seller with respect to the sale of Energy Output from the Facility. This Agreement may be amended, changed, modified, or altered; provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto.

(i) **Binding Effect**

This Agreement, as it may be amended from time to time pursuant to this Section, shall be binding upon and inure to the benefit of the Parties’ respective successors-in-interest, legal representatives, and assigns.

(j) **Headings**

Captions and headings used in the Agreement are for ease of reference only and do not constitute a part of this Agreement.

(k) **Counterparts**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

(l) **Choice of Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon (without reference to choice of law doctrine), except to the extent the Parties’ rights and obligations are required to be governed by United States Federal law, then such rights and obligations shall be governed by United States Federal law.

(m) **Equal Employment Opportunity Compliance Certification**

Seller acknowledges that BPA is subject to various Federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. Only to the extent that such Federal laws, executive orders and regulations are applicable to Seller as a vendor to BPA due to the sale of Energy Output under

the terms of this Agreement and are required by law to be incorporated herein, such Federal laws, executive orders and regulations, including, but not limited to, 41 C.F.R. § 60-1.4(a)(1-7), are incorporated by reference into this Agreement.

(n) **BPA Restructuring Event; Further Assurances**

The Parties understand and acknowledge that, although Power Business Line and Transmission System Operator have been allocated certain rights and obligations under this Agreement, each of Power Business Line and Transmission System Operator is a division of BPA as of the Effective Date and, for purposes of this Agreement, references to each of Power Business Line and Transmission System Operator shall mean, and be a reference to, BPA. The Parties further understand and acknowledge that BPA may elect in the future to perform a reorganization of BPA and its various divisions, including any sale, disposition, divestiture, transfer, restructuring, reorganization or other event that could result in the creation of affiliates or other third-parties to carry on the activities currently performed by BPA's various divisions (including Power Business Line or Transmission System Operator) (any such event, a "BPA Restructuring Event"). BPA shall so notify Seller at least sixty (60) days prior to any such BPA Restructuring Event. Upon delivery of a notice of such BPA Restructuring Event, the Parties shall diligently cooperate in good faith to execute and deliver, or cause to be executed and delivered, as soon as reasonably possible following the occurrence of such BPA Restructuring Event, (i) any amendments, modifications or supplements to this Agreement, the Generation Interconnection Agreement and the Delivery Arrangements Agreement (including the Transmission and Transportation Agreement), as applicable, or (ii) any additional or substitute agreements or instruments reasonably acceptable to Seller, in each case as is necessary or required by Seller to further evidence, confirm or effectuate the transactions contemplated in this Agreement, the Generation Interconnection Agreement and the Delivery Arrangements Agreement (including the Transmission and Transportation Agreement), as applicable. The Parties shall take such further actions as are necessary or required under this Section 22(n). Nothing in this Section 22(n) and no amendment, modification, agreement or instrument executed and delivered pursuant to this Section 22(n) shall relieve either Party of any of its obligations and responsibilities under, or in connection with, this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

Condon Wind Power, LLC
a Delaware limited liability company

By: SeaWest WindPower, Inc.,
its sole member

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By: /S/ STEVEN M. THOMPSON
Steven M. Thompson
Senior Vice President

By: /S/ STEPHEN R. OLIVER
Stephen R. Oliver
Vice President, Bulk Power Marketing &
Transmission Services 11/07/01

EXHIBIT A

Facility Description and Map

The Facility is known as the Condon Wind Power Project and is located in Gilliam County, Oregon.

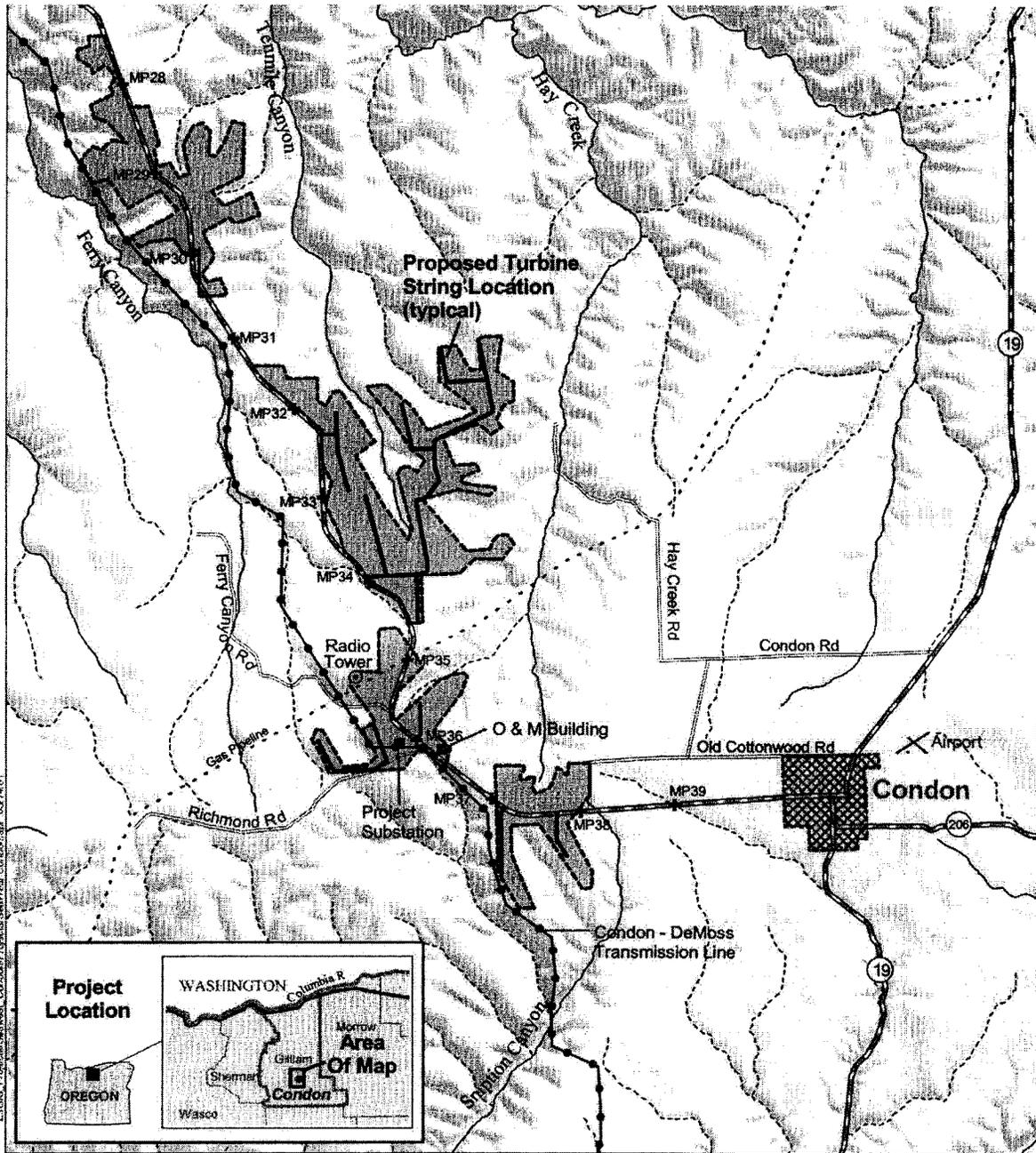
Seller Owned Property:

- (1) Wind Turbines
- (2) Project Interconnection Facilities, including;
 - Facility Substation
 - Facility Transmission Line

BPA Owned Property:

- (1) BPA Interconnection Facilities
- (2) BPA Meter (Located in Seller's control house in the Facility Substation)

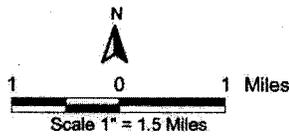
The following site map indicates the location and layout of the Wind Turbines. The following diagram shows the location of Meters, the Point of Delivery, and other equipment installed at Project Interconnection Facilities and/or the BPA Interconnection Facilities.



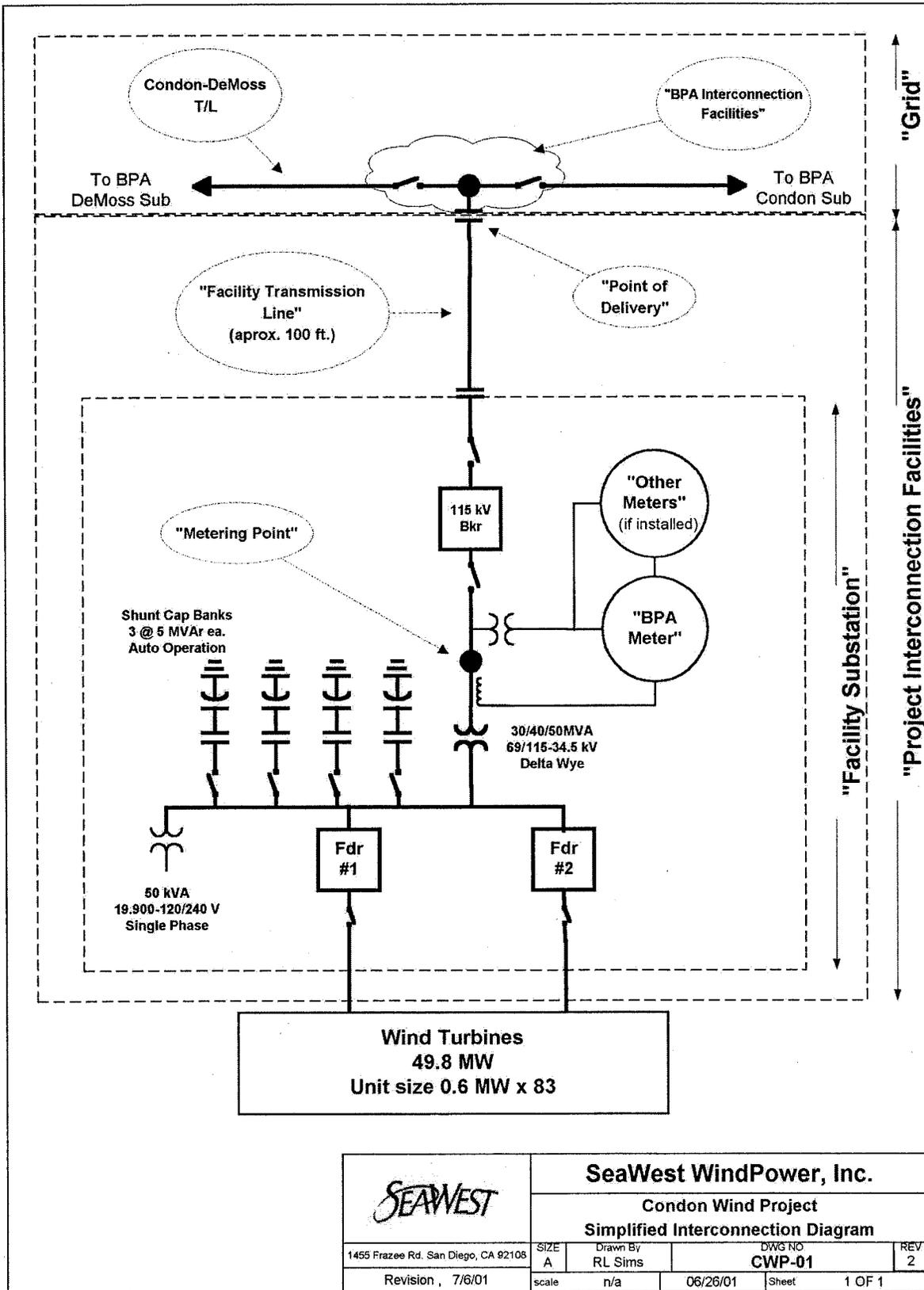
Source: Shaded Relief Image - BPA, 2000; Project Site - Seawest, 2000.

Legend

-  Study Area
-  Project Site/Turbine String/Access Road
-  Highway with Milepost
-  Stream
-  Existing Transmission Line
-  Gas Pipeline



Project Site and Study Area Location



| | | | | |
|-------------------------------------|---|---------------------|-------------------------|--------------|
| <i>SEAWEST</i> | SeaWest WindPower, Inc. | | | |
| | Condon Wind Project Simplified Interconnection Diagram | | | |
| 1455 Frazee Rd. San Diego, CA 92108 | SIZE A | Drawn By RL Sims | DWG NO CWP-01 | REV 2 |
| Revision, 7/6/01 | scale | n/a | 06/26/01 | Sheet 1 OF 1 |

EXHIBIT B
INTENTIONALLY OMITTED

EXHIBIT C
Form of Invoice

Condon Wind Power, LLC
1455 Frazee Road, Suite 900
San Diego, CA 92108

Invoice Date: 0/00/00

Invoice #: _____
Customer ID: _____
Contract #: _____

Wind Project Manager - PT-5
Bonneville Power Administration
Bulk Power Marketing
P.O. Box 3621
Portland, OR 97208-3621

Page: ____ of ____

PERIOD: April 1, 2002 through April 30, 2002

Due Upon Receipt

| | Qty | Unit Desc. | Unit Price | Amount |
|---|-----|------------|------------|--------|
| Energy Output | | MWh | | |
| BPA share of Generation Imbalance Charges | | MWh | | |

Total Invoice: \$ _____

EXHIBIT D
Termination Payment Schedule
[REDACTED: CONTAINS CONFIDENTIAL INFORMATION]

EXHIBIT E
Power Curve

Power Curve – MWT-600 (Rotor Extended, Dual Control)

Air density 1.13 kg/m³

| Wind Speed at Hub Height (m/s) | Power Output (kW) |
|---|------------------------------|
| 3.0 | 0 |
| 4.0 | 21 |
| 5.0 | 46 |
| 6.0 | 82 |
| 7.0 | 128 |
| 8.0 | 195 |
| 9.0 | 285 |
| 10.0 | 380 |
| 11.0 | 479 |
| 12.0 | 576 |
| 13.0 | 600 |
| 14.0 | 600 |
| 15.0 | 600 |
| 16.0 | 600 |
| 17.0 | 600 |
| 18.0 | 600 |
| 19.0 | 600 |
| 20.0 | 600 |
| 21.0 | 600 |
| 22.0 | 600 |
| 23.0 | 600 |
| 24.0 | 600 |
| 25.0 | 600 |
| > 25.0 | 0 |

- The above data assumes, and is only valid for, the indicated 10-minute average wind speed.
- The power output is stated net of electrical losses and consumption that occur within the Wind Turbine.
- The above data assumes, and is only valid for, airflow turbulence not greater than 10% on average during the 10-minute average wind speed period.

GENERATION INTERCONNECTION AGREEMENT

executed by the

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

CONDON WIND POWER, LLC

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| Exhibit E | Control Area Services |

This GENERATION INTERCONNECTION AGREEMENT (Agreement) is executed December 21, 2001, (Effective Date) by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (Bonneville), and CONDON WIND POWER, LLC (Customer), (hereinafter collectively referred to as "Parties" and individually as "Party").

RECITALS

The Parties desire to interconnect Customer's 49.8 MW nominally-rated generator facility (Project) with the Federal Columbia River Transmission System (FCRTS).

The Parties intend to enter into a Construction and Operation and Maintenance Agreement, Contract No. 01TX-10480, effective as of the Effective Date.

Bonneville has administratively divided its organization into two business lines in order to functionally separate the administration and decisionmaking activities of Bonneville's transmission business from the administration and decisionmaking activities of Bonneville's power business. For the purpose of establishing which Bonneville business line is responsible for the administration of this Agreement, references in this Agreement to Bonneville are to the Transmission Business Line.

NOW THEREFORE, the Parties agree to the following:

1. **PURPOSE OF AGREEMENT**

The purpose of this Agreement is to provide for the interconnection of the Project with the FCRTS and operation of the Project in the Bonneville Control Area and to maintain the reliability of the FCRTS and interconnected systems through Customer's commitment to comply with reliability standards set forth in this Agreement and the agreements and documents incorporated herein.

Each Party shall design, construct, operate, maintain and use its electric facilities in conformance with Good Utility Practice to:

- (a) minimize Electric Disturbances which may interfere with the electric system or facilities of the other Party or any electric system or facilities connected to such other Party's electric system or facilities; and
- (b) minimize the effect of Electric Disturbances on its electric system or facilities and on the electric system or facilities connected to its electric system or facilities, whether such Electric Disturbances originate in its own or another entity's electric system or facilities.

Handwritten initials/signature

2. DEFINITIONS

- (a) "Bonneville's Technical Requirements" means Bonneville's Technical Requirements for the Interconnection of Generation Resources, dated April 1999, as such may be amended or replaced from time to time.
- (b) "Control Area" has the same meaning as contained in the WSCC Reliability Criteria Agreement.
- (c) "Dispatch" means the control centers that monitor and control the FCRTS.
- (d) "Electric Disturbance" means any sudden, unexpected, changed, or abnormal electric condition occurring in or on an electric system or facilities.
- (e) "Financing Party" means the lender, institution and/or other entity providing construction and/or term financing or refinancing to Customer, as Customer will designate from time to time in a written notice to Bonneville identifying such Financing Party and providing a mailing address and facsimile number with respect thereto.
- (f) "Force Majeure" means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any curtailment, order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, or any other cause beyond a Party's control.
- (g) "Generator" has the same meaning as contained in the WSCC Reliability Criteria Agreement.
- (h) "Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the WSCC area during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region and, with respect to Bonneville's actions pursuant to this Agreement, consistently adhered to by Bonneville.
- (i) "Interconnection Facilities" means all of the protective relay, control facilities and other equipment described in the Construction and Operation and Maintenance Agreement, Contract No. 01TX-10480 which interconnect the Project with the FCRTS at Bonneville's 69 kV Fossil - DeMoss transmission line, as the same may be replaced, improved, or upgraded from time to time.

- (j) "Interconnection Facilities Commercial Operation Date" means the date on which, as indicated in written notice from Bonneville to Customer, the Interconnection Facilities are operating as part of the FCRTS.
- (k) "Member" means any party to the WSCC Agreement.
- (l) "Output Purchaser" means the entity that takes delivery of power generated by the Project at the Point of Interconnection and makes arrangements for the transmission of such power over the FCRTS.
- (m) "Point of Interconnection" means the point where the electrical facilities of the Project interconnect with the FCRTS. The Point of Interconnection is more fully described in Exhibit A.
- (n) "Project Commercial Operation Date" means the date on which, as indicated in written notice from Customer to Bonneville, the Project is available for and capable of continuous operation on a commercial basis.
- (o) "Remedial Action Scheme" or "RAS" has the same meaning as contained in Bonneville's Technical Requirements.
- (p) "RTO" means a regional transmission organization that has operational control of the FCRTS and is approved by the FERC.
- (q) "Tariff" means Bonneville's Open Access Transmission Tariff, as such may be amended or replaced from time to time.
- (r) "WSCC" means the Western Systems Coordinating Council or its successor.
- (s) "WSCC Agreement" means the Western Systems Coordinating Council Agreement dated March 20, 1967, as such may be amended or replaced from time to time.
- (t) "WSCC Reliability Criteria Agreement" means the Western Systems Coordinating Council Reliability Criteria Agreement dated June 18, 1999, among the WSCC and certain of its Member transmission operators, as such may be amended or replaced from time to time.
- (u) "WSCC RMS Agreement" means the Reliability Management System Agreement by and between the WSCC and Bonneville, dated June 18, 1999, as such may be amended or replaced from time to time.

3. **TERM AND TERMINATION**

(a) **Term**

This Agreement shall become effective at 2400 hours on the date of execution by both Parties and shall continue in effect until terminated in accordance with section 3(b) or (c) of this Agreement.

(b) **Termination by Customer**

Customer may terminate this Agreement on sixty (60) days' prior written notice to Bonneville if Customer voluntarily disconnects the Project from the FCRTS. In such case, Customer may not reconnect the Project to the FCRTS unless it executes a replacement generation interconnection agreement in identical form and substance or in such form and substance as agreed by the Parties.

(c) **Termination by Bonneville**

Bonneville may terminate this Agreement upon thirty (30) days' prior written notice to Customer if:

- (1) Customer terminates its obligations under section 5, and the Parties fail to enter into an amendment to this Agreement pursuant to section 5(e) by the date Customer's obligations under section 5 terminate,
- (2) the Project is disconnected from the FCRTS for a continuous period of two years following the Project Commercial Operation Date as a result of either Bonneville exercising its right to suspend the interconnection of the Project with the FCRTS pursuant to section 6(e) or Customer voluntarily disconnecting the Project from the FCRTS but failing to terminate this Agreement, or
- (3) the Project Commercial Operation Date does not occur within two (2) years after the Interconnection Facilities Commercial Operation Date; provided that such period shall be extended for a length of time equal to the time that Customer is unable to undertake or complete the necessary steps to achieve commercial operation because of event(s) of Force Majeure.

4. **EXHIBITS, RELATED AGREEMENTS, AND DOCUMENTS INCORPORATED BY REFERENCE**

(a) Exhibits A through E are attached to and made a part of this Agreement. In addition, the following agreements and documents are incorporated into this Agreement by reference to the extent they apply:

- (1) The Tariff.

- (2) Bonneville's applicable rate schedules and General Rate Schedule Provisions, as such may be amended or replaced from time to time.
 - (3) Bonneville's Technical Requirements.
 - (4) The WSCC Reliability Criteria Agreement.
- (b) Current versions of items (a)(1) through (a)(4) shall be provided by Bonneville to Customer upon request. In the event of an amendment to the document listed in section (a)(3), Customer shall be bound by such amendment, to the extent that such amendment applies to Customer, upon receipt of a copy of the amended document from Bonneville. In the event of an amendment to a document listed in sections (a)(1), (a)(2), or (a)(4), Customer shall be bound by such amendment, to the extent that such amendment applies to Customer as of the effective date of the amendment.
- (c) In the case of a conflict between this Agreement and any of the agreements or documents listed in sections (a)(1) through (a)(4), which conflict exists as of the effective date of this Agreement, the terms of this Agreement shall prevail. In the case of a conflict between this Agreement and any of the agreements or documents listed in sections (a)(1) through (a)(4), which conflict arises after the effective date of this Agreement by reason of an amendment to or replacement of such agreement or document, the terms of such agreement or document shall prevail.

5. COMPLIANCE WITH WSCC RELIABILITY CRITERIA

- (a) **Compliance**
Customer shall comply with the provisions of the WSCC Reliability Criteria Agreement that are applicable to asynchronous generators. Customer shall for all purposes be considered a Participant as defined in the WSCC Reliability Criteria Agreement, and shall be entitled to all of the rights and privileges and be subject to all of the obligations of a generator that is a Participant to that agreement, including but not limited to the rights, privileges and obligations set forth in Sections 5 (Determination of Compliance), 6 (Review of RCC Determination), and 10 (Remedies) of the WSCC Reliability Criteria Agreement.
- (b) **Payment of Sanctions**
Customer shall be responsible for payment of any monetary sanction assessed against Customer by WSCC pursuant to the WSCC Reliability Criteria Agreement. Any such payment shall be made pursuant to the procedures specified in the WSCC Reliability Criteria Agreement.
- (c) **WSCC Remedy**
Bonneville and Customer expressly intend that WSCC is a third-party beneficiary to this Agreement for purposes of this section 5. The WSCC shall

LR
RR

have the right to seek to enforce against Customer any provision of this section 5, provided that specific performance shall be the sole remedy available to the WSCC for enforcement of the provisions of this section 5 (other than payment of sanctions to the WSCC).

(d) **Termination**

Customer may terminate its obligations under this section 5 (other than its obligations under section 5(e)):

- (1) if after the effective date of this Agreement, the requirements of the WSCC Reliability Criteria Agreement applicable to Customer are amended so as to adversely affect Customer, provided that, within forty-five (45) days of the date of issuance of a FERC order accepting such amendment for filing, Customer gives fifteen (15) days' written notice of such termination to Bonneville and the WSCC; and provided further that such forty-five (45) day period may be extended by Customer for an additional forty-five (45) days if Customer gives written notice to Bonneville of such requested extension within the initial forty-five (45) day period; or
- (2) for any reason on one year's written notice to Bonneville and the WSCC.

(e) **Replacement Terms**

If Customer exercises its right to terminate its obligations under section 5(d)(1), Customer and Bonneville shall use good faith efforts to negotiate an amendment to this Agreement imposing obligations on Customer to meet reliability criteria satisfactory to Bonneville.

(f) **Consent**

Customer consents to the release by the WSCC of information related to Customer's compliance with this section 5 of this Agreement, provided that such information is released in accordance with the WSCC Reliability Criteria Agreement.

6. BONNEVILLE'S INTERCONNECTION REQUIREMENTS

- (a) Customer shall comply with Bonneville's Technical Requirements. The Parties shall coordinate on the required testing and documentation necessary to ensure such compliance. If Customer fails to comply with any provision of Bonneville's Technical Requirements, Bonneville shall give Customer written notice of its noncompliance and identify actions required to cure such noncompliance. Once the Customer has achieved compliance, Bonneville shall provide written notice to Customer of such compliance and grant final approval of the interconnection.

- (b) Customer shall maintain power factor and reactive power at the Project as provided in Exhibit B.
- (c) Customer shall adhere to Dispatch orders regarding RAS applicable to the Project, and maintain compliance with Bonneville's Technical Requirements. RAS applicable to the Project is identified in Exhibit C.
- (d) Customer shall operate the Project in accordance with Good Utility Practice. In addition, Customer shall operate the Project as directed by Dispatch, whose orders shall comply with Good Utility Practice.
- (e) (1) If Customer fails to materially comply with any of the provisions of this section 6, including Dispatch orders issued pursuant hereto, Bonneville shall give Customer written notice specifying the provision or Dispatch order with which Customer has failed to comply. In the event of such noncompliance Bonneville may pursue any remedy available under this Agreement or pursuant to law, and Customer will be liable for payment of any rate that applies pursuant to Bonneville's applicable rate schedules and General Rate Schedule Provisions. In addition, if Customer's material non-compliance continues for a period of thirty (30) days following delivery of such notice, Bonneville may suspend the interconnection of the Project with the FCRTS for as long as the period of such noncompliance continues.
- (2) In any case in which Bonneville suspends interconnection of the Project with the FCRTS, Bonneville shall document in writing Customer's non-compliance, which documentation shall include the reasons for Bonneville's suspension of the interconnection of the Project and the steps Customer must take before Bonneville will restore the interconnection of the Project. Upon Customer curing such noncompliance, and giving written notice to Bonneville of such cure, Bonneville shall restore the interconnection of the Project with the FCRTS.
- (3) Notwithstanding the provisions of 6(e)(1) and (2) above, Bonneville may immediately suspend interconnection of the Project, without notice, if Bonneville reasonably believes that immediate suspension of the interconnection of the Project is necessary to preserve the safety and reliability of the FCRTS.

7. CONTROL AREA SERVICES AND OTHER SERVICES

- (a) Control Area Services
Bonneville shall provide and Customer shall pay for applicable Control Area Services specified in Exhibit E.
- (b) Other Services
Customer shall make arrangements to supply and deliver energy for station service to the Project.
- (c) Scheduling
Customer shall be responsible for scheduling Project output to the Point of Interconnection consistent with Bonneville's Technical Requirements and Bonnevilles' Generation Imbalance Service Business Practice and other applicable scheduling procedures in effect October 1, 2001, as as the same may be revised or amended from time to time.

8. BILLING AND PAYMENTS

Bills for all services provided under this Agreement shall be rendered monthly by Bonneville.

9. FORCE MAJEURE

Neither Customer nor Bonneville will be considered in default as to any obligation under this Agreement if such Party is prevented from fulfilling the obligation due to an event of Force Majeure, provided that the suspension of the performance is of no greater scope and of no longer duration than is required by the Force Majeure. The Party whose performance is delayed or prevented by the event of Force Majeure shall as soon as practicable after the occurrence of the event of Force Majeure provide written notice to the other Party describing the particulars of the occurrence of such event and its estimated duration, and shall use all reasonable efforts to remedy its inability to perform and to resume full performance of its obligations under this Agreement as soon as practicable.

10. NOTICES

Any administrative notice, demand, request or other communication provided for in this Agreement, or served, given or made in connection with this Agreement, shall be given in writing (unless otherwise provided in this Agreement) and shall be deemed to be served, given or made upon receipt if delivered in person or sent by acknowledged delivery or by registered or certified mail, postage prepaid, to the persons identified in Exhibit D. Operational contacts for activities associated with the interconnection of the Project with the FCRTS, including but not limited to outage coordination, generation dispatch, and system dispatch, are also identified in Exhibit D.

11. **OUTAGES AND OUTAGE COORDINATION**

Bonneville shall endeavor to provide notice to the Customer contact listed in Exhibit D of scheduled outages on the FCRTS that affect the delivery of the Project output. Bonneville shall provide notice of scheduled outages on the Interconnection Facilities to the Customer contact listed in Exhibit D, pursuant to Bonneville's Accident Prevention Manual.

12. **AMENDMENTS AND REVISIONS**

- (a) No amendment of all or any part of the body of this Agreement shall be valid unless it is reduced to writing and signed by both Customer and Bonneville. The terms and conditions herein shall remain in effect throughout the term and shall not be subject to change through application to the FERC or other governmental body or authority; provided that Customer may challenge at FERC or the appropriate governmental body or authority amendments to any of the documents incorporated by reference pursuant to section 4. Any revision of exhibits to this Agreement shall be as specified in the exhibits
- (b) If an RTO is established and such RTO is to be responsible for reliability criteria for interconnections of generation facilities with the FCRTS, the Parties shall negotiate in good faith an amendment to this Agreement to conform to the RTO's reliability criteria.

13. **THIRD-PARTY BENEFICIARIES**

Except as provided in section 5, this Agreement creates rights and obligations only between the Parties hereto. The Parties do not intend to create any obligation or promise of performance to any other person or entity, nor have the Parties conferred any right to enforce this Agreement or any remedy upon any person or entity other than the Parties hereto, their respective successors and assigns, except as provided in section 5.

14. **LIABILITY**

- (a) No Party (First Party) shall be liable, to the other Party (Second Party) for any injury or death to any person, or for any loss or damage to any property, caused by or arising out of an Electric Disturbance on the First Party's electric system or facilities, whether or not such Electric Disturbance resulted from the First Party's negligent, or wrongful act or omission. For the purposes of this section 13(a),
 - (1) the term "Party" means, in addition to such Party itself, its affiliated companies, their respective boards of directors, officers and employees;
 - (2) the term "damage" means all damage, including consequential damage; and

(3) the term "person" means any person, including those not connected with either Party to this Agreement.

(b) Bonneville and Customer assert that neither Party is the agent or principal for the other, nor are they partners or joint venturers; and the Parties agree that they will not represent to any other party that they act in the capacity of agent or principal for the other.

15. **ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between Bonneville and Customer with respect to the subject matter hereof, supersedes any and all previous understandings between the Parties with respect to the subject matter hereof, and binds and inures to the benefit of the Parties and their successors and assigns.

16. **ASSIGNMENT**

All rights, benefits and obligations under this Agreement shall be binding upon the respective successors and assigns of the Parties to this Agreement. This Agreement shall not be transferred or assigned by either Party to any other person or entity without the written consent of the other Party; provided that Bonneville may assign this Agreement to an RTO without Customer's consent, and Customer may assign its interest in this Agreement to the Financing Party, as security for financing of the Project, without Bonneville's consent. The assigning Party shall notify the non-assigning Party of such assignment. Any consent required of the other Party shall not be unreasonably withheld or delayed. In any sale or transfer of control of the Project pursuant to which the Project will remain interconnected to the FCRTS, Customer (or the Financing Party if Customer has assigned its interest in this Agreement to the Financing Party) shall, as a condition of such sale or transfer, require the acquiring entity or transferee either to assume the obligations of Customer pursuant to this Agreement or to enter into an agreement with Bonneville that includes the same terms and conditions as this Agreement.

17. **REPRESENTATION**

Each of the Parties represent that the individual signing on its behalf is authorized to execute this Agreement and that the Agreement is legal and binding on that Party in accordance with its terms.

18. **CHOICE OF LAW**

This Agreement shall be interpreted, construed, and implemented under Federal law.

19. **SECTION HEADINGS**

section headings and subheadings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Handwritten initials: JNT BBR

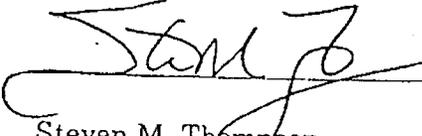
20. DISPUTE RESOLUTION

In case of a dispute, section 12 of the Tariff shall apply.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

CONDON WIND POWER, LLC

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By: 

By: 

Name: Steven M. Thompson
(Print/Type)

Name: Robert A. (Joe) Rogers
(Print/Type)

Title: Senior Vice President

Title: Transmission Account Executive

Date: 12/21/01

Date: 12/20/01

(W:\TMC\CT\SeaWest\Contracts (Final)\10554.doc) 12/19/01

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EXHIBIT A
DESCRIPTION OF POINT(S) OF INTERCONNECTION

1. POINT OF INTERCONNECTION

Location: the point where the Project connects to the 69 kV Fossil - DeMoss-Transmission Line #1;

Voltage: 69 kV;

Metering: at Customer's Condon Wind Substation, in the 69 kV circuits over which power flows.

2. REVISIONS

This exhibit may be revised or replaced from time to time by the mutual agreement of the Parties.

(W:\TMC\CT\SeaWest\Contracts (Final)\10554.doc) 12/19/01

EXHIBIT B
POWER FACTOR AND REACTIVE POWER

1. POWER FACTOR AND REACTIVE POWER

- (a) The Project shall have sufficient reactive power capability to operate at the Point of Interconnection at a power factor of 1.0 at 90 percent of the Project nominal capability, and to maintain a power factor of not less than 0.97 at any other output level. Customer shall operate the Project at the Point of Interconnection at a power factor between 1.0 and 0.97, as directed by Dispatch and within the stated capabilities of the system as studied.
- (b) Bonneville has studied the reactive power capability for phase 1 of Project (having approximately a 25 MW nominal capability). Customer shall provide additional information acceptable to Bonneville on the total Project's reactive power capability. Prior to Bonneville's consent to energize phase 2 of the Project (for a total Project nominal capability of 49.8 MW), Customer shall install sufficient shunt compensation necessary to operate the Project within the power factor requirements provided in 1(a) above. Bonneville shall, at Customer's expense, conduct further studies to verify the system performance of phase 2 of the Project.
- (c) In order to reduce circulating reactive power flow between multiple generators in an area, and to increase real power capability, Bonneville may request a change in operations of control equipment at the Project subject to the limitations of such equipment. Any other deviation or change in operation shall require Bonneville approval in advance.

2. REVISIONS

This exhibit may be revised or replaced from time to time by the mutual agreement of the Parties.



EXHIBIT C
REMEDIAL ACTION SCHEME

1. **REMEDIAL ACTION SCHEME**

The remedial action scheme for the Project will consist of a generation reduction scheme.

Generation Reduction Scheme:

The generation reduction scheme will provide a signal to the project to limit generation to 45 MW in the event of an overload of the 230/69 kV transformer at Bonneville's Maupin Substation.

The generation dropping scheme will also provide a signal to the project to limit generation to 25 MW in the event of an overload of the 115/69 kV transformer at Bonneville's DeMoss Substation.

2. **REVISION OF THIS EXHIBIT**

This exhibit may be revised by Bonneville upon Bonneville's determination that such revision is necessary to preserve transmission system safety and reliability. Bonneville shall provide Customer with as much notice as reasonably possible of its intent to revise such RAS.

(W:\TMC\CT\SeaWest\Contracts (Final)\10554.doc) 12/19/01



EXHIBIT D
NOTICES

1. ADMINISTRATIVE CONTACTS

Administrative contacts under this Agreement are as follows:

If to Customer:

Condon Wind Power, LLC
c/o SeaWest WindPower Inc.
1455 Frazee Road, 9th Floor
San Diego, CA 92108
Attention: Senior Vice President Project
Transactions

Copy to:
SeaWest Wind Power, Inc.
1455 Frazee Road, 9th Floor
San Diego, CA 92108
Attention: Vice President Asset Management

If to Bonneville:

Bonneville Power Administration
5411 NE Highway 99
P.O. Box 491
Vancouver, WA 98666-0491
Attention: Transmission Account
Executive for Condon Wind
Power, LLC - TM/Ditt2

2. OPERATIONAL CONTACTS

Operational contacts under this Agreement are as follows:

| Party | Outage Coordination | Operational |
|------------|--|--|
| Bonneville | Planned Outages: Dittmer CC Phone: (360) 418-2274 FAX: (360) 418-2214 | Generation Issues: Primary: Dittmer Dispatch Phone: (360) 418-2281; or (800) 392-0816 Fax: (360) 418-2938 Transmission Issues: Alternate & Local Subgrid: Munro Dispatch Phone: (509) 465-1820; or (888) 835-9590 |
| Customer | SeaWest Operations General Manager, Oregon Division Phone: | SeaWest Operations General Manager, Oregon Division Phone: |

3. CHANGES IN CONTACTS

If either Party changes its contact(s), that Party shall notify the other Party by voice phone, facsimile transmission, or other means as soon as possible. The Party making the change shall send written notice of the change to the other Party as soon as practical. Bonneville shall revise this exhibit upon such notice.

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EXHIBIT E

CONTROL AREA SERVICES

1. REQUIRED CONTROL AREA SERVICES

These services are provided for generators located in the Bonneville's Control Area.

Generation Imbalance Service

Provided By Contract No.
Transmission 01TX-10554
Provider

2. REVISION OF THIS EXHIBIT

This exhibit may be revised by Bonneville upon Bonneville's determination that such revision is necessary to conform with Bonneville's approved Transmission and Ancillary Rates and General Rate Schedule Provisions. Bonneville shall provide Customer with as much notice as reasonably possible of its intent to revise such rates and revision of this Exhibit.

(W:\TMC\CT\SeaWest\Contracts (Final)\10554.doc) 12/19/01

WAT ORR

GENERATOR ATTESTATION FORM

Name of Facility: Condon Wind Project (the "Facility")

Address of Facility: 15981 Highway 206, PO Box 633, Condon OR 97823

CEC Registration Number (if applicable): _____

Energy Administration Identification Number (if applicable) 55739

Qf Identification Number (if applicable): _____

Contact Person: Gabriel Vaca Title: Director – Asset Management

Telephone: 619.908.3467 Fax: 619.293.3347

| Fuel Type | Capacity* (MW) | Operational Date (only necessary if being used for the purposes of New Renewables) | MWh of Energy Green Tag Sold | Period (Beginning/Ending) | Average SO ₂ emission rate during period (lb/MWh) | Average NO _x emission rate during period (lb/MWh) | Average CO ₂ emission rate during period (lb/MWh) |
|-----------------------------|----------------|--|------------------------------|---------------------------|--|--|--|
| Biomass | | | / | | | | |
| Geothermal | | | / | | | | |
| Landfill Gas | | | / | | | | |
| Small Scale Hydro (< 30 MW) | | | / | | | | |
| Wind | 49.8 MW | 12/31/01 | 94,804 MWh | CY 2003 | | | |
| Solar electric | | | / | | | | |
| Other: _____ | | | / | | | | |

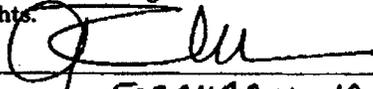
* For facilities that have added new renewable capacity, please indicate the amount and operational date of the new capacity and the existing capacity.

Check this box if the Facility named above was placed into operation after July 23, 1999.

Declaration:

I, (print name and title) Gabriel Vaca, Director Asset Management, the authorized agent of the Facility, declare that the information provided on this form is consistent with the Facility's business records and is true and correct to the best of my knowledge. I further declare: (i) that the Facility generated the energy identified above, and Green Tags (as defined below); (ii) that such energy was not used for onsite generation; and (iii) that the Facility (A) sold such Green Tags once and only once exclusively to the buyer (Bonneville Power Administration) pursuant to its Power Purchase Agreement; and (B) made no representation, in writing or otherwise, that any third party received, or has or obtained any right to, any of such Green Tags.

"Green Tag" means all right, title and interest in and to the "Non-Power Attributes" (defined below) associated with the power generated from the specified electricity generating resource and the exclusive right to claim: (a) the Residual Electricity was generated by the specific generation unit, fuel or resource; (b) the Residual Electricity associated with the Green Tag was delivered to the Western Energy Coordinating Council ("WECC") grid; and (c) the Green Tag Reporting Rights (as defined below). One Green Tag represents the Non-Power Attributes made available by the generation of 1 MWh, during a calendar year, by the generating resource. "Non-Power Attributes" means the fuel, emissions or avoidance of emissions, or other environmental characteristic of the generating resource deemed of value by a Green Tag Purchaser. Non-Power Attributes do not include any energy, capacity, reliability or other power attributes used to provide electricity services. Non-Power Attributes are expressed in MWh, and are not a calculation of the quantity or value of avoided emissions from such attributes. "Green Tag Reporting Right(s)" means the exclusive right of a Green Tag Purchaser to report accumulated annual Non-Power Attributes in compliance with or pursuant to any present or future Federal or state law (including without limitation Oregon SB 1149), if applicable, and to any authorized international body, Federal or state agency, or any other party at the Green Tag Purchaser's discretion. "Residual Electricity" is the electricity generated in conjunction with the production of Green Tags which are transferred independently of the Green Tags and free of any claim or assertion of Green Tag Reporting Rights.

Signature: 
 Date: FEBRUARY 10, 2004
 Place of Execution: SAN DIEGO, CA



Department of Energy

Bonneville Power Administration
P.O. Box 491
Vancouver, Washington 98666-0491

TRANSMISSION BUSINESS LINE

November 26, 2001

In reply refer to: TM-Ditt2

Ms. Anne E. Draper, Manager
Transmission Acquisition and Reserve Services – PTT-5
Power Business Line
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

Dear Anne:

Enclosed are two copies of Table 59 of Exhibit C of Point-to-Point Memorandum of Agreement No. 96MS-95365. Table 59 provides for the transmission of the output of the Condon Wind generation to Grand Coulee Substation. Please sign both copies and return one copy to me by December 11, 2001.

If you have any questions, please call me at (360) 418-8283.

Sincerely,

A handwritten signature in black ink, appearing to read "Allan F. Paschke".

Allan F. Paschke
Account Executive
Transmission Marketing and Sales

Enclosures

Exhibit C, Table 59, Page 1 of 5
 MOA No. 96MS-95363
 Power Business Line Delivery to:
 Grand Coulee Substation
 Effective at 2400 hours
 on the date of execution of this
 Table 59

**STATEMENT OF SPECIFICATIONS FOR LONG-TERM FIRM
 TRANSMISSION SERVICE**

Power Business Line Delivery to the Grand Coulee Substation.

1. TERM OF TRANSACTION

Start Date: at 0000 hours on January 1, 2002.
 Termination Date: 0000 hours on January 1, 2022.

**2. SUMMARY OF POINTS OF INTERCONNECTION AND POINTS OF
 DELIVERY/DELIVERING PARTY/CONTROL AREA/RECEIVING
 PARTY/SCHEDULING AGENT**

2.1 Oasis Assignment Reference Number: 421644

| Delivering Party (Resource) | POR | POR Control Area | Maximum POR Demand (kW) | POD (Voltage) | POD Control Area | Maximum POD Demand (kW) | Receiving Party |
|-----------------------------|---------------|------------------|-------------------------|-----------------------------------|------------------|-------------------------|-----------------|
| Sea West Wind Power, Inc. | DeMoss-Fossil | BPAT | 25,000 * | Grand Coulee Substation 500 kV | TBL | 25,000 * | PBL |
| Total Transmission Demand | | | 25,000 * | | | 25,000 * | |

* Subject to the provisions of Section 5 of this Table 59.

3. DESCRIPTION OF POINT OF RECEIPT

DeMoss-Fossil

Location: The point where the 69 kV Tap Line to the resource is connected to the Transmission Provider's DeMoss-Fossil transmission line, between structures 34/4 and 34/5 where the Transmission Provider shall receive Electric Power for transmission hereunder;

Voltage: 69 kV;

Metering: quantities to be scheduled.

Exhibit C, Table 59, Page 2 of 5
MOA No. 96MS-95363
Power Business Line Delivery to:
Grand Coulee Substation
Effective at 2400 hours
on the date of execution of this
Table 59

4. DESCRIPTION OF POINT OF DELIVERY

GRAND COULEE SUBSTATION

Location: The points in the Transmission Provider's Grand Coulee 230 kV and 500 kV Switchyards where the line terminals are connected to the 500 kV bus;

Voltage: 500 kV;

Metering: quantities to be scheduled.

5. MAXIMUM AMOUNT OF CAPACITY AND ENERGY TO BE TRANSMITTED:

The Transmission Customer's Completed Application for Firm Point to Point Transmission Service requested 50 MW of Reserved Capacity. As of January 1, 2002, the Transmission Provider does not have adequate transmission capability to satisfy the full amount of the Transmission Customer's requested Reserved Capacity without constructing or installing additional facilities. Pursuant to section 19.7 of the Tariff, the Transmission Provider will provide 25 MW of Reserved Capacity until additional facilities that are sufficient to accommodate the incremental amount of the requested Reserved Capacity of 25 MW are constructed or installed and placed into service. At such time, Transmission Provider shall unilaterally revise this Table 59 to reflect a total Reserved Capacity of 50 MW. The incremental amount of requested Reserved Capacity is not an extension for the commencement of service pursuant to section 17.7 of the Tariff and is not subject to a non-refundable annual reservation fee.

6. DESIGNATION OF PARTY SUBJECT TO RECIPROCAL SERVICE OBLIGATION:

Not applicable per section 1.12 of this MOA.

7. NAME(S) OF ANY INTERVENING SYSTEMS PROVIDING TRANSMISSION SERVICE:

None.

8. SERVICE UNDER THIS AGREEMENT WILL BE SUBJECT TO SOME COMBINATION OF THE CHARGES DETAILED BELOW. (THE APPROPRIATE CHARGES FOR TRANSACTIONS WILL BE DETERMINED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE TARIFF.)

Exhibit C, Table 59, Page 3 of 5
 MOA No. 96MS-95363
 Power Business Line Delivery to:
 Grand Coulee Substation
 Effective at 2400 hours
 on the date of execution of this
 Table 59

8.1 Transmission Charge:
 PTP-02 Rate Schedule or Successor Rate Schedule.

8.1.1 Reservation Fee:
 Not applicable.

8.1.2 Short Distance Discount (SDD):
 Not applicable.

8.2 System Impact and/or Facilities Study Charge(s):
 System Impact and/or Facilities Study Charges are not required for
 service under this Table 59.

8.3 Direct Assignment and Use-of-Facilities Charges:
 Facilities Charges are not required at this time for the service under this
 Table 59.

8.4 Ancillary Service Charges:
 ACS-02 Rate Schedule.

8.4.1 Ancillary Services are provided as follows:

| | <u>Ancillary Service</u> | <u>Provided By</u> | <u>Contract No.</u> |
|---------|--|-----------------------------|---------------------|
| 8.4.1.1 | Scheduling, System Control, and Dispatch | BPA (TBL) | 96MS-95363 |
| 8.4.1.2 | Reactive Supply and Voltage Control from Generation Sources | BPA (TBL) | 96MS-95363 |
| 8.4.1.3 | Regulation and Frequency Response | BPA (TBL) As Applicable | 96MS-95363 |
| 8.4.1.4 | Energy Imbalance | BPA (TBL) As Applicable | 96MS-95363 |
| 8.4.1.5 | Operating Reserve – Spinning Reserve | BPA (TBL) | 96MS-95363 |
| 8.4.1.6 | Operating Reserve – Supplemental Reserve | BPA (TBL) | 96MS-95363 |

Exhibit C, Table 59, Page 4 of 5
MOA No. 96MS-95363
Power Business Line Delivery to:
Grand Coulee Substation
Effective at 2400 hours
on the date of execution of this
Table 59

8.4.2 Notification of Changes in Ancillary Services Provider:

Except for those Ancillary Services that must be provided by the Transmission Provider, the Transmission Customer may make an annual election to obtain some or all Ancillary Services from a third party or to self-supply Ancillary Services.

If the Transmission Customer intends that an entity other than the Transmission Provider provide any Ancillary Service for any Fiscal Year (October 1 through September 30), then the Transmission Customer must notify the Transmission Provider of its election of an Ancillary Service provider by July 1 of each Fiscal Year. Such election will be effective October 1 of the next Fiscal Year. If the Transmission Customer *does* make such election, the Transmission Provider will notify the Transmission Customer no later than September 1 of the Fiscal Year prior to the Fiscal Year for which such election is made, whether the Transmission Customer's alternative arrangements are comparable to purchasing the Ancillary Service(s) from the Transmission Provider, and are consistent with the Transmission Provider's business practices for self-supply or third party supply. In the event that, as to any Ancillary Service, the Transmission Customer's alternative arrangements are *not* comparable, or are inconsistent with the Transmission Provider's business practices for self-supply or third party supply, the Ancillary Service provider for such Ancillary Service for the next Fiscal Year shall be the Transmission Provider.

If the Transmission Customer does *not* elect to obtain any Ancillary Services from a third party or to self-supply any Ancillary Services, the Ancillary Service provider for the next Fiscal Year shall be the Transmission Provider.

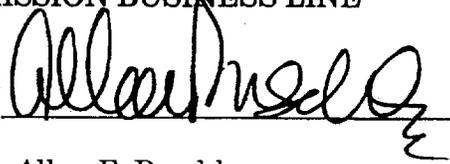
Exhibit C, Table 59, Page 5 of 5
MOA No. 96MS-95363
Power Business Line Delivery to:
Grand Coulee Substation
Effective at 2400 hours
on the date of execution of this
Table 59

9. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for whom they sign.

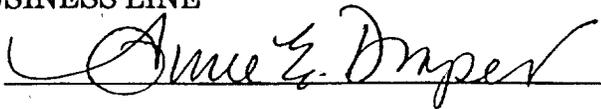
UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

TRANSMISSION BUSINESS LINE

By: 
Name: Allan F. Paschke
Print/Type
Title: Transmission Account Executive
Date: 11/26/01

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

POWER BUSINESS LINE

By: 
Name: Anne E. Draper
Print/Type
Title: Manager,
Transmission Acquisition and Reserves
Date: 12/3/01

LAST TRANSACTION REPORT FOR HP FAX-700 SERIES

VERSION: 01.03

FAX NAME: BPA/HQ PSB-5
FAX NUMBER: 503 230 3681

DATE: 22-JAN-02
TIME: 15:11

| DATE | TIME | REMOTE FAX NAME AND NUMBER | DURATION | PG | RESULT | DIAGNOSTIC |
|--------|---------|----------------------------|----------|----|--------|--------------|
| 22-JAN | 15:05 S | 17602883556 | 0:03:40 | 6 | OK | 553140100170 |

S=FAX SENT
I=POLL IN(FAX RECEIVED)
O=POLLED OUT(FAX SENT)

TO PRINT THIS REPORT AUTOMATICALLY, SELECT AUTOMATIC REPORTS IN THE SETTINGS MENU.
TO PRINT MANUALLY, PRESS THE REPORT/SPACE BUTTON, THEN PRESS ENTER.

*faxed to Todd Lantz (seawest)
re per our conversation*

1/22/02

TBL

This is:
TBL - PBL

Need
TBL - SWWP

00PE-10692

Form A Generator Attestation (Sale of Energy and its Green Tags to one Party)

Name of Facility: Condon Wind Project (the "Facility")
 Address of Facility: 15981 Highway 206, PO Box 633, Condon OR 97823
 Facility Energy Administration Identification Number (if applicable): 55739
 Contact Person: Jennifer R. Guthrie Title: Vice President, Project Administration
 Telephone: 619.293.3344x3444 Fax: 619.293.3347

| Resource source | Capacity (MW) | Operational Date | Mwh / # Green Tags [this sale] | Period of Delivery [this sale] |
|---------------------|---------------|------------------|-----------------------------------|-----------------------------------|
| Biomass | | | | |
| Geothermal | | | | |
| Landfill Gas/BioGas | | | | |
| Hydro | | | | |
| Wind | 49.8 | 12/31/01 | 50,137 | 01/01/02-12/31/02 |
| Solar | | | | |
| Other | | | | |

* For facilities that have added new renewable capacity, please indicate amount and operational date of the new capacity and the existing capacity.

Declaration: I, (print name and title) Jennifer R. Guthrie, Vice President, Project Administration, SeaWest WindPower, the authorized agent of the Facility, declare that the information provided on this form is consistent with the Facility's business records and is true and correct to the best of my knowledge. I further declare, to the best of my knowledge: (i) the Facility generated the energy identified above, and the Green Tags (as defined below) associated therewith; (ii) that such energy was not used for on-site generation; and (iii) the Facility sold the energy specified in the table above and all of the associated Green Tags once and only once exclusively to BPA ("Buyer"), and made no representation, in writing or otherwise, that any third party received, or has or has obtained any right to, any of such energy or any Green Tag associated therewith.

Signature: [Signature] Date: January 31, 2003

Place of Execution: San Diego, California

SUBSCRIBED AND SWORN to before me this _____ day of (month/year) _____

Notary Public for Oregon _____ My Commission Expires: _____ (date)

"Green Tag" means all right, title and interest in and to the "Non-Power Attributes" (defined below) associated with the power generated from the specified electricity generating resource and the exclusive right to claim: (a) the Residual Electricity was generated by the specific generation unit, fuel or resource; (b) the Residual Electricity associated with the Green Tag was delivered to the Western Systems Coordinating Council ("WSCC") grid; (c) the Non-Power Attributes associated with the Residual Electricity were delivered to the WSCC grid; and (d) the Green Tag Reporting Rights (as defined below). One Green Tag represents the Non-Power Attributes made available by the generation of 1 MWh, during a calendar year, by the generating resource. "Non-Power Attributes" means the fuel, emissions or avoidance of emissions, or other environmental characteristic of the generating resource deemed of value by a Green Tag Purchaser. Non-Power Attributes do not include any energy, capacity, reliability or other power attributes used to provide electricity services. Non-Power Attributes include but are not limited to any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and any other pollutant that is now or may in the future be regulated under the pollution control laws of the United States or any state; and further include any avoided emissions of carbon dioxide (CO2) and any other greenhouse gas (GHG) that contributes to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, along with the Green Tag Reporting Rights to these avoided emissions. Non-Power Attributes are expressed in MWh, and are not a calculation of the quantity or value of avoided emissions from such attributes. "Green Tag Reporting Right(s)" means the exclusive right of a Green Tag Purchaser to report accumulated annual Non-Power Attributes in compliance with or pursuant to any present or future Federal or state law (including without limitation Oregon SB 1149), if applicable, and to any authorized international body, Federal or state agency, or any other party at the Green Tag Purchaser's discretion. "Residual Electricity" is the electricity generated in conjunction with the production of Green Tags, which is sold, traded, assigned, or otherwise transferred independently of the Green Tags and free of any claim or assertion of Green Tag Reporting Rights.

The information provided in this Form may be used by the Bonneville Environmental Foundation and others, including the Center for Resource Solutions, to substantiate and/or verify the accuracy of any advertising/public communication claims associated with the subject Green Tags, and in any such company's advertising and other public communications.

Barristers & Solicitors
Patent & Trade-mark Agents

McCarthy Tétrault

22P3 10692
McCarthy Tétrault LLP
Box 48, Suite 4700
Toronto Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Telephone: 416 362-1812
Facsimile: 416 868-0673
www.mccarthy.ca

France Tenaillé
Direct Line: 416 601-7573
Direct Fax: 416 868-0673
E-Mail: ftenaill@mccarthy.ca

September 25, 2003

BY COURIER

Ms. Debra Malin
Account Executive, Renewable Energy
Bonneville Power Administration
905 NE 11th Avenue
Portland, OR 97232-4170

Dear Debra:

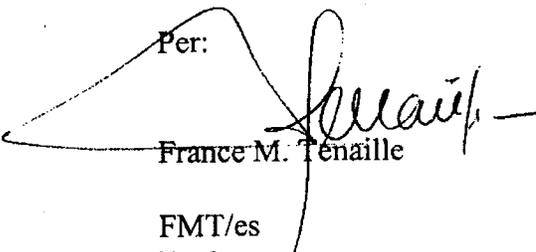
Re: Condon Wind Power, LLC

I enclosed herewith the Consent and Agreement dated as of September 19, 2003 which has been originally executed by Sun Life Assurance Company of Canada and Condon Wind Power, LLC.

Yours very truly,

McCarthy Tétrault LLP

Per:


France M. Tenaillé

FMT/es
Encl

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this "Consent and Agreement"), dated as of September 19, 2003, is executed by the United States of America, Department of Energy, acting by and through the Bonneville Power Administration (the "Undersigned"), and Condon Wind Power, LLC a Delaware limited liability company ("Borrower"), for the benefit of Sun Life Assurance Company of Canada ("Agent"), as Agent for the lenders (the "Lenders") under the Term Loan Agreement (as defined below).

A. Borrower has entered into that certain Term Loan Agreement, dated as of September 19, 2003, among Borrower, the Lenders and Agent (as amended, modified, supplemented, restated or replaced from time to time, the "Term Loan Agreement").

B. The Undersigned and Borrower have entered into those certain agreements more particularly described in the attached Schedule A (all such agreements as amended, modified, supplemented, restated or replaced from time to time in accordance with the terms hereof, collectively herein referred to as the "Contracts" and each individually referred to as a "Contract").

C. Pursuant to the Security Agreement, dated as of September 19, 2003 (as amended, modified, supplemented, restated or replaced from time to time in accordance with the terms hereof), between Borrower and Agent, Borrower has assigned an interest under the Contracts to Agent for its own benefit and the benefit of the Lenders.

D. As communicated in electronic mail correspondence dated August 1, 2003 between SeaWest WindPower Inc. ("SeaWest") and the Undersigned, GS Wind Power I, LLC, an affiliate of Goldman Sachs Group ("GS Wind Power") is acquiring an economic interest in Borrower equal to approximately seventy-five percent of the total economic interests in Borrower. GS Wind Power will be admitted as the non-managing member of Borrower. SeaWest, currently the sole member of Borrower, will be transferring its remaining membership interest in Borrower to SeaWest Northwest Asset Holdings, LLC ("SeaWest NAH"), an affiliate of SeaWest. After such transfer, SeaWest NAH will become the managing member of Borrower.

NOW THEREFORE, the Undersigned hereby agrees as follows:

1. The Undersigned acknowledges the assignments referred to in paragraph C above and consents to such assignments and agrees with Agent for its own benefit and the benefit of the Lenders as follows:

(a) Agent shall be:

(i) deemed a "Senior Lender" under the PPA (as defined in Schedule A attached hereto), and as such shall be entitled to all the rights and protections contained in the PPA applicable to Senior Lenders, including, without limitation, Section 19 of the PPA as amended and replaced by Schedule B hereto, and all such provisions shall be deemed incorporated

- 2 -

herein by reference as if specifically set forth herein and shall be binding upon the Undersigned for the benefit of this Agent or any successor agent appointed pursuant to the terms of the Term Loan Agreement and Section 18 of the PPA, as agent for and on behalf of the Lenders, and this Consent and Agreement constitutes notice to the Undersigned in accordance with Section 19 of the PPA of Agent's position as a "Senior Lender" under the PPA;

- (ii) acknowledged as a "Financing Party" under section 16 of the GIA (as defined in Schedule A attached hereto); and
- (iii) acknowledged as a "Financing Party" under section 17 of the COMA (as defined in Schedule A attached hereto);

(b) The Undersigned agrees to make all payments required under the PPA (if any) to be made by it under the Contracts directly to Agent for its own benefit and the benefit of the Lenders upon receipt of Agent's written instructions to do so. Borrower hereby expressly consents to the Undersigned making any such payments and hereby releases the Undersigned from any claims, which it may ever have in respect of the making by the Undersigned of any such payment. In consideration of the foregoing, the Lenders agree to defend the Undersigned to the complete satisfaction of the Undersigned in any action arising from payment to the Lenders of amounts due by Borrower under the Contracts and to hold the Undersigned harmless, indemnify and recompense the Undersigned the costs of satisfying any judgment and any and all other costs incurred in defending any such action or as a result of any such action.

2. The Undersigned hereby represents and warrants to each other party to this Consent and Agreement that:

(a) The undersigned is authorized by United States Federal law, including the *Northwest Power Act* and other applicable laws, to dispose of electric power generated at various Federal hydroelectric projects in the Pacific Northwest region of the United States or acquired from other resources, including wind energy facilities.

(b) The execution, delivery and performance by the Undersigned of the Contracts and this Consent and Agreement have been duly authorized by all necessary action, and do not and will not:

- (i) require any further consents or approvals which have not been obtained;
or
- (ii) to the knowledge of the Undersigned, violate any provision of any law, regulation, order, judgement, injunction or similar matters or breach any agreement presently in effect with respect to or binding on the

Undersigned; which could have a material adverse effect on the ability of the undersigned to perform its obligations under the Contracts.

(c) This Consent and Agreement and the Contracts are legal, valid and binding obligations of the Undersigned;

(d) Except as described in Section 1(a) of this Consent and Agreement, as of the date hereof, the Contracts are in full force and effect and have not been amended, supplemented or modified;

(e) To the best of the Undersigned's knowledge, Borrower has fulfilled all of its obligations under the Contracts, and there are no breaches, defaults or unsatisfied conditions presently existing that would allow the Undersigned to terminate the Contracts;

(f) Attached hereto as Schedule "C" are true copies of the Contracts;

(g) The Undersigned has not granted to any other person rights in respect of the Contracts which are to the same effect as any of the rights granted herein; and

(h) The condition referred to in the second sentence of Section 2(a) of the PPA relating to the Transmission and Transportation Agreement (as such term is defined in the PPA) has been fully satisfied.

3. The Undersigned acknowledges the assignments referred to in paragraph D above and consents to such assignments.

4. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by telefacsimile and (c) if otherwise delivered, upon the earlier of receipt or five Banking Days (as such term is defined in the Term Loan Agreement) after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to the Undersigned: Bonneville Power Administration
905 N.E. 11th Avenue (97232)
P.O. Box 3621
Portland, OR 97208-3621

Attention: Account Executive - PT-5
Bulk Power Marketing
Telecopy No.: 503-230-3681
Telephone No.: 503-230-5701

- 4 -

If to Agent: Sun Life Assurance Company of Canada
225 King Street West
11th Floor
Toronto, ON
M5V 3C5

Attention: Director, Project Financing
Telephone No. (416) 408-7853
Telecopy No.: (416) 595-0131

5. This Consent and Agreement shall be binding upon and benefit the successors and assigns of the Undersigned, Borrower, Agent and the Lenders and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the Obligations under the Term Loan Agreement, subject to section 18 of the PPA if applicable). The Undersigned agrees to confirm such continuing obligation in writing upon the reasonable request of Borrower, Agent, the Lenders or any of their respective successors, transferees or assigns. No termination, amendment variation or waiver of any provisions of this Consent and Agreement shall be effective unless in writing and signed by the Undersigned, Agent and Borrower.

6. This Consent and Agreement shall be governed and construed in accordance with the laws of the State of Oregon (without reference to choice of law doctrine), except to the extent the parties' rights and obligations are required to be governed by United States Federal law, then such rights and obligations shall be governed by United States Federal law.

7. Any provision of this Consent and Agreement or the Contracts which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction, provided that the remaining valid and enforceable provisions materially retain the essence of the parties' original bargain.

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

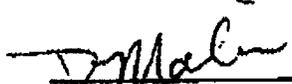
Accepted and Agreed:
SUN LIFE ASSURANCE COMPANY OF CANADA,
as Agent for the Lenders

By: 
Name: **Cam Di Giorgio**
Title: **Director, Investment Project Finance**

By: 
Name: **Steve Theofanis**
Title: **Director, Structured Finance**

IN WITNESS WHEREOF, the Undersigned by its officer thereunto duly authorized, has duly executed this CONSENT AND AGREEMENT as of the date set forth above.

THE UNITED STATES DEPARTMENT OF ENERGY, acting by and through the Bonneville Power Administration

By:  9/17/03
Name: Debra J. Malin
Title: Account Executive
Power Business Line

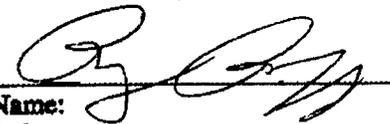
By:  9/17/03
Name: Micheal Raschio
Title: Account Executive
Transmission Business Line

Accepted and Agreed:
SUN LIFE ASSURANCE COMPANY OF CANADA,
as Agent for the Lenders

By: _____
Name:
Title:

By: _____
Name:
Title:

Accepted and Agreed:
CONDON WIND POWER, LLC,
a Delaware limited liability company,
by its managing member, **SEAWEST NORTHWEST
ASSET HOLDINGS, LLC**

By: 
Name:
Title:

IN WITNESS WHEREOF, the Undersigned by its officer thereunto duly authorized, has duly executed this CONSENT AND AGREEMENT as of the date set forth above.

THE UNITED STATES DEPARTMENT OF ENERGY, acting by and through the Bonneville Power Administration

By: [Signature] 9/17/03
Name: Debra J. Malin
Title: Account Executive
Power Business Line

By: [Signature] 9/17/03
Name: Micheal Raschio
Title: Account Executive
Transmission Business Line

Accepted and Agreed:
SUN LIFE ASSURANCE COMPANY OF CANADA,
as Agent for the Lenders

By: _____
Name:
Title:

By: _____
Name:
Title:

Accepted and Agreed:
CONDON WIND POWER, LLC,
a Delaware limited liability company,
by its managing member, SEAWEST NORTHWEST
ASSET HOLDINGS, LLC

By: [Signature]
Name:
Title:

Schedule A

- (i) the Power Purchase Agreement dated November 7, 2001 by and between the United States of America, Department of Energy, acting by and through the Bonneville Power Administration and Condon Wind Power, LLC (the "PPA")
- (ii) the Generation Interconnection Agreement dated December 21, 2001 by and between the United States of America, Department of Energy, acting by and through the Bonneville Power Administration and Condon Wind Power, LLC (the "GIA")
- (iii) the Construction and Operation and Maintenance Agreement dated December 19, 2001 by and between the United States of America, Department of Energy, acting by and through the Bonneville Power Administration and Condon Wind Power, LLC (the "COMA")

Schedule B

LENDER PROTECTION PROVISIONS

19. Protections for Senior Lender

Notwithstanding the provisions of Section 10, Senior Lender, for so long as any indebtedness or other obligation of Seller to Senior Lender is outstanding or unsatisfied and Senior Lender has a security interest in this Agreement, shall be entitled to the following protections.

(a) **Right to Assign, Right to Enforce and Right to Foreclose.**

Senior Lender shall have the absolute right:

- (1) to assign its security interest in this Agreement;
- (2) to enforce its lien by any lawful means;
- (3) to foreclose its security interest on the Facility and this Agreement or to acquire Seller's interest therein by an assignment in lieu thereof and to take possession of and operate the Facility or any portion thereof and to perform all obligations to be performed by Seller hereunder or to cause a receiver to be appointed to do so (provided that Senior Lender or, if applicable, such receiver has, at the time of possession, cured any monetary Events of Default, if applicable, of Seller pursuant to Section 19(b); and further provided that Senior Lender's choice of such receiver shall be subject to obtaining the prior written consent of BPA, which consent shall not be unreasonably withheld, delayed or conditioned (and every reference to a receiver in this Section 19 shall be to a receiver chosen by Senior Lender that has been so consented to by BPA)); and
- (4) thereafter to assign or transfer, in accordance with Section 18, such interest in the Agreement to a third party in connection with any sale of the Facility (provided that Senior Lender or, if applicable, a receiver chosen by it, has, at or prior to such assignment or transfer, cured any Events of Default of Seller pursuant to Section 19(b)).

(b) **Notice of Default and Opportunity to Cure; Obligations of Senior Lender.**

As a condition to exercising any rights or remedies as a result of any alleged default by Seller, BPA shall give written notice of the default to Senior Lender concurrently with delivery of such notice to Seller in respect of Sections 10(a)(2) and 10(a)(3) and promptly in respect of Section 10(a)(1), specifying in detail the alleged event of default and the required remedy. If BPA gives such a written notice of default, the following provisions shall apply:

- (1) Senior Lender shall have the same period after receipt of notice of default to remedy the default, or to cause the same to be remedied, as is given to Seller after Seller's receipt of notice of default, plus an additional thirty (30) days (ten (10) days in the case of monetary defaults); provided that

such thirty (30) day period for non-monetary defaults (including any default under Section 10(a)(1)) only shall be extended for the time reasonably required for Senior Lender to take possession of the Facility (including possession by a receiver), if possession of the Facility is required for such cure by Senior Lender, and provided further that Senior Lender acts with reasonable and continuous diligence to obtain possession of the Facility and, thereafter, complete such cure. In no event, however, shall the time available to Senior Lender to cure a Seller non-monetary default exceed one hundred eighty (180) days from the date of default. Senior Lender shall have the absolute right to substitute itself for Seller under the Agreement and perform the duties and obligations of Seller hereunder for purposes of curing such defaults. BPA expressly consents to such substitution, and agrees to accept such performance. BPA shall not terminate the Agreement prior to expiration of the cure periods available to Senior Lender as set forth in this Section 19(b)(1).

- (2) During any period of possession of the Facility by Senior Lender (or a receiver requested by Senior Lender) and/or during the pendency of any foreclosure proceedings instituted by Senior Lender, Senior Lender or such receiver shall perform or cause to be performed all duties and obligations of Seller under this Agreement. Following acquisition of Seller's interest in the Agreement by Senior Lender or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, the Agreement shall continue in full force and effect and Senior Lender or party acquiring title to Seller's interest in the Agreement shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently proceed with such cure until such default is cured within the cure periods set forth in Section 10(a)(2), as extended by Section 19(b)(1), whereupon BPA's right to terminate this Agreement based upon such defaults shall be deemed to have been withdrawn; provided, however, Senior Lender or party acquiring title to Seller's interest in the Agreement shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party and which are no longer material to BPA, in BPA's reasonable discretion ("Non-Curable Defaults"). Upon request, BPA shall identify in writing any such Non-Curable Defaults prior to completion of foreclosure proceedings or acquisition of Seller's interest in the Agreement by such party and any immaterial Non-Curable Defaults so identified by BPA shall be deemed waived upon said identification.
- (3) Senior Lender or any other party who acquires Seller's interest in the Agreement pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Seller by this Agreement incurred or accruing after such party no longer has an interest in the Agreement if the party that acquired Senior Lender's position has agreed in writing to perform all of Seller's duties and obligations under

this Agreement and BPA has consented to assignment of the interest to such other party under subsection 18(a).

- (4) Notwithstanding any other provision of this Section 19, Senior Lender shall not be entitled to acquire Seller's interest in this Agreement, and shall not be subject to perform any duty or obligation hereunder, unless it has given BPA prior written notice before or during the thirty (30) day cure period referred to in Section 19(b)(1) (or ten (10) day cure period in the case of monetary defaults) in which it or its designee or assignee agrees to perform such duties and obligations of Seller hereunder arising after such notice. It is further agreed that delivery of such notice and performance of such duties and obligations will be with respect to Senior Lender or its designee or assignee a cure of a default by Seller under Section 10(a)(1)(i) through 10(a)(1)(iv) or 10(a)(2)(ii). In addition, without delivery of such notice, or incurring any duties or obligations under this Agreement, Senior Lender may perform any such duties and obligations on behalf of Seller during the cure periods referred to in Section 19(b)(1).
- (5) Nothing herein shall be construed to extend the Agreement beyond its Term or to require Senior Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and Senior Lender discontinues foreclosure proceedings, the Agreement shall continue in full force and effect.
- (6) If this Agreement is rejected or terminated as a result of any bankruptcy or insolvency proceeding involving Seller or for any reason other than a default subject to the cure periods available to Seller under this Agreement or the additional cure periods available to Senior Lender under Section 19(b)(1) that Seller or Senior Lender failed to timely cure within said applicable cure periods for any reason, Senior Lender or its designee or assignee may, within thirty (30) days after such rejection or termination, certify in writing to BPA that it intends to perform and is capable of performing the obligations of Seller arising after the date of such rejection or termination as and to the extent required under this Agreement. Provided that BPA has been reimbursed by any person for all amounts due and payable by Seller to BPA under this Agreement (except to the extent that such amounts are due and payable for prospective damages to BPA directly resulting from the rejection or termination of this Agreement in any bankruptcy or insolvency proceeding), BPA shall execute and deliver to Senior Lender or its designee or assignee a new power purchase agreement (a "Replacement Agreement") which shall be for the balance of the remaining Term under such rejected Agreement. The Replacement Agreement shall contain the same conditions, agreements, terms, provisions and limitations as the original Agreement (except for any requirements which have been fulfilled by Seller and BPA prior to such rejection or termination), and except that in the Replacement Agreement Senior Lender or its designee or assignee will be substituted for instances

where "Seller" is referenced in this Agreement. Upon the execution and delivery of such Replacement Agreement by Senior Lender in its capacity as Seller under such Replacement Agreement, none of the provisions of this Section 19 shall apply to such Senior Lender unless it is thereafter reinstated as Senior Lender. Nothing in this Agreement shall prevent BPA from filing a proof of claim in any such bankruptcy or insolvency proceeding.

- (7) If Senior Lender or its designee(s), or any purchaser, transferee, grantee or assignee of the interests of Senior Lender or its designee(s) in the Facility assume or become liable under the Agreement, liability for any and all obligations of any such party under the Agreement shall be limited solely to recourse against such party (except there shall be no recourse against Senior Lender other than against Senior Lender's interest in the Facility) and such party's interest in the Facility.

(c) Senior Lender's Consent to Amendment and Termination.

Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as there exists an unpaid or unsatisfied indebtedness or obligation owed to Senior Lender, without the prior written consent of Senior Lender, not to be unreasonably withheld (a) this Agreement shall not be materially modified or amended, and (b) BPA shall not accept a termination or cancellation of this Agreement from Seller prior to expiration of the Term unless BPA has received a notice from Seller containing Senior Lender's written consent to such termination or cancellation. This provision is for the express benefit of, and shall be enforceable by, Senior Lender. Nothing in this Section 19(c) is intended to affect BPA's rights or remedies, including its right to terminate this Agreement, upon a Seller Event of Default as provided in Section 10, or as otherwise expressly permitted under this Agreement.

(d) Further Amendments.

At Seller's request, BPA shall amend this Agreement to include any provision which may reasonably be requested by Senior Lender; provided, however, that such amendment does not, in BPA's sole judgment, impair any of BPA's rights under this Agreement or increase the burdens or obligations of BPA hereunder or decrease the burdens or obligations of Seller hereunder. Upon the request of Senior Lender, BPA shall provide written acknowledgement evidencing Senior Lender's then existing rights under this Agreement, as interpreted by BPA.

AUTHENTICATED (REDACTED)

BPA Contract No. 01PB-10761

**STATELINE WIND PROJECT
POWER PURCHASE AGREEMENT**

by and between

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

Acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

PACIFICORP POWER MARKETING, INC.

Dated as of December 13, 2001

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POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this "Agreement") is dated as of December 13, 2001 (the "Effective Date") by and between PACIFICORP POWER MARKETING, INC., an Oregon corporation (the "Seller"), 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:

WHEREAS, Seller is purchasing from Project Developer energy output and associated environmental attributes from the Stateline Wind Project, which is to be located in Walla Walla County, Washington and in Umatilla County, Oregon (the "Project");

WHEREAS, Purchaser is authorized by the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501 (the "Northwest Power Act") 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;

WHEREAS, 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;

WHEREAS, Purchaser was not involved in negotiations between Seller and Project Developer, and Purchaser in no way enabled Project to be constructed;

WHEREAS, Seller and Purchaser desire to set forth in this Agreement the terms pursuant to which Seller will sell to Purchaser, and Purchaser will purchase from Seller, a share of the Project's hourly energy output and associated environmental attributes.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Definitions.** As used in this Agreement, the following terms have the following meanings when used with initial capitalization, whether singular or plural:

"Adequate Credit Support": Unless otherwise agreed to by the Parties, this term means a letter of credit that assures payment of one Party's obligations hereunder to the other Party and (i) is from a financial institution that is rated "A" or better by at least two Rating Agencies, and (ii) is in the amount of \$8 million.

"Adequate Guaranty": This term means a guarantee provided by Guarantor, in substantially the same form as the Adequate Guaranty provided by Guarantor contemporaneously with the execution of this Agreement, which at any time must be in the amount of \$8 million, provided that at least one Rating Agency rates the long-term senior unsecured debt of the Guarantor and each Rating Agency that rates such debt rates the debt at or above Investment Grade.

"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.

“Agreement”: This term has the meaning given to it in the preamble to this Agreement.

“Availability LDs”: This term has the meaning given to it in section 6.5.2.

“Base Hours”: Calculated independently for each Turbine, Base Hours is the number of hours in the applicable period, less any hours during such period that Purchaser is unable for any reason other than due to action or inaction by Seller (e.g., a failure of the Transmission Provider), to accept delivery of any energy that such Turbine is otherwise capable of generating. Base Hours is further reduced by average Scheduled Maintenance per Turbine (not to exceed 109.5 hours per Contract Year for purposes of calculating Base Hours), a Force Majeure Event, and/or Non-Generating Wind Conditions. Exhibit B contains an example of a Base Hours calculation.

“BPA”: This term has the meaning given to it in the preamble to this Agreement.

“BPA Delivery Point”: The point, more specifically described in Exhibit A, where Energy is made available to the Transmission Provider between structures 19/3 and 19/4 on the Franklin – Walla Walla 115 kV transmission line.

“BPA Metered Output”: The Energy output metered by the Transmission Provider’s metering equipment installed on the 34.5 kV side of the 115 kV transformation located in the Project Developer’s Nine Mile Substation. 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 PPM to the BPA Delivery Point on each hour.

“Business Day”: Each Day that is not a weekend Day or a federal holiday.

“Check Meters”: This term has the meaning given to it in section 8.2.

“Commercial Operation Date”: The first date on which (i) any of the Turbines, (ii) the Project Developer’s Interconnection Facilities, and (iii) the Transmission Provider’s Interconnection Facilities, are each installed and capable of producing and delivering Energy to the Transmission System in accordance with Prudent Utility Practices; *provided, however*, that the Commercial Operation Date shall not be deemed to have occurred until a number of Turbines included in the Project sufficient to generate at least 50 MW in the aggregate have been certified by Seller as having been installed and capable of producing and delivering Energy to the Transmission System and PacifiCorp’s transmission system in accordance with Prudent Utility Practices.

“Conduit Debt Rating”: This term means a rating of long-term debt of Energy Northwest relating to one or more nuclear projects the debt service of which is secured by Purchaser under a series of net billing agreements among Energy Northwest, Purchaser and certain named participants; *provided that* such rating shall be on debt that is not defeased to maturity or enhanced by third-party credit support such as bond insurance.

“Contract Year”: The Days from January 1 through December 31, inclusive, of a given calendar year during the Term. The first Contract Year shall commence on the earlier of (i) the first January 1 occurring after Project Completion, or (ii) January 1, 2003.

“Cost Cap”: This term has the meaning give to it in section 4.3.2.

“Day”: A period beginning at 00:00 hours on any calendar day and ending at 24:00 hours on the same calendar day.

“Default Termination Payment”: This term has the meaning given to it in section 12.6.

“Defaulting Party”: This term has the meaning given to it in section 12.2.

“Effective Date”: This term has the meaning given to it in the preamble of this Agreement.

“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, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the BPA Metered Output during the Term, or the generation, purchase, sale or use of BPA Metered Output from or by the Project during the Term, including without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, but specifically excluding only the PTCs.

“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, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event,

transportation delays, unavailability of materials, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, strike or other labor difficulty caused or suffered by third parties beyond the reasonable control of such Party or its Affiliates, an interruption of transmission service by the Transmission Provider or any transmission provider beyond the BPA Delivery Point, or an event that constitutes an event of force majeure under the Project PPA (whether such cause is similar or dissimilar to the foregoing) or any restraint or restriction imposed by law or by rule, regulation, or other acts of 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. Seller represents and warrants that it has attached a true and correct copy of the force majeure provisions from the Project PPA in Exhibit D.

“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”: A service provided by the Transmission Provider to Seller for which charges or credits are imposed under applicable tariffs and rate schedules and associated with differences between generation output and generation schedules, as such tariffs and rate schedules may be modified from time-to-time.

“Guarantor”: PacifiCorp Group Holdings Company, a Delaware corporation, or another Affiliate of Seller, as designated by Seller, which Affiliate’s long-term unsecured debt shall, at the time of such designation, be rated at or above Investment Grade by each Rating Agency that rates such debt, provided that at least one Rating Agency shall have a rating of such debt.

“Interconnection Agreement”: The interconnection agreement between the Transmission Provider and the Project Developer pursuant to which the Project Developer’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 Moody’s Investor’s Service (or its successor), a rating of “Baa3” (or its future equivalent); (ii) in the case of Standard & Poors Rating Services (or its successor), a rating of “BBB-” (or its future equivalent); and, (iii) in the case of Fitch, Inc. (or its successor), a rating of “BBB-” (or its future equivalent).

“kW”: Kilowatt.

“kWh”: A unit of energy equal to one kilowatt of power supplied or taken from an electric circuit for one hour.

“Market True-Up Price”: 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 Contract Year. An example illustrating the calculation of Market True-Up Price under certain stated assumptions is included in Exhibit B.

“Material Adverse Change”: This term means (a) with respect to Purchaser, that (i) any Rating Agency that has a rating then in effect provides a long-term direct issuer rating (or its equivalent) below Investment Grade, (ii) if no Rating Agency has an outstanding long-term direct issuer rating of Purchaser, the Conduit Debt Rating is rated below Investment Grade by any Rating Agency that has a rating then effect for such debt; or (iii) no Conduit Debt Rating is

in effect and no Rating Agency has a long-term direct issuer rating of Purchaser; and (b) with respect to Seller, that (i) any Rating Agency that has a rating then in effect rates Seller's long-term senior unsecured debt (if any) below Investment Grade or no Rating Agency has in effect a rating of Seller's long-term senior unsecured debt (if any); and (ii) neither an Adequate Guaranty nor Adequate Credit Support is in effect.

"Maximum Delivery Rate": The maximum hourly rate of delivery for Energy scheduled and delivered to the BPA Delivery Point, as specified in Exhibit C.

"Mean Project Output": 777,480 MWh per Contract Year with the Project configured as substantially set forth in Exhibit A or as otherwise redefined pursuant to a Project Reconfiguration, if any.

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

$$\text{Mechanical Availability Percentage} = 100 \times \frac{\text{(total Operational Hours during the period for all Turbines)}}{\text{(total Base Hours during the period for all Turbines)}}$$

"Month": A calendar month.

"MW": Megawatt or 1,000 KW.

"MWh(s)": Megawatt-hour(s).

"Non-Defaulting Party": This term has the meaning given to it in section 12.2.

"Non-Generating Wind Conditions": Wind velocity at a Turbine that is less than four (4) meters per second or greater than twenty-five (25) meters per second at Turbine hub height.

"Northwest Power Act": This term has the meaning given to it in the Recitals.

"Notice Period": This term has the meaning given to it in section 2.3.

"Operational Hours": Calculated independently for each Turbine, Operational Hours is the number of hours during the applicable period in which a given Turbine is physically and

legally capable of producing energy as measured by such Turbine's internal turbine controller. Operational Hours specifically exclude any hours during which a Turbine is (i) in an emergency, stop, service mode or pause state; (ii) in "run" status and faulted; (iii) not operational as a result of Non-Generating Wind Conditions; (iv) not operational as a result of a Force Majeure Event; and/or (v) not operational as a result of Scheduled Maintenance.

"PacifiCorp Delivery Point": The point, more specifically defined in Exhibit A, where energy is made available to PacifiCorp.

"Pacific Prevailing Time": Pacific Daylight Time or Pacific Standard Time, as applicable.

"Party" and "Parties": These terms have the meanings given to them in the preamble of this Agreement.

"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.

"Present Value Rate": This term has the meaning given to it in Exhibit E.

"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": This term has the meaning given to it in the Recitals, more particularly described in Exhibit A, configured substantially as set forth in Exhibit A and as reconfigured pursuant to a Project Reconfiguration, if applicable.

“Project Completion”: The date on which all of the Turbines in the Project and all other portions of the Project necessary to put the Project into operation with the Transmission Provider’s Interconnection Facilities and the Project Developer’s Interconnection Facilities have been tested and commissioned and can operate in accordance with Prudent Utility Practices, or December 31, 2002, whichever is earlier.

“Project Developer”: FPL Energy Vansycle, L.L.C., a Delaware limited liability company, and its successors and assigns.

“Project Developer’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 Project Developer’s side of, the BPA Delivery Point.

“Project Developer’s Meters”: This term has the meaning given to it in section 8.1.

“Project PPA”: That certain Power Purchase Agreement between PacifiCorp Power Marketing, Inc. and FPL Energy Vansycle, L.L.C., dated as of November 30, 2000, as amended from time to time.

“Proprietary Information”: This term has the meaning given to it in section 17.1.

“Project Reconfiguration”: This term has the meaning given to it in section 3.1.1.

“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.

“PTCs”: The production tax credits under section 45 of the Internal Revenue Code 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.

“Purchase Price”: This term has the meaning given to it in section 7.

“Purchaser”: This term has the meaning given to it in the preamble of this Agreement.

“Qualifying Charge”: This term has the meaning given to it in section 4.3.2.

“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).

“Representative”: This term has the meaning given to it in section 14.1.

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

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

“Seller”: This term has the meaning given to it in the preamble of this Agreement.

“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.

“T for C Effective Date”: This term has the meaning given to it in section 2.3.

“Termination Payment”: This term has the meaning given it in Exhibit E.

“Term”: This term has the meaning given to it in section 2.1.

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

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

“Transmission Provider’s Interconnection Facilities”: The Franklin-Walla Walla 115 kV 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; *provided, however*, that the number of Turbines stated in Exhibit A may be adjusted pursuant to section 3 and pursuant to a Project Reconfiguration, if any.

“WSCC”: Those portions of the United States, Canada, and Mexico that comprise the Western System 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 December 31, 2026, unless terminated earlier pursuant to section 2.3, 2.4, or 12 (the “Term”).

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.

2.3 Termination for Convenience. Purchaser, at its sole discretion, may terminate this Agreement for convenience to become effective at 2400 hours on December 31 of any Contract Year (the "T for C Effective Date") by providing written notice to Seller no later than twenty-four (24) Months prior to any such T for C Effective Date (the "Notice Period"); *provided, however*, that Purchaser shall not provide a notice of termination for convenience prior to 2400 hours on December 31, 2004. During the Notice Period, the Parties shall negotiate in good faith the Termination Payment for such termination using the methodology described in Exhibit E, which amount is intended by the Parties to make Seller whole in terms of the value of this Agreement, and the Seller shall provide Purchaser with written notice of such amount on or before the T for C Effective Date. The Parties agree that the Termination Payment shall always be an amount paid by Purchaser to Seller. The Termination Payment shall be due and payable by Purchaser on the T for C Effective Date. If the Parties are unable to agree on the Termination Payment within twelve (12) Months after the date of Purchaser's notice (but not before such date), either Party may resort to dispute resolution under section 14. After Purchaser delivers such notice, Seller shall have the right to enter into a replacement agreement or agreements for the sale of Energy and Environmental Attributes commencing after the T for C Effective Date.

2.4 Notice of Termination. Seller may terminate this Agreement if (a) an Interconnection Agreement with PacifiCorp, in form and substance satisfactory to Project Developer, in its reasonable discretion, is not executed by June 30, 2001, and (b) Project Developer exercises its right to terminate the Project PPA in such circumstances; provided, however, that Seller gives Purchaser ten (10) days written notice before such termination. Upon the effective date of such termination, the Parties shall be released and discharged from any obligation arising hereunder from and after the date of termination.

3. **Project Permitting and Construction.**

3.1 Configuration of the Project; Reconfiguration of Project. As of the Effective Date, the Project consists of 399 Turbines and is configured substantially as set forth in Exhibit A.

3.1.1 Purchaser acknowledges that (i) Project Developer and Seller have the right, pursuant to sections 4.4.4 and 4.4.5 of the Project PPA, to partially terminate the Project PPA, and (ii) if such a partial termination occurs, Seller and Project Developer shall reconfigure the Project to exclude those Turbines so partially terminated from the Project, all pursuant to section 4.4 of the Project PPA (a "Project Reconfiguration").

3.1.2 If a partial termination results pursuant to section 3.1.1, Seller and Project Developer shall, subject to approval by Purchaser, which shall not be unreasonably withheld, conditioned, or delayed, (i) reconfigure the Project in a commercially reasonable manner, and (ii) redefine the Mean Project

Output and the Turbines, in each case consistent with the Project Reconfiguration.

3.2 Project Completion. Seller shall use commercially reasonable efforts under the Project PPA to cause the Project Developer to achieve the Project Completion by December 31, 2001; *provided, however,* that such date shall be extended Day-for-Day by any Force Majeure Event and otherwise not due to the negligence or fault of Purchaser.

3.3 Purchaser Has No Interest in Project Expansion. Purchaser acknowledges that, pursuant to the Project PPA, Seller has the option to purchase from Project Developer the energy and environmental attributes produced by turbines located in Umatilla County, Oregon or in Walla Walla County, Washington that are in addition to the Turbines included in the Project. If Seller exercises this option, this Agreement shall not apply to, and Purchaser shall have no right to purchase and accept, such energy and environmental attributes.

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 sell and deliver at

the BPA Delivery Point, the energy from all Turbines specified in Exhibit A-1, section 5, and Purchaser shall purchase and accept from Seller at the BPA Delivery Point, the BPA Scheduled Deliveries; *provided, however*, that the amount of Energy delivered to the Purchaser shall not exceed the Maximum Delivery Rate. Seller shall not change the number of Turbines connected to the BPA Delivery Point without prior written notice to the Purchaser, and only during periods of Force Majeure Events, Forced Outage, Scheduled Maintenance, or inability of the Transmission Provider to accept energy at the BPA Delivery Point.

4.3 Generation Imbalance Service. Seller shall be responsible for Generation Imbalance Service charges assessed by the Transmission Provider at the BPA Delivery Point, subject to the following:

4.3.1 Generation Imbalance Service Cost Sharing. In addition to any reimbursements made by Purchaser to Seller under section 4.3.2, to the extent the Transmission Provider charges the Seller a fixed dollar per MWh charge of \$100 per MWh for Generation Imbalance Service under Transmission Provider's Generation Imbalance Service rate, the Purchaser shall reimburse Seller for one-half (1/2) the portion of such charge that is above 110 percent of the market index price. For example, if, on an hour, the Transmission Provider charges the greater of \$44 (110 percent of an assumed \$40 per MWh market index price) or \$100 per MWh, the Purchaser will reimburse the Seller one-half (1/2) of the amount by which

the \$100 per MWh charge exceeds 110 percent of the market index price, as shown in the following example:

$((\$100 - \$44) / 2 = \$28$ cost share reimbursed to Seller). In this example, the amount to be applied toward the Cost Cap will be \$32 (\$100-\$40-\$28).

Seller shall calculate the cost sharing amount, if any, based on the actual Transmission Provider invoice, for each hour of a Month as set forth above and shall include such amount as a separate line item in the following billing invoice submitted by Seller to Purchaser. Upon request by the Purchaser, Seller shall provide Purchaser billing quality data, when such data is made available to Seller by the Transmission Provider, including the data used by the Transmission Provider to calculate the Generation Imbalance charges, in order for Purchaser to verify the hourly cost sharing amount included in any billing invoice submitted by Seller to Purchaser.

4.3.2 Generation Imbalance Service Cost Cap. The Seller's exposure to qualifying monthly Generation Imbalance Service charges ("Qualifying Charges") will be capped at [REDACTED] per month ("Cost Cap") and the Purchaser shall reimburse the Seller for all Qualifying Charges that exceed the Cost Cap each Month.

The Parties intend that Qualifying Charges shall be those charges assessed Seller by the Transmission Provider in excess of the market index price, and all discounts from the market index price provided as credits to Seller, pursuant to tariffs and rate schedules in effect from time-to-time

and associated with Generation Imbalance Service outside the deviation band, if any, less any reimbursements under section 4.3.1. The Parties intend that the “market index price” as referred to in this Agreement shall be what the Transmission Provider currently defines as “incremental cost,” as that term may be re-defined from time to time, under Generation Imbalance Service.

In determining the Qualifying Charges each Month, Seller shall calculate the following for each hour as applicable: (i) the portion of the price charged Seller by the Transmission Provider in excess of the market index price for each hour that BPA Metered Output is less than BPA Scheduled Deliveries, multiplied by the MWh applicable to such charge, or (ii) the difference between the market index price and the price received by Seller from Transmission Provider for each hour that BPA Metered Output exceeds BPA Scheduled Deliveries multiplied by the MWh applicable to such payment. The Seller shall sum each of the hourly charges and payments into a single, aggregate amount of Qualifying Charges for a Month. Examples of Qualifying Charges and charges which are not Qualifying Charges are included in Exhibit B.

The Seller shall calculate the Qualifying Charges for each Month to determine if the Cost Cap has been reached for the Month. If Seller determines the Qualifying Charges exceed the Cost Cap, then Seller shall calculate the amount of Qualifying Charges that exceed the Cost Cap and shall include such amount as a separate line item in the next issued billing

invoice submitted by Seller to Purchaser. Upon request by the Purchaser, Seller shall provide Purchaser billing quality data when such data is made available to Seller by the Transmission Provider, including the worksheets and electronic data used by the Transmission Provider to calculate the Generation Imbalance Service charges in order for Purchaser to verify such charges.

4.4 Monthly Comparison of BPA Metered Output to BPA Scheduled Deliveries.

Following the end of each Month, Seller shall compare BPA Metered Output to BPA Scheduled Deliveries.

4.4.1 BPA Metered Output Exceeds BPA Scheduled Deliveries. If BPA

Metered Output during a Month exceeds BPA Scheduled Deliveries during such Month by five percent (5%) or more, Seller shall credit Purchaser an amount for each hour equal to (1) the positive difference, if any, between the Generation Imbalance Service charge paid to Seller by Transmission Provider (expressed in hourly \$/MWh) and the Purchase Price herein, multiplied by (2) the amount (in MWh) by which BPA Metered Output exceeds BPA Scheduled Deliveries for such hour by more than the deviation band allowed in the Transmission Provider's Generation Imbalance Service charge rate for such hour.

4.4.2 BPA Scheduled Deliveries Exceed BPA Metered Output. If BPA

Scheduled Deliveries during a Month exceeds BPA Metered Output during such Month by five percent (5%) or more, Seller shall credit Purchaser an amount for each hour equal to (1) the positive difference, if

any, between the Purchase Price herein and the Generation Imbalance Service amount charged to Seller by Transmission Provider (expressed in hourly \$/MWh), multiplied by (2) the amount (in MWh) that BPA Scheduled Deliveries exceeds BPA Metered Output by more than the deviation band allowed in the Transmission Provider's Generation Imbalance Service charge for such hour.

4.4.3 Credit on Purchaser's Bill. Seller shall calculate the credit, if any, as described above in sections 4.4.1 and 4.4.2 as soon as reasonably practicable after receipt of the Transmission Provider's invoice for Generation Imbalance Service for the applicable Month. Seller shall include any such credit on the invoice next issued to Purchaser under section 9 and shall reference the Month for which such credit is being applied. Upon request by the Purchaser, Seller shall provide Purchaser billing quality data when such data is made available to Seller by the Transmission Provider, including the billing data used by the Transmission Provider to calculate the Generation Imbalance Service charges, in order for the Purchaser to verify charges under this section. Exhibit B sets forth examples of the calculation of the credit specified in this section 4.4 under certain stated assumptions.

In a Month during which there are differences between BPA Metered Output and of BPA Scheduled Deliveries of five percent (5%) or more as provided in sections 4.4.1 or 4.4.2, and resulting in a credit being owed by Seller to Purchaser for which Seller has not included such credit

on Purchaser's next issued invoice, then interest shall accrue pursuant to section 18.8 beginning thirty (30) Days after either (i) Seller is charged and billed the subject Generation Imbalance Service charges by the Transmission Provider, or (ii) Seller is credited on the Transmission Provider invoice for Energy received under the Generation Imbalance Service.

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 reasonable evidence of Purchaser's right, title, and interest in such Environmental Attributes and information with respect to such Environmental Attributes. Seller makes no representation or warranty, expressed or implied, regarding the current or future existence of any Environmental Attributes, but will transfer to Purchaser any and all Environmental Attributes.

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 WSCC 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 Curtailment.

5.4.1 Purchaser acknowledges that, pursuant to the Project PPA, the Project Developer may curtail deliveries of Energy in accordance with Prudent

Utility Practices and in a commercially reasonable manner if Project Developer reasonably believes that curtailment is necessary: (i) to construct, install, maintain, repair, replace, remove or inspect any of the Turbines or the Project's equipment, or (ii) 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 Project Developer to protect life or property. If the Project Developer notifies Seller of any curtailment under clause (i) above, Seller shall promptly notify Purchaser.

5.4.2 Purchaser acknowledges that, pursuant to the Project PPA, Project Developer 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 use commercially reasonable efforts under the Project PPA to cause the Project Developer to resume deliveries of Energy as soon after curtailment as is reasonably possible, safe, and in accordance with Prudent Utility Practices.

5.5 Project Availability Log. In accordance with Seller's rights under section 5.4 of the Project PPA to receive a log from the Project Developer, Seller shall provide BPA 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 two (2) Business Days' advance written notice of its intent to do so.

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

6.1 **Operating Standards.** Seller shall use commercially reasonable efforts pursuant to the Project PPA (a) to cause the Project Developer to construct, operate and maintain the Project in accordance with Prudent Utility Practices and consistent with any interconnection agreement related to the Project, and (b) to enforce the Project PPA against the Project Developer (including at a minimum pursuing the remedy of specific performance under the Project PPA).

6.2 **Site Visits.** Upon Purchaser's prior request provided to Seller at least five (5) Days in advance, Seller shall use commercially reasonable efforts to cause Project Developer to 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 use commercially reasonable efforts pursuant to the Project PPA to cause Project Developer (a) to 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 in accordance with Prudent Utility Practices, and (b) to keep

records with respect to inspections, maintenance and repairs to the Project. Seller shall use commercially reasonable efforts pursuant to the Project PPA to cause Project Developer to permit Purchaser to inspect the plan and records during Project Developer's regular business hours upon at least five (5) Business Days' notice.

6.4 Scheduled Maintenance Schedule. Purchaser acknowledges that Project Developer is required to deliver to Seller a Scheduled Maintenance schedule for the Project for a Contract Year at least sixty (60) Days before the beginning of that Contract Year. Within ten (10) Days after Seller receives the Scheduled Maintenance schedule from Project Developer, Seller shall provide Purchaser with written notice of 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, consistent with its obligations to other purchasers of energy and to the Project Developer, to accommodate any outage schedule adjustment requested by Purchaser.

6.5 Mechanical Availability Guaranty.

6.5.1 Seller guarantees that, as calculated at the beginning of the third Contract Year and each Contract Year thereafter, the Project shall have achieved a Mechanical Availability Percentage of 75 percent for the prior Contract Year.

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

damages equal to the difference between the guaranteed Mechanical Availability Percentage and the actual Mechanical Availability Percentage multiplied by the Mean Project Output multiplied by 34.33 percent multiplied by the Market True-Up Price for the Contract Year in which the Project failed to achieve the guaranteed Mechanical Availability Percentage (the "Availability LDs").

6.5.3 Purchaser shall not be entitled to receive Availability LDs under this section 6.5 to the extent that the Project's failure to achieve the guaranteed Mechanical Availability Percentage was caused by (a) Transmission Provider or any of its agents, contractors, vendors, or employees, (b) Purchaser or any of its agents, contractors, vendors or employees, or (c) a Force Majeure Event.

6.5.4 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 Availability LDs.

6.5.5 Examples illustrating the calculation Availability LDs under certain stated assumptions are included in Exhibit B.

6.6 Exclusiveness and Non-Duplication of Remedies. Notwithstanding anything to the contrary in this Agreement, the remedies provided for in this section 6 shall be Purchaser's sole and exclusive remedy for Seller's breach of any of the covenants contained in this section 6.

6.7 Wind Data Collection and Usage. Seller shall make commercially reasonable efforts to make available to Purchaser wind and energy data collected by Project

Developer at the Project and provided to Seller by the Project Developer. Prior to providing such data to Purchaser, Project Developer must agree in writing to allow Seller to provide such data to the Purchaser. Seller shall provide such data to Purchaser in electronic form whenever possible. Such data shall be used by Purchaser solely for purposes of analyzing the feasibility of, and preparing a process for, forecasting and scheduling short-term future deliveries of energy to be generated by the Project. Each Party shall be entitled to use the results of Purchaser's analysis and process; provided that such use shall be at such Party's own risk; and further provided that such analysis and process shall not affect the provisions of this Agreement or either Party's performance of its obligations hereunder. All wind data made available to Purchaser shall remain the property of Seller and shall not be distributed to any other person or entity without the prior written consent of Seller. Seller shall have no obligation to provide wind data pursuant to this section until the Parties first enter into a confidentiality agreement on terms reasonably acceptable to both Seller and Purchaser.

7. **Purchase Price; Credit Support.**

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 Credit Support.

7.3.1 Initial Credit Support. As a condition precedent to the commencement of Seller's obligations under this Agreement, Purchaser hereby represents and warrants that as of the Effective Date Purchaser's Conduit Debt Rating as rated by each Rating Agency is Investment Grade or above.

As a condition precedent to the commencement of Purchaser's obligations under this Agreement, Seller (i) shall provide to Purchaser an Adequate Guaranty from Guarantor and accepted by Purchaser, which guarantee secures Seller's obligations to Purchaser under this Agreement in the amount of eight million U.S. dollars (\$8,000,000); and (ii) hereby represents and warrants that, as of the effective date of this Agreement, Standard & Poors Rating Services rates Guarantor's long-term senior unsecured debt at or above Investment Grade. Purchaser acknowledges that, if Seller is hereafter rated by at least one Rating Agency and obtains an Investment Grade or higher rating by each Rating Agency that gives it a rating, the Adequate Guaranty delivered pursuant to clause (i) above shall automatically terminate ten (10) Days after written notice to BPA and shall thereafter be of no further force or effect.

7.3.2 Provision of Adequate Credit Support. At any time during the period in which a Material Adverse Change affecting Purchaser or Seller is

occurring, the other Party, in its sole discretion, may by written notice demand that the other Party provide Adequate Credit Support.

Within ten (10) Days of the receipt of a written demand for Adequate Credit Support from a Party, the Party receiving such demand shall provide Adequate Credit Support, and shall thereafter maintain such Adequate Credit Support until such time as no Material Adverse Change is then occurring with respect to the Party receiving the demand. Notwithstanding the foregoing, a Party that has provided either Adequate Credit Support or an Adequate Guaranty may replace such instrument with another instrument or instruments of Adequate Credit Support or Adequate Guaranty with ten (10) Days' prior written notice to the Party benefiting from such instrument or instruments.

7.3.3 Failure to Provide or Maintain Credit Support. The failure of a Party to perform any of its obligations as provided in this section shall be a default of this Agreement under section 12.

7.3.4 Information. At a Party's written request, the other Party shall furnish the requesting Party information as may be reasonably required to determine whether a Material Adverse Change has occurred or is continuing.

7.4 Taxes. All applicable taxes assessed Seller and/or Project Developer to support the sale and delivery of Energy and Environmental Attributes to Purchaser shall be paid by Seller and/or Project Developer. ~~All applicable taxes assessed Purchaser to support the purchase of Energy and Environmental Attributes from Seller shall be paid by Purchaser.~~**[Initialed SRO/PW, 12/13/01].** Each Party

shall use reasonable efforts to provide to the other Party, in compliance with applicable law, such information as may be required to minimize the taxes that each Party is required to pay.

8. **Measurement and Metering.**

8.1 **Metering Equipment.** Seller shall cause Project Developer to 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 and to the PacifiCorp 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 (the "Project Developer's Meters"). Seller shall cause Project Developer (or a transmission provider or the Transmission Provider, as applicable) to install Project Developer's Meters on the low side of the transformer prior to the BPA Delivery Point and the PacifiCorp Delivery Point. Transmission loss factors shall be provided by the Transmission Provider to adjust the BPA Metered Output as measured by the Project Developer's Meters. Seller shall, if requested by Purchaser and at the sole cost and expense of Purchaser, use commercially reasonable efforts under the Project PPA to cause the Project Developer to make such information available to Purchaser on a real-time basis by remote access.

8.2 **Check Meters.** Purchaser may instruct Seller to exercise Seller's rights under the Project PPA 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; *provided, however*, that if other purchasers of energy instruct Seller to exercise its right to install, maintain or operate Check Meters, the cost of installing, maintaining and operating the Check Meters shall be borne by the requesting Persons on a pro rata basis based on the percentage of the Energy purchased by such requesting Persons. Purchaser acknowledges that the Check Meters may not interfere with the installation, maintenance and operation of Project Developer's metering equipment or the Project Developer's Interconnection Facilities. Seller shall use commercially reasonable efforts under the Project PPA to cause Project Developer to arrange for a location within or near Project Developer's Meters, accessible to Seller and Purchaser, for the installation of the Check Meters.

8.3 Measurements. Readings of Project Developer's Meters shall be conclusive as to the amount of Energy delivered under this Agreement; *provided, however*, that if any of Project Developer'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 Project

Developer'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 agreed upon by the Seller and Project Developer 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 the PacifiCorp Delivery Point(s); or
- 8.3.6 by Project Developer's estimating by reference to the measurements made during other comparable time periods having similar wind-generating conditions when the Project Developer's Meters were registering accurately, such estimate being subject to Seller's approval, not to be unreasonably withheld, conditioned or delayed; 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 use commercially reasonable efforts under the Project PPA (a) to cause Project Developer to test and verify the accuracy of Project Developer's Meters at least every two (2) years, and (b) to enable Purchaser to exercise Seller's rights under the Project PPA to test and verify the accuracy of Project Developer'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 Resolution of Disagreements Concerning Meter Accuracy. Each meter shall be accurate to within a two percent (2%) variance. Purchaser acknowledges that disputes regarding the accuracy of any meter will be resolved under the Project PPA as follows: If either Seller or Project Developer disputes a meter's accuracy or condition, it will so advise the owner of the meter in writing. The owner of the meter will, within fifteen (15) Days after receiving the notice, advise the disputing entity in writing as to its position concerning the meter's accuracy and reasons for taking such position. If the entities are unable to resolve their disagreement through reasonable negotiations, then either entity may submit such dispute to an unaffiliated third-party engineering company mutually acceptable to Seller and Project Developer to test the meter. Should the meter be found to register within the permitted two percent (2%) variance, the disputing entity shall bear the cost of inspection; otherwise, the cost shall be borne by the owner of the meter. Any

repair or replacement shall be made at the expense of the owner of the meter as soon as practicable, based on the third-party engineer's report.

- 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 the Project PPA and 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 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, the Energy 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 (15th) Day of each Month for charges determined under sections 4, 6, 7, and 8 for the preceding Month(s) and shall transmit the invoice to Purchaser by fax. 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 Project Developer or 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 (20th) 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 contractual or other limitations regarding confidential or proprietary information, 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: Manager, Middle Office
PacifiCorp Power Marketing, Inc.
650 NE. Holladay, Suite 700
Portland, OR 97232
Phone: (503) 813-5763
Fax: (503) 813-5707

With a copy to: Vice President, Business Development
PacifiCorp Power Marketing, Inc.
650 NE. Holladay, Suite 700
Portland, OR 97232
Phone: (503) 813-6262
Fax: (503) 813-5722

To Purchaser: Wind Program Manager
Bonneville Power Administration
P.O. Box 3621, Routing – PTS-5
Portland, OR 97208
-or-
905 NE. 11th
Portland, OR 97232
Phone: (503) 230-4386
Fax: (503) 230-4973

With a copy to: Tom Osborn, Project Manager
Bonneville Power Administration
1520 Kelly Place
Walla Walla, WA 99362
Phone: (509) 527-6211
Fax: (509) 527-6311

Mark Miller, Account Executive
Bonneville Power Administration
P.O. Box 3621, Routing - PT-5
Portland, OR 97208
Phone: (503) 230-4003
Fax: (503) 230-3681

With a copy to: The Guarantor under any Adequate Guaranty.

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 Failure to perform any obligations under section 7.3;

12.1.6 Seller's failure to deliver the energy generated from all Turbines specified in Exhibit A-1, section 5, to Purchaser at the BPA Delivery Point as a result of the sale or other disposition of such energy to a third party or parties or Seller's willful refusal to schedule such energy to Purchaser in compliance with this Agreement (but excluding delivery failures addressed by section 4.3 or 4.4).

12.1.7 Seller's failure to deliver the energy generated from all Turbines specified in Exhibit A-1, section 5, to Purchaser at the BPA Delivery Point as a result of the Project Developer's sale or other disposition of such energy other than to Seller or Purchaser or Project Developer's willful refusal to deliver such energy to Seller for delivery to Purchaser in compliance with this Agreement (but excluding delivery failures addressed by section 4.3 or 4.4).

12.1.8 The failure of a Party to perform any other material duty imposed upon that Party by this Agreement.

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 pursuant to section 12.1.5, the default must be cured within ten (10) Days after the Defaulting Party's receipt of the Notice of Default.
- 12.3.4 In the case of a default described in section 12.1.6, Seller must recommence the delivery of energy to Purchaser within two (2) Business Days after receiving the Notice of Default. The Parties agree that Seller will have committed a default of this Agreement if the aggregate number of hours in which such failure occurs in any consecutive 365-Day period is more than three hundred and thirty six (336) hours; *provided, however*, that an hour shall not be counted toward the 336 hour total until after Seller has received a Notice of Default for the default that causes the failure to deliver in that hour.
- 12.3.5 In the case of a default described in section 12.1.7, Seller shall cause Project Developer to cure the default within thirty-five (35) Days after Seller's receipt of the Notice of Default. Notwithstanding the preceding sentence, if the default cannot in good faith be corrected within the thirty-five (35) Day cure period and the Project Developer or any other Person begins to correct the default within the cure period and thereafter

continues corrective efforts until a cure is effected, then the Notice of Default shall be inoperative, and the Seller shall lose no rights under this Agreement; *provided, however*, that the additional cure period shall not extend beyond 185 Days after receipt of the Notice of Default; *and provided further*, that if the Project Developer's lender has the right to cure the default under the Project PPA, the original cure period shall be ninety-five (95) Days and the additional cure period shall not extend beyond 185 Days after receipt of the Notice of Default. If the Project Developer cures the default within the applicable cure period as it may be extended by the preceding sentence, then the Notice of Default shall be inoperative, and the Defaulting Party shall lose no rights under this Agreement. If the default is not cured within the applicable cure period (as it may be extended under this section), then the Non-Defaulting Party may exercise the remedies set forth in section 12.4.3.

12.3.6 In the case of a default described in section 12.1.8, the default must be cured within thirty-five (35) Days after the Defaulting Party's receipt of the Notice of Default. Notwithstanding the preceding sentence, if the default cannot in good faith be corrected within the thirty-five (35) Day cure period and the Defaulting Party or any other Person begins to correct the default within the cure period and thereafter continues corrective efforts until a cure is effected, then the Notice of Default shall be inoperative, and the Defaulting Party shall lose no rights under this Agreement; *provided, however*, that the additional period shall not extend

beyond thirty-five (35) Days after the end of the original cure period; *provided further*, that if a default by Seller can be cured only by compelling the Project Developer to cure a default under the Project PPA, the additional cure period shall not extend beyond 185 Days after receipt of the Notice of Default; *and provided further*, that if the Project Developer's lender has the right to cure the default under the Project PPA, the original cure period shall be ninety-five (95) Days and the additional cure period shall not extend beyond 185 Days after receipt of the Notice of Default. If the Defaulting Party cures the default within the applicable cure period as it may be extended by the preceding sentence, then the Notice of Default shall be inoperative, and the Defaulting Party shall lose no rights under this Agreement. If the default is not cured within the applicable cure period (as it may be extended under this section), 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 Seller defaults under section 12.1.6 and does not cure the default as provided in section 12.3.4, Purchaser shall have the right (but not the duty) to terminate this Agreement. In addition, Seller shall be liable to Purchaser for its reasonable cost to cover. Subject to the dispute

resolution procedures of section 14, Purchaser shall submit its written determination of such cost to cover to Seller (together with supporting explanation and information) and Seller shall pay such amount to Purchaser within thirty (30) Days after receiving the written determination. Seller shall have no right to liquidated damages against Purchaser in the event of termination under this section 12.4.2. If Purchaser suffers damages under this Agreement from a default under section 12.1.6, Purchaser shall be entitled to recover cost to cover damages suffered by Purchaser for the period during which the Seller was in default, regardless of whether Seller thereafter cures the default.

12.4.3 If Project Developer causes Seller to default under section 12.1.7 and the default is not cured as provided in section 12.3.5, Purchaser shall have the right (but not the duty) to terminate this Agreement and recover from Seller, as Purchaser's exclusive remedy for such an uncured default, the following liquidated damages: 17.165 percent (i.e., 50 percent of Purchaser's 34.33 percent in the energy output of the Project as a whole) of the result of (i) the damages or other financial value, if any, that Seller recovers from the Project Developer in an action against the Project Developer for breach of the Project PPA, minus (ii) Seller's reasonable costs of prosecuting the action against the Project Developer and/or its guarantor and/or its lender (including documented, reasonable attorneys' fees and costs, court costs, expert witness fees and related expenses). Seller shall provide Purchaser with regular status reports concerning the

progress of any such action. If Project Developer cures the default within the applicable cure period, but Seller nonetheless recovers damages from Project Developer for such default under the Project PPA, Seller shall share the damages recovered with Purchaser on the same basis as set forth in this section. Seller shall have no right to liquidated damages against Purchaser in the event of termination under this section 12.4.3.

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 now or hereafter 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. Notwithstanding section 13, the Non-Defaulting Party shall be entitled to recover, upon termination of this Agreement for the Defaulting Party’s default, all costs reasonably incurred by the Non-Defaulting Party’s in closing out forward positions and similar transactions entered into in connection with this Agreement, including but not limited to damages incurred by the Non-Defaulting Party’s in closing out mark-to-market arrangements.

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 set off under this Agreement and each Party retains all other rights of setoff, offset and recoupment otherwise available to it.

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 PURCHASED POWER, 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.

14.3 Waiver of Jury Trial. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY

LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

14.4 Attorneys' Fees. If any action at law or in equity is taken to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such Party may be entitled, including fees and expenses at trial and on appeal.

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; *provided, however,* that Seller may Transfer this Agreement to an Affiliate of Seller without Purchaser's consent but with prior notice to Purchaser if, at the time of such Transfer, either (i) the Affiliate of Seller is not rated below Investment Grade by any Rating Agency and at least one Rating Agency rates the Affiliate of Seller, or (ii) the performance of the Affiliate of Seller is guaranteed by an Adequate Guaranty or Adequate Credit Support. 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. In addition, notwithstanding this section 15.1, 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 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.

15.2 Restriction on Assignment by Purchaser. Purchaser may not Transfer this Agreement without Seller's prior written consent, not to 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 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. 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. BPA hereby represents, covenants, and warrants to Seller the following:
- 16.1.1 Northwest Power Act. BPA is authorized by federal law, including the Northwest Power Act and other applicable laws, to dispose of electric power generated at various federal hydroelectric projects in the Pacific

Northwest or acquired from other resources, including wind energy facilities.

16.1.2 Due Authorization; No Violation. The execution and performance of BPA's obligations under this Agreement has been duly authorized by all necessary agency action, and does not and will not:

- (a) require any further agency consent or approval;
- (b) to the knowledge of BPA, violate any provision of federal law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to BPA, or conflict with or constitute a breach or default under any contract or agreement of any kind to which BPA is a party, the violation, conflict, or breach or default of which could have a material adverse effect on the ability of BPA to perform its obligations under this Agreement.

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.

16.1.3 Enforceability. This Agreement has been duly authorized, executed, and delivered by BPA and, assuming due authorization, execution, and delivery by the other Party hereto, the Agreement constitutes a legal and valid obligation of BPA enforceable in accordance with its terms, except

as the enforceability thereof may be limited by bankruptcy laws of the United States of America, insolvency, reorganization, arrangement, moratorium, or other laws relating to or affecting the enforcement of creditors' rights generally, general principles of equity, whether such enforceability is considered in a proceeding in equity or at law, and the exercise of judicial discretion in appropriate cases and the limitations on legal remedies against the United States of America under Federal law.

16.1.4 Project PPA. Purchaser represents that it has had the opportunity to review the excerpts from the Project PPA contained in Exhibit D and to ask questions and receive answers from Seller concerning the Project PPA and, further, that it has received all information that it believes is necessary or desirable in its understanding the references to the Project PPA contained in this Agreement.

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

16.2.1 Corporate Organization. Seller is a corporation duly organized and validly existing under the laws of Oregon.

16.2.2 Due Authorization. Seller's Board of Directors 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 valid order of any court, or any regulatory agency or other body having authority to which 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, principles of public policy concerning, affecting or limiting the enforcement of rights or remedies against governmental entities such as Seller, 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).

16.2.5 Project PPA. Seller represents that Exhibit D contains true and accurate excerpts of the Project PPA as in effect as of the Effective Date. Seller represents that neither it nor Project Developer have any right to terminate the Project PPA, except for (i) the right to terminate for default as described in attached Exhibit D (section 4.6), (ii) the right to terminate and buy out the Project PPA in certain circumstances specified in the Project PPA, and (iii) the right to terminate described in section 2.4. Seller shall not exercise its right to terminate and buy out the Project PPA while this Agreement remains in effect. Seller shall not agree to or permit any amendment to the Project PPA that would adversely affect Purchaser's

rights under this Agreement without receiving Purchaser's prior written consent to such amendment (such consent not to be unreasonably withheld, delayed, or conditioned), and Seller shall notice Purchaser of any such amendment to the Project PPA within thirty (30) Business Days prior to the effective date of such amendment.

17. **Confidentiality.**

17.1 **Certain Definitions.** For purposes of this section 17, "**Proprietary Information**" means (i) 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, and (ii) the nature and content of the discussions regarding this Agreement. 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. 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. 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 and uses its reasonable efforts to obtain confidential treatment for such information consistent with how the Recipient would treat its own confidential information.

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 and construed in accordance with the laws of the State of Oregon (without reference to conflicts of laws rules), except to the extent the Parties’ rights and obligations are required to be governed by United States federal law, then such rights and obligations 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 with each other and the Project Developer 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. Purchaser acknowledges and agrees that it is not a Third-Party beneficiary of the Project PPA.

- 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. Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporate and vice versa, as the context so requires. Whenever the words “include(s)” or “including” are used in this Agreement, they should be interpreted to mean include(s) or including, but not limited to. 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 under section 6.6, or Purchaser terminates this Agreement for convenience pursuant to section 2.3, or the Purchaser terminates this Agreement under section 12.4.3, and the Parties therefore agree that the payment of liquidated damages as contemplated in section 6.6, the payment as may be agreed to pursuant to Exhibit E, and the damages contemplated by section 12.4.3, each constitute a fair and reasonable calculation of actual damages to Purchaser in the

event that Seller fails to perform or to Seller in the event that Purchaser terminates this Agreement for convenience pursuant to section 2.3.

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 supersedes all other prior agreements, statements and understanding (whether written or oral) with respect to the subject matter hereof.

(Signature page follows.)

IN WITNESS WHEREOF, the Parties enter into this Agreement as of the date first written above.

PACIFICORP POWER MARKETING, INC.

THE BONNEVILLE POWER ADMINISTRATION

/S/ PETER C. VAN ALDERWERELT

/S/ STEPHEN R. OLIVER

By: Peter C. van Alderwerelt

Its: Vice President

By: Stephen R. Oliver

Its: Vice President, Bulk Power
Marketing & Transmission
Services

**EXHIBIT A
PROJECT CONFIGURATION**

Exhibit A-1

PROJECT DESCRIPTION

1. Project Location

The Project will be located on private agricultural land located in Umatilla County, Oregon and Walla Walla County, Washington, as more fully set forth in Exhibit A-2, on which Project Developer will obtain wind energy leases or other possessory real estate rights with the landowners. The real estate rights will allow Project Developer to construct and operate wind generation facilities for a defined term; and in exchange, each landowner will receive financial compensation.

2. Project Facilities

The wind generation facilities include the Turbines more fully described in Exhibits A-2 and A-3 and the electrical system. The Project's electrical system will consist of two key elements: (1) a collector system, which will collect energy at 690 volts from each wind turbine increased to 34.5 kV by a pad-mounted transformer and connect it to the Project substation; and (2) the substation, which will transform energy from 34.5 kV to the 230 kV interconnected to the PacifiCorp Transmission System and to the 115 kV interconnected to the BPA Transmission System.

3. Project Collector System

The collector system consists of the padmount transformers and the 34.5 kV electric cables. Each Turbine will generate power at 690 volts. A transformer adjacent to each tower will transform the power to 34.5 kV. Transformers will be located on a transformer pad located approximately 5 feet from the tower pad. From there, power will be transmitted via a combination of underground and overhead 34.5 kV electric cables.

4. Project Substation Site

The substation site will occupy approximately 1 to 2 acres in an area just east of Hatch Grade Road in Washington. The substation site will be a graveled, fenced area with transformer and switching equipment and an area to park utility vehicles. Transformers will be non-polychlorinated biphenyl (PCB) oil-filled types.

5. Portion of Project from which BPA is Purchasing Energy Output

Unless the Turbines are changed pursuant to section 3.1 or section 4.2 of the body of this Agreement, BPA will purchase the Energy from 137 Turbines on the following Turbine strings connected to the 115 kV transformer:

| <u>Circuit</u> | <u>Turbine String Name</u> | <u>Installed Capacity (MW)</u> |
|----------------|----------------------------|--------------------------------|
| 4 | HG-J | 27.06 |
| 5 | HG-K,L,M,N | 26.4 |
| 9 | WS-A | 21.78 |
| 10 | HG-A | <u>15.18</u> |

Total Installed Capacity = 90.42 MW

Exhibit A-2

PROJECT MAP

See Attached Drawing: Figure 58; Stateline Wind Project; Civil Overall Site Plan, July 24, 2001.

For the avoidance of doubt, Purchaser acknowledges that, pursuant to the Project PPA, Project Developer intends to develop the Project substantially in the configuration attached hereto as Exhibit A-2, but shall have the right, subject to available permits and land rights, to increase or decrease the number of Turbines in each of the various Turbine strings so long as the total number of Turbines in the Project is 399.

**[NOTE: THE PROJECT MAP IS AVAILABLE IN THE ORIGINAL FILE.
PLEASE CONTACT CCIS STAFF FOR FURTHER INFORMATION.]**

DESCRIPTION OF TURBINES

The Project consists of a total of 399 Vestas V-47-660-KW wind turbines, approximately 272 of which are located in Walla Walla County, Washington, and approximately 127 of which are located in Umatilla County, Oregon, as more fully set forth in the Project configuration attached hereto as Exhibit A-2. Wind turbines consist of two main components; the turbine tower and the nacelle. The nacelle is the portion of the wind turbine mounted at the top of the tower, which houses the wind turbine itself, the rotor and blades, hub, and gearbox.

Nacelle: The V-47-660-KW wind turbines operate at wind speeds from 4 to 25 meters per second (m/s) at a relatively constant (± 10 percent) speed. The turbines operate on a variable pitch principal in which the rotor blades rotate to keep them at the optimum angle to maximize output for all wind speeds. At speeds exceeding 25 m/s, the blades feather (rotate slightly on their axis) and the rotor stops turning. The turbines are equipped with a wind vane that signals wind direction changes to the electronic controller. Within the electronic controller, there is a yaw mechanism, which uses electrical motors to turn the nacelle and rotor so that the turbine faces into the wind.

Towers: Turbines will be approximately 165 feet tall at the turbine hub, and with the nacelle and blades mounted, the total height of the wind turbine will be approximately 242 feet tall including the turbine blades. The towers will be smooth, hollow steel structures, approximately 14 feet in diameter at the base and weighing approximately 48 tons each. A controller cabinet will be located at the base inside each tower. Cables and a ladder will ascend to the nacelle to provide access for turbine maintenance. A locked door will provide access to the base of the tower. Tower foundations will be spread footing or pier-type footings.

LOCATION OF DELIVERY POINTS

[Hard copy to be inserted]

**[NOTE: PROJECT DIAGRAM IS NOT AVAILABLE IN WORD. PLEASE SEE THE
"IMAGE" VERSION OR THE ORIGINAL DOCUMENT TO VIEW IT.]**

EXAMPLES

1. **“Market True-Up Price”** (Definitions)

Assuming that, during Contract Year 2003, (i) the time weighted average price 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) were \$60/MWh; and (ii) the Purchase Price for were \$37/MWh, then the **“Market True-Up Price”** would equal \$23/MWh, calculated as follows:

$$\$60/\text{MWh} - \$37/\text{MWh} = \$23/\text{MWh}$$

2. **“Mechanical Availability Percentage; Base Hours; Operational Hours”** (Definitions)

If in Contract Year 2005 the Project consisted of three Turbines A, B and C, which had the following operating characteristics:

| | <u>Turbine A*</u> | <u>Turbine B**</u> | <u>Turbine C***</u> |
|---|-------------------|--------------------|---------------------|
| Non-Generating Wind Conditions | 300 | 194 | 120 |
| Force Majeure Events | 60 | 60 | 30 |
| Scheduled Maintenance | 77 | 85 | 114 |
| Turbine mode = “emergency” | 50 | 25 | 70 |
| Turbine mode = “stop” | 100 | 50 | 75 |
| Turbine mode = “service” | 100 | 150 | 25 |
| Turbine mode = “pause” | 100 | 75 | 200 |
| Turbine mode = “run” and faulted | 300 | 105 | 400 |
| Operational Hours | 7658 | 8009 | 7748 |
| Base Hours | 8308 | 8414 | 8518 |
| ----- | ----- | ----- | ----- |
| Mechanical Availability Percentage (by Turbine) | 92.17% | 95.19% | 90.96% |

* Base Hours calculated at 8760, less 60 (Force Majeure Event), less 300 (Non-Generating Wind Conditions), less 92 (e.g., (77 + 85 + 114)/3) (Scheduled Maintenance). Operational Hours calculated at 8760 less 650 (sum of turbine mode = emergency, stop, service, pause and run but faulted), and less 360 (Force Majeure and Non-Generating Wind Conditions), less 92 (Scheduled Maintenance).

** Base Hours calculated at 8760, less 60 (Force Majeure Event), less 194 (Non-Generating Wind Conditions), less 92 (Scheduled Maintenance). Operational Hours calculated at 8760 less 405 (sum of turbine mode =

emergency, stop, service, pause and run but faulted), less 254 (Force Majeure and Non-Generating Wind Conditions), less 92 (Scheduled Maintenance).

*** Base Hours calculated at 8760, less 30 (Force Majeure Event), less 120 (Non-Generating Wind Conditions), less 92 (Scheduled Maintenance).
Operational Hours calculated at 8760 less 770 (sum of turbine mode = emergency, stop, service, pause and run but faulted), and less 150 (Force Majeure and Non-Generating Wind Conditions), less 92 (Scheduled Maintenance).

Then the Mechanical Availability Percentage for the Project would equal 92.77 percent, calculated as follows:

$$\frac{7650 + 8009 + 7748}{8308 + 8414 + 8518} = 92.77\%$$

3. “Availability LDs” (section 6.5.2)

Assuming that, during a given Contract Year, (i) the Mean Project Output were 777,480 MWh; (ii) the actual Mechanical Availability Percentage were 73.10 percent; (iii) BPA percentage share is 34.33 percent (90.42 / 263.34) and (iv) the applicable Market True-Up Price were \$21.50/MWh, then Seller would owe Purchaser Availability LDs for that Contract Year in the amount of \$108,682.90, calculated as follows:

$$(75.00\% - 73.10\%) \times 777,480 \text{ MWh} \times 34.33\% \times \$21.50/\text{MWh} = \$109,032.28$$

4. Qualifying Charges (section 4.3)

- (a) If, on a particular hour, the Transmission Provider charges the Seller, for amounts in excess of the Generation Imbalance Service deviation band, 110 percent of the Mid-C market index price for the Transmission Provider’s deliveries necessary to bring the generation amount up to the scheduled amount for that hour, the Qualifying Charge is 10 percent of the Mid-C market index price multiplied by such generation amount (i.e. if the Mid-C market index price for an hour is \$40 per MWh, and the resulting Transmission Provider charge for such hour for Generation Imbalance Service is \$44 per MWh, then the Qualifying Charge for such hour shall be \$4 per MWh multiplied by the generation for such hour necessary to bring the sum of the generation amount plus the Generation Imbalance Service deviation band amount up to the scheduled amount for that hour).
- (b) If, on a particular hour, the Transmission Provider charges the \$100 minimum charge for Transmission Provider’s deliveries in excess of the Generation Imbalance Service deviation band necessary to bring the generation amount up to the scheduled amount for that hour, the Qualifying Charge for that hour is \$100, minus (1) Mid-C market index price, and (2) any reimbursement the Purchaser shall make to the Seller under section 4.3.1.
- (c) If, on a particular hour, the Transmission Provider pays the Seller 90 percent of the Mid-C market index price for generation amounts in excess of the sum of that hour’s

schedule plus the Generation Imbalance Service deviation band amount, the Qualifying Charge is 10 percent of Mid-C market index price multiplied by such generation amount (i.e. if the Mid-C market index price for an hour is \$40 per MWh, and the resulting Transmission Provider's credit for such hour for Generation Imbalance is \$36 per MWh, then the Qualifying Charge for such hour shall be \$4 per MWh multiplied by the generation for such hour in excess of the sum of that hour's schedule plus the Generation Imbalance Service deviation band amount).

5. Generation Imbalance Service charges which are not Qualifying Charges (section 4.3)

- (a) Charges or credits by the Transmission Provider based on a real-time imbalance market for the RTO (i.e. at the market, and not in excess or below the market), shall not be Qualifying Charges.
- (b) Charges associated with not meeting scheduling requirements within the Transmission Provider's deviation band for Generation Imbalance Service shall not be Qualifying Charges.

6. Comparison of BPA Metered Output to BPA Scheduled Deliveries (section 4.4) .

[NOTE: THE EXAMPLES FOR SECTIONS 4.4.1 AND 4.4.2 ARE NOT AVAILABLE IN WORD. PLEASE SEE THE "IMAGE" VERSION OR THE ORIGINAL DOCUMENT TO VIEW THEM.]

**PURCHASE PRICE
AND
MAXIMUM DELIVERY RATE**

| <u>Calendar Year</u> | <u>Maximum Delivery Rate</u> | <u>Purchase Price (per MWh)¹</u> |
|-----------------------------|-------------------------------------|--|
| 2001 | 90.42 MW | [REDACTED] |
| 2002 | 90.42 MW | |
| 2003 | 90.42 MW | |
| 2004 | 90.42 MW | |
| 2005 | 90.42 MW | |
| 2006 | 90.42 MW | |
| 2007 | 90.42 MW | |
| 2008 | 90.42 MW | |
| 2009 | 90.42 MW | |
| 2010 | 90.42 MW | |
| 2011 | 90.42 MW | |
| 2012 | 90.42 MW | |
| 2013 | 90.42 MW | |
| 2014 | 90.42 MW | |
| 2015 | 90.42 MW | |
| 2016 | 90.42 MW | |
| 2017 | 90.42 MW | |
| 2018 | 90.42 MW | |
| 2019 | 90.42 MW | |
| 2020 | 90.42 MW | |
| 2021 | 90.42 MW | |
| 2022 | 90.42 MW | |
| 2023 | 90.42 MW | |
| 2024 | 90.42 MW | |
| 2025 | 90.42 MW | |
| 2026 | 90.42 MW | |

¹ The Purchase Price is designated confidential and proprietary by Seller.

PROJECT PPA PROVISIONS

| PPA Section or Defined Term | Project PPA Section or Defined Term | Operative Project PPA Provision(s)* |
|-----------------------------------|---|---|
| "Force Majeure Event" | "Force Majeure Event" | <p>* All references to "this Agreement", etc., are to the Project PPA. All capitalized terms are defined in the Project PPA.</p> <p>"Force Majeure Event" shall mean 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 unforceable, 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, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, transportation delays, unavailability of materials, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, strike or other labor difficulty caused or suffered by third parties beyond the reasonable control of such Party or its Affiliates (whether such cause is similar or dissimilar to the foregoing) or any restraint or restriction imposed by law or by rule, regulation, or other acts of governmental authorities, whether federal, state or local; <i>provided, however</i>, 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; <i>provided, further, however</i> that Seller's failure to obtain any of the Permits shall not be a Force Majeure Event.</p> |
| "Turbine" | "Turbine" | <p>"Turbine" shall mean each of the single wind turbine generating systems (including its tower, pad transformer and controller system) as described on Exhibit B; <i>provided, however</i>, that the number of Turbines stated in Exhibit B may be adjusted pursuant to sections 4.4.4 or 4.4.5 as a result of the partial termination of this Agreement with respect to a portion of the Project. For the avoidance of doubt, the turbines associated with the Project Expansion that is the subject of the First Amendment have been incorporated into the definition of Turbine as set forth in Exhibit B.</p> |
| 8.5 | 8.5 | <p>Except for obligations to pay money and other accrued rights and obligations, the performance of any obligation required hereunder 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; <i>provided, however</i>, that the Party experiencing the delay shall notify the other Party of the occurrence of such Force Majeure Event and the anticipated period of delay within ten (10) Days after the commencement 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</p> |

| | | |
|------------|--|--|
| | | <p>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.</p> |
| <p>4.4</p> | | <p>4.4 <u>Pre-Commercial Operation Date Termination</u>. The Parties may terminate this Agreement * * * prior to the Commercial Operation Date as specified below:</p> <p>4.4.1 (Deleted)</p> <p>4.4.2 (Deleted)</p> <p>4.4.3 Seller may terminate this Agreement and the Related Agreements in whole if a PacifiCorp Interconnection Agreement in form and substance satisfactory to Seller, in its reasonable discretion, is not executed by June 30, 2001; <i>provided, however</i>, that the Seller gives Purchaser fifteen (15) Days' written notice prior to termination.</p> <p>4.4.4 Either Party may terminate this Agreement and the Related Agreements in part only with respect to that portion of the Project for which a Partial Commercial Operation Date has not been achieved by September 30, 2002. Notwithstanding this section 4.4.4, the failure of Seller to achieve a Partial Commercial Operation Date by September 30, 2002 shall not give rise to Purchaser's right to terminate this Agreement in part to the extent that Seller's failure to achieve commercial operation was caused by the Purchaser or any of its agents, contractors, vendors or employees, in which event the date set forth in this section 4.4.4 shall be extended by a number of Days equal to the period of such delay. That portion of the Project and the Turbines that are thereafter excluded from this Agreement shall become part of the Project Expansion subject to the Project Expansion Option.</p> <p>4.4.5 Either Party may terminate this Agreement and the Related Agreements in part only with respect to that portion of the Project that does not qualify for the PTCs by December 31, 2001 or the PTC Extension Date, as applicable, as a result of (i) the failure of the PacifiCorp Transmission Provider to have completed and placed the PacifiCorp Interconnection Facilities in service by the date scheduled in the PacifiCorp Interconnection Agreement, or (ii) a delay due to the occurrence of a Force Majeure Event. That portion of the Project and the Turbines that are thereafter excluded from this Agreement shall become part of the Project Expansion subject to the Project Expansion Option.</p> <p>4.4.6 (Deleted)</p> <p>Notwithstanding any provision of this Agreement to the contrary, in the event of termination pursuant to this section 4, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination but only to the extent of such termination; * * * <i>provided, further</i>, that this Agreement shall remain in full force and effect with respect to that portion of the Project that is not terminated and excluded from this Agreement * * *. In the event of a partial termination, the Parties shall, in a commercially reasonable manner consistent with the transactions contemplated by this Agreement, redefine the Project * * * and</p> |

| | |
|------------------------------|--|
| | <p>execute other amendments to this Agreement as appropriate to correspond to the portion of the Project that is not terminated * * *. That portion of the Project and the Turbines that are excluded from this Agreement by any partial termination shall automatically become part of the Project Expansion subject to the Project Expansion Option. Seller agrees to provide to Purchaser information regarding the reconfiguration or redefinition of the Project and any other information reasonably requested by Purchaser in order that the Parties may expeditiously redefine and reconfigure Project and execute any other amendments to this Agreement.</p> |
| <p>“Mean Project Output”</p> | <p>“Mean Project Output” shall mean 777,480 MWh per year with the Project configured substantially as set forth in Exhibit G or as otherwise redefined pursuant to sections 4.4.4 or 4.4.5 as a result of the partial termination of this Agreement with respect to a portion of the Project.</p> |
| <p>“Project”</p> | <p>“Project” shall have the meaning set forth in the Recitals, more particularly described in Exhibit A, configured substantially as set forth in Exhibit G and as further redefined pursuant to sections 4.4.4 or 4.4.5 as a result of the partial termination of this Agreement with respect to a portion of the Project. For the avoidance of doubt, the Project Expansion that is the subject of the First Amendment has been incorporated into the definition of the Project as set forth in Exhibits A and G.</p> |
| <p>3.1, 3.3</p> | <p>3.3 <u>Permitting, Construction and Financing the Project.</u></p> <p>3.3.1 Seller shall site, develop, finance and construct the Project. Seller agrees to provide to Purchaser monthly reports as to the status of the siting, development, financing and permitting of the Project and other matters reasonably related to Purchaser’s interest in the Project, this Agreement and the Related Agreements. Seller shall provide Purchaser with reasonable notice in no event later than ten (10) Days prior to each Partial Commercial Operation Date after the first Partial Commercial Operation Date.</p> <p>3.3.2 Seller shall use its commercially reasonable best efforts to obtain the Permits and all land rights necessary for the Project configured substantially as set forth in Exhibit G. If, despite its commercially reasonable best efforts, Seller is able to obtain Construction Permits or land rights (i) only for a configuration of the Project different from that set forth on Exhibit G, or (ii) only for a portion of the Project, in each case by June 30, 2001 (or September 1, 2001 if the PTCs are extended for the Project until at least March 1, 2002), the Parties shall, in a commercially reasonable manner consistent with the transactions contemplated by this Agreement, redefine the Project * * * and execute other amendments to this Agreement as appropriate to correspond to the Project size and configuration authorized by the Construction Permits that Seller is able to obtain * * *. That portion of the Project and the Turbines that are thereafter excluded from this Agreement shall become part of the Project Expansion subject to the Project Expansion Option. Seller agrees to provide to Purchaser information regarding the reconfiguration or redefinition of the Project and any other information reasonably requested by Purchaser in order that the Parties may expeditiously redefine and reconfigure the Project and execute any other amendments to this Agreement associated with such redefinition.</p> <p>3.3.3 Purchaser agrees to assist Seller in obtaining any Permits as Seller may reasonably request from time to time.</p> |

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| | 3.3.4 Seller shall cause the Project to achieve the Commercial Operation Date by December 31, 2001. * * * If the termination date for the PTCs has not been extended to a date beyond December 31, 2001 and Seller has not achieved the Commercial Operation Date for the Project by December 31, 2001, * * * Seller shall nonetheless complete the Project * * *. | | |
| 5.5 | 2.7 <u>Curtailment</u> | | |
| | 2.7.1 Seller may curtail deliveries of Energy in accordance with Prudent Utility Practices and in a commercially reasonable manner if Seller reasonably believes that curtailment is necessary: (i) to construct, install, maintain, repair, replace, remove or inspect any of its equipment, or (ii) in connection with an emergency condition likely to result in significant damage to Seller's equipment or is deemed necessary by Seller to protect life or property. Within at least ten (10) Days prior to any planned curtailment under clause (i) above, Seller shall consult with Purchaser and the Transmission Providers as to the necessity and duration of such planned curtailment. | | |
| | 2.7.2 Seller shall curtail deliveries of Energy if notified by either Transmission Provider pursuant to the PacifiCorp Interconnection Agreement or the BPA Interconnection Agreement that a System Emergency exists, but only for so long as such System Emergency continues and only to the extent required by such Transmission Provider. | | |
| | 2.7.3 Seller shall resume deliveries of Energy as soon after curtailment as is reasonably possible, safe, and in accordance with Prudent Utility Practices. | | |
| 5.6 | 5.4 <u>Maintenance and Records</u> . Within thirty (30) Days after the end of each calendar month, Seller shall provide to Purchaser a monthly report in electronic format, which report shall include information on the Mechanical Availability Percentage * * * of the Turbines, summaries of production of the Turbines, any other significant events related to the operation of the Turbines, and any supporting information that Purchaser may reasonably request. In addition, Seller shall maintain an electronic fault log of operations of the Project (including without limitation all information reasonably required to confirm Project availability and the Mechanical Availability Percentage) during each hour of the Term beginning as of the Commercial Operation Date and shall provide such log to Purchaser on a monthly basis. | 5.4 | |
| 6.1, 6.3 | "Prudent Utility Practices" shall mean 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. | "Prudent Utility Practices" | |
| | 3.2 <u>Operation and Maintenance of Facilities</u> . | 3.2 | |

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| | | <p>3.2.1 Seller covenants to operate and maintain the Project, the Seller Interconnection Facilities, its Meters and all other equipment and systems interconnecting with the Interconnection Facilities or the interconnected Transmission System in safe and reliable operating conditions and in accordance with Prudent Utility Practices.</p> <p>3.2.2 Seller shall devise and implement a plan of inspection, maintenance and repair for the Project and the components thereof in order to maintain such equipment in safe and reliable operating conditions and in accordance with Prudent Utility Practices, and shall keep records with respect to inspections, maintenance and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Purchaser during Seller's regular business hours upon reasonable notice.</p> |
| | "BPA Interconnection Agreement" | "BPA Interconnection Agreement" shall mean the mutually agreed interconnection agreement, in a form reasonably acceptable to Purchaser, between the BPA Transmission Provider and Seller pursuant to which the Seller Interconnection Facilities and the BPA Interconnection Facilities will be constructed, operated and maintained during the Term. |
| | "PacifiCorp Interconnection Agreement" | "PacifiCorp Interconnection Agreement" shall mean the mutually agreed interconnection agreement, in a form reasonably acceptable to Purchaser, between the PacifiCorp Transmission Provider and Seller pursuant to which the Seller Interconnection Facilities and the PacifiCorp Interconnection Facilities will be constructed, operated and maintained during the Term. |
| 8 | "Meter" | "Meter" shall mean an instrument or instruments meeting applicable Technical Requirements and electric industry standards used to measure and record the volume and other required delivery characteristics of the Energy delivered hereunder. |
| | "Technical Requirements" | "Technical Requirements" shall mean those codes, standards and specifications for the Meters that the Parties shall mutually agree upon, including without limitation, bi-directional measurement capabilities. |
| | 5.1 | 5.1 <u>Metering Equipment.</u> |
| | | 5.1.1 Seller (or the PacifiCorp Transmission Provider or the BPA Transmission Provider depending on the terms and conditions of the PacifiCorp Interconnection Agreement or the BPA Interconnection Agreement, as applicable) shall provide, install, own, operate, and maintain all metering and data processing equipment needed for the registration, recording, and transmission of information regarding the Energy generated from the Turbines and delivered to the applicable Delivery Points, 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 (the "Seller's Meters"). Seller (or the PacifiCorp Transmission Provider or the BPA Transmission Provider, as applicable) shall install Seller's Meters on the low side of the transformer immediately prior to the existing Delivery Points, <i>provided, however</i> , that such Seller's Meters are adjusted to account for substation transformer losses to Purchaser's reasonable satisfaction. 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. Seller's metering and data |

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| <p>processing equipment shall meet or exceed the Technical Requirements. Seller may provide separate Meters for the measurement of all Expansion Energy generated from any Project Expansion and the provisions of this Agreement relating to installation, maintenance, operation and testing of Meters shall not be applicable to such other Meters.</p> <p>5.1.2 Purchaser may, at its own expense, install, maintain, and operate its own metering, telemetry and communication equipment for the purpose of comparison with Seller's metering equipment and observation of the Energy generation at the Project (the "Purchaser's Meters"); <i>provided, however</i>, that such equipment shall not interfere with the installation, maintenance and operation of Seller's metering equipment or the Seller Interconnection Facilities. Seller shall arrange for a location within or near the Seller's Meters, accessible to Seller and Purchaser, for such metering, telemetry and communication equipment to be installed.</p> | <p>5.2 Measurements. Readings of Seller's Meters shall be conclusive as to the amount of Energy delivered under this Agreement; <i>provided, however</i>, that if any of Seller's Meters is out of service or is determined, pursuant to section 5.3, to be registering inaccurately, measurement of Energy delivered hereunder shall be determined in the following sequence:</p> <p>5.2.1 by Purchaser's Meters, if they have been installed and are operational pursuant to section 5.1.2; or</p> <p>5.2.2 by using Purchaser's RTU (pulse accumulator meter) history data and applying appropriate transformer loss factors once the RTU and Seller's Meters are proven to be within the accuracy specifications for each instrument; or</p> <p>5.2.3 by using the integrated instantaneous Megawatt value used to monitor the composite Turbine output from the computer monitoring system; or</p> <p>5.2.4 by using the MWh history files stored in the substation relays and applying appropriate transformer loss factors; or</p> <p>5.2.5 by the computer monitoring system for each Turbine, using a mathematical calculation agreed upon by the Parties to adjust the output thereof to account for electrical losses in the gathering system and Turbine transformers and substation transformers up to the applicable Delivery Point; or</p> <p>5.2.6 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, such estimate being subject to Purchaser's approval, not to be unreasonably withheld, conditioned or delayed; or</p> <p>5.2.7 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</p> |
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| | <p>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, <i>provided, however, that, in the case of clause (ii), the period covered by the correction shall not exceed six (6) months.</i></p> |
| 5.3 | <p><u>5.3 Testing and Correction.</u></p> <p>5.3.1 The accuracy of Seller's Meters shall be tested and verified by Seller at least annually. Seller grants Purchaser the right to access, with reasonable notice to Seller and at reasonable times, Seller's Meters in order to test and verify the accuracy of Seller's Meters' measurements and recordings. Such inspections and verifications shall be at Purchaser's sole expense. If Purchaser has installed Meters in accordance with section 5.1.2 hereof, Purchaser shall test and verify each Purchaser's Meters at least annually. Each Party shall bear the cost of the annual testing of its own Meters.</p> <p>5.3.2 Each Meter shall be accurate within a two percent (2%) variance. The following steps should be taken to resolve disputes regarding the accuracy of any Meter:</p> <p>5.3.2.1 If either Party disputes a Meter's accuracy or condition, it shall so advise the owner of the Meter in writing.</p> <p>5.3.2.2 The owner of the Meter shall, within fifteen (15) Days after receiving such notice, advise the disputing Party in writing as to its position concerning the Meter's accuracy and reasons for taking such position.</p> <p>5.3.2.3 If the Parties are unable to resolve their disagreement through reasonable negotiations, then either Party may submit such dispute to an unaffiliated third-party engineering company mutually acceptable to the Parties to test the Meter.</p> <p>5.3.2.4 Should the Meter be found to register within the permitted two percent (2%) variance, the disputing Party shall bear the cost of inspection; otherwise, the cost shall be borne by the owner of the Meter.</p> <p>5.3.2.5 Any repair or replacement shall be made at the expense of the owner of the Meter as soon as practicable, based on the third-party engineer's report.</p> <p>5.3.3 Following testing, corrections shall be made as follows:</p> <p>5.3.3.1 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 hereunder, and such Meter shall be promptly adjusted to record correctly.</p> <p>5.3.3.2 If any Meter is found to be in error by an amount exceeding the two percent (2%) variance, then such</p> |

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| | <p>Meter shall be promptly adjusted to record correctly and any previous recordings by such Meter shall be adjusted in accordance with section 5.2 hereof.</p> <p>5.3.3.3 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.</p> | |
| 12 | <p>4.6 <u>Events of Defaults.</u></p> <p>4.6.1 Each of the following shall constitute an "Event of Default" hereunder:</p> <p>4.6.1.1 a failure by a Party to pay any amount due hereunder, where, after notice by the non-defaulting Party to the defaulting Party is delivered in accordance with Section 8.4, such failure is not cured, by payment of the amount due plus interest at the Prime Rate from the date due until paid, within ten (10) Business Days of the date that such notice is received by the defaulting Party;</p> <p>4.6.1.2 any other material default if such default has not been cured by the defaulting Party within thirty (30) Days after receiving written notice from the non-defaulting Party setting forth, in reasonable detail, the nature of such material default; <i>provided, however</i>, that, in the case of a material default that is not reasonably capable of being cured within the thirty-Day cure period, the defaulting Party shall have additional time to cure the default if it commences to cure the default within such thirty-Day cure period, it diligently pursues such cure, and such default is capable of being cured by the defaulting Party and is in fact cured within no more than one-hundred eighty (180) Days after receiving such notice; <i>provided, further, however</i>, that (i) the defaulting Party shall not be relieved of its duty to pay amounts due under this Agreement during the cure period, whether the amount due arises from the default or otherwise, and (ii) if the non-defaulting Party suffers damages under this Agreement because of the other Party's default, the non-defaulting Party shall be entitled to recover damages under this Agreement regardless of whether Seller thereafter cures the default;</p> <p>4.6.1.3 the commencement of bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding with respect to any Party or any Person providing credit support for such Party's performance under this Agreement (whether under any present or future statute, law, or regulation), including the appointment of any trustee, receiver, custodian or the like of such entity or all or any substantial part of its assets unless, in the case of any Person providing credit support, such credit support is replaced in form and substance and by an entity satisfactory to the non-defaulting Party within ten (10) Business Days after the commencement of such proceeding; or</p> | |

4.6.1.4 in the case of Seller, a material default by Seller Guarantor under the guaranty issued pursuant to Section 2.9.2, or, in the case of Purchaser, a material default by Purchaser Guarantor under the guaranty issued pursuant to Section 2.9.1, if, in either case, such material default has not been cured by the defaulting Party or guarantor within thirty (30) Days after receiving written notice from the non-defaulting Party setting forth, in reasonable detail, the nature of such material default.

4.6.2 Upon the occurrence of an Event of Default by a Party and after any cure period described in Section 4.6.1, the non-defaulting Party shall have the following rights:

4.6.2.1 to terminate this Agreement by written notice to the other Party;

4.6.2.2 to suspend performance of its obligations and duties hereunder upon written notice to the defaulting Party; and

4.6.2.3 to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise;

provided, however, that in the case of an Event of Default by Seller, Purchaser shall provide the Seller Lender (if any) with notice of such Event of Default, and (i) thirty (30) Days from the date notice of default or breach is delivered to Seller Lender to cure such default if such default is the failure to pay amounts to Purchaser which are due and payable hereunder, (ii) ninety (90) Days, to cure such breach or default if the breach or default cannot be cured by the payment of money to Purchaser or (iii) in the case of a default that is not reasonably capable of being cured within the ninety-Day cure period, the Seller Lender shall have additional time to cure the Event of Default if it commences to cure the Event of Default within such ninety-Day cure period, it diligently pursues such cure, and such default is capable of being cured by the Seller Lender and is in fact cured within no more than one-hundred eighty (180) Days after receiving such notice. Notwithstanding any provision to the contrary in this Agreement (including any exhibit to this Agreement), Purchaser may provide such notice to the Seller Lender at the same time that it gives notice of default to Seller.

Provided, further, however, that in the case of an Event of Default by Purchaser, Seller shall provide the Purchaser Lender (if any) with notice of such Event of Default, and (i) thirty (30) Days from the date notice of default or breach is delivered to Purchaser Lender to cure such default if such default is the failure to pay amounts to Seller which are due and payable hereunder, (ii) ninety (90) Days to cure such breach or default if the breach or default cannot be cured by the payment of money to Purchaser or (iii) in the case of a default that is not reasonably capable of being cured within the ninety-Day cure period, the Purchaser Lender shall have additional time to cure the default if it commences to cure the default within such ninety-Day cure period, it diligently pursues such cure, and such default is capable of being cured by the Purchaser Lender and is in fact cured within no more than one-hundred eighty (180) Days after receiving such notice. Notwithstanding any provision to the contrary in this Agreement (including any exhibit to this Agreement), Seller may provide such notice to the Purchaser Lender at the same time

that it gives notice of default to Purchaser.

4.7 Specific Performance and Injunctive Relief.

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties agree that specific performance is proper in the event of any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance agree that all expenses incurred by the prevailing Party in such proceeding, including, but not limited to, reasonable counsel fees, be awarded to the prevailing Party in such proceeding.

4.8 Discharge of Obligations Upon Termination.

Subject to Section 4.4, in the event of termination hereof for any reason prior to the expiration of the Term or any then-effective renewal or extension term, and upon the payment of any past due amounts, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination (other than obligations arising upon termination, including, without limitation, the obligation to pay any damages arising from such termination and other amounts in respect of such termination or otherwise hereunder); *provided, however*, that termination shall not discharge or relieve either Party from any indemnity obligations under Article VII or the provisions of Section 8.1 hereof, which provisions shall survive any termination of this Agreement.

TERMINATION FOR CONVENIENCE COMPENSATION METHODOLOGY

If Purchaser provides Seller with a notice to terminate for convenience pursuant to section 2.3 of the body of this Agreement, then the Parties shall negotiate in good faith the payment associated with such termination (“Termination Payment”) in accordance with the methodology provided below. Receipt of the Termination Payment shall be the sole and exclusive remedy in the event of a termination for convenience.

The Parties agree that the purpose of the Termination Payment is to provide value to the Seller to ensure, at the time of such payment, the Seller is receiving a value equal to the value it would otherwise have received from the continued operation of this Agreement. The Termination Payment will be determined by taking into account the following factors: (1) the present value of the payment stream for the remainder of Term following the T for C Effective Date that would have been paid by the Purchaser to the Seller for Energy and Environmental Attributes, using the Purchase Prices specified in Exhibit C, the installed capacity of the Project available to make deliveries to the BPA Delivery Point, a capacity factor equal to the average capacity factor based on the BPA Metered Output during the previous five (5) years, and (2) minus the predicted market value of the Energy and Environmental Attributes, for the remainder of the Term. To the extent Purchaser has entered into a commercially reasonable replacement agreement for the Energy and Environmental Attributes for a term comparable to the remainder of the Term, the market value referenced in (2) in the immediately preceding sentence shall be equal to the purchase price in the replacement agreement.

The present value calculation shall be calculated using the Present Value Rate as of the time of termination (to take account to the period between the T for C Effective Date and when

such amount would have otherwise been due). The "Present Value Rate" shall mean the sum of 0.50 percent plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting online intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the remaining term of this Agreement.



12 February 2004

Deb Malin, Wind Program Manager
Bonneville Power Administration
PO Box 3621
Routing PTS-5
Portland OR 97208

RE: Stateline Wind Project Power Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration and PacifiCorp Power Marketing, Inc. Dated as of December 13, 2001

Dear Ms. Malin,

Per Section 4.5, enclosed are attestations providing evidence of Purchaser's right, title and interest in the Environmental Attributes transferred to Bonneville Power Administration for 2003 under the above referenced agreement.

If you have any questions, please do not hesitate to call.

Sincerely,

Julie Morris
Asset Optimization

Enc.

Cc: Tom Osborn – Project Manager w/o enclosure
Mark Miller – Account Executive w/o enclosure

**PPM Energy, Inc.
Green Tag Attestation and Bill of Sale**

PPM Energy, Inc. ("PPM") hereby sells, transfers and delivers to Bonneville Power Administration ("BPA") the Green Tags or Green Tickets, as applicable and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid (as such term(s) are defined in the Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration (the "Contract") dated December 13, 2001 between PPM and BPA) arising from the generation for delivery to the grid of the energy by the Facility described below:

Facility name and location: Stateline Energy Center (Helix, OR and Walla Walla, WA)

Fuel Type: Wind

Capacity (MW): 263

Operational Date: December 14, 2001

36

December 10, 2002

Energy Admin. ID no. 55559 (OR), 55560 (WA)

| <u>Dates</u> | <u>MWhrs generated</u> |
|----------------|------------------------|
| January 2003 | 10,340 |
| February 2003 | 12,751 |
| March 2003 | 26,534 |
| April 2003 | 18,774 |
| May 2003 | 16,175 |
| June 2003 | 17,158 |
| July 2003 | 14,908 |
| August 2003 | 13,262 |
| September 2003 | 12,617 |
| October 2003 | 16,034 |
| November 2003 | 19,310 |
| December 2003 | 11,049 |

in the amount of one Green Tag, Green Ticket or its equivalent for each megawatt hour generated; and PPM further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to BPA is its one and only sale of the Green Tags and/or Green Tickets and associated Environmental Attributes referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and
- iv) to the best of PPM's knowledge, each of the Green Tags or Green Tickets and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from PPM to BPA all of PPM's right, title and interest in and to the Green Tags, Green Tickets and/or and Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Donna Foy (tel: 503.796.7034; fax: 503.796.6905)

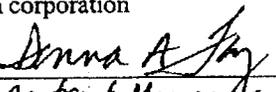
WITNESS MY HAND,

PPM ENERGY, INC.
an Oregon corporation

By

Its

Date:


Contract Manager
2/10/04

This Attestation may be disclosed by PPM and BPA to others, including the Center for Resource Solutions, to substantiate and verify the accuracy of PPM's advertising and public communication claims, as well as in PPM's advertising and other public communications.

01PB-107101



22 January 2003

Wind Program Manager
Bonneville Power Administration
PO Box 3621
Routing PTS-5
Portland OR 97208

RE: Stateline Wind Project Power Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration and PacifiCorp Power Marketing, Inc. Dated as of December 13, 2001

Dear Wind Program Manager,

Per Section 4.5, enclosed are attestations providing evidence of Purchaser's right, title and interest in the Environmental Attributes transferred to Bonneville Power Administration for calendar years 2001 and 2002 under the above reference agreement.

If you have any questions, please do not hesitate to call.

Sincerely,

Julie Morris
Asset Optimization

Enc.

Cc: Tom Osborn – Project Manager
Mark Miller – Account Executive

PPM Energy, Inc.
Green Tag Attestation and Bill of Sale

PPM Energy, Inc. ("PPM") hereby sells, transfers and delivers to Bonneville Power Administration ("Customer") the Green Tags or Green Tickets, as applicable and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid (as such term(s) are defined in the Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration (the "Contract") dated December 13, 2001 between PPM and Customer) arising from the generation for delivery to the grid of the energy by the Facility described below:

Facility name and location: Stateline Energy Center (Helix, OR and Walla Walla, WA)

Fuel Type: Wind

Capacity (MW): 263 Operational Date: December 14, 2001

Energy Admin. ID no. 55559 (OR) 55560 (WA)

| <u>Dates</u> | <u>MWhrs generated</u> |
|--------------|------------------------|
| 2001 | 1,866 |

in the amount of one Green Tag, Green Ticket or its equivalent for each megawatt hour generated; and PPM further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Customer is its one and only sale of the Green Tags and/or Green Tickets and associated Environmental Attributes referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and
- iv) to the best of PPM's knowledge, each of the Green Tags or Green Tickets and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from PPM to Customer all of PPM's right, title and interest in and to the Green Tags, Green Tickets and/or and Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Donna Foy tel: 1-503-813-6191; fax: 1-503-813-5695

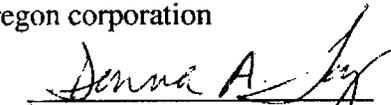
WITNESS MY HAND,

PPM ENERGY, INC.
an Oregon corporation

By

Its

Date:





This Attestation may be disclosed by PPM and Customer to others, including the Center for Resource Solutions, to substantiate and verify the accuracy of PPM's advertising and public communication claims, as well as in PPM's advertising and other public communications.

December 2001

PPM Energy, Inc.
Green Tag Attestation and Bill of Sale

PPM Energy, Inc. ("PPM") hereby sells, transfers and delivers to Bonneville Power Administration ("Customer") the Green Tags or Green Tickets, as applicable and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid (as such term(s) are defined in the Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration (the "Contract") dated December 13, 2001 between PPM and Customer) arising from the generation for delivery to the grid of the energy by the Facility described below:

Facility name and location: Stateline Energy Center (Helix, OR and Walla Walla, WA)

Fuel Type: Wind

Capacity (MW): 263

Operational Date: December 14, 2001

36

December 10, 2002

Energy Admin. ID no. 55559 (OR) 55560 (WA)

| <u>Dates</u> | <u>MWhrs generated</u> |
|--------------|------------------------|
| 2002 | 173,819 |

in the amount of one Green Tag, Green Ticket or its equivalent for each megawatt hour generated; and PPM further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Customer is its one and only sale of the Green Tags and/or Green Tickets and associated Environmental Attributes referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and
- iv) to the best of PPM's knowledge, each of the Green Tags or Green Tickets and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from PPM to Customer all of PPM's right, title and interest in and to the Green Tags, Green Tickets and/or and Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Donna Foy tel: 1-503-813-6191; fax: 1-503-813-5695

WITNESS MY HAND,

PPM ENERGY, INC.

an Oregon corporation

By

Its

Date:

Donna A. Foy
Contract Manager
21 January 2003

This Attestation may be disclosed by PPM and Customer to others, including the Center for Resource Solutions, to substantiate and verify the accuracy of PPM's advertising and public communication claims, as well as in PPM's advertising and other public communications.

January - December 2002



6 February 2003

Deb Malin, Wind Program Manager
Bonneville Power Administration
PO Box 3621
Routing PTS-5
Portland OR 97208

RE: Stateline Wind Project Power Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration and PacifiCorp Power Marketing, Inc. Dated as of December 13, 2001

Dear Ms. Malin,

Per Section 4.5, enclosed are attestations providing evidence of Purchaser's right, title and interest in the Environmental Attributes transferred to Bonneville Power Administration for December 2002 under the above referenced agreement.

If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie Morris".

Julie Morris
Asset Optimization

Enc.

Cc: Tom Osborn – Project Manager
Mark Miller – Account Executive

PPM Energy, Inc.
Green Tag Attestation and Bill of Sale

PPM Energy, Inc. ("PPM") hereby sells, transfers and delivers to Bonneville Power Administration ("Customer") the Green Tags or Green Tickets, as applicable and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid (as such term(s) are defined in the Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration (the "Contract") dated December 13, 2001 between PPM and Customer) arising from the generation for delivery to the grid of the energy by the Facility described below:

Facility name and location: Stateline Energy Center (Helix, OR and Walla Walla, WA)

Fuel Type: Wind

Capacity (MW): 263

Operational Date: December 14, 2001

36

December 10, 2002

Energy Admin. ID no. 55559 (OR) 55560 (WA)

| <u>Dates</u> | <u>MWhrs generated</u> |
|---------------|------------------------|
| December 2002 | 13,655 |

in the amount of one Green Tag, Green Ticket or its equivalent for each megawatt hour generated; and PPM further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Customer is its one and only sale of the Green Tags and/or Green Tickets and associated Environmental Attributes referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and
- iv) to the best of PPM's knowledge, each of the Green Tags or Green Tickets and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from PPM to Customer all of PPM's right, title and interest in and to the Green Tags, Green Tickets and/or and Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Donna Foy tel: 1-503-813-6191; fax: 1-503-813-5695

WITNESS MY HAND,

PPM ENERGY, INC.
an Oregon corporation

By

Its

Date:

Donna A. Foy
Contract Manager
2/7/03

This Attestation may be disclosed by PPM and Customer to others, including the Center for Resource Solutions, to substantiate and verify the accuracy of PPM's advertising and public communication claims, as well as in PPM's advertising and other public communications.

December 2002



*Rec'd by Council Hand Carried
05-02-03*

01PB-10761

2 May 2003

Deb Malin, Wind Program Manager
Bonneville Power Administration
PO Box 3621
Routing PTS-5
Portland OR 97208

RE: Stateline Wind Project Power Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration and PacifiCorp Power Marketing, Inc. Dated as of December 13, 2001

Dear Ms. Malin,

Per our conversation today, I am enclosing a revised attestation providing evidence of Purchaser's right, title and interest in the Environmental Attributes transferred to Bonneville Power Administration for January through November 2002 under the above referenced agreement.

Please discard the attestation that was previously sent to you on January 22, 2003.

Thank you for your assistance,

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Morris".

Julie Morris
Asset Optimization

Enc.

REVISED

**PPM Energy, Inc.
Green Tag Attestation and Bill of Sale**

PPM Energy, Inc. ("PPM") hereby sells, transfers and delivers to Bonneville Power Administration ("Customer") the Green Tags or Green Tickets, as applicable and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid (as such term(s) are defined in the Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration (the "Contract") dated December 13, 2001 between PPM and Customer) arising from the generation for delivery to the grid of the energy by the Facility described below:

Facility name and location: Stateline Energy Center (Helix, OR and Walla Walla, WA)

Fuel Type: Wind

Capacity (MW): 263 Operational Date: December 14, 2001

36 December 10, 2002

Energy Admin. ID no. 55559 (OR) 55560 (WA)

| <u>Dates</u> | <u>MWhrs generated</u> |
|------------------|------------------------|
| Jan. - Nov. 2002 | 171,953 (revised) |

in the amount of one Green Tag, Green Ticket or its equivalent for each megawatt hour generated; and PPM further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Customer is its one and only sale of the Green Tags and/or Green Tickets and associated Environmental Attributes referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and
- iv) to the best of PPM's knowledge, each of the Green Tags or Green Tickets and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from PPM to Customer all of PPM's right, title and interest in and to the Green Tags, Green Tickets and/or and Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Donna Foy (tel: 503.813.6191; fax: 503.813.5695)

WITNESS MY HAND,

PPM ENERGY, INC.
an Oregon corporation

By

Its

Date:

Donna A. Foy
Contract Manager
5/2/03

This Attestation may be disclosed by PPM and Customer to others, including the Center for Resource Solutions, to substantiate and verify the accuracy of PPM's advertising and public communication claims, as well as in PPM's advertising and other public communications.

REVISED

(5/13/03)

**PPM Energy, Inc.
Green Tag Attestation and Bill of Sale**

PPM Energy, Inc. ("PPM") hereby sells, transfers and delivers to Bonneville Power Administration ("Customer") the Green Tags or Green Tickets, as applicable and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid (as such term(s) are defined in the Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration (the "Contract") dated December 13, 2001 between PPM and Customer) arising from the generation for delivery to the grid of the energy by the Facility described below:

Facility name and location: Stateline Energy Center (Helix, OR and Walla Walla, WA)

Fuel Type: Wind

Capacity (MW): 263

Operational Date: December 14, 2001

36

December 10, 2002

Energy Admin. ID no. 55559 (OR) 55560 (WA)

Dates

Jan. - Dec. 2002

MWhrs generated

185,608 (revised)

in the amount of one Green Tag, Green Ticket or its equivalent for each megawatt hour generated; and PPM further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Customer is its one and only sale of the Green Tags and/or Green Tickets and associated Environmental Attributes referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and
- iv) to the best of PPM's knowledge, each of the Green Tags or Green Tickets and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from PPM to Customer all of PPM's right, title and interest in and to the Green Tags, Green Tickets and/or and Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Donna Foy (tel: 503.813.6191; fax: 503.813.5695)

WITNESS MY HAND,

PPM ENERGY, INC.

an Oregon corporation

By

Its

Date:

Donna A Foy
Contract Manager
5/13/03

This Attestation may be disclosed by PPM and Customer to others, including the Center for Resource Solutions, to substantiate and verify the accuracy of PPM's advertising and public communication claims, as well as in PPM's advertising and other public communications.

January - December 2002 (rev.)

This Attestation and Bill of Sale supercedes Attestations issued for January - November 2002 and December 2002.

AUTHENTICATED (REDACTED)

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

| | |
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| 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”: Unless otherwise agreed to by the Parties, this term means, for the purposes of section 15, a letter of credit that assures payment of a Person’s obligations hereunder to the Purchaser and (i) is from a financial institution that is rated “A” or better by at least two Rating Agencies, and (ii) is in the amount of \$2 million.

“Adequate Guaranty”: This term means, for the purposes of section 15, a guarantee provided by a Guarantor, which at any time must be in the amount of \$2 million, provided that at least one Rating Agency rates the long-term senior unsecured debt of the Guarantor and each Rating Agency that rates such debt rates the debt at or above Investment Grade.

“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”: This term means, for the purposes of section 15, an Affiliate whose long-term unsecured debt shall be rated at or above Investment Grade by each Rating Agency that rates such debt, provided that at least one Rating Agency shall have a rating of such debt.

“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”: 61,023 MWh for the first Contract Year and 64,413 MWh 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. Seller shall be responsible for Generation Imbalance Service charges assessed by the Transmission Provider at the BPA Delivery Point, subject to the following:

4.3.1 Generation Imbalance Service Cost Sharing. If the Transmission Provider charges Seller for Generation Imbalance Service under its applicable tariffs and rate schedules when BPA Metered Output delivered by Seller to the BPA Delivery Point in a schedule hour is less than BPA Scheduled Deliveries for such hour, then, following the receipt of payment of such charge by the Transmission Provider, Purchaser shall reimburse Seller for one-half (1/2) the portion, if any, of such charge that is above 110 percent of the Market Index Price. For example, if, on an hour, the Transmission Provider charges the greater of \$44 (110 percent of an assumed \$40 per MWh Market Index Price) or \$100 per MWh, the Purchaser will reimburse Seller one-half (1/2) of the amount by which the \$100 per MWh charge exceeds 110 percent of the Market Index Price, as shown in the following example:

$((\$100 - \$44) / 2 = \$28$ cost share reimbursed to Seller). In this example, the amount to be applied toward the Cost Cap, as this term is defined in section 4.3.2 below, will be \$32 (\$100-\$40-\$28).

Seller shall calculate the cost sharing amount, if any, based on the actual invoice rendered by the Transmission Provider, for each hour of a

month as set forth above and shall include such amount as a separate line item in the following billing invoice submitted by Seller to Purchaser. Upon request by the Purchaser, Seller shall provide Purchaser billing quality data, when such data is made available to Seller by the Transmission Provider, including the data used by the Transmission Provider to calculate the Generation Imbalance Service charges, in order for Purchaser to verify the hourly cost sharing amount included in any billing invoice submitted by Seller to Purchaser.

4.3.2 Generation Imbalance Service Cost Cap. Seller's exposure to qualifying monthly Generation Imbalance Service charges ("Qualifying Charges") will be capped at \$7,000 per month ("Cost Cap") and the Purchaser shall, following the receipt of payment by the Transmission Provider of Qualifying Charges, reimburse Seller for all Qualifying Charges that exceed the Cost Cap each month.

The Qualifying Charges shall be those charges assessed Seller by the Transmission Provider in excess of the Market Index Price when BPA Metered Output delivered in a schedule hour by Seller to the BPA Delivery Point is less than BPA Scheduled Deliveries for such hour, and all discounts from the Market Index Price provided as credits to Seller when BPA Metered Output delivered in a schedule hour by Seller to the BPA Delivery Point is greater than the BPA Scheduled Deliveries for such hour, pursuant to tariffs and rate schedules in effect from time-to-time and associated with Generation Imbalance Service outside the deviation band,

if any, less any reimbursements under section 4.3.1. Following are examples of the calculation of Qualifying Charges under the currently applicable tariffs and rate schedules for Generation Imbalance Service.

(1) If, on a particular hour, the Transmission Provider charges Seller, for amounts in excess of the Generation Imbalance Service deviation band, 110 percent of the Market Index Price for the Transmission Provider's deliveries necessary to bring the generation amount up to the scheduled amount for that hour, the Qualifying Charge is 10 percent of the Market Index Price multiplied by such generation amount (i.e. if the Market Index Price for an hour is \$40 per MWh, and the resulting Transmission Provider charge for such hour for Generation Imbalance Service is \$44 per MWh, then the Qualifying Charge for such hour shall be \$4 per MWh multiplied by the generation for such hour necessary to bring the sum of the generation amount plus the Generation Imbalance Service deviation band amount up to the scheduled amount for that hour).

(2) If, on a particular hour, the Transmission Provider charges the \$100 minimum charge for the Transmission Provider's deliveries in excess of the Generation Imbalance Service deviation band necessary to bring the generation amount up to the scheduled amount for that hour, the Qualifying Charge for that hour is \$100, minus (1) the Market Index Price, and (2) any reimbursement Purchaser shall make to Seller under section 4.3.1 of this agreement.

(3) If, on a particular hour, the Transmission Provider pays Seller 90 percent of the Market Index Price for generation amounts in excess of the sum of that hour's schedule plus the Generation Imbalance Service deviation band amount, the Qualifying Charge is 10 percent of the Market Index Price multiplied by such generation amount (i.e. if the Market Index Price for an hour is \$40 per MWh, and the resulting Transmission Provider's credit for such hour for Generation Imbalance is \$36 per MWh, then the Qualifying Charge for such hour shall be \$4 per MWh multiplied by the generation for such hour in excess of the sum of that hour's schedule plus the Generation Imbalance Service deviation band amount).

In determining the Qualifying Charges each month, Seller shall calculate the following for each hour as applicable: (i) the portion of the price charged Seller by the Transmission Provider in excess of the Market Index Price for each hour that BPA Metered Output is less than BPA Scheduled Deliveries, multiplied by the MWh applicable to such charge, or (ii) the difference between the Market Index Price and the price received by Seller from the Transmission Provider for each hour that BPA Metered Output exceeds BPA Scheduled Deliveries multiplied by the MWh applicable to such payment. Seller shall sum each of the hourly charges and payments into a single, aggregate amount of Qualifying Charges for a month.

Seller shall calculate the Qualifying Charges for each month to determine if the Cost Cap has been reached for the month. If Seller determines the Qualifying Charges exceed the Cost Cap, then Seller shall calculate the amount of Qualifying Charges that exceed the Cost Cap and shall include such amount as a separate line item in the next issued billing invoice submitted by Seller to PBL. Upon request by the Purchaser, Seller shall provide Purchaser billing quality data when such data is made available to Seller by the Transmission Provider, including the data used by the Transmission Provider to calculate the Generation Imbalance Service charges in order for Purchaser to verify such charges.

4.4 Monthly Comparison of BPA Metered Output to BPA Scheduled Deliveries.

Following the end of each Month, Seller shall compare BPA Metered Output to BPA Scheduled Deliveries.

4.4.1 BPA Metered Output Exceeds BPA Scheduled Deliveries. For all hours during a month that BPA Metered Output exceeds BPA Scheduled Deliveries during such month by five percent (5%) or more, Seller shall calculate an amount for each such hour equal to (1) the positive difference, if any, between the Generation Imbalance Service credit paid to Seller by the Transmission Provider (expressed in hourly \$/MWh) and the Purchase Price herein, multiplied by (2) the amount (in MWh) by which BPA Metered Output exceeds BPA Scheduled Deliveries for each such hour by more than the deviation band allowed in the Transmission Provider's Generation Imbalance Service charge rate for such hour.

4.4.2 BPA Scheduled Deliveries Exceed BPA Metered Output. For all hours during a month that BPA Scheduled Deliveries exceeds BPA Metered Output during such month by five percent (5%) or more, Seller shall calculate an amount for each such hour equal to (1) the positive difference, if any, between the Purchase Price herein and the Generation Imbalance Service amount charged to Seller by the Transmission Provider (expressed in hourly \$/MWh), multiplied by (2) the amount (in MWh) that BPA Scheduled Deliveries exceeds BPA Metered Output for each such hour by more than the deviation band allowed in the Transmission Provider's Generation Imbalance Service charge for such hour.

4.4.3 Credit on Purchaser's Bill. Seller shall calculate the sum, if any, of the amounts calculated under sections 4.4.1 and 4.4.2 as soon as reasonably practicable after receipt of the Transmission Provider's invoice for Generation Imbalance Service for the applicable month. Seller shall include a credit on the invoice next issued to Purchaser under section 9 of this Agreement equal to the amount by which such sum for the applicable month exceeds the Qualifying Charges under section 4.3.2 for such month to the extent that such Qualifying Charges are not subject to reimbursement by Purchaser for such month and shall reference the month for which such credit is being applied. Upon request by the Purchaser, Seller shall provide Purchaser billing quality data when such data is made available to Seller by the Transmission Provider, including the billing data used by the Transmission Provider to calculate the Generation Imbalance

Service charges, in order for the Purchaser to verify charges under this section.

In a month during which there are differences between total BPA Metered Output and of BPA Scheduled Deliveries of five percent (5%) or more as provided in sections 4.4.1 or 4.4.2, and resulting in a credit being owed by Seller to Purchaser for which Seller has not included such credit on Purchaser's next issued invoice, then interest shall accrue pursuant to section 18.8 beginning thirty (30) days after either (i) Seller is charged and billed the subject Generation Imbalance Service charges by the Transmission Provider, or (ii) Seller is credited on the Transmission Provider's invoice for energy received under the Generation Imbalance Service.

- 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 Seller guarantees that, as calculated at the beginning of the third Contract Year and each Contract Year thereafter, the Project shall have achieved a Mechanical Availability Percentage of 75 percent for the prior Contract Year.

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 the difference between 75 percent and the actual Mechanical Availability Percentage multiplied by the Mean Project Output multiplied by the Market True-Up Price for the Contract Year in which the Project failed to achieve the guaranteed Mechanical Availability Percentage (the "Guarantee Payment"). Examples illustrating the calculation of the Guarantee Payment under certain stated assumptions are included in Exhibit B.

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 (15th) 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 (20th) 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 supersedes 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.

22. Reopener to Accommodate Financing.

The Parties intend to allow Seller to obtain financing for the Project without impairing Purchaser's interest in obtaining performance of this Agreement, or in the event of nonperformance, the economic value to Purchaser of performance. The Parties acknowledge that in order for Seller to obtain such financing, it may become necessary to amend this Agreement to accommodate the requirements of the Person from whom Seller seeks financing. In such event, the Parties agree to negotiate in good faith to amend this Agreement to make such accommodation while protecting Purchaser's interest in full performance of this Agreement, or in the event of nonperformance, the economic value to Purchaser of full performance.

IN WITNESS WHEREOF, the Parties enter into this Agreement as of the date first written above.

NORTHWESTERN WIND POWER, LLC

THE BONNEVILLE POWER ADMINISTRATION

/S/ BRETT WILCOX

By: Brett Wilcox
Its: Manager & CEO of Northwest
Aluminum, Inc.
June 4, 2002

/S/ SCOTT K. WILSON

By: Scott K. Wilson
Its: PBL Account Executive
May 31, 2002

**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**

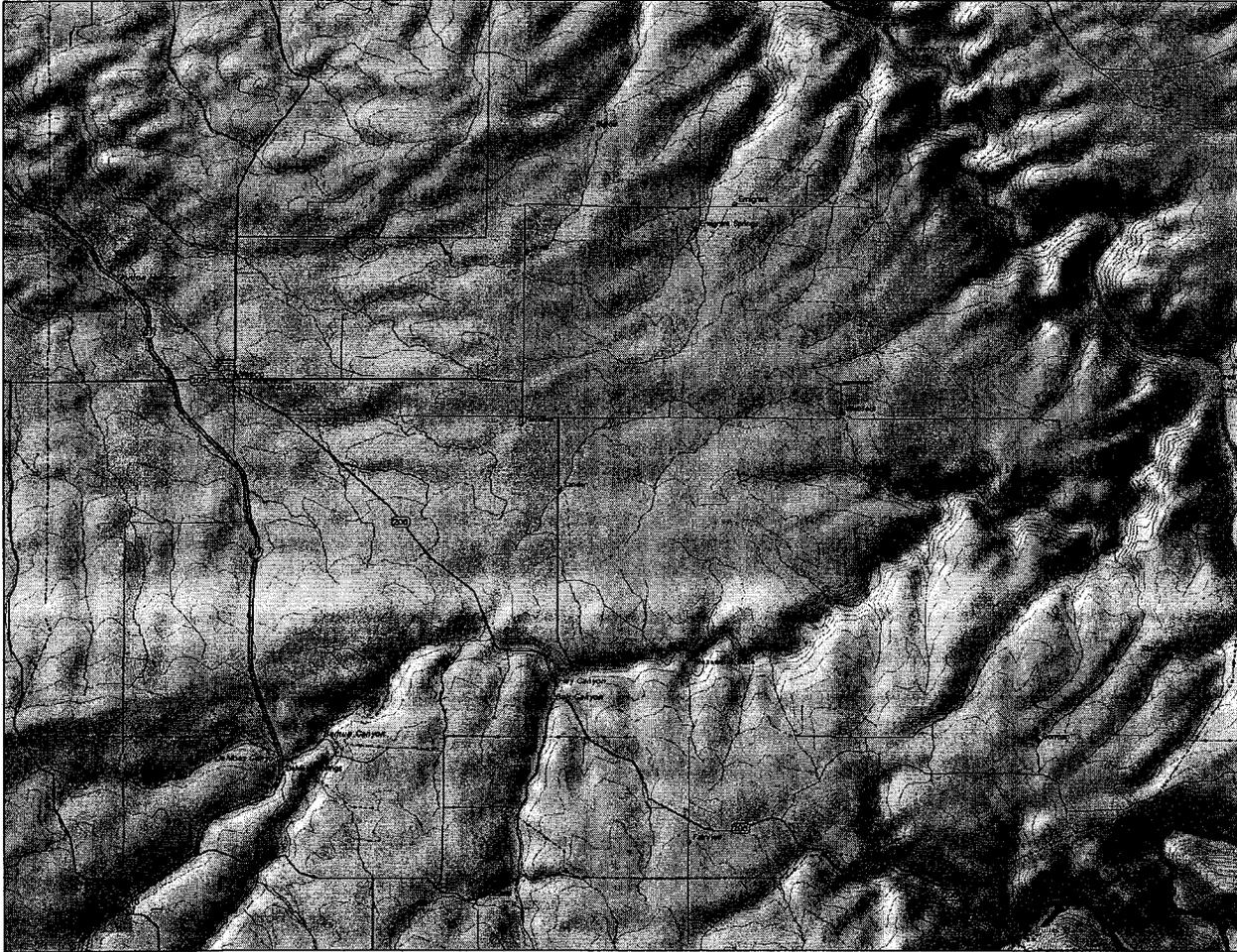
The collector system consists of the padmount transformers and the 34.5 kV electric cables. Each Turbine will generate power at 575 volts. A transformer adjacent to each tower will transform the power to 34.5 kV. Transformers are located on concrete pads that are approximately 5 feet from each tower 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



© 2001 DeLorme, Type USA® 2.8
Scale: 1 : 100,000 Zoom Level: 11-8 Datum: WGS84 Map Rotation: 0° Magnetic Declination: 17.5°E

1 mi

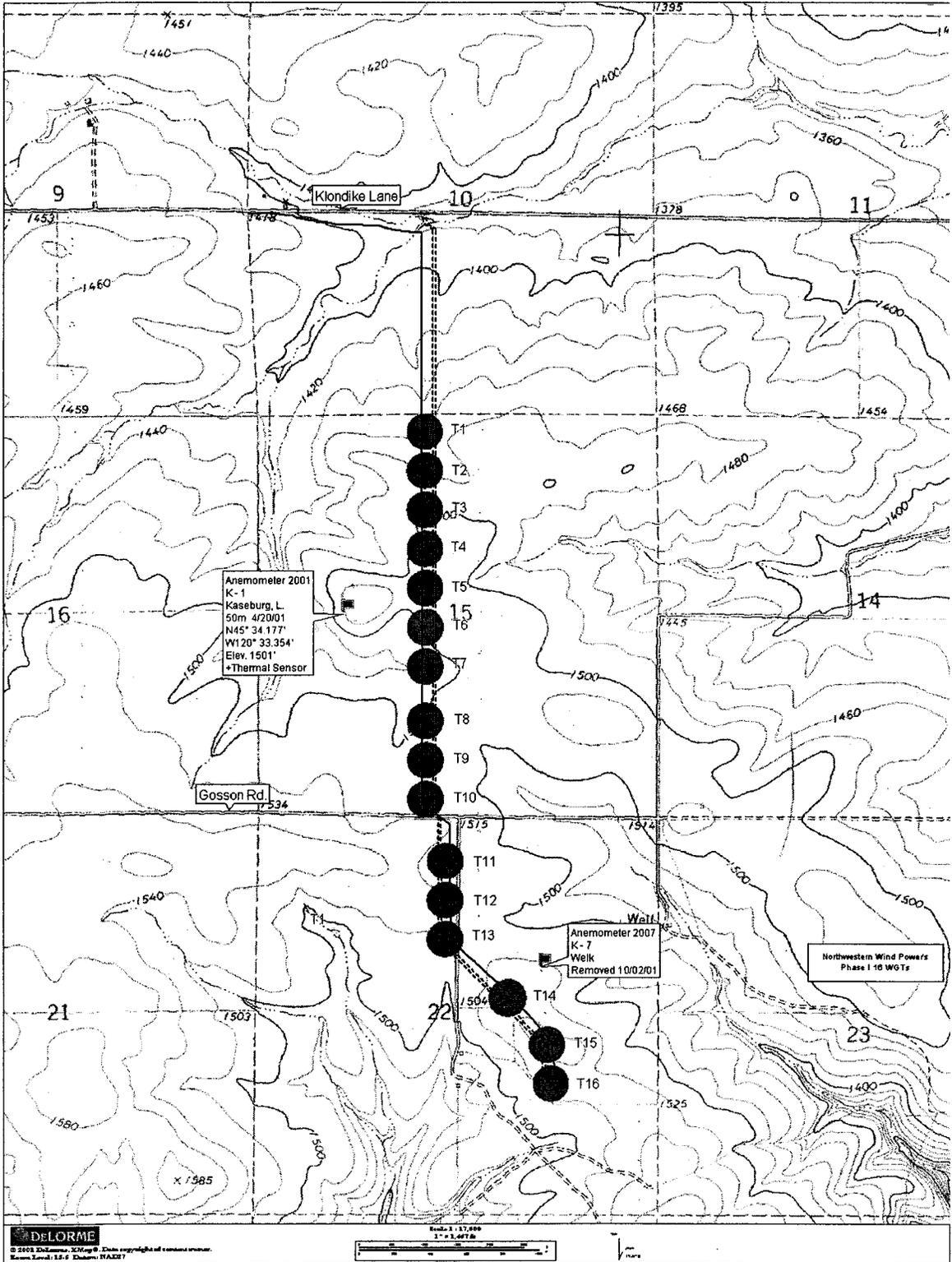


Exhibit A-3-1

LOCATION OF BPA DELIVERY POINT^{1/}

^{1/} This Exhibit A-3-1 shows the location of the BPA Delivery Point until such time as the 115-kV interconnection referenced in section 20 of the body of this Agreement has been completed.

Exhibit A-3-2

LOCATION OF BPA DELIVERY POINT^{2/}

^{2/} This Exhibit A-3-2 shows the location of the BPA Delivery Point following the completion of the 115-kV interconnection referenced in section 20 of the body of this Agreement.

EXAMPLES

1. **“Market True-Up Price”** (Definitions)

Assuming that, during Contract Year 2003, (i) the time weighted average price 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) was \$60/MWh; and (ii) the Purchase Price for the prior Contract Year was \$37/MWh, then the **“Market True-Up Price”** would equal \$23/MWh, calculated as follows:

$$\$60/\text{MWh} - \$37/\text{MWh} = \$23/\text{MWh}$$

2. **“Guarantee Payment”** (section 6.5.2)

Assuming that, during a given Contract Year, (i) the Mean Project Output were 266,909 MWh; (ii) the actual Mechanical Availability Percentage were 73.10 percent; (iii) the applicable Market True-Up Price were \$21.50/MWh, then Seller would owe Purchaser Availability Guarantee Payment for that Contract Year in the amount of \$109,032.33, calculated as follows:

$$(75.00\% - 73.10\%) \times 266,909 \text{ MWh} \times \$21.50/\text{MWh} = \$109,032.33$$

**PURCHASE PRICE
AND
MAXIMUM DELIVERY RATE**

| <u>Calendar Year</u> | <u>Maximum Delivery Rate</u> | <u>Purchase Price (per MWh)¹</u> |
|-----------------------------|-------------------------------------|--|
| 2002 | 24.0 MW | REDACTED |
| 2003 | 24.0 MW | REDACTED |
| 2004 | 24.0 MW | REDACTED |
| 2005 | 24.0 MW | REDACTED |
| 2006 | 24.0 MW | REDACTED |
| 2007 | 24.0 MW | REDACTED |
| 2008 | 24.0 MW | REDACTED |
| 2009 | 24.0 MW | REDACTED |
| 2010 | 24.0 MW | REDACTED |
| 2011 | 24.0 MW | REDACTED |
| 2012 | 24.0 MW | REDACTED |
| 2013 | 24.0 MW | REDACTED |
| 2014 | 24.0 MW | REDACTED |
| 2015 | 24.0 MW | REDACTED |
| 2016 | 24.0 MW | REDACTED |
| 2017 | 24.0 MW | REDACTED |
| 2018 | 24.0 MW | REDACTED |
| 2019 | 24.0 MW | REDACTED |
| 2020 | 24.0 MW | REDACTED |
| 2021 | 24.0 MW | REDACTED |
| 2022 | 24.0 MW | REDACTED |

¹ The Purchase Price is designated confidential and proprietary by Seller.

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

If Purchaser provides Seller with a notice of termination pursuant to section 12.8 of the body of this Agreement, then the Parties shall negotiate in good faith the payment associated with such termination (“Termination Payment”) in accordance with the methodology provided below. Receipt of the Termination Payment shall be Seller’s sole and exclusive remedy in the event of such a termination.

The Parties agree that the purpose of the Termination Payment is to provide value to the Seller to ensure, at the time of such payment, the Seller is receiving a value equal to the value it would otherwise have received from the continued operation of this Agreement. The Termination Payment will be determined by taking into account the following factors: (1) the present value of the payment stream for the remainder of Term following the effective date of termination that would have been paid by the Purchaser to the Seller for Energy and Environmental Attributes, using the Purchase Prices specified in Exhibit C, the installed capacity of the Project available to make deliveries to the BPA Delivery Point, a capacity factor equal to the average capacity factor based on the BPA Metered Output during the previous five (5) years, and (2) minus the predicted market value of the Energy and Environmental Attributes, for the remainder of the Term net of the administrative cost to Seller of selling such Energy and Environmental Attributes. If, following written approval by Purchaser, Seller enters into a commercially reasonable replacement agreement for the Energy and Environmental Attributes for a term equal to the remainder of the Term following the termination date, the market value referenced in (2) in the immediately preceding sentence shall be equal to the purchase price in the

replacement agreement less the administrative cost to Seller of procuring such replacement agreement.

The present value calculation shall be calculated using the Present Value Rate as of the time of termination. The "Present Value Rate" shall mean the sum of 0.50 percent plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting online intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the remaining term of this Agreement.

CALCULATION OF MECHANICAL AVAILABILITY

"Mechanical Availability" is calculated for each Turbine as follows:

$$\text{AVAILABILITY} = \frac{\text{TOH-FMH-SMH-UAH}}{\text{TOH-FMH-SMH}}$$

TOH = "Total Hours" is the number of hours in the period for which Mechanical Availability is being measured.

FMH = "Force Majeure Hours" is the number of hour during the Total Hours that, due to a Force Majeure Event, 1) the Turbine is damaged and is not operating; 2) the electrical energy from the Turbine cannot be delivered to the BPA Delivery Point; 3) Seller or its agent is unable to access or repair damage or other conditions that prevents the Turbine from operating or the delivery of electrical energy to the BPA Delivery Point; or 4) there is an interruption of transmission service that prevents Purchaser from accepting delivery of Energy.

SMH = "Scheduled Maintenance Outage Hours", is the lesser of the number of hours during the Total Hours that the Turbine is shut down for Scheduled Maintenance Outages or 48 hours per year.

UAH = "Unavailable Hours" is the number of hours during the Total Hours that the Turbine is shut down or non-operational minus all Force Majeure Hours Scheduled Maintenance Outage Hours, hours unavailable due to a System Emergency. In calculating Unavailable Hours, the Turbine shall not be considered shut down or non-operational due solely to the existence of Non-Generating Wind Conditions.

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

POWER BUSINESS LINE

January 10, 2003

AUTHENTICATED

In reply refer to: PTS-5

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": Unless otherwise agreed to by the Parties, this term means, for the purposes of section 15, either: (a) a letter of credit that (i) assures payment of a Party's obligations under this Agreement to the other Party and is from a financial institution that is rated at or above "A" by Standard & Poor's and at or above "A2" by Moody's and (ii) is in the amount of \$2 million; or (b) other reasonable and commercially priced security that (i) is in a form, provided in a manner and from a source reasonably acceptable to the Party seeking performance assurance under section 15, which security may include, among other security, cash collateral, and (ii) is in the amount of \$2 million.

- (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,

/S/ MARK E. MILLER for

Scott K. Wilson
Account Executive

Date **January 10, 2003**_____

ACCEPTED:

NORTHWESTERN WIND POWER, LLC

By **/S/ BRETT WILCOX**

Name **Brett Wilcox**

Title **Manager**

Date **January 10, 2003**

DHanlon:jlb:3562:1/7/03 (M_WG-PTS-W:\PSC\PM\CT\11093aa1.doc)



12 February 2004

Deb Malin, Wind Program Manager
Bonneville Power Administration
PO Box 3621
Routing PTS-5
Portland OR 97208

RE: 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 PPM Energy, Inc. amended per Letter Agreement dtd January 10, 2003

Dear Ms. Malin,

Per Section 4.5, enclosed are attestations providing evidence of Purchaser's right, title and interest in the Environmental Attributes transferred to Bonneville Power Administration for 2003 under the above referenced agreement.

If you have any questions, please do not hesitate to call.

Sincerely,

Julie Morris
Asset Optimization

Enc.

Cc: Tom Osborn – Project Manager w/o enclosure
Mark Miller – Account Executive w/o enclosure

Klondike Wind Power, L.L.C.
Green Tag Attestation and Bill of Sale

Klondike Wind Power, L.L.C. ("KWP") hereby sells, transfers and delivers to Bonneville Power Administration ("BPA") the Green Tags or Green Tickets, as applicable and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid (as such term(s) are defined in the Klondike Wind Project Power Purchase Agreement by and between United States of America Department of Energy Acting by and through the Bonneville Power Administration (the "Contract") between KWP and BPA) arising from the generation for delivery to the grid of the energy by the Facility described below:

Facility name and location: Klondike Wind Project (Sherman County, OR)

Fuel Type: Wind

Capacity (MW): 24

Operational Date: January 2002

Energy Admin. ID no.:

| <u>Dates</u> | <u>MWhrs generated</u> |
|----------------|------------------------|
| January 2003 | 851 |
| February 2003 | 4,730 |
| March 2003 | 7,152 |
| April 2003 | 5,220 |
| May 2003 | 7,237 |
| June 2003 | 8,051 |
| July 2003 | 8,378 |
| August 2003 | 6,897 |
| September 2003 | 5,158 |
| October 2003 | 5,401 |
| November 2003 | 4,494 |
| December 2003 | 2,446 |

in the amount of one Green Tag, Green Ticket or its equivalent for each megawatt hour generated; and KWP further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to BPA is its one and only sale of the Green Tags and/or Green Tickets and associated Environmental Attributes referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and
- iv) to the best of KWP's knowledge, each of the Green Tags or Green Tickets and Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from KWP to BPA all of KWP's right, title and interest in and to the Green Tags, Green Tickets and/or and Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Donna Foy (tel: 503.796.7034; fax: 503.796.6905)

WITNESS MY HAND,

KLONDIKE WIND POWER, L.L.C.
an Oregon corporation

By: Donna A. Foy
Its: Contract Manager
Date: 2/10/04

This Attestation may be disclosed by KWP and BPA to others, including the Center for Resource Solutions, to substantiate and verify the accuracy of KWP's advertising and public communication claims, as well as in KWP's advertising and other public communications.



0247 101

Northwestern Wind Power
3313 West Second Street
The Dalles, Oregon 97058
phone: 541 298 0864
fax: 541 298 0800

January 7, 2003

Scott Wilson
Account Executive
Bonneville Power Administration
P.O. Box 3621, Routing - PT-5
Portland, OR 97208-3621

Re: Klondike Wind Project Power Purchase Agreement (BPA Contract No. 02PB-11093) dated as of June 1, 2002 (the "Agreement") between the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("BPA") and Northwestern Wind Power, LLC ("Northwestern")

Dear Scott:

In January 2003, Northwestern signed an Asset Purchase Agreement (the "APA") with Klondike Wind Power LLC ("KWP") pursuant to which Northwestern agreed to sell all of its assets that comprise the 24 MW wind generation facility located in Sherman County, Oregon to KWP. The parties to the APA anticipate that the transactions contemplated under the APA will close in January 2002, but the closing date of those transactions (the "Closing Date") has not been finally determined.

Included among the assets to be sold to KWP is the Agreement. As described in the APA and the documents contemplated thereunder, KWP has agreed to assume the obligations of Northwestern under the Agreement on and after the Closing Date.

Section 15.1 of the Agreement prohibits assignment of the Agreement without the prior written consent of BPA, such consent not to be unreasonably withhold, delayed or conditioned. Northwestern hereby requests the consent of BPA to assign the Agreement to KWP effective as of the Closing Date.

By executing the enclosed counterpart of this letter, BPA acknowledges and agrees that:

1. The undersigned individual has the full power and authority to execute this letter agreement on behalf of BPA.

2. BPA hereby consents to Northwestern's assignment of all of its rights and delegation of all of its duties under the Agreement to KWP as of the Closing Date. The foregoing shall be subject to the conditions that, on or prior to the Closing Date:

A. BPA and Northwestern enter into the Amendment No. 1 to the Agreement, dated/effective as of the Closing Date and in the form attached hereto as Exhibit A;

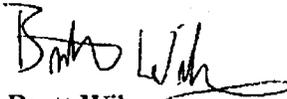
B. KWP causes its indirect corporate parent, PacifiCorp Holdings, Inc., a Delaware corporation, to execute and deliver to BPA a Limited Guaranty dated as of the Closing Date and in the form attached hereto as Exhibit B, which form of Limited Guaranty BPA acknowledges to be an "Adequate Guaranty" from a "Guarantor" (as each such term is defined in the Agreement); and

C. BPA executes and delivers to an Estoppel Certificate dated as of the Closing Date and in the form attached hereto as Exhibit C;

Please sign below where indicated and fax a copy of this letter to me at (541) 298-0800 and return one originally executed letter in the enclosed self-addressed, stamped envelope. If you have any questions, please do not hesitate to call me at (541) 298-0814. Thank you in advance for your prompt attention to this matter.

Best regards,

NORTHWESTERN WIND POWER, LLC



Brett Wilcox
Manager

ACKNOWLEDGED AND AGREED

**UNITED STATES OF AMERICA,
DEPARTMENT OF ENERGY
BONNEVILLE POWER ADMINISTRATION**

By: Mark E. Miller
Name: Mark E. Miller
Title: Account Executive
Date: 01/08/03

Attachments (Exhibits A, B and C)



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

POWER BUSINESS LINE

January 7, 2003

In reply refer to: PTS-5

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

Brett Wilcox
Northwestern Wind Power, LLC
8000 NE. Parkway Drive, Suite 300
Vancouver, WA 98662-6744

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 Windpower 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:

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- (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."

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- (3) The number of Turbines in service during the one-minute interval.

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“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.”

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(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.

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(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,

Scott K. Wilson
Account Executive

Date _____

ACCEPTED:

NORTHWESTERN WIND POWER, LLC

By _____

Name _____

Title _____

Date _____

DHanlon:jlb:3562:1/7/03 (M_WG-PTS-W:\PSC\PM\CT\11093aa1.doc)

**FORM OF
LIMITED GUARANTY**

This LIMITED GUARANTY (this "**Guaranty**") is made as of _____, 2003¹ (the "**Effective Date**") by PacifiCorp Holdings, Inc., a Delaware corporation (the "**Guarantor**"), in favor of Bonneville Power Administration, an agency of the United States Department of Energy (the "**Creditor**").

RECITALS

WHEREAS, Creditor has entered into that certain Klondike Wind Project Power Purchase Agreement (as amended by Amendment No. 1 dated _____, 2003, the "**Agreement**") dated as of June 1, 2002, with Northwestern Wind Power, LLC, an Oregon limited liability company ("**Northwestern**");

WHEREAS, on [DATE], 2003, Creditor executed a consent (the "**Consent**") to the assignment of the Agreement by Northwestern to Klondike Wind Power LLC, an Oregon limited liability company and an indirectly, wholly owned subsidiary of Guarantor (the "**Debtor**"), *provided that*, among other things, Debtor deliver, or cause to be delivered, to Creditor a guaranty as contemplated by the Consent; and

WHEREAS, subject to the terms and conditions of this Guaranty and in satisfaction of the provision of the Consent relating to the delivery of a guaranty to Creditor, Guarantor is willing to execute and deliver this Guaranty to secure certain of Debtor's obligations to Creditor.

NOW, THEREFORE, in consideration of and as inducement for Creditor to consent to the assignment of the Agreement to Debtor and to extend credit or other financial accommodations to Debtor, Guarantor hereby covenants and agrees with Creditor as follows:

AGREEMENT

1. **Guaranty.** Subject to the terms and conditions of this Guaranty, Guarantor hereby unconditionally guarantees to Creditor the full and prompt payment of all indebtedness, liabilities or undertakings under the Agreement incurred on or after the Effective Date by Debtor as the same shall become due and payable to Creditor, whether at the stated maturity thereof, by acceleration, amortization or otherwise (collectively, the "**Obligations**") *provided, however*, that Guarantor's payment obligation under this Guaranty shall at no time exceed \$2,000,000 in the aggregate (the "**Liability Limit**"). This is a guaranty of payment and not of collection or of performance. All payments by Guarantor hereunder shall be made in lawful money of the United States of America.

2. **Guaranty Continuing; Termination.** This Guaranty shall be a continuing guaranty of payment and shall remain in effect until the date which is sixty (60) days following the end of the term of the Agreement; *provided, however, that* if, prior to such date, a demand for payment hereunder shall have been made, this Guaranty shall remain in effect until such demanded payment shall have been indefeasibly made in full. Notwithstanding the foregoing, this Guaranty shall automatically terminate and be of no further force and effect whatsoever,

¹ To be dated as of date of closing of transactions contemplated under Asset Purchase Agreement.

and Creditor shall promptly cancel and return this Guaranty to Guarantor, if Guarantor or Debtor causes an Affiliate (as defined in the Agreement) to deliver to Creditor Adequate Credit Support (as defined in the Agreement) or an Adequate Guaranty (as defined in the Agreement).

3. **Nature of Obligations.** Except as expressly provided in this Guaranty, Guarantor's obligations under this Guaranty are absolute and unconditional and shall remain in full force and effect until all Obligations of Debtor shall have been paid and discharged in full. Whether or not legal action is instituted, Guarantor agrees to reimburse Creditor on demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Creditor in enforcing this Guaranty. Notwithstanding any provision of this Guaranty to the contrary, Guarantor shall be entitled to assert all rights and defenses that the Debtor may be entitled to assert under the Agreement, including, but not limited to, any setoff or counterclaim that the Debtor is or may be entitled to, except those defenses premised on lack of authority or bankruptcy. Notwithstanding the preceding sentence, the liability of the Guarantor under this Guaranty shall not be affected by (i) the bankruptcy, insolvency, dissolution or liquidation of the Debtor, (ii) the lack of corporate power or authority of the Debtor to enter into, and perform its obligations under, the Agreement, (iii) the lack of validity or enforceability of the Debtor's obligations under the Agreement premised on a lack of corporate power or authority of the Debtor to enter into and perform its obligations under the Agreement, or (iv) the allowability or enforceability in a bankruptcy, insolvency, reorganization, dissolution or similar proceeding of any of the Obligations.

4. **Independent Obligation.** In the event of any default by Debtor, Creditor shall have the right to proceed first and directly against Guarantor under this Guaranty without proceeding against any other person or entity or exhausting any other remedies which it may have and without resorting to any other security held by it. Guarantor agrees that one or more successive or concurrent actions may be brought hereon against Guarantor, in the same action in which Debtor may be sued or in separate actions.

5. **Effect of Bankruptcy.** Except as expressly provided in this Guaranty, in the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law, or any judgment, order or decision thereunder, Creditor must rescind or restore any payment, or any part thereof, received by Creditor, any prior release or discharge from the terms of this Guaranty shall be without effect, and this Guaranty shall remain in full force and effect.

6. **Waiver.** Guarantor hereby expressly waives notice from Creditor of its acceptance of and reliance upon this Guaranty and any notice of credit extended hereunder. Guarantor consents to any extensions of time for the payment of said account and to any changes in the terms of any agreement between Creditor and Debtor. Any and all suretyship defenses are hereby waived by Guarantor. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing. The failure of Creditor to enforce any of the provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce the same. All remedies of Creditor shall be cumulative. The terms and provisions hereof may not be waived, altered, modified, or amended except in a writing executed by Guarantor and a duly authorized officer of Creditor.

7. **Subrogation.** Until all Obligations are indefeasibly paid Guarantor hereby subordinates all rights under any debts owing from Debtor to Guarantor, whether now existing or

Attn: Rodney Ross
Phone: 503-230-3498

All such notices, requests, demands and other communications shall be deemed to have been duly given or made, in the case of telecopied or delivered notice, when telecopied or actually delivered, or, in the case of registered or certified mail, on the third business day after the day on which mailed.

12. *Miscellaneous.*

(a) This Guaranty constitutes the sole and entire agreement between Guarantor and Creditor with respect to the subject matter hereof and supersedes and replaces any and all prior agreements, understandings, negotiations or correspondence between them with respect thereto.

(b) Words importing the singular number hereunder shall include the plural number and vice versa and any pronouns used herein shall be deemed to cover all genders. The term "person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

(c) All section headings herein are for convenience of reference only and shall not limit or otherwise affect the meaning or interpretation of the provisions of this Guaranty.

IN WITNESS WHEREOF, this Limited Guaranty was executed and effective as of the Effective Date.

PACIFICORP HOLDINGS, INC.

By: _____
Title: _____

Creditor acknowledges that it has received this Limited Guaranty and that all conditions to the effectiveness of the Consent have been satisfied.

BONNEVILLE POWER ADMINISTRATION

By: _____
Title: _____
Date: _____

ESTOPPEL CERTIFICATE

WHEREAS, Northwestern Wind Power, LLC, an Oregon limited liability company ("Northwestern"), and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("BPA"), are parties to the Klondike Wind Project Power Purchase Agreement (BPA Contract No. 02PB-11093) dated as of June 1, 2002 (the "Agreement"); and

WHEREAS, Klondike Wind Power LLC, an Oregon limited liability company ("KWP"), and Northwestern have entered into that certain Asset Purchase Agreement (the "APA"), dated as of January __, 2003, pursuant to which KWP has agreed to purchase from Northwestern all or substantially all of the assets relating to the Project (as such term is defined in the Agreement), all as more fully described in the APA.

The undersigned individual, acting under the due authority of BPA, hereby certifies on behalf of BPA that, as of the date set forth below:

1. The Agreement, as amended by Amendment No. 1, represents the entire agreement between Northwestern and BPA with respect to the subject matter thereof and is in full force and effect;
2. Other than as provided in Amendment No. 1 to the Agreement, no other modifications have been made to the Agreement;
3. There are no disputes existing or any defaults under the Agreement, and BPA is not aware of any events that have occurred that would or may, with the giving of notice or the passage of time, constitute a default under the Agreement; and
4. All amounts that BPA may be entitled to with respect to payment obligations or credits arising under or in connection with the Agreement before the date of this Estoppel Certificate have been indefeasibly paid in full.

BPA acknowledges and agrees that KWP, and its successors and assigns, may and will rely upon the representations made in this Estoppel Certificate in connection with the consummation of the transactions contemplated under the APA.

Dated: January __, 2003

THE BONNEVILLE POWER ADMINISTRATION

By: _____

Name: _____

Title: _____

ESTOPPEL CERTIFICATE

WHEREAS, Northwestern Wind Power, LLC, an Oregon limited liability company ("Northwestern"), and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("BPA"), are parties to the Klondike Wind Project Power Purchase Agreement (BPA Contract No. 02PB-11093) dated as of June 1, 2002 (the "Agreement"); and

WHEREAS, Klondike Wind Power LLC, an Oregon limited liability company ("KWP"), and Northwestern have entered into that certain Asset Purchase Agreement (the "APA"), dated as of January 10, 2003, pursuant to which KWP has agreed to purchase from Northwestern all or substantially all of the assets relating to the Project (as such term is defined in the Agreement), all as more fully described in the APA.

The undersigned individual, acting under the due authority of BPA, hereby certifies on behalf of BPA that, as of the date set forth below:

1. The Agreement, as amended by Amendment No. 1, represents the entire agreement between Northwestern and BPA with respect to the subject matter thereof and is in full force and effect;
2. Other than as provided in Amendment No. 1 to the Agreement, no other modifications have been made to the Agreement;
3. There are no disputes existing or any defaults under the Agreement, and BPA is not aware of any events that have occurred that would or may, with the giving of notice or the passage of time, constitute a default under the Agreement; and
4. All amounts that BPA may be entitled to with respect to payment obligations or credits arising under or in connection with the Agreement before the date of this Estoppel Certificate have been indefeasibly paid in full.

BPA acknowledges and agrees that KWP, and its successors and assigns, may and will rely upon the representations made in this Estoppel Certificate in connection with the consummation of the transactions contemplated under the APA.

Dated: January 13, 2003

THE BONNEVILLE POWER ADMINISTRATION

By: Mark E. Miller

Name: Mark E. Miller

Title: Account Executive

Form A Generator Attestation
(Sale of Energy and its Green Tags to one Party)

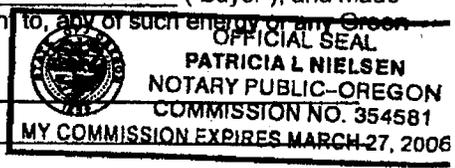
Name of Facility: KLONDIKE I WIND PROJECT (the "Facility")
 Address of Facility: 98536 KLONDIKE LANE, WASCO, OREGON 97065
 Facility Energy Administration Identification Number (if applicable): EIA# 55871
 Contact Person: ALLEN BARKLEY Title: GENERAL MANAGER
 Telephone: 541-298-0864 Fax: 541-298-0800

| Resource | Capacity (MW) | Operational Date | Awh: # Green Tags (this sale) | Period of Delivery (this sale) |
|---------------------|---------------|------------------|----------------------------------|-----------------------------------|
| Biomass | | | | |
| Geothermal | | | | |
| Landfill Gas/BioGas | | | | |
| Hydro | | | | |
| Wind | 24 | 1/1/02 | 62,625 | 2/02 - 12/02 |
| Solar | | | | |
| Other | | | | |

* For facilities that have added new renewable capacity, please indicate amount and operational date of the new capacity and the existing capacity.

Declaration: I, (print name and title) ALLEN BARKLEY, GENERAL MANAGER, the authorized agent of the Facility, declare that the information provided on this form is consistent with the Facility's business records and is true and correct to the best of my knowledge. I further declare, to the best of my knowledge: (i) the Facility generated the energy identified above, and the Green Tags (as defined below) associated therewith; (ii) that such energy was not used for on-site generation; and (iii) the Facility sold the energy specified in the table above and all of the associated Green Tags once and only once exclusively to Bonneville Power ("Buyer"), and made no representation, in writing or otherwise, that any third party received, or has or has obtained any right to, any of such energy or any Green Tag associated therewith.

Signature: *Allen Barkley* Date: 1/30/03
 Place of Execution: THE DALLES, OREGON



SUBSCRIBED AND SWORN to before me this 30 day of (month/year) JANUARY, 2003
 Notary Public for Oregon *Patricia L. Nielsen* My Commission Expires: _____ (date)

"Green Tag" means all right, title and interest in and to the "Non-Power Attributes" (defined below) associated with the power generated from the specified electricity generating resource and the exclusive right to claim: (a) the Residual Electricity was generated by the specific generation unit, fuel or resource; (b) the Residual Electricity associated with the Green Tag was delivered to the Western Systems Coordinating Council ("WSCC") grid; (c) the Non-Power Attributes associated with the Residual Electricity were delivered to the WSCC grid; and (d) the Green Tag Reporting Rights (as defined below). One Green Tag represents the Non-Power Attributes made available by the generation of 1 MWh, during a calendar year, by the generating resource. "Non-Power Attributes" means the fuel, emissions or avoidance of emissions, or other environmental characteristic of the generating resource deemed of value by a Green Tag Purchaser. Non-Power Attributes do not include any energy, capacity, reliability or other power attributes used to provide electricity services. Non-Power Attributes include but are not limited to any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and any other pollutant that is now or may in the future be regulated under the pollution control laws of the United States or any state; and further include any avoided emissions of carbon dioxide (CO2) and any other greenhouse gas (GHG) that contributes to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, along with the Green Tag Reporting Rights to these avoided emissions. Non-Power Attributes are expressed in MWh, and are not a calculation of the quantity or value of avoided emissions from such attributes. "Green Tag Reporting Right(s)" means the exclusive right of a Green Tag Purchaser to report accumulated annual Non-Power Attributes in compliance with or pursuant to any present or future Federal or state law (including without limitation Oregon SB 1149), if applicable, and to any authorized international body, Federal or state agency, or any other party at the Green Tag Purchaser's discretion. "Residual Electricity" is the electricity generated in conjunction with the production of Green Tags, which is sold, traded, assigned, or otherwise transferred independently of the Green Tags and free of any claim or assertion of Green Tag Reporting Rights.

The information provided in this Form may be used by the Bonneville Environmental Foundation and others, including the Center for Resource Solutions, to substantiate and/or verify the accuracy of any advertising/public communication claims associated with the subject Green Tags, and in any such company's advertising and other public communications.