

Exhibit 22

September 17, 2020

**Email from Kyle Moore and
Attachments**

From: [Moore, Kyle \(PacifiCorp\) {Mkt Function}](#)
To: [Greg Adams](#); [Mifsud, Cynthia Hansen \(PacifiCorp\)](#)
Cc: [Bryan Case](#); [Dave Peterson](#); [McDermott, Jacob \(PacifiCorp\)](#)
Subject: RE: Fall River Rural Elect. Coop.'s Response Letter Re Chester Project PPA Request - RMP Turn
Date: Thursday, September 17, 2020 10:24:34 AM
Attachments: [FRREC_Chester_Hydro_Existing_Offsystem_QF_RMP_Draft_9-17-2020_RMP.docx](#)

Greg,

Please find PacifiCorp's turn of the document. We would like to set up a call to discuss metering issues and Exhibit K to make sure we all have the same understanding of how the metering process will work with Net Output. Do you have some time in the next couple of week for a discussion?

Thanks,

Kyle Moore
Rocky Mountain Power
Commercial Services
O 801.220.4467
C 385.210.4209

From: Greg Adams [mailto:Greg@richardsonadams.com]
Sent: Thursday, September 3, 2020 10:49 AM
To: Moore, Kyle (PacifiCorp) {Mkt Function} <Kyle.Moore@pacificorp.com>; McDermott, Jacob (PacifiCorp) <Jacob.McDermott@pacificorp.com>
Cc: Bryan Case <Bryan.Case@fallriverelectric.com>; Dave Peterson <Dave.Peterson@fallriverelectric.com>; Mifsud, Cynthia Hansen (PacifiCorp) <Cynthia.Hansen@pacificorp.com>
Subject: [INTERNET] RE: Fall River Rural Elect. Coop.'s Response Letter Re Chester Project PPA Request

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Cybersecurity risk assessment: Low	

Kyle and Jake, I am checking in the edits to the Chester PPA. You indicated you would be supplying those by last Friday, but I do not believe I received it.

Greg Adams

Richardson Adams, PLLC
515 N. 27th Street, 83702
P.O. Box 7218, 83707
Boise, Idaho
Voice: 208.938.2236
Facsimile: 208.938.7904

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From: Moore, Kyle (PacifiCorp) {Mkt Function}
Sent: Wednesday, August 26, 2020 1:26 PM
To: Greg Adams <Greg@richardsonadams.com>; McDermott, Jacob (PacifiCorp) <Jacob.McDermott@pacificorp.com>
Cc: Bryan Case <Bryan.Case@fallriverelectric.com>; Dave Peterson <Dave.Peterson@fallriverelectric.com>; Mifsud, Cynthia Hansen (PacifiCorp) <Cynthia.Hansen@pacificorp.com>
Subject: RE: Fall River Rural Elect. Coop.'s Response Letter Re Chester Project PPA Request

Greg,

We are finalizing our response to your redlines and hope to have it over to you by Friday, we apologize for our delay and will make it up in our next response period.

Thanks,

Kyle Moore
Rocky Mountain Power
Commercial Services
O 801.220.4467
C 385.210.4209

From: Greg Adams [<mailto:Greg@richardsonadams.com>]
Sent: Friday, August 21, 2020 4:06 PM
To: Moore, Kyle (PacifiCorp) {Mkt Function} <Kyle.Moore@pacificorp.com>; McDermott, Jacob (PacifiCorp) <Jacob.McDermott@pacificorp.com>
Cc: Bryan Case <Bryan.Case@fallriverelectric.com>; Dave Peterson <Dave.Peterson@fallriverelectric.com>; Mifsud, Cynthia Hansen (PacifiCorp) <Cynthia.Hansen@pacificorp.com>
Subject: [INTERNET] RE: Fall River Rural Elect. Coop.'s Response Letter Re Chester Project PPA Request

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Cybersecurity risk assessment: Medium	

Hello Kyle and Jake, I am checking in on this PPA request. I believe it has been over 30 days since we submitted our comments and proposed revisions to the PPA. Can we expect PacifiCorp's response soon? Thanks.

Greg Adams
Richardson Adams, PLLC
515 N. 27th Street, 83702
P.O. Box 7218, 83707
Boise, Idaho
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From: Greg Adams
Sent: Monday, July 20, 2020 11:05 AM
To: Moore, Kyle {Mkt Function} <Kyle.Moore@pacificorp.com>; McDermott, Jacob <Jacob.McDermott@pacificorp.com>
Cc: Bryan Case <Bryan.Case@fallriverelectric.com>; Dave Peterson <Dave.Peterson@fallriverelectric.com>; Mifsud, Cynthia Hansen <Cynthia.Hansen@pacificorp.com>
Subject: RE: Fall River Rural Elect. Coop.'s Response Letter Re Chester Project PPA Request

Kyle and Jake,

I attached Fall River's proposed revisions to the Chester Hydro PPA. I also attached requested materials related to the interconnection of the facility to Fall River's distribution system and the transmission path.

If you would like to discuss our edits, we can be available to do so.

Greg Adams

Richardson Adams, PLLC
515 N. 27th Street, 83702
P.O. Box 7218, 83707
Boise, Idaho
Voice: 208.938.2236
Facsimile: 208.938.7904

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From: Moore, Kyle {Mkt Function}
Sent: Thursday, June 18, 2020 5:07 PM
To: Greg Adams <Greg@richardsonadams.com>; McDermott, Jacob <Jacob.McDermott@pacificorp.com>
Cc: Bryan Case <Bryan.Case@fallriverelectric.com>; Dave Peterson <Dave.Peterson@fallriverelectric.com>; Mifsud, Cynthia Hansen <Cynthia.Hansen@pacificorp.com>
Subject: RE: Fall River Rural Elect. Coop.'s Response Letter Re Chester Project PPA Request

Greg,

Please find attached the draft PPA for the Chester Project as discussed.

Thanks,

Kyle Moore
Rocky Mountain Power
Commercial Services
O 801.220.4467
C 385.210.4209

From: Greg Adams [<mailto:Greg@richardsonadams.com>]
Sent: Wednesday, June 10, 2020 5:19 PM
To: Moore, Kyle {Mkt Function} <Kyle.Moore@pacificorp.com>; McDermott, Jacob <Jacob.McDermott@pacificorp.com>
Cc: Bryan Case <Bryan.Case@fallriverelectric.com>; Woodworth, Thomas <Thomas.Woodworth@PacifiCorp.com>; Dave Peterson <Dave.Peterson@fallriverelectric.com>
Subject: [INTERNET] RE: Fall River Rural Elect. Coop.'s Response Letter Re Chester Project PPA Request

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Cybersecurity risk assessment: Medium	

Jake and Kyle, I am touching base on the Chester Project PPA request. Please let us know when we can expect to receive the draft PPA we had discussed. We would like to move forward with that as expeditiously as possible. Thanks.

Greg Adams
Richardson Adams, PLLC
515 N. 27th Street
Boise, Idaho 83702
Voice: 208.938.2236
Facsimile: 208.938.7904

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From: Greg Adams <Greg@richardsonadams.com>
Sent: Monday, May 11, 2020 10:33 AM
To: Moore, Kyle {Mkt Function} <Kyle.Moore@pacificorp.com>; McDermott, Jacob <Jacob.McDermott@pacificorp.com>
Cc: Bryan Case <Bryan.Case@fallriverelectric.com>; Woodworth, Thomas <Thomas.Woodworth@PacifiCorp.com>; Dave Peterson <Dave.Peterson@fallriverelectric.com>
Subject: Fall River Rural Elect. Coop.'s Response Letter Re Chester Project PPA Request

Jake and Kyle, Please see the attached letter regarding the Chester Project PPA request.

Greg Adams
Richardson Adams, PLLC
515 N. 27th Street
Boise, Idaho 83702
Voice: 208.938.2236
Facsimile: 208.938.7904

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POWER PURCHASE AGREEMENT

BETWEEN

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

AND

PACIFICORP

FOR THE CHESTER DIVERSION HYDROELECTRIC PROJECT

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SATISFACTION OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL)) AND ALL OTHER NECESSARY REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS (INCLUDING BUT NOT LIMITED TO PRICING) SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, SIGNED, DELIVERED AND APPROVED BY ALL REQUIRED REGULATORY BODIES, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.

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EXHIBITS

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Exhibit L	Party Notice Information
Exhibit M	Generation Scheduling

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “Agreement”), is entered into between Fall River Rural Electric Cooperative, Inc., an Idaho Corporation (the “Seller”) and PacifiCorp, an Oregon corporation (“PacifiCorp”). Seller and PacifiCorp are sometimes referred to in this Agreement collectively as the “Parties” and individually as a “Party.”

A. Seller owns, operates and maintains the hydro-powered Chester Diversion Project for the generation of electric energy located in Fremont County, Idaho, with a nameplate capacity rating of 2.0 MW (the “Facility”);

B. Seller intends to operate the Facility as a Qualifying Facility (“QF”) consistent with the requirements of PURPA;

C. Seller desires to sell, and PacifiCorp agrees to purchase, the Net Output delivered by the Facility in accordance with the terms and conditions of this Agreement;

D. The rates, terms and conditions in this Agreement are in accordance with the rates, terms, and conditions approved by the Commission for purchases from QFs; and

E. PacifiCorp intends designate the Facility as a Network Resource for the purposes of serving network load.

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

SECTION 1 DEFINITIONS, RULES OF INTERPRETATION

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

“Abandonment” means (a) the relinquishment of all possession and control of the Facility by Seller, but only if such relinquishment is not caused by or attributable to an Event of Default by PacifiCorp, a request by PacifiCorp, or an event of Force Majeure.

“Adjusted Scheduled Monthly Energy Delivery” shall have the meaning set forth in Section 4.10.

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

“Agreement” is defined in the Recitals.

“AC” means alternating current.

“As-built Supplement” is a supplement to Exhibit B of this Agreement, as provided in Section 6.1, which provides the final “as-built” description of the Facility, including the Point of Delivery.

“Business Day” means any day on which banks in Portland, Oregon, are not authorized or required by Requirements of Law to be closed.

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

“Commission” means the Idaho Public Utilities Commission.

“Conditional DNR Notice” is defined in Section 4.2.

“Conforming Energy” means all Net Energy except Non-Conforming Energy subject to any adjustments to the Energy Delivery Schedule in Section 4.9 and 4.10.

“Conforming Energy Purchase Price” means the applicable price for Conforming Energy and capacity (if any), specified in Section [Error! Reference source not found.](#)[Error! Reference source not found.](#)

“Contract Interest Rate” means the lesser of (a) the highest rate permitted under Requirements of Law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its “prime rate.” If a Citibank, N.A. prime rate is not available, the applicable prime rate will be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid.

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

“Contract Year” means any consecutive twelve (12) month period during the Term, commencing at 00:00 hours on First Delivery Date or any of its anniversaries and ending at 24:00 hours on the last day of such twelve (12) month period.

“Credit Requirements” means a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of (a) ‘BBB+’ or greater from S&P, or (b) ‘Baa1’ or greater from Moody’s; provided that if such ratings are split, the lower of the two

ratings must be at least ‘BBB+’ or ‘Baa1’ from S&P or Moody’s, and provided further that if (a) or (b) is not available, an equivalent rating as determined by PacifiCorp through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party.

“Effective Date” is defined in Section 2.1.

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

“Energy Delivery Schedule” is defined in Section 4.9 of this Agreement.

“Energy Imbalance Market” means generation facilities electrically located within PacifiCorp’s balancing authority areas that are, from time to time, bid in to or otherwise subject to dispatch instructions issued or originating from the Market Operator.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances associated with the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides, nitrogen oxides, carbon monoxide, and other pollutants; and (b) any avoided emissions of carbon dioxide, methane, and other greenhouse gases that have been determined by any Governmental Authority to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Environmental Attributes do not include (i) Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

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

“Event of Default” is defined in Section 11.1.

“Expected Monthly Net Output” means the estimated monthly Net Output as determined in Exhibit A.

“Expected Net Output” means 5,481,400 kWh of Net Output in the first full Contract Year. Seller estimates that the Net Output will be delivered during each Contract Year according to the Expected Monthly Net Output provided in Exhibit A, as reduced each Contract Year, as applicable, by the annual degradation factor.

“Facility” is defined in the Recitals and is more fully described in attached Exhibit B and includes all equipment, devices, associated appurtenances owned, controlled,

operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to PacifiCorp and required to interconnect with the System.

“FERC” means the Federal Energy Regulatory Commission.

“Firm Market Price Index” means the hourly value calculated based on the average prices reported by the Intercontinental Exchange, Inc. (“ICE”) Day-Ahead PV On-Peak Index and the ICE Day-Ahead PV Off-Peak Index (each an “ICE Index”) for a given day, weighted by the count of hours for each ICE Index on such day, multiplied by the hourly CAISO day-ahead market locational marginal price for the “PACE. DGAP_PACE-APND” location, and divided by the average of the same CAISO index over all hours in such day. If applicable, the resulting value will be reduced by the integration costs specified in the most recent Commission order as applicable to the Facility. If any index is not available for a given period, the Firm Market Price Index will be the average price derived from days in which all published data is available, for the same number of days immediately preceding and immediately succeeding the period in which an index was not available, regardless of which days of the week are used for this purpose. If the Firm Market Price Index or its replacement or any component of that index or its replacement ceases to be published or available, or useful for its intended purpose under this Agreement, during the Term, the Parties must agree upon a replacement Firm Market Price Index or component that, after any necessary adjustments, provides the most reasonable substitute quotation of the hourly price of electricity for the applicable periods.

“First Delivery Date” means the date on which Seller first delivers and PacifiCorp firsts accepts Net Output from the Facility for sale under this Agreement. To establish the First Delivery Date, Seller must provide written notice to PacifiCorp, after the Commission’s approval of this Agreement, that the Facility will commence deliveries to PacifiCorp accompanied by a copy of the Transmission Agreement. Unless Seller’s notice is deficient, PacifiCorp must confirm that it will commence accepting deliveries within ten (10) calendar days of receipt of a notice satisfying the requirements of the preceding sentence. If PacifiCorp informs Seller within such ten (10) calendar day period that PacifiCorp believes the Facility has not met the conditions for the First Delivery Date, identifying the specific areas of deficiency, Seller must address the concerns stated in PacifiCorp’s deficiency notice to the reasonable satisfaction of PacifiCorp; PacifiCorp will then accept deliveries of Net Ouptut promptly after the matters identified in PacifiCorp’s deficiency notice have been addressed to PacifiCorp’s reasonable satisfaction.

“Force Majeure” is defined in Section 14.1.

“Forced Outage” means NERC Event Types U1, U2 and U3, as provided in attached Exhibit J, and specifically excludes any Maintenance Outage or Planned Outage.

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

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

“Inadvertent Energy” means: (1) energy delivered in excess of the Maximum Monthly Purchase Obligation; and (2) energy delivered to the Point of Delivery at a rate exceeding the Maximum Delivery Rate. Inadvertent Energy is not included in Net Output.

“Indemnified Party” is defined in Section 6.2.3(b).

“Indemnifying Party” is defined in Section 6.2.3(b).

“Initial Energy Delivery Schedule” shall have the meaning set forth in Section 4.3.

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

“Interconnection Provider” means Fall River Rural Electric Cooperative, Inc.

“KW” means kilowatt.

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

“Liabilities” is defined in Section 12.1.1.

“Maintenance Outage” means NERC Event Type MO, as provided in attached Exhibit J, and includes any outage involving ten percent (10%) of the Facility’s Net Output that is not a Forced Outage or a Planned Outage.

“Market Operator” means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market or any organized day-ahead or intra-hour market.

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

“Maximum Monthly Purchase Obligation” means the maximum amount of energy PacifiCorp is obligated to purchase under this Agreement in a calendar month. In accordance with Commission orders, the Maximum Monthly Purchase Obligation for a given month, in kWh, shall not exceed 10,000 kW multiplied by the total number of hours in that month and prorated for any partial month.

“Moody’s” means Moody’s Investor Services, Inc.

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

“MW” means megawatt.

"MWh" means megawatt-hour.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the Facility, expressed in MW (AC), when operated in compliance with Prudent Electrical Practices and the requirements of the Interconnection Provider and consistent with the recommended power factor and operating parameters provided by the manufacturer of the generator. The Nameplate Capacity Rating of the Facility is 2.0 MW.

“Net Energy” means the energy component, in kWh, of Net Output. Net Energy does not include Inadvertent Energy.

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any, up to and including the Point of Interconnection. For purposes of calculating payment under this Agreement, Net Output of energy will be the amount of energy flowing through the Point of Interconnection, less any station use not provided by the Facility.

Commented [FRREC1]: Net Output is measured at the POI for an off-system QF. This language is taken from PacifiCorp’s Oregon form PPA for off-system QFs.

“Network Resource” is defined in the Tariff.

“Non-Conforming Energy” means for any calendar month subject to any adjustments to the Energy Delivery Schedule in Section 4.4: (1) that portion, if any, of Net Energy delivered subsequently to the initial 110% of the Scheduled Monthly Energy Delivery for that calendar month; or (2) all Net Energy delivered when Net Energy delivered is less than 90% of the Scheduled Monthly Energy Delivery for that calendar month; and (3) all Net Output produced by the Facility prior to the First Delivery Date.

“Non-Conforming Energy Purchase Price” means the applicable price for Non-Conforming Energy and capacity, specified in Section 5.1.

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

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

“Output” means all energy produced by the Facility.

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

“PacifiCorp Indemnitees” is defined in Section 12.1.1.

“PacifiCorp Representatives” is defined in Section 6.14.

“PacifiCorp Transmission” means PacifiCorp, an Oregon corporation, acting in its transmission function capacity.

“PacifiCorp’s Cost to Cover” means the positive difference, if any, between (a) the time weighted average of the Firm Market Price Index for each day for which the determination is being made, and (b) the Contract Price in effect on such days, stated as an amount per MWh.

“Party” and “Parties” are defined in the Recitals.

“Permits” means the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership or operation of the Facility or occupancy of the Premises.

“Planned Outage” means NERC Event Type PO, as provided in attached Exhibit J, and specifically excludes any Maintenance Outage or Forced Outage.

“Point of Delivery” means the Goshen substation, the location in PacifiCorp’s system where PacifiCorp has agreed to receive Seller’s Net Energy, as further described in Exhibit C.

“Point of Interconnection” means the point of interconnection between the Facility and Interconnection Provider’s electric distribution system, as specified in Exhibit C.

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

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

“PURPA” means the Public Utility Regulatory Policies Act of 1978.

“QF” means “Qualifying Facility,” as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

“Qualifying Curtailment” means, to the extent not caused by Seller’s negligent, reckless, or willful actions, a period in a given calendar month during which delivery of Net Output is curtailed or interrupted pursuant to Section 4.5, and only applicable to adjustment of the Energy Delivery Schedule as described in Section 4.10.

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

“Qualifying Outage” is defined in Section 4.10.

“Required Facility Documents” means the Permits and other authorizations, rights and agreements necessary for construction, ownership, operation, and maintenance of the Facility, and to deliver the Net Output to PacifiCorp in accordance with this Agreement and Requirements of Law, including those listed in Exhibit D.

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

“RTO” means any entity (including an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

“S&P” means Standard & Poor’s Rating Group (a division of S&P Global, Inc.).

“Schedule 38” means Rocky Mountain Power Idaho Schedule No. 38 as attached in Exhibit K, and as approved by the Commission on the Effective Date.

“Scheduled Monthly Energy Delivery” means the Net Energy scheduled to be delivered during a given calendar month, as specified by Seller in the Energy Delivery Schedule.

“Subsequent Energy Delivery Schedule” is defined in Section 4.3.2 of this Agreement.

“Seller” is defined in the Recitals.

“Seller Indemnitees” is defined in Section 12.1.2.

“Seller’s Cost to Cover” means the positive difference, if any, between (a) the Contract Price per MWh, and (b) the net proceeds per MWh actually realized by Seller from the sale to a third party of Net Output not purchased by PacifiCorp as required under this Agreement.

“System” means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by the applicable Transmission Provider.

“Tariff” means PacifiCorp’s Open Access Transmission Tariff on file with FERC, as such tariff is revised from time to time.

“Tax Credits” means any state, local and federal production and investment tax credits, tax deductions, or other tax benefits specific to the production of renewable energy or investments in renewable energy facilities.

“Term” is defined in Section 2.1.

“Termination Damages” is defined in Section 11.5.

“Transmission Provider” means PacifiCorp Transmission, including PacifiCorp’s business unit responsible for the safe and reliable operation of PacifiCorp’s balancing authority areas, or Bonneville Power Administration, as applicable.

“Transmission Service” means the firm, uninterruptible, transmission service acquired by Seller pursuant to which Interconnection Provider and Transmission Providers transmits Output to the Point of Delivery.”

“WECC” means the Western Electricity Coordinating Council.

1.2 Rules of Interpretation.

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

1.2.2 Terms Not to be Construed For or Against Either Party. Each term in this Agreement must be construed according to its fair meaning and not strictly for or against either Party.

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

1.2.4 Interpretation with FERC Orders. Each Party conducts its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its companion orders, requiring the separation of its transmission and merchant functions.

(a) Notwithstanding any other provision in this Agreement, nothing in any other agreement between Seller on the one hand and PacifiCorp Transmission on the other hand, nor any alleged event of default thereunder, will alter or modify the Parties' rights, duties, and obligations in this Agreement. This Agreement will not be construed to create any rights between Seller and PacifiCorp Transmission as a Transmission Provider.

(b) Seller acknowledges that, for purposes of this Agreement, PacifiCorp Transmission as a Transmission Provider shall be deemed to be a separate entity and separate contracting party from PacifiCorp. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser in this Agreement, has no responsibility for or control over PacifiCorp Transmission as a Transmission Provider, and is not liable for any breach of agreement or duty by PacifiCorp Transmission as a Transmission Provider.

SECTION 2 TERM; MILESTONES

2.1 Term. This Agreement will become effective after the occurrence of all of the following events: (1) execution by both Parties; and (2) approval by the Commission; *provided*, however, this Agreement shall not become effective until the Commission has determined, pursuant to a final and non-appealable order, that the prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the costs incurred by PacifiCorp in relation to this Agreement are legitimate expenses, all of which the Commission will allow PacifiCorp to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses. Unless terminated earlier as provided herein, once effective, this Agreement remains in effect until the completion of 20 Contract Years (the "Term").

SECTION 3 REPRESENTATIONS AND WARRANTIES

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

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

3.1.2 Authority. It has the requisite power and authority to enter this Agreement and to perform according to its terms.

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

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

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

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

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

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

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

(b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than consents and approvals which are (i) provided in Exhibit D or (ii) required in connection with the construction or operation of the Facility and expected to be obtained in due course; or

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

3.2.3 Required Facility Documents. All Required Facility Documents are listed on Exhibit D. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date (or such other later date as may be specified under Requirements of Law), and will maintain for the Term all Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting real property agreements, including leases and

easements, required for the construction, ownership, operation and maintenance of the Facility or the performance of any obligations of Seller in this Agreement and that are identified in Exhibit E. Following the Effective Date, Seller must promptly notify PacifiCorp of any additional Required Facility Documents not listed on Exhibit D. If reasonably requested by PacifiCorp, Seller must provide copies of any or all Required Facility Documents.

3.2.4 Delivery of Energy. Seller must hold all rights sufficient to enable Seller to deliver Net Output at the Nameplate Capacity Rating from the Facility to the Point of Delivery pursuant to this Agreement throughout the Term.

3.2.5 Control of Premises. Seller has all legal and contractual rights necessary for Seller to enter upon and occupy the Premises for the purpose of owning, operating and maintaining the Facility throughout the Term. All real property rights agreements, including leases and easements, required for the ownership, operation and maintenance of the Facility or the performance of any obligations of Seller in this Agreement are identified in Exhibit E. Seller must maintain throughout the Term all such real property agreements, including leases and easements, required for the ownership, operation and maintenance of the Facility or the performance of all obligations of Seller under this Agreement. Upon request by PacifiCorp, Seller must provide copies of all memoranda of real property interests recorded in connection with the development of the Facility.

3.2.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against Seller or any Affiliate of Seller, with respect to this Agreement, the Facility, or the transactions contemplated in this Agreement. No other investigation or proceeding is pending or threatened against Seller or any Affiliate of Seller, the effect of which would materially and adversely affect Seller's performance of its obligations in this Agreement.

3.2.7 Eligible Contract Participant. Seller, and any guarantor of its obligations under this Agreement, is an "eligible contract participant" as that term is defined in the United States Commodity Exchange Act.

3.2.8 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. In entering into this Agreement and agreeing to undertake the obligations within, Seller has investigated and determined that it is capable of performing and has not relied upon the advice, experience or expertise of PacifiCorp in connection with the transactions contemplated by this Agreement.

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

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

3.4 Continuing Nature of Representations and Warranties: Notice. The representations and warranties provided in this Section 3 are made as of the Effective Date. If at any time during the Term, either Party obtains actual knowledge of any event or information that would have caused any of the representations and warranties in this Agreement to be materially untrue or misleading at the time given, such Party must provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required by this section must be given as soon as practicable after the occurrence of each such event.

SECTION 4 DELIVERIES OF NET OUTPUT

4.1 Purchase and Sale. Subject to the provisions of this Agreement, Seller must sell and make available to PacifiCorp, and PacifiCorp must purchase and receive the entire Net Output from the Facility at the Point of Delivery, subject to the provisions of Exhibit M. PacifiCorp is under no obligation to make any purchase other than Net Output and is not obligated to purchase, receive or pay for Net Output that is not delivered to the Point of Delivery. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses between the Point of Interconnection and the Point of Delivery. The loss adjustment shall be []% of the kWh of Net Output.

4.2 Designation as Network Resource. Within five (5) Business Days following the Effective Date, PacifiCorp will submit an application to the Transmission Provider requesting designation of the Facility as a Network Resource, thereby authorizing transmission service under PacifiCorp's Network Integration Transmission Service Agreement with the Transmission Provider. If PacifiCorp is notified in writing by the Transmission Provider that designation of the Facility as a Network Resource requires the construction of transmission system network upgrades or otherwise requires potential redispach of other Network Resources of PacifiCorp (the "Conditional DNR Notice"), the Parties will promptly meet to determine how such conditions to the Facility's Network Resource designation may impact the Contract Price or other terms and conditions of this PPA. If, within thirty (30) days following the date of PacifiCorp's receipt of the Conditional DNR Notice, the Parties are unable to reach agreement on any necessary adjustments to ensure the Contract Price reflects an "avoided cost" price as determined by the Commission and PURPA, PacifiCorp will submit the matter to the Commission for a determination on what adjustments, if any, are appropriate as a result of the Conditional DNR Notice. PacifiCorp will submit such filing with the Commission within sixty (60) days following the date of PacifiCorp's receipt of the Conditional DNR Notice. In the event of such a filing to the Commission under this Section, the Parties' obligations under this Agreement will be suspended until such time that the Commission issues a final decision. In the event of a Conditional DNR Notice, Seller will have the right to terminate the Agreement upon written notice to PacifiCorp and such termination by Seller will not be an Event of Default and no damages or other liabilities under this Agreement will be owed by one Party to the other Party; provided, however, that Seller's right to terminate the Agreement under this Section 4.2 will cease following (a) any amendment of this Agreement associated with addressing matters covered under this Section 4.2 or (b) PacifiCorp incurring costs at Seller's request in furtherance of addressing matters covered under this Section 4.2.

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

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

4.5 Curtailement. PacifiCorp is not be obligated to purchase, receive, pay for, or pay any damages associated with, Net Output not delivered to the System or Point of Delivery due to any of the following: (a) the interconnection between the Facility and the Interconnection Provider's system is disconnected, suspended or interrupted, in whole or in part, by the Interconnection Provider; (b) the Market Operator or Transmission Provider directs a general curtailment, reduction, or redispatch of generation in the area (which would include the Net Output) for any reason (excluding curtailment of purchases for general economic reasons unilaterally directed by the Market Operator or PacifiCorp acting solely in its merchant function capacity), even if and no matter how such curtailment or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in any way in order to meet its obligations to the Market Operator or Transmission Provider to operate within system limitations; (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System; or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output. Seller will reasonably determine the MWh amount of Net Output curtailed under this Section 4.5 based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller must promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a curtailment described in this Section 4.5.

4.6 PacifiCorp as Merchant. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission, in either its capacity as Transmission Provider or Interconnection Provider.

4.7 Ownership of Environmental Attributes. Seller maintains ownership of any commercially transferrable or tradeable renewable energy credits associated with the Output.

4.8 Purchase and Sale of Capacity Rights. Seller transfers to PacifiCorp, and PacifiCorp accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person or entity the Capacity Rights, if any. During the Term, Seller must not report to any person or entity that the

Capacity Rights, if any, belong to anyone other than PacifiCorp. At PacifiCorp's request, Seller must execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Net Output or any Capacity Rights to PacifiCorp.

4.9 Energy Delivery Schedule. Seller shall prepare and provide to PacifiCorp, on an ongoing basis, a written schedule of Net Energy expected to be delivered by the Facility ("Energy Delivery Schedule"), in accordance with the following:

From the Effective Date until revised consistent with this Section 4.9, Seller predicts that the Facility will produce and deliver the following monthly amounts ("Initial Energy Delivery Schedule"):

<u>Month</u>	<u>Energy Delivery (kWh)</u>
January	10,000
February	170,000
March	400,000
April	900,000
May	1,150,000
June	1,100,000
July	775,000
August	440,100
September	410,000
October	450,000
November	600,000
December	175,200

4.9.1 The Seller may revise any future monthly Energy Delivery Schedule with additional forward estimates (which shall be the "Subsequent Energy Delivery Schedule") by providing written notice no later than 5 PM Mountain Standard time on the 20th day of the month that is prior to the month to be revised. If the 20th day of the month falls on a weekend or holiday, then written notice must be received on the last business day prior to the 20th day of the month. For example, if the Seller would like to revise the Energy Delivery Schedule for October, Seller must submit a revised schedule no later than September 20th or the last business day prior to September 20th.

4.9.2 This written notice must be provided to PacifiCorp in accordance with Section 22.1, including the electronic notice provisions therein, or by other means of electronic notice as agreed to by both parties. Failure to provide timely written notice of changes to the Initial Energy Delivery Schedule or, if applicable, the most recent Subsequent Energy Delivery

Schedule will be deemed to be an election of no change from the most recently provided Energy Delivery Schedule.

4.10 Adjustment of Energy Delivery Schedule. In the event of (i) a Qualifying Curtailment, or (ii) a Forced Outage lasting at least 48 hours and for which Seller provides notice to PacifiCorp pursuant to Section 6.5.3 (“Qualifying Outage”), the Scheduled Monthly Energy Delivery will be adjusted, *pro rata*, (“Adjusted Scheduled Monthly Energy Delivery”) for that month to determine Conforming Energy and Non-Conforming Energy. The Adjusted Scheduled Monthly Energy Delivery shall be calculated as follows:

$$SMED(adj) = SMED \left(1 - \sum_{i=1}^n \left(\frac{Hc_i}{Ht} * \frac{DRm - DRc_i}{DRm} \right) \right)$$

Where:

<i>SMED</i>	=	Scheduled Monthly Energy Delivery for the month in which the Qualifying Curtailment(s) and/or Qualifying Outage(s) occur
<i>SMED(adj)</i>	=	Adjusted Scheduled Monthly Energy Delivery for the month in which the Qualifying Curtailment(s) and/or Qualifying Outage(s) occur
<i>Hc_i</i>	=	the duration in hours of the Qualifying Curtailment or Qualifying Outage (<i>i</i>)
<i>Ht</i>	=	total hours in the month in which Qualifying Curtailment(s) and/or Qualifying Outage(s) occurs
<i>DRc_i</i>	=	the Maximum Curtailed Facility Delivery Rate during the Qualifying Curtailment or Qualifying Outage (<i>i</i>)
<i>DRm</i>	=	the Maximum Facility Delivery Rate
<i>i</i>	=	a Qualifying Curtailment or Qualifying Outage
<i>n</i>	=	the number of Qualifying Curtailments and/or Qualifying Outage(s) in the month

Where Qualifying Curtailments and Qualifying Outages overlap, each distinct period of overlap shall be calculated as a separate Qualifying Curtailment or Qualifying Outage such that no hour within a calendar month may figure into more than one Qualifying Curtailment or Qualifying Outage.

SECTION 5 CONTRACT PRICE; COSTS

5.1 Contract Price; Includes Capacity Rights. PacifiCorp will pay Seller Conforming Energy or Non-Conforming Energy Purchase Prices stated in Exhibit K and as described in this Section 5.1 for all deliveries of Net Output adjusted for the month and On-Peak Hours or Off-Peak Hours and Capacity Rights, up to the Maximum Delivery Rate.

5.2 Costs and Charges. Seller is responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, Transmission Service, transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider for the

Interconnection Facilities. Except as provided in Section 4.2, PacifiCorp is responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery.

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

5.4 Taxes. Seller must pay, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Net Output or Capacity Rights up to and including the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp must pay, or reimburse Seller for, all such taxes imposed or levied by any Governmental Authority on the Net Output or Capacity Rights beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. The Contract Price will not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back. In the event any taxes are imposed on a Party for which the other Party is responsible in this Agreement, the Party on which the taxes are imposed must promptly provide the other Party notice and such other information as such Party reasonably requests with respect to any such taxes.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision of this Agreement and subject to Section 5.4, Seller is solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions of this Agreement, and (b) all taxes and charges (however characterized) now existing or later imposed on or with respect to the Facility and its operation, including any tax or charge (however characterized) payable by a generator of Environmental Attributes.

5.6 Rates Not Subject to Review. The rates for service specified in this Agreement will remain in effect until expiration of the Term, and are not subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party will petition FERC to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes to this Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* will be the “public interest” application of the “just and reasonable” standard of review as described in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956), and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956), and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008).

SECTION 6 OPERATION AND CONTROL

6.2 Standard of Facility Operation.

6.2.1 General. Seller will operate all interconnected equipment associated with

the Facility and the Interconnection Facilities within its control in accordance with all applicable federal, state, and local laws and regulations to ensure system safety and reliability of interconnected operations. At Seller's sole cost and expense, Seller must operate, maintain and repair the Facility in accordance with (a) the applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors to the functions thereof; (b) the Permits and Required Facility Documents; (c) the [requirements of the Interconnection Provider and transmission](#) service agreements to which it is a party; (d) all Requirements of Law; (e) the requirements of this Agreement; and (f) Prudent Electrical Practice.

6.2.2 Qualified Operator. Seller or an Affiliate of Seller must operate and maintain the Facility or cause the Facility to be operated and maintained by an entity that has at least two years of experience in the operation and maintenance of similar facilities of comparable size to the Facility. Seller must provide PacifiCorp thirty (30) days prior written notice of any change in operator of the Facility.

6.2.3 Fines and Penalties.

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

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

6.3 Transmission Arrangements. Seller shall be responsible for the costs and expenses associated with obtaining from the Transmission Providers the Transmission Services for the Facility at its Capacity Rating from the Point of Interconnection to the Point of Delivery. Seller shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Providers or Interconnection Provider, in connection with the Interconnection Facilities, transmission service agreements or otherwise.

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

6.5 Outages.

6.5.1 Planned Outages. Seller must provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one month, but no more than three months, before the first day of that Contract Year, and may update such Planned Outage schedule as necessary to comply with Prudent Electrical Practices. Any such update to the Planned Outage schedule must be promptly submitted to PacifiCorp. Except as may be required by Prudent Electrical Practices in operation of the Interconnection Facilities by the Interconnection Provider, Seller may not schedule a Planned Outage during any portion of the months of December and July, except to the extent reasonably required to enable a vendor to satisfy a guarantee requirement.

6.5.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller must notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins. Seller must take all reasonable measures consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the months of December and July. Notice of a proposed Maintenance Outage by Seller must include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. PacifiCorp will promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller must use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Once the Maintenance Outage has commenced, Seller must keep PacifiCorp apprised of any changes in the generation capacity available from the Facility during the Maintenance Outage and any changes in the expected Maintenance Outage completion date and time. As soon as practicable, any notifications given orally must be confirmed in writing. Seller must take all reasonable measures consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

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

6.5.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform PacifiCorp, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any limitations, restrictions, deratings or outages reasonably predicted by Seller to affect more than five percent (5%) of the Nameplate Capacity rating of the Facility for the following day and will promptly update such notice to the extent of any material

changes in this information.

6.5.5 Effect of Outages on Estimated Output. Seller represents and warrants that the Expected Monthly Net Output provided in Exhibit A takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility.

6.6 Scheduling.

6.6.1 Cooperation and Standards. With respect to any and all scheduling requirements, (a) Seller must cooperate with PacifiCorp with respect to scheduling Net Output, and (b) each Party will designate authorized representatives to communicate with regard to scheduling and related matters arising under this Agreement. Each Party must comply with the applicable variable resource standards and criteria of any applicable Electric System Authority, as applicable.

6.6.2 Generation Scheduling. Seller shall perform all scheduling of generation from the Facility in accordance with Exhibit M.

6.7 Forecasting.

6.7.1 Long-Range Forecasts. Seller must, by December 1st of each year during the Term (except for the last year of the Term), provide an annual update to the expected long-term monthly/diurnal mean net energy and net capacity factor estimates (12 X 24 profile). Seller must prepare such forecasts utilizing a renewable energy resource prediction model or service that is satisfactory to PacifiCorp in the exercise of its reasonable discretion and comparable in accuracy to models or services commonly used in the industry. The forecasts provided by Seller must comply with all applicable Electric System Authority tariff procedures, protocols, rules and testing as necessary and as may be modified from time to time.

6.8 Increase in Nameplate Capacity Rating; New Project Expansion or Development. If Seller elects to increase the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate through any means, including replacement or modification of Facility equipment or related infrastructure, PacifiCorp is not required to purchase any Net Output above the Maximum Delivery Rate. If Seller elects to build an expansion or additional project within one mile of the Facility (measured from the nearest generation equipment at both locations), Seller may not require PacifiCorp to purchase (and PacifiCorp will have no obligation to purchase pursuant to this Agreement) the output of any such expansion or additional facility. Seller agrees that it will not seek to avoid the obligations in this Section 6.8 through use or establishment of a special purpose entity or other Affiliate. Any such expansion or additional facility may not materially and adversely impact the ability of either Party to fulfill its obligations under this Agreement.

6.9 Telemetering. Seller must provide telemetering or other cellular or web-based equipment and facilities capable of transmitting the following information concerning the Facility to PacifiCorp on a real-time basis and will operate such equipment when requested by PacifiCorp to indicate:

Commented [FRECC2]: Deliveries will be made via scheduling on OASIS, so there should be no need for communication circuits other than the requirements for the transmission agreement. PacifiCorp will have the access to this data via the Transmission Provider consent in section 6.10.

Commented [FRECC3]: Deliveries will be made via scheduling on OASIS, so there should be no need for communication circuits other than the requirements for the transmission agreement. PacifiCorp will have the access to this data via the Transmission Provider consent in section 6.10.

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Commented [CHM4]: Reinstated original language. Parties to discuss.

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

Commencing on the date of initial deliveries under this Agreement, Seller must also transmit or otherwise make accessible to PacifiCorp any other data from the Facility that Seller receives on a real time basis, including Net Output data. Such real time data must be made available to PacifiCorp on the same basis as Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp must also receive the data in four second intervals). If Seller uses a web-based performance monitoring system for the Facility, Seller must provide PacifiCorp access to Seller's web-based performance monitoring system.

6.10 Transmission Provider Consent. Within ten (10) days of the Effective Date, Seller must execute and submit to PacifiCorp, a consent in the form provided in Exhibit H or as otherwise required by Transmission Provider, that allows PacifiCorp to read the meter and receive any and all data from the Transmission Provider relating to transmission of Output or other matters relating to the Facility without the need for further consent from Seller.

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

Commented [FRREC5]: Same comment as Section 6.9 - Deliveries will be made via scheduling on OASIS, so there should be no need for communication circuits other than the requirements for the transmission agreement.

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6.12 Reports and Records.

6.12.1 Electronic Fault Log. Seller must maintain an electronic fault log of operations of the Facility during each hour of the Term. Seller must provide PacifiCorp with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.12.2 Information to Governmental Authorities. Seller must, promptly upon written request from PacifiCorp, provide PacifiCorp with data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required for reports to any Governmental Authority or Electric System Authority, along with a statement from an officer of Seller certifying that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller must use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review such information and meet any submission deadlines. PacifiCorp will reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year, if any, incurred in connection with PacifiCorp's requests for information under this subsection.

6.12.3 Data Request. Seller must, promptly upon written request from PacifiCorp, provide PacifiCorp with data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental

Authority. Seller must use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review such date and meet any submission deadlines. PacifiCorp will reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year, if any, incurred in connection with PacifiCorp's requests for information under this subsection.

6.12.4 Documents to Governmental Authorities. By January 30th of each year, Seller shall provide PacifiCorp with a list of all filings, statements, applications, and reports or any documents submitted with any Governmental Authority or Electric System Authority relating to operation and maintenance of the Facility during the previous calendar year. If PacifiCorp subsequently requests any such materials, Seller must promptly provide to PacifiCorp a copy of the materials requested. PacifiCorp will reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year, if any, incurred in connection with PacifiCorp's requests for information under this subsection.

6.12.5 Notice of Material Adverse Events. Seller must promptly notify PacifiCorp of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility, or Seller's ability to develop, construct, operate, maintain or own the Facility, including any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Premises.

6.12.6 Notice of Litigation. Following its receipt of written notice or knowledge of the commencement of any action, suit, or proceeding before any court or Governmental Authority against Seller, its members, or any Affiliate relating to the Facility or this Agreement, or that could materially and adversely affect Seller's performance of its obligations in this Agreement, Seller must promptly notify PacifiCorp.

6.12.7 Additional Information. Seller must provide to PacifiCorp such other information as relevant to Seller's performance of its obligations under this Agreement or the Facility as PacifiCorp may, from time to time, reasonably request.

6.12.8 Confidential Treatment. The reports and other information provided to PacifiCorp under this Section 6.12 will be treated as confidential if such treatment is requested in writing by Seller at the time the information is provided to PacifiCorp, subject to PacifiCorp's rights to disclose such information pursuant to Sections 6.12.3 and 6.12.4, and pursuant to any applicable Requirements of Law. Seller will have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information.

6.13 Financial and Accounting Information. If PacifiCorp or one of its Affiliates determines that, under (a) the Accounting Standards Codification (ASC) 810, Consolidation of Variable Interest Entities, and (b) Requirements of Law that it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller agrees to provide, upon PacifiCorp's written request, sufficient financial and ownership information so that PacifiCorp or its Affiliate may confirm whether a variable interest does exist under ASC 810

and Requirements of Law. If PacifiCorp or its Affiliate determines that, under ASC 810, it holds a variable interest in Seller, Seller agrees to provide, upon PacifiCorp's written request, sufficient financial and other information to PacifiCorp or its Affiliate so that PacifiCorp may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 and Requirements of Law. PacifiCorp will reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.13. Seller will have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information.

6.14 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller must provide PacifiCorp and its authorized agents, employees and inspectors ("PacifiCorp Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, and (c) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp will release Seller from any and all Liabilities resulting from actions or omissions by any of the PacifiCorp Representatives in connection with their access to the Facility, except to the extent such Liabilities are caused by the intentional or negligent act or omission of Seller or its agents or Affiliates.

SECTION 7 QUALIFYING FACILITY STATUS

7.1 Seller's QF Status. Seller must maintain throughout the Term the Facility's status as a QF. Seller must provide PacifiCorp with copies of any QF certification or recertification documentation within ten (10) days of its filing with any Governmental Authority. At any time during the Term, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

SECTION 8 SECURITY AND CREDIT SUPPORT

RESERVED

SECTION 9 METERING

9.1 Metering. Metering must be performed at the location and in the manner specified in Exhibit C and as necessary to perform Seller's obligations under this Agreement. All quantities of Net Output purchased must reflect the net amount of energy flowing onto PacifiCorp's System at the Point of Delivery, subject to the provisions of Exhibit M.

9.2 Metering Costs. Seller is responsible for all costs and expenses relating to all metering equipment installed to accommodate Seller's Facility.

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

Commented [CHM7]: Reinstated Interconnection Provider

Commented [FRECE8]: Fall River Rural Electric Coop is the "Interconnection Customer" so there would be no request made to itself.

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

SECTION 10 BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Monthly Invoices. On or before the tenth (10th) day following the end of each calendar month, Seller must deliver to PacifiCorp an invoice showing Seller's computation of Net Output delivered to the Point of Delivery during such month, including the information required in Exhibit M. When calculating the invoice, in addition to the content required in Exhibit M, Seller must provide computations showing the portion of Net Output that was delivered during On-Peak Hours and the portion of Net Output that was delivered during Off-Peak Hours. If such invoice is delivered by Seller to PacifiCorp, then PacifiCorp must send to Seller, on or before the later of the twentieth (20th) day following receipt of such invoice or the thirtieth (30th) day following the end of each month, payment for Seller's deliveries of Net Output to PacifiCorp.

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

10.3 Interest on Late Payments. Any amounts not paid when due under this Agreement will bear interest at the Contract Interest Rate from the date due until paid.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due under an invoice provided under this Agreement, such Party must notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, must pay that portion of the invoice that is undisputed on or before the due date. Any such notice of dispute must be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due must be paid within five (5) Business Days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

10.5 Audit Rights. Each Party, through its authorized representatives, has the right, at its expense upon reasonable notice and during normal business hours, to examine and copy the

records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made under this Agreement or to verify the other Party's performance of its obligations under this Agreement. Upon request, each Party must provide to the other Party statements evidencing the quantities of Net Output delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement will be issued and, subject to Section 10.4, any amount due one Party to the other Party as a result of the corrected statement will be promptly paid including the payment of interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment.

SECTION 11 DEFAULTS AND REMEDIES

11.1 Defaults. The following events are defaults under this Agreement, and are "Events of Defaults" after the passing of notice and cure periods, as applicable:

11.1.1 Defaults by Either Party.

(a) A Party fails to make a payment when due under this Agreement if the failure is not cured within ten (10) Business Days after the non-defaulting Party gives the defaulting Party a notice of the default.

(b) A Party (i) makes a general assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is unable to pay its debts when due.

(c) A Party breaches a representation or warranty in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default; provided, however, that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within ninety (90) days, the defaulting Party will have an additional reasonable time to cure the default, not to exceed ninety (90) days following the date of notice of the default by the non-defaulting Party, if the defaulting Party provides to the non-defaulting Party a remediation plan within fifteen (15) days following the date of notice of the default by the non-defaulting Party, the non-defaulting Party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

(d) A Party fails to perform any material obligation in this Agreement for which an exclusive remedy is not provided in the Agreement and which is not otherwise an identified Event of Default in this Agreement, if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided, however, that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within ninety (90) days, the defaulting Party will have an additional reasonable time to cure the default, not to exceed ninety (90) days following the

date of notice of the default by the non-defaulting Party, if the defaulting Party provides to the non-defaulting Party a remediation plan within fifteen (15) days following the date of notice of the default by the non-defaulting Party, the non-defaulting Party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

11.1.2 Defaults by Seller.

(a) Seller's failure to achieve the First Delivery Date by June 1, 2021.

(a)(b) Seller sells Output or Capacity Rights from the Facility to a party other than PacifiCorp in breach of Section 4.3, if Seller does not permanently cease such sale and compensate PacifiCorp for the damages arising from the breach within ten (10) days after PacifiCorp gives Seller a notice of default.

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

(c)(d) Seller fails to maintain any Required Facility Documents or Permits necessary to own or operate the Facility and is not able to obtain the necessary Required Facility Documents or Permits within ninety (90) days after the loss of the applicable Required Facility Documents or Permits.

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

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

11.2 Remedies for Failure to Deliver/Receive.

11.2.1 Remedy for Seller's Failure to Deliver. Upon the occurrence and during the continuation of a default of Seller under Section 11.1.2(b), Seller must pay PacifiCorp within five (5) Business Days after receipt of invoice, an amount equal to the sum of (a) PacifiCorp's Cost to Cover multiplied by the Net Output delivered to a party other than PacifiCorp, (b) additional transmission charges, if any, reasonably incurred by PacifiCorp in moving replacement energy to the Point of Delivery or if not there, to such points in PacifiCorp's control area as determined by PacifiCorp, and (c) any additional cost or expense incurred as a result of Seller's default, as determined by PacifiCorp in a commercially reasonable manner. The invoice for such amount must include a written statement explaining in reasonable detail the calculation of such amount.

Commented [FRREC9]: This appears to have been a typo.

11.2.2 Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to receive or purchase all or part of the Net Output required to be purchased under this Agreement

and such failure is not excused by Seller's failure to perform under or comply with this Agreement, then PacifiCorp must pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after receipt of invoice, an amount equal to Seller's Cost to Cover multiplied by the amount of Net Output not purchased. The invoice for such amount must include a written statement explaining in reasonable detail the calculation of such amount.

11.2.3 Remedy for Seller's Failure to Provide Capacity Rights. Seller is liable for PacifiCorp's actual damages in the event Seller fails to sell or deliver all or any portion of the Capacity Rights to PacifiCorp.

11.2.4. Remedy for Seller's Failure to Achieve Timely First Delivery Date. Upon the occurrence of a Seller Event of Default under Section 11.1.2(a), PacifiCorp shall be entitled to, at its election, update the pricing set forth in Exhibit K to this Agreement based on then-current pricing, in the event that Seller cures the Event of Default before this Agreement is terminated under Section 11.3.

11.3 Termination and Remedies. From and during the continuance of an Event of Default, the non-defaulting Party will be entitled to all remedies available at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than fifteen (15) days before such termination date. The notice required under this Section 11.3 may be provided in the notice of default (and does not have to be a separate notice) provided it complies with the terms of this Section 11.3. Seller must provide copies of such termination notice to the notice addresses of the then-current President and General Counsel of PacifiCorp by registered overnight delivery service or by certified or registered mail, return receipt requested. Seller's termination notice must state prominently in type font no smaller than 14-point capital letters that "THIS IS A TERMINATION NOTICE UNDER A PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," must state any amount alleged to be owed, and must include wiring instructions for payment. Notwithstanding any other provision of this Agreement to the contrary, Seller will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within fifteen (15) days of PacifiCorp's receipt of such notice. Further, from and after the date upon which Seller fails to remedy a default within the time periods provided in this Agreement, and until PacifiCorp has recovered all damages incurred on account of such default by Seller, PacifiCorp may offset its damages against any payment due Seller. Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement. The rights contemplated by this Section 11 are cumulative such that the exercise of one or more rights does not constitute a waiver of any other rights. In the event of a termination of this Agreement:

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

(b) The amounts due under this Section 11.3 must be paid within thirty (30) days after the billing date for such charges and will bear interest at the Contract Interest

Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due under this Agreement.

(c) Without limiting the generality of the foregoing, the provisions of this Agreement that either expressly by their terms survive, or, by their nature are intended to survive or come into or continue in force and effect after the termination or expiration of this Agreement shall remain in effect.

11.4 Rights Upon Termination. In the event this Agreement is terminated because of Seller's default and Seller or any Affiliate or successor to Seller with respect to ownership of the Facility wishes to again sell Net Output from the Facility to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller or any Affiliate or successor to Seller with respect to ownership of the Facility shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the date on which the 20th Contract Year would have expired under this Agreement had it not been terminated. At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

11.5 Termination Damages. If this Agreement is terminated by PacifiCorp as a result of an Event of Default by Seller, termination damages owed by Seller to PacifiCorp will be the positive difference, if any, between (a) PacifiCorp's estimated costs to secure replacement power for a period of twenty four (24) months following the date of termination, including any associated transmission necessary to deliver such replacement power; and (b) the Contract Price for such twenty four (24) month period ("Termination Damages"). PacifiCorp must calculate the Termination Damages in a commercially reasonable manner and provide to Seller a written statement explaining in reasonable detail the calculation of Termination Damages. Amounts owed pursuant to this Section 11.5 are due by Seller within ten (10) Business Days after receipt of the written statement of Termination Damages from PacifiCorp. Each Party agrees and acknowledges that the damages that PacifiCorp would incur due to Seller's Event of Default would be difficult or impossible to predict with certainty, it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Termination Damages as agreed to in this Section 11.5 are a fair and reasonable calculation of such damages

11.6 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance. With respect to Seller, Seller must use commercially reasonable efforts to maximize the price for Net Output received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Net Output not purchased or accepted by PacifiCorp (only during a period PacifiCorp is in default), to the extent permitted by Requirements of Law. With respect to PacifiCorp, PacifiCorp must use commercially reasonable efforts to minimize the price paid to third parties for energy purchased to replace Net Output not delivered by Seller as required under this Agreement.

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

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

SECTION 12 INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Seller releases, indemnifies and holds harmless PacifiCorp, its divisions, Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “PacifiCorp Indemnitees”) against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys’ fees, both at trial and on appeal, whether or not suit is brought) (collectively, “Liabilities”) actually or allegedly resulting from, arising out of, or in any way connected with, the performance by Seller of its obligations under this Agreement, or relating to the Facility or Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity, except for Liabilities caused by the gross negligence or willful misconduct of any person or entity within the PacifiCorp Indemnitees. Seller is solely responsible for (and will defend and hold PacifiCorp harmless against) any damage that may occur as a direct result of Seller’s failure to comply with Prudent Electrical Practices or the requirements of the Interconnection Provider.

Commented [CHM10]: Reinstated original language with some revisions to account for fact that there is no interconnection agreement.

12.1.2 Indemnity by PacifiCorp. To the extent permitted by Requirements of Law and subject to Section 12.1.5, PacifiCorp releases, indemnifies and holds harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “Seller Indemnitees”) against and from any and all Liabilities actually or allegedly resulting from, arising out of, or in any way connected with, the performance by PacifiCorp of its obligations under this Agreement for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity within the Seller Indemnitees, except for Liabilities caused by the gross negligence or willful misconduct of any person or entity within the Seller Indemnitees.

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

12.1.4 No Dedication. Nothing in this Agreement will be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party. No

undertaking by one Party to the other under any provision of this Agreement will constitute the dedication of PacifiCorp's facilities or any portion thereof to Seller or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.1.5 Consequential Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, DELAY DAMAGES, TERMINATION DAMAGES, PACIFICORP AND SELLER COST TO COVER DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT DO NOT REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES AS CONTEMPLATED IN THIS PARAGRAPH.

SECTION 13 INSURANCE

13.1 Required Policies and Coverages. Without limiting any Liabilities or any other obligations of Seller, Seller must secure and continuously carry the insurance coverage specified on Exhibit I.

SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. "Force Majeure" or "an event of Force Majeure" means an event that prevents a Party from performing an obligation under this Agreement and that (a) is not reasonably anticipated as of the Effective Date, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the requirements in the preceding sentence): environmental disasters; civil disturbance; sabotage; strikes; lock-outs; work stoppages; and action or restraint by court order or public or Governmental Authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or PacifiCorp's ability to purchase energy or capacity at a more advantageous price than is provided under this Agreement; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money or the increased cost of electricity, steel, labor, or transportation; (iv) any breakdown or malfunction of the Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure; (v) the imposition upon a Party of costs or taxes; (vi) delay or failure of Seller to obtain or perform any Required Facility Document unless due to a Force Majeure event; (vii) any delay, alleged breach of contract, or failure by the Transmission Provider or Interconnection Provider unless due to a Force Majeure event; (viii) maintenance upgrade or repair of any facilities or right of way corridors constituting

part of or involving the Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a result of an event of Force Majeure); (ix) Seller's failure to obtain, or meet any requirements of the Interconnection Provider or otherwise under its contracts and obligations to a Transmission Provider or Interconnection Provider, unless due to a Force Majeure event; or (x) any event attributable to the use of Interconnection Facilities for deliveries of Net Output to any party other than PacifiCorp.

Commented [FRECC11]: There is no Generation Interconnection Agreement

14.2 Suspension of Performance. Neither Party will be liable for any delay or failure in its performance under this Agreement, nor will any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure during the continuation of the event of Force Majeure, provided that: (a) the Party affected by the Force Majeure, within five (5) days after the occurrence of the event of Force Majeure, gives the other Party written notice describing the particulars of the event of Force Majeure and how the event has impacted the affected Party's obligations under this Agreement; (b) the suspension of performance of the affected Party's obligations is of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and (c) the affected Party uses diligent efforts to remedy its inability to perform.

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

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

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding 180 consecutive days, then the Party not affected by the Force Majeure event may terminate this Agreement by giving ten (10) days prior notice to the other Party. Notwithstanding the foregoing, the non-performing Party's inability to substantially perform its obligations for a period exceeding 180 days due to a Force Majeure event will be excused and the other Party may not terminate this agreement if delay in excess of 180 days is the result of: (i) delayed availability or delivery of a replacement transformer ; or (ii) seasonal limitations on the non-performing Party's ability to reasonably access the Facility or the affected electrical system to complete repairs during such 180-day period, in which case the 180-day period will be extended to allow 180 consecutive days during which the non-performing party can achieve reasonable access. Upon such termination, neither Party will have any liability to the other with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

SECTION 15 SEVERAL OBLIGATIONS

Nothing in this Agreement will be construed to create an association, trust, partnership or

joint venture or to impose a trust, partnership or fiduciary duty, obligation or Liability on or between the Parties.

**SECTION 16
CHOICE OF LAW**

This Agreement will be interpreted and enforced in accordance with the laws of the State of Idaho, without applying any choice of law rules that may direct the application of the laws of another jurisdiction.

**SECTION 17
PARTIAL INVALIDITY**

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of this Agreement will remain in effect. The Parties agree to use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

**SECTION 18
NON-WAIVER**

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

**SECTION 19
GOVERNMENTAL JURISDICTION
AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those Governmental Authorities having jurisdiction over either Party or this Agreement.

**SECTION 20
SUCCESSORS AND ASSIGNS**

20.1 Restriction on Assignments. Except as provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

20.2 Permitted Assignments. Notwithstanding Section 20.1, either Party may, without the need for consent from the other Party (but with notice to the other Party, including the names of the assignees): (a) transfer, sell, pledge, encumber or assign this Agreement or the related accounts, revenues or proceeds in connection with project financing for the Facility; or (b) transfer or assign this Agreement to an Affiliate meeting the requirements of this Agreement, provided, however, that Seller will not transfer, sell, encumber or assign this Agreement or any interest in this Agreement to any Affiliate of PacifiCorp without the prior written consent of

PacifiCorp. For any assignment under (b) above, the assignee must agree in writing to be bound by the terms and conditions of this Agreement and must possess the same or similar experience, and possess the same or better creditworthiness, as the assignor. PacifiCorp may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that PacifiCorp ceases to be a load-serving entity, in which event PacifiCorp will be released from liability under this Agreement. The Party seeking to assign or transfer this Agreement is solely responsible for paying all costs of assignment.

SECTION 21 ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement is effective unless it is in writing and executed by both Parties.

SECTION 22 NOTICES

22.1 Addresses and Delivery Methods. All notices, requests, statements or payments must be made to the addresses set out in Exhibit L. In addition, copies of a notice of termination of this Agreement under Section 11.3 must contain the information required by Section 11.3 and must be sent to the then-current President and General Counsel of PacifiCorp. Notices required to be in writing must be delivered by letter or other tangible documentary form. Notice by overnight mail or courier will be deemed to have been given on the date and time evidenced by the delivery receipt. Notice by hand delivery will be deemed to have been given when received or hand delivered. Notice by electronic transmission is effective as of transmission, but must be followed up by notice by registered mail or overnight carrier to be effective. Notice by certified or registered mail, return receipt requested, will be deemed to have been given upon receipt. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this section.

SECTION 23 PUBLICITY

23.1 News Releases and Publicity. Before Seller issues any news release or publicly distributed promotional material regarding this Agreement, Seller must first provide a copy thereof to PacifiCorp for its review. Any use of the name "Berkshire Hathaway," in any form, requires the prior written consent of PacifiCorp.

SECTION 24 DISAGREEMENTS

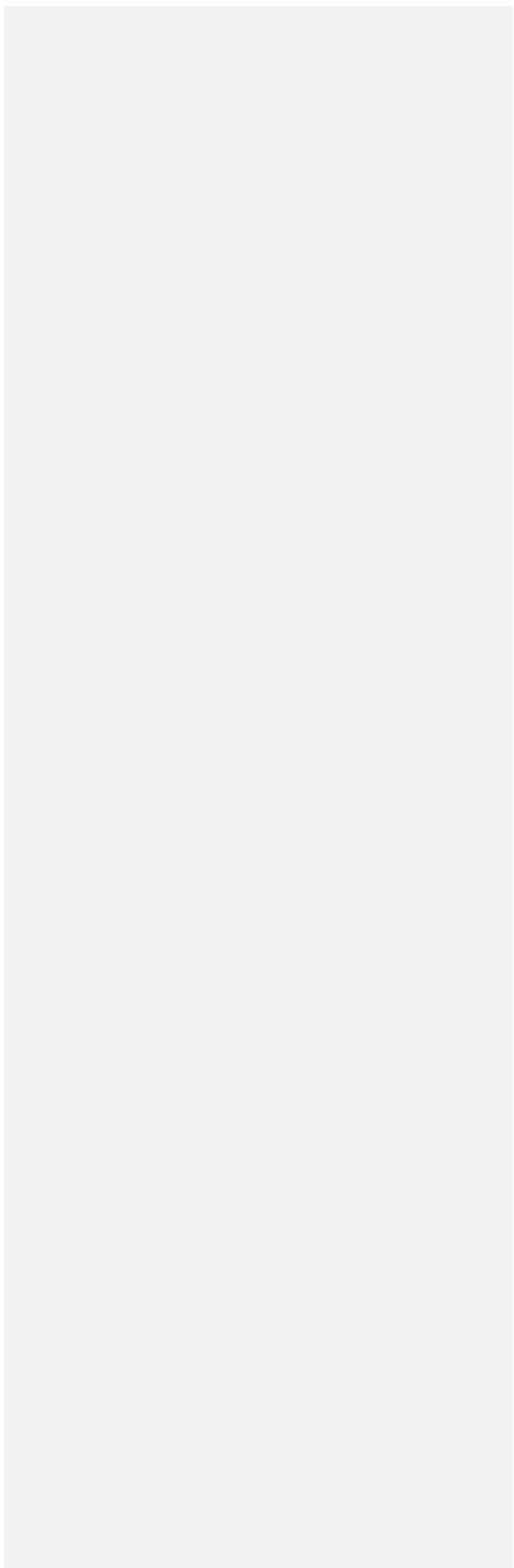
24.1 Negotiations. Prior to proceeding with formal dispute resolution, the Parties must first attempt in good faith to resolve informally all disputes arising out of, related to or in connection with this Agreement. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above those employees who have previously been involved in the dispute must meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and

thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such executives, or if no meeting of such executives has taken place within fifteen (15) days after such referral, either Party may initiate any legal remedies available to the Party. No statements of position or offers of settlement made in the course of the dispute process described in this section will be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement will constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, will be promptly returned to the Party providing the same.

24.2 Mediation. If the dispute is not resolved under the procedures provided in Section 24.1, either Party may request that the matter be submitted to non-binding mediation. The costs of the mediation, including fees and expenses, will be borne equally by the Parties. All verbal and written communications between the Parties and issued or prepared in connection with the mediation will be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and will be exempt from discovery and production, and will not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

24.3 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement will be brought exclusively in the state and federal courts in Salt Lake City, Utah. By execution and delivery of this Agreement, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement; (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions; (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith; (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address stated in this Agreement; and (e) agrees that nothing in this Agreement affects the right to effect service of process in any other manner permitted by law.

24.4 WAIVER OF JURY TRIAL. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.



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

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC.

By: _____
Name: _____
Title: _____
Date: _____

PACIFICORP

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
EXPECTED MONTHLY NET OUTPUT¹

Month	On-Peak Energy (kWh)	Off-Peak Energy (kWh)	Total Energy (kWh)
January	8,000	2,000	10,000
February	96,000	74,000	170,000
March	222,000	178,000	400,000
April	520,000	380,000	900,000
May	667,050	482,950	1,150,000
June	611,700	488,300	1,100,000
July	451,200	323,800	775,000
August	252,000	181,100	440,100
September	228,800	181,200	410,000
October	262,400	187,600	450,000
November	345,600	254,400	600,000
December	89,600	85,600	175,200

MAXIMUM DELIVERY RATE

2.0 MWh

¹ **Note to Form** – Prior to executing the Agreement, Seller will be required to provide PacifiCorp information sufficient to allow PacifiCorp to reasonably verify the output estimates stated in Exhibit A.

EXHIBIT B
DESCRIPTION OF SELLER'S FACILITY

The Chester Diversion project, licensed in FERC Docket No. P-11879, is a run-of-the-river hydropower facility that utilizes the head of the pre-existing Chester Diversion Dam (aka the Cross Cut Diversion dam) on the Henry's Fork of the Snake River in Fremont County, Idaho. The Chester Diversion projects utilizes three Kaplan S-type turbines with 1200 kW generators, one of which operates a back-up for use when another generator is out of service, and considering the available water the Facility has a maximum generating capacity of 2.0 MW.

Facility Maximum Capacity: 2.0 MW

Generator 1:

Type (synchronous or inductive): **Synchronous**

Model: Wuhan Changyuan Waterpower Manufacture Co. Ltd., Generator Type SFW-J1200-52/3400

Number of Phases: 3

Power factor requirements: **1333.3 kVA**

Rated Power Factor (PF) or reactive load (kVAR): **0.9 PF**

Rated Output (kW): **1200 kW**

Rated Output (kVA): **1333.3 kVA**

Rated Voltage (line to line): **12.47 kV**Rated Current (A): Stator: **64.6 A**; Rotor: _____

Maximum kW Output: **1200 kW**Maximum kVA Output: **1333.3 kW**Minimum kW Output: **300 kW**

Generator 2:

Type (synchronous or inductive):**Synchronous**

Model: Wuhan Changyuan Waterpower Manufacture Co. Ltd., Generator Type SFW-J1200-52/3400

Number of Phases: 3

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR): **0.9 PF**

Rated Output (kW): **1200 kW**

Rated Output (kVA): **1333.3 kVA**

Rated Voltage (line to line): **12.47 kV**

Rated Current (A): Stator: **64.6 A**; Rotor: _____ A

Maximum kW Output: **1200 kW**

Maximum kVA Output: **1333.3 kVA**

Minimum kW Output: **30 kW**

Generator 3:

Type (synchronous or inductive): Synchronous

Model: Wuhan Changyuan Waterpower Manufacture Co. Ltd., Generator Type SFW-J1200-52/3400

Number of Phases: 3

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR): 0.9 PF

Rated Output (kW): 1200 kW

Rated Output (kVA): 1333.3 kVA

Rated Voltage (line to line): 12.47 kV

Rated Current (A): Stator: 64.6 A; Rotor: _____ A

Maximum kW Output: 1200 kW

Maximum kVA Output: 1333.3 kVA

Minimum kW Output: 300 kW

Station service requirements, and other loads served by the Facility, if any:

Station Service: 35.38 kW

Line Losses from Generators to Point of Interconnection: 5 kW

External loads served by the Facility, if any: N/A

Location of the Facility:

The Chester Diversion Project is located in Fremont County, Idaho, and utilizes Fremont-Madison Irrigation District's pre-existing Cross Cut Diversion Dam on the Henry's Fork of the Snake River, immediately downstream of the confluence with the Falls River. The site location is between the towns of St. Anthony and Ashton, Idaho. The geographic coordinates are N 44°01.014' W 111°35.005'.

EXHIBIT C
POINT OF DELIVERY

The Point of Delivery to PacifiCorp’s system is the Goshen Substation, where Seller will deliver up to 2.0 MW of energy (the “Maximum Transmission Rate”) via a Transmission Agreement with Bonneville Power Administration. The attached one line diagram and picture depict the transmission path from the Facility to the Point of Delivery, as well as the provision of station service, including the following information:

- The generators connect via 1/0 cable to a bus connection point on Fall River Electric Cooperative’s distribution system. The output is measured with a meter located at the bus, and thus no losses occur between the meter and the distribution system. The point of metering of Net Output - SEL 734 – is depicted at the “Chester Hydro Plant” on the one line diagram;
- Station service - Provided by Fall River Rural Electric Cooperative via three phase 500kVA 277/480, metered at a location south of the building at the plant;
- The 161 kV line from Drummond Substation to Goshen Substation and the 161/115kV transformer in Drummond Substation is owned by BPA. Fall River RuralC Electric Cooperative owns all other facilities on the one line diagram.

“Point of Interconnection” – For purposes of this Agreement the Point of Interconnection is the point where the generators connect via 1/0 cable to a bus connection point on Fall River Electric Cooperative’s distribution system, where the output is measured with a meter located at the bus.

EXHIBIT D
REQUIRED FACILITY DOCUMENTS

QF Self-certification – QF10-337
FERC Hydropower License No. 11879
Fremont County Building Permit
Idaho Department of Water Resources Permit No. 21-13076
Firm Point to Point Transmsion documentation from POI to Point of Delivery

Commented [FRECC12]: We can supply written confirmation from BPA that 2 MW of capacity is available to delivery the power from the Facility to Goshen. Fall River Rural Electric Coopertive will execute the PTP Transmisison Agreement soon after this PPA is executed.

EXHIBIT E

REAL ESTATE DOCUMENTS

The real property rights to operate the Chester Diversion Project are as follows:

1. Amended Lease Agreement between Fall River Rural Electric Cooperative and Fremont Madison Irrigation District dated October 28, 2013
2. Electric Line Right of Way and Easements granted to Fall River Rural Electric Cooperative, recorded on January 27, 2009
3. State of Idaho Easement No. ES800026

EXHIBIT F
[RESERVED]

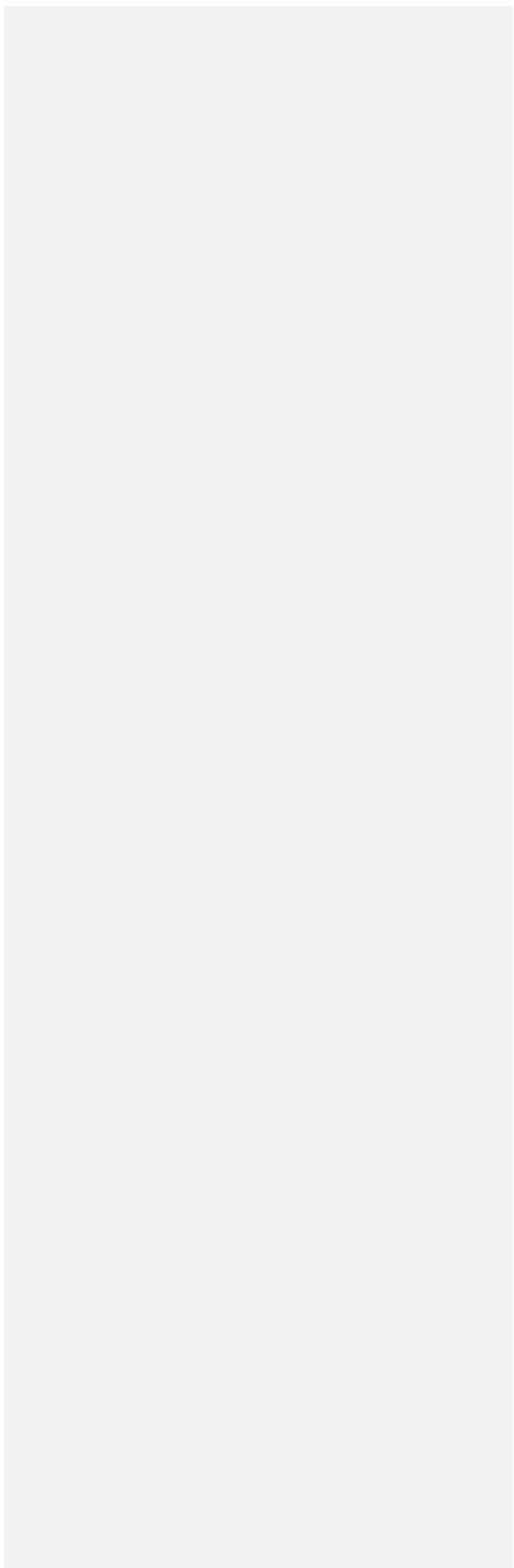


EXHIBIT G
[RESERVED]

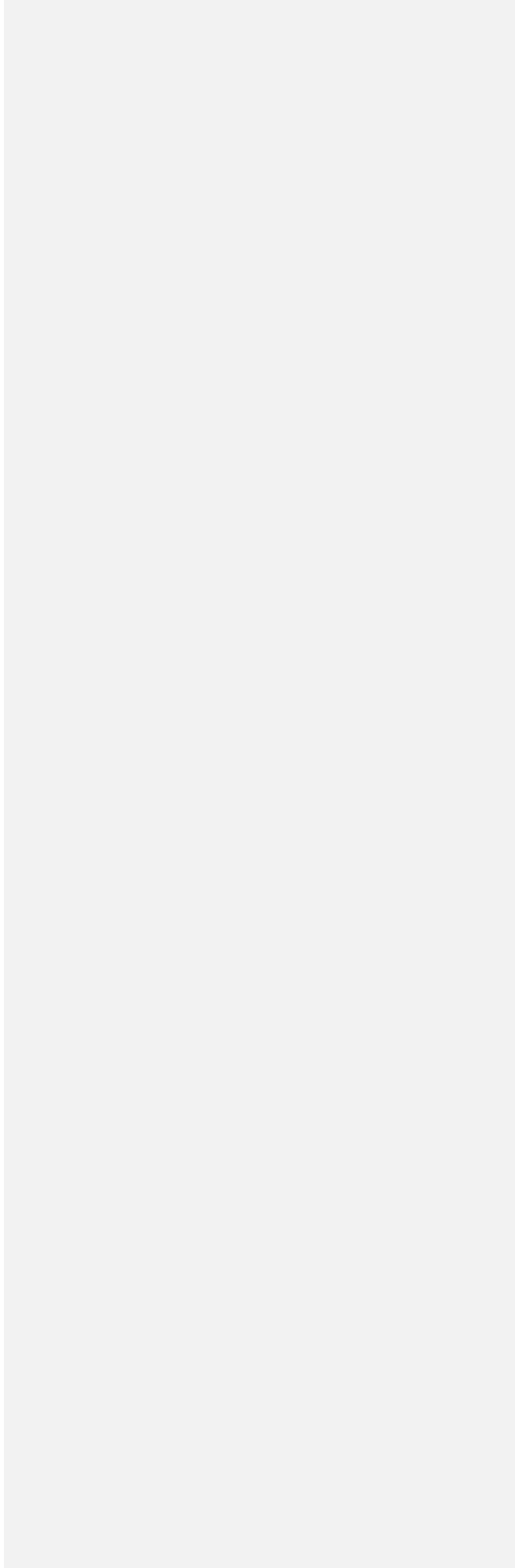


EXHIBIT H
SELLER AUTHORIZATION TO RELEASE
GENERATION DATA TO PACIFICORP

[DATE]

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

To Whom it May Concern:

_____ (“Seller”) hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Seller's transmission information with marketing function employees of PacifiCorp, including but not limited to those in Energy Supply Management. Seller acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

EXHIBIT I
REQUIRED INSURANCE

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

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

1.1.2 Employers’ Liability. Seller shall maintain employers’ liability insurance with minimum limits covering bodily injury for: \$1,000,000 – each accident, \$1,000,000 by disease – each employee, and \$1,000,000 by disease – policy limit.

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

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

1.1.5 Umbrella/excess Liability. Seller shall maintain umbrella or excess liability insurance on an occurrence and following form basis with a minimum limits of \$5,000,000

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

1.2 Additional Provisions or Endorsements.

1.2.1 Except for workers’ compensation and property insurance, the policies required must include provisions or endorsements as follows:

- (a) naming PacifiCorp, parent, divisions, officers, directors and employees as additional insureds;
- (b) include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and
- (c) cross liability coverage or severability of interest.

1.2.2 Unless prohibited by applicable law, all required insurance policies must contain

provisions that the insurer will have no right of recovery or subrogation against PacifiCorp.

1.3 Certificates of Insurance. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp with certificates of insurance within ten (10) days after the date by which such policies are required to be obtained, in ACORD or similar industry form. The certificates must indicate that the insurer will provide thirty (30) days prior written notice of cancellation. Seller's compliance with the insurance requirements hereunder. Insurance certificate confirming compliance shall be provided to PacifiCorp by Seller at least annually and each time a new insurance policy is issued or becomes effective.

Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate, and Seller shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

1.4 Term of Commercial General Liability Coverage. Commercial general liability coverage must be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

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

EXHIBIT J
NERC EVENT TYPES

Event Type	Description of Outages
U1	<u>Unplanned (Forced) Outage—Immediate</u> – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2	<u>Unplanned (Forced) Outage—Delayed</u> – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3	<u>Unplanned (Forced) Outage—Postponed</u> – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF	<u>Startup Failure</u> – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year.
PE	<u>Planned Outage Extension</u> – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

EXHIBIT K
SCHEDULE 38 AND PRICING SUMMARY TABLE

Conforming Energy Purchase Price = $AR_{ce} * MPM$
Non-Conforming Energy Purchase Price = Minimum of [$AR_{ce} * MPM$; or
PV-85]

Where

- AR_{ce} = Conforming Energy annual rate from Table 1, below, for the year of the Net Output.
- MPM = monthly On-Peak or Off-Peak multiplier from Table 2, below, that corresponds to the month of the Net Output and whether the Net Output occurred during On-Peak Hours or Off-Peak Hours.
- PV-85 = 85% of weighted average of the average Firm Market Price Index for the month, or portion of month, of Net Output, multiplied by 82.4% to account for the non-firm nature of the power.

Table 1: Conforming Energy Annual Rates

Year	Conforming Energy Annual Rate (AR_{ce}) \$/MWh
2021	<u>\$23.83</u>
2022	<u>\$23.90</u>
2023	<u>\$24.93</u>
2024	<u>\$27.03</u>
2025	<u>\$30.30</u>
2026	<u>\$33.51</u>
2027	<u>\$35.90</u>
2028	<u>\$67.85</u>
2029	<u>\$69.29</u>
2030	<u>\$70.08</u>
2031	<u>\$71.21</u>
2032	<u>\$72.97</u>
2033	<u>\$75.06</u>
2034	<u>\$77.04</u>
2035	<u>\$78.78</u>
2036	<u>\$80.57</u>
2037	<u>\$83.22</u>
2038	<u>\$85.46</u>
2039	<u>\$87.27</u>
2040	<u>\$89.12</u>
2041	<u>\$90.92</u>

Table 2: Monthly On-Peak/Off-Peak Multipliers

Month	On-Peak Hours	Off-Peak Hours
January	103%	94%
February	105%	97%
March	95%	80%
April	95%	76%
May	92%	63%
June	94%	65%
July	121%	92%
August	121%	106%
September	109%	99%
October	115%	105%
November	110%	96%
December	129%	120%

[Schedule 38 as it exists on the Effective Date will be inserted as Exhibit K.]

EXHIBIT L
PARTY NOTICE INFORMATION

Notices	PacifiCorp	Seller
All Notices:	PacifiCorp 825 NE Multnomah, Suite 600 Portland, Oregon 97232- 2315 Attn: Contract Administration E-mail: cntadmin@pacificorp.com	Bryan Case CEO/General Manager Fall River Rural Electric Cooperative 1150N 3400E Ashton, ID 83420 Office (208)652-7431 Cell (208)709-1263
All Invoices:	Attn: Back Office, Suite 1900 Email: powerinvoices@pacificorp.com	Fall River Rural Electric Cooperative 1150N 3400E Ashton, ID 83420
Scheduling:	Attn: Pre-Scheduling, Suite 600 Phone: (503) 813-6090 Email: ctpreschd@pacificorp.com	Dave Peterson Manager of Engineering Fall River Electric Cooperative (208) 652-7050 Direct Office (208) 709-4870 Cell
Payments:	Attn: Central Cashiers Office, Suite 550 Phone: (503) 813-6826	Fall River Rural Electric Cooperative 1150N 3400E Ashton, ID 83420
Wire Transfer:	To be provided in separate letter from PacifiCorp to Seller	
Credit and Collections:	Attn: Credit Manager, Suite 600 Phone (503) 813-7280	Fall River Rural Electric Cooperative 1150N 3400E Ashton, ID 83420
Notices of an Event of Default or Potential Event of Default:	PacifiCorp Legal Department 825 NE Multnomah, Suite 2000 Portland, Oregon 97232- 2315 Attn: Assistant General Counsel	Bryan Case CEO/General Manager Fall River Rural Electric Cooperative 1150N 3400E Ashton, ID 83420 Office (208)652-7431 Cell (208)709-1263

EXHIBIT M
GENERATION SCHEDULING ²

1. Definitions. The following terms have the following meanings in this Exhibit M:

“Energy Imbalance Accumulation,” or “EIA,” means the accumulated difference between Seller’s Net Output and the energy actually delivered at the Point of Delivery. A positive accumulated difference indicates Seller’s net delivery of Supplemented Output to PacifiCorp.

“Excess Output” has the meaning provided in Section 2 of this Exhibit M.

“Firm Delivery” means the Transmission Service that is reserved and/or scheduled between the Facility’s Point of Interconnection as reflected in Exhibit C and the Point of Delivery.

“Settlement Period” means one calendar month.

“Supplemented Output” means any increment of scheduled hourly energy or capacity delivered to the Point of Delivery in excess of the Facility’s Net Output during that same hour.

“Surplus Delivery” means any energy delivered by the Facility in excess of hourly Net Output that is not offset by the delivery of energy in deficit of hourly Net Output during the Settlement Period. PacifiCorp shall accept Surplus Delivery, but shall not pay for it.

2. Seller’s Responsibility to Arrange for Delivery of Net Output to Point of Delivery.

Seller shall arrange for the Firm Delivery of Net Output to the Point of Delivery. Seller shall comply with the terms and conditions of the transmission agreements between the Seller and the Transmission Providers. Whenever Seller fails to provide for Firm Delivery of Net Output on all transmission segments between the Point of Interconnection and Point of Delivery, such Net Output delivered to the Point of Delivery shall be deemed excess output (“Excess Output”) and subject to the payment provisions in Section 5.1 of this Agreement applicable to Non-Conforming Energy.

Commented [FREEC13]: There is no price for Excess Output in Section 5.1.1 or Exhibit K.

We would like to understand better what is intended by this sentence. It’s not clear how the power could be delivered by BPA without the transmission capacity being reserved and energy scheduled.

Commented [FREEC14]: Note that this Facility is located in PacifiCorp’s Balancing Authority Area, even though the transmission path goes over BPA transmission facilities.

3. Seller’s Responsibility to Schedule Delivery. Seller shall provide PacifiCorp with a schedule of the next day’s hourly scheduled Net Output at least 24 (twenty-four) hours prior to the beginning of the day being scheduled, and otherwise in accordance with WECC prescheduling requirements and the applicable Transmission Provider’s open access transmission tariff.

4. Seller’s Responsibility to Report Net Output. On or before the tenth (10th) day following the end of each calendar month, Seller shall send a report documenting hourly station service, Surplus Delivery, Excess Output, and Net Output from the Facility during the previous calendar month. If requested, Seller shall provide an electronic copy of the data used to calculate Net Output, in a standard format specified by PacifiCorp. For each day Seller is late delivering the certified report, PacifiCorp shall be entitled to postpone its payment deadline in Section 10 of this Agreement by one day. Seller hereby grants PacifiCorp the right to audit its certified reports of hourly Net Output. In the event of discovery of a billing error resulting in underpayment or overpayment, the Parties agree to limit recovery to a period of threetwo years from the date of

Commented [FREEC15]: Section 10.4 imposes a 2 year limitation for billing disputes. We recommend that the parties agree to use 2 years or 3 years in both locations in the contract to avoid confusion.

² PAC NTD – Exhibit M and the associated generation scheduling provisions in the Agreement remain under review by PAC’s operational team. There may be further edits following additional discussions with our technical team, to address the off-system nature of this resource.

discovery.

5. Seller's Supplemental Representations, Warranties, and Covenants. In addition to the Seller's representations and warranties contained in Section 3 of this Agreement, Seller represents, warrants, and covenants that:

(a) Seller's Supplemented Output, if any, results from Seller's purchase of some form of energy imbalance ancillary service;

(b) One or more of the Transmission Providers requires Seller to procure the energy imbalance ancillary service, above, as a condition of providing transmission service;

(c) One or more of the Transmission Providers requires Seller to schedule deliveries of Net Output in increments of no less than one (1) megawatt;

(d) Seller is not attempting to sell PacifiCorp energy or capacity in excess of its Net Output; and

(e) The energy imbalance service, above, is designed to correct a mismatch between energy scheduled by Seller and the actual real-time production of the Facility.

6. Seller's Right to Deliver Supplemented Output. In reliance upon Seller's warranties in Section 5, above, PacifiCorp agrees to accept and pay for Supplemented Output; provided, however, that Seller agrees to achieve an EIA of zero (0) kilowatt-hours during On-Peak Hours and zero (0) kilowatt-hours during Off-Peak Hours at the end of each Settlement Period.

(a) Remedy for Seller's Failure to Achieve Zero EIA. In the event Seller does not achieve an EIA of zero (0) kilowatt-hours during On-Peak Hours and zero (0) kilowatt-hours during Off-Peak Hours at the end of each Settlement Period, PacifiCorp will declare any positive balance to be Surplus Delivery for the Settlement Period's On-Peak Hours or the Settlement Period's Off-Peak Hours, and Seller's EIA will be reset to zero for such period. PacifiCorp will include an accounting of Surplus Delivery in each monthly statement provided to Seller pursuant to Section 10.1 of this Agreement.

(b) Negative Energy Imbalance Accumulations. Any negative EIA during On-Peak Hours or during Off-Peak Hours at the end of each Settlement Period (indicating that a Transmission Provider has delivered to the Point of Delivery less than Seller's Net Output), will be reset to zero at the end of each Settlement Period without any corresponding compensation by PacifiCorp.