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February 16, 2011

**VIA OVERNIGHT DELIVERY**

Idaho Public Service Commission  
472 W. Washington Street  
P.O. Box 83720  
Boise, Idaho 83720-0074

PAC-E-U-08

Attention: Jean D. Jewell  
Commission Secretary

**RE: In the Matter of the Application of Rocky Mountain Power for Approval of Power Purchase Agreement Between Rocky Mountain Power and Cargill, Inc.**

Please find enclosed the original and seven (7) copies each of the Application and Power Purchase Agreement between Rocky Mountain Power under which Cargill would sell and Rocky Mountain Power would purchase electric energy generated from Cargill's biogas-fueled digester generating facility for the generation of electric power located near Roberts County, Idaho, in Jefferson County with a nameplate capacity rating of 1,696 kilowatts.

Please contact Daniel Solander, Senior Counsel, with any questions (801) 220-4014.

Sincerely,

Jeffrey K. Larsen  
Vice President, Regulation

Enclosures

Daniel E. Solander  
Senior Counsel, Rocky Mountain Power  
201 South Main, Suite 2300  
Salt Lake City UT 84111  
Telephone: (801) 220 - 4014  
FAX: (801) 220 - 3299  
Email: [Daniel.Solander@PacifiCorp.com](mailto:Daniel.Solander@PacifiCorp.com)

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Attorney for Rocky Mountain Power

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION	)	
FOR APPROVAL OF POWER PURCHASE	)	CASE NO. PAC-E-11-08
AGREEMENT BETWEEN PACIFICORP	)	
AND CARGILL, INCORPORATED	)	APPLICATION OF
	)	ROCKY MOUNTAIN
	)	POWER

COMES NOW, PacifiCorp, d/b/a Rocky Mountain Power (“RMP” or the “Company”), and pursuant to RP 52, hereby applies to the Idaho Public Utilities Commission (the “Commission”) for an order approving the Power Purchase Agreement between RMP and Cargill, Incorporated, dated February 8, 2011 (the “Agreement”). In support of this Petition, the Company states as follows:

**I. BACKGROUND**

RMP is an electrical corporation and public utility doing business as Rocky Mountain Power in the state of Idaho and is subject to the jurisdiction of the Commission with regard to its public utility operations. RMP also provides retail electric service in the states of Utah, Oregon, Wyoming, Washington, and California.

Cargill, Incorporated (“Cargill”) intends to own, operate and maintain a biogas-fueled digester generating facility for the generation of electric power located near Roberts County, Idaho, in Jefferson County with a nameplate capacity rating of 1,696

kilowatts (the "Facility"). The Facility will be a qualified small power production facility under the applicable provisions of the Public Utilities Regulatory Policy Act of 1978 ("PURPA").

## II. THE POWER PURCHASE AGREEMENT

1. Under the terms of the Agreement, Cargill elected to contract with the Company for an approximate ten-year term, expiring February 28, 2021. Except as otherwise provided, RMP will pay Cargill non-levelized, non-fueled published avoided cost rates for capacity and energy adjusted for seasonality and On-Peak/Off-Peak Hours in accordance with Commission Order Nos. 31025, 30423, and other applicable orders. The Commission recently limited the published avoided cost rate eligibility of wind and solar QFs to facilities of 100 kW or less in Order No. 32176. As a biogas-fueled digester, the Facility is not subject to the 100-kW eligibility cap.

2. The total nameplate capacity of this Facility is 1,696 kilowatts. As described in Section 7 of the Agreement, Cargill will be required to provide data on the Facility that RMP will use to determine whether under normal and/or average conditions: (1) the feasibility that Facility Net Energy will equal or exceed 9,450,000 kWh in the first year of operation and 12,600,000 kWh in subsequent years for the full term of this Agreement; and (2) the likelihood that the Facility, under average design conditions, will generate at no more than 10 MW in any calendar month. Further, as described in Section 5.3 and Section 6.6 of the Agreement, should the Facility exceed 10 average MW on a monthly basis, RMP will accept the energy ("Inadvertent Energy") that does not exceed the Maximum GIA Delivery Rate, but will not purchase or pay for this Inadvertent Energy.

3. Paragraph 2.1 of the Agreement provides that the Agreement will not become effective until the Commission has approved the Agreement and determined that the prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the cost incurred by RMP for purchasing capacity and energy from Cargill are legitimate expenses, all of which the Commission will allow RMP to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses.

4. Cargill has elected the day seven days after Commission approval of the Agreement as the Commercial Operation Date for this Facility. Various requirements have been placed upon Cargill in order for RMP to accept energy deliveries from this Facility. RMP will monitor compliance with these initial requirements. In addition, RMP will monitor the ongoing requirements through the full term of this Agreement. Cargill and RMP have agreed to Delay Liquidated Damages and associated Delay Security provisions of \$100,097 for the Facility with return of the security as specific Agreement milestones are met.

5. Cargill has been made aware of and accepted the provisions of the PPA regarding curtailment or disconnection of its Facility should certain operating conditions develop on the Company's system. Section 6 of the PPA defines the conditions for curtailment and obligations of Cargill in the event of curtailment.

6. All applicable interconnections charges and monthly operation and maintenance charges under the Generation Interconnection Agreement with RMP transmission will be assessed to Cargill.

### III. COMMUNICATION

Communications regarding this Application should be addressed to:

Ted Weston  
201 South Main, Suite 2300  
Salt Lake City, Utah 84111  
Telephone: (801) 220-2963  
Fax: (801) 220-2798  
Email: [ted.weston@pacificorp.com](mailto:ted.weston@pacificorp.com)

and to:

Daniel E. Solander  
201 South Main, Suite 2300  
Salt Lake City, Utah 84111  
Telephone: (801) 220-4014  
Fax: (801) 220-3299  
Email: [daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com)

In addition, the Company respectfully requests that all data requests regarding this matter be addressed to one or more of the following:

By e-mail (preferred)	<a href="mailto:datarequest@pacificorp.com">datarequest@pacificorp.com</a>
By regular mail	Data Request Response Center PacifiCorp 825 NE Multnomah, Suite 2000 Portland, OR 97232

### CONCLUSION

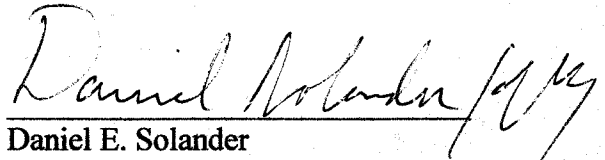
NOW, THEREFORE, based on the foregoing, RMP respectfully requests that the Commission issue its Order:

- (1) Approving the Power Purchase Agreement between Cargill and RMP without change or condition; and
- (2) Declaring that the prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the cost incurred by RMP for purchasing

capacity and energy from Cargill are legitimate expenses, all of which the Commission will allow RMP to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses.

DATED this 16<sup>th</sup> day of February 2011

Respectfully submitted,

  
Daniel E. Solander  
Attorney for Rocky Mountain Power

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IDAHO PUBLIC UTILITIES COMMISSION

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**CARGILL, INCORPORATED**

[a new, on-system, non-fueled, non-levelized, 90%/110% performance band, Idaho Qualifying Facility—10aMW/Month or less]

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 2<sup>th</sup> day of February, 2011, is between Cargill, Incorporated, a Delaware corporation (the "Seller") and PacifiCorp, an Oregon corporation acting in its merchant function capacity ("PacifiCorp"). Seller and PacifiCorp are referred to collectively as the "Parties" and individually as a "Party".

### RECITALS

A. Seller intends to construct, own, operate and maintain a biogas-fueled digester facility, including Seller's Interconnection Facilities, for the generation of electric power located within PacifiCorp service territory near Roberts, in Jefferson County, Idaho with an expected Facility Capacity Rating of 1,696-kilowatts (kW), as further described in **Exhibit A** and **Exhibit B** ("Facility"); and

B. Seller intends to operate the Facility as a Qualifying Facility; as such term is defined in this Agreement, and to sell Net Output to PacifiCorp in Idaho.

C. Seller estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is 9,450,000 kilowatt-hours (kWh) in the first year of operation and 12,600,000 kWh in subsequent years pursuant to the monthly Initial Year Delivery Schedule in Section 4.3 in the delivery schedules in **Exhibit F-1** and **Exhibit F-2** hereto, which amount of energy PacifiCorp will include in its resource planning.

D. Seller intends to sell and PacifiCorp intends to purchase all the Net Output from the Facility in accordance with the terms and conditions of this Agreement.

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

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

G. Seller has provided PacifiCorp with: (a) a motive force plan and associated certification from a Licensed Professional Engineer as described in Section 7 of this Agreement; and (b) an executed copy of **Exhibit I**, "Seller Authorization to Release Generation Data to PacifiCorp."

NOW, THEREFORE, the Parties mutually agree as follows:

### SECTION 1: DEFINITIONS

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

1.1 "Adjusted Scheduled Monthly Energy Delivery" shall have the meaning set forth in Section 4.4.

1.2 "As-built Supplement" shall be a supplement to **Exhibit A**, provided by Seller following completion of construction of the Facility, accurately describing the completed Facility.



1.3 “**Billing Period**” means the time period between PacifiCorp's reading of its power purchase meter at the Facility and shall coincide with calendar months.

1.4 “**Capacity Factor**” means, for any given period of time, the Net Output (kWh) delivered divided by the product of the Facility Capacity Rating (kW) and the total hours in the given period of time.

1.5 “**Commercial Operation**” means that not less than 90% of the expected Facility Capacity Rating is fully operational and reliable and the Facility is fully interconnected and synchronized with the System, all of which shall be Seller's responsibility to receive or obtain, and which occurs when all of the following events: (i) have occurred, and (ii) remain simultaneously true and accurate as of the time on which Seller gives PacifiCorp notice that Commercial Operation has occurred:

1.5.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer (a) stating the Facility Capacity Rating of the Facility at the anticipated time of Commercial Operation and (b) stating that the Facility is able to generate electric power reliably in amounts required by this Agreement.

1.5.2 PacifiCorp has received documentation that start-up testing of the Facility has been completed in accordance with **Exhibit E**.

1.5.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, an attorney in good standing in Idaho, or a letter from the Transmission Provider, stating that, in accordance with the Generator Interconnection Agreement, all required Interconnection Facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the System in conformance with the Generator Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement, and the Facility is synchronized with the System.

1.5.4 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, or an attorney in good standing in Idaho, stating that Seller has obtained all Required Facility Documents and, if requested by PacifiCorp in writing, that Seller has provided copies of any or all such requested Required Facility Documents.

1.5.5 Seller has complied with the security requirements of Section 10.

1.5.6 Network Resource Designation and Transmission Service Request.

(a) Seller has provided all data required by the Transmission Provider to enable the Facility to be designated as a network resource in accordance with the Tariff.

- (b) PacifiCorp has received confirmation from the Transmission Provider that the Facility has been designated as a network resource.
- (c) Seller has provided all data required for PacifiCorp to submit a transmission service request for the Facility pursuant to the Tariff.
- (d) PacifiCorp has received confirmation from the Transmission Provider that the transmission service request has been granted in sufficient capacity to meet or exceed the Maximum Facility Delivery Rate and the Seller has paid all costs associated with any requirements of the transmission service request.

1.6 “**Commercial Operation Date**” means the date, as designated by PacifiCorp pursuant to Section 2.3, that the Facility first achieves Commercial Operation.

1.7 “**Commission**” means the Idaho Public Utilities Commission.

1.8 “**Conforming Energy**” means all Net Energy except Non-Conforming Energy.

1.9 “**Conforming Energy Purchase Price**” means the applicable price for Conforming Energy and capacity (if any), specified in Section 5.1.

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

1.11 “**Delay Liquidated Damages**”, “**Delay Daily Minimum**”, “**Delay Period**”, “**Delay Price**” and “**Delay Volume**” are defined in Section 2.4 of this Agreement. “**Delay Security**” is defined in Section 10.1.1 of this Agreement.

1.12 “**Effective Date**” is defined in Section 2.1 of this Agreement.

1.13 “**Energy Delivery Schedule**” is defined in Section 4.3 of this Agreement.

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

with the construction, ownership or operation of the Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

1.15 “**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.

1.16 “**Expiration Date**” is defined in Section 2.1 of this Agreement.

1.17 “**Facility**” is defined in Recital A of this Agreement.

1.18 “**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.19 “**Force Majeure**” has the meaning set forth in Section 14.1.

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

1.21 “**Generator Interconnection Agreement**” or “**GIA**” means the generator interconnection agreement entered into separately between Seller and the Transmission Provider, providing for the construction, operation, and maintenance of the Interconnection Facilities required to accommodate deliveries of Seller’s Net Output.

1.22 “**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.

1.23 “**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.

1.24 “**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 Facility Delivery Rate. Inadvertent Energy is not included in Net Output.

1.25 “**Index Price**”, for each day, shall mean the weighted average of the average Peak and Off-Peak firm energy market prices, as published in the *Intercontinental Exchange (ICE) Day Ahead Power Price Report* for the Palo Verde Hub. For Sunday and NERC holidays, the 24-Hour Index Price shall be used, unless ICE shall publish a Firm On-Peak and Firm Off-Peak Price for such days for Palo Verde, in which event such indices shall be

utilized for such days. If the ICE index or any replacement of that index ceases to be published during the term of this Agreement, PacifiCorp shall select as a replacement a substantially equivalent index that, after any appropriate or necessary adjustments, provides the most reasonable substitute for the index in question. PacifiCorp's selection shall be subject to Seller's consent, which Seller shall not unreasonably withhold, condition or delay.

1.26 "**Initial Year Energy Delivery Schedule**" shall have the meaning set forth in Section 4.3.1.

1.27 "**Interconnection Facilities**", as defined in the Generator Interconnection Agreement, means all the facilities and ancillary equipment used to interconnect the Facility to the System.

1.28 "**Letter of Credit**" means an irrevocable standby letter of credit in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder. Such letter of credit shall be provided by an institution that is a United States office of a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, with a credit rating on its long-term senior unsecured debt of at least "A" from Standard & Poor's and "A2" from Moody's Investor Services, and having assets of at least \$10,000,000,000 (net of reserves).

1.29 "**Licensed Professional Engineer**" means a person who is licensed to practice engineering in the state of Idaho, who has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called to provide a certification, evaluation and/or opinion, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with the Seller, so long as such engineer has no other economic relationship, association or nexus with the Seller.

1.30 "**Maintenance Outage**" means any outage of one or more generating units that is not a Forced Outage or a Planned Outage. A Maintenance Outage is an outage that can be deferred until after the end of the next weekend, but that requires that the generating unit(s) be removed from service before the next Planned Outage. A Maintenance Outage may occur any time during the year and must have a flexible start date.

1.31 "**Material Adverse Change**" shall occur when Seller, in the reasonable opinion of PacifiCorp, has experienced a material adverse change in ability to fulfill its obligations under this Agreement. A downgrade of Seller's long-term credit rating (corporate or long-term senior unsecured debt rating) below 'Baa3' from Moody's Investors Services

("Moody's") or below 'BBB-' from Standard & Poor's Ratings Group ("S&P") or the cessation of S&P or Moody's rating of Seller shall constitute a Material Adverse Change.

1.32 **"Maximum Curtailed Facility Delivery Rate"** means the maximum instantaneous rate (kW) at which the Facility is capable of delivering Net Output at the Point of Delivery during a Qualifying Curtailment.

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

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

1.35 **"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 Order No. 29632, the Maximum Monthly Purchase Obligation for a given month, in kWh, shall equal 10,000 kW multiplied by the total number of hours in that month and prorated for any partial month.

1.36 **"Nameplate Capacity Rating"** means the maximum instantaneous generating capacity of any qualifying small power or cogeneration generating unit supplying all or part of the energy sold by the Facility, expressed in MW or kW, when operated consistent with the manufacturer's recommended power factor and operating parameters, as set forth in a notice from Seller to PacifiCorp delivered before the Commercial Operation Date and, if applicable, updated in the As-built Supplement.

1.37 **"NERC"** means the North American Electric Reliability Corporation.

1.38 **"Net Energy"** means the energy component, in kWh, of Net Output. Net Energy does not include Inadvertent Energy.

1.39 **"Net Output"** means all energy and capacity (if any) produced by the Facility, less station use and less transformation and transmission losses and other adjustments, if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery, less any station use not provided by the Facility. Net Output does not include Inadvertent Energy.

1.40 **"Net Replacement Power Costs"** is defined in Section 11.4 of this Agreement.

1.41 **"Network Resource"** shall have the meaning set forth in the Tariff.

1.42 **"Network Service Provider"** means PacifiCorp Transmission or a successor, including any regional transmission organization (RTO), as a provider of network service to PacifiCorp under the Tariff.

1.43 **“Non-Conforming Energy”** means for any Billing Period: (1) that portion, if any, of Net Energy delivered subsequently to the initial 110% of the Scheduled Monthly Energy Delivery for that Billing Period; or (2) all Net Energy delivered when Net Energy delivered is less than 90% of the Scheduled Monthly Energy Delivery for that Billing Period; and (3) all Net Output produced by the Facility prior to the Commercial Operation Date.

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

1.45 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.46 **“On-Peak Hours”** means hours from 7:00 a.m. to 11:00 p.m. Mountain Prevailing Time (MPT), Monday through Saturday, excluding Western Electricity Coordinating Council (WECC) and North American Electric Reliability Corporation (NERC) holidays.

1.47 **“PacifiCorp”** is defined in the first paragraph of this Agreement, and excludes PacifiCorp Transmission or a successor, including any Regional Transmission Organization.

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

1.49 **“Planned Outage”** means an outage of predetermined duration that is scheduled in Seller’s Energy Delivery Schedule. Boiler overhauls, turbine overhauls or inspections are typical planned outages. Maintenance Outages and Forced Outages are not Planned Outages.

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

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

1.52 **“Prime Rate”** means the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by JPMorgan Chase & Co. If a JPMorgan Chase & Co. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.53 **“Production Tax Credits”** means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the term hereof or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy actually generated and sold and any correlative state tax credit determined by reference to renewable electric energy actually generated and sold for which the Facility is eligible. Production Tax Credits do not include any tax credit determined by reference to investment.

1.54 **“Prudent Electrical Practices”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.55 **“Qualifying Curtailment”** shall have the meaning set forth in Section 4.4.

1.56 **“QF”** means **“Qualifying Facility”**, as that term is defined in the version of FERC Regulations (codified at 18 CFR Part 292) in effect on the date of this Agreement.

1.57 **“Replacement Period”**, **“Replacement Price”** and **“Replacement Volume”** shall have the meanings set forth in Section 11.4 of this Agreement.

1.58 **“Required Facility Documents”** means all deeds, titles, leases, licenses, permits, authorizations, and agreements demonstrating that Seller controls the necessary property rights, (e.g. site lease), rights to motive force, and government authorizations to construct, operate, and maintain the Facility, including without limitation those set forth in **Exhibit C**.

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

1.60 **“Scheduled Commercial Operation Date”** means the date by which Seller promises to achieve Commercial Operation, as specified in Section 2.2.4.

1.61 **“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.

1.62 **“Subsequent Energy Delivery Schedule”** is defined in Section 4.3.3 of this Agreement.

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

1.64 “**Tariff**” means the PacifiCorp Transmission FERC Electric Tariff Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time, or the comparable tariff of a successor Transmission Provider.

1.65 “**Transmission Provider**” means PacifiCorp Transmission or a successor, including any Regional Transmission Organization.

## **SECTION 2: TERM, MILESTONES, COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties and after approval by the Commission (“**Effective Date**”); *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 for purchases of capacity and energy from Seller 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 earlier terminated as provided herein, the Agreement shall remain in effect until midnight (24:00 MPT) on February 28, 2021 (“**Expiration Date**”).

2.2 Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to achieve Commercial Operation by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By the date 5 business days after the Effective Date, Seller shall provide Delay Security required under Section 10.1.1, as applicable.

2.2.2 At least ten business days prior to delivery of any energy from the Facility to PacifiCorp, Seller shall provide PacifiCorp with an executed Generator Interconnection Agreement.

2.2.3 Prior to Commercial Operation, Seller shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp.

2.2.4 Seven days after the Effective Date of this Agreement, Seller shall achieve Commercial Operation (“**Scheduled Commercial Operation Date**”).

2.3 Establishing Commercial Operation. To achieve Commercial Operation, Seller must provide, subject to PacifiCorp’s written approval which will not be unreasonably withheld, written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation accompanied by the certificates described in Section 1.5. PacifiCorp’s approval, if given, shall designate the Commercial Operation Date. In no event will delay in achieving the Scheduled Commercial Operation Date postpone the Expiration Date specified in Section 2.1.



