

Case No. *PAC-E-04-01*  
Exhibit No. 1  
Witness: Randy A. Landolt

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**PACIFICORP**

**Exhibit Accompanying Direct Testimony of Randy A. Landolt**

**Purchase and Sale Agreements and Exhibits**

**February 2004**

**SKOOKUMCHUCK FACILITIES PURCHASE AND SALE AGREEMENT**

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PACIFICORP;  
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON; PUGET  
SOUND ENERGY, INC.;  
CITY OF TACOMA, WASHINGTON; AVISTA CORPORATION;  
CITY OF SEATTLE, WASHINGTON; and  
PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS HARBOR COUNTY, WASHINGTON

As Sellers

AND

2677588 Washington LLC

As Buyer

*Execution Copy*

# SKOOKUMCHUCK FACILITIES PURCHASE AND SALE AGREEMENT

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## SKOOKUMCHUCK FACILITIES PURCHASE AND SALE AGREEMENT

This SKOOKUMCHUCK FACILITIES PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of the 25 day of November, 2003 by and among PACIFICORP ("PacifiCorp"); PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON ("Snohomish PUD"); PUGET SOUND ENERGY, INC. ("PSE"); CITY OF TACOMA, WASHINGTON ("Tacoma"); AVISTA CORPORATION ("Avista"); CITY OF SEATTLE, WASHINGTON ("Seattle"); AND PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS HARBOR COUNTY, WASHINGTON ("Grays Harbor PUD") (each a "Seller" and collectively "Sellers"), and 2677588 WASHINGTON LLC, a Washington limited liability company or its nominee ("Buyer"), with reference to the following facts:

A. Sellers are engaged in the business of generating, transmitting and distributing electric energy and in connection therewith own as tenants in common the Skookumchuck Dam located along the Skookumchuck River near Centralia, Washington (the "Dam"). The Skookumchuck Facilities impound a reservoir on the Skookumchuck River (the "Reservoir").

B. Buyer desires to purchase from Sellers, and Sellers desires to sell to Buyer, the interests in the LLC to which Sellers will contribute the Dam, related real property and other assets associated therewith (collectively, the "Facilities") upon the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

### ARTICLE I DEFINITIONS

Section 1.1 Certain Defined Terms. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Affiliate" of a specified Person shall mean any corporation, partnership, sole proprietorship or other Person which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the Person specified. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person.

(b) "Assigned Contracts" shall mean all of Sellers' rights, title and interest in and to all written contracts and agreements specifically and exclusively relating to the Facilities to which Sellers are a party at the Closing. The Assigned Contracts shall also include, without limitation, engineering or construction contracts relating to engineering or construction work-in-progress at the Facilities; equipment leases (whether operating or capital leases) and installment purchase contracts; contracts or arrangements binding on the Facilities which restrict the nature of the business activities in which the Facilities may engage; and leases with respect to which Sellers are lessor or sublessor.

(c) “Business Day” means a day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Washington are not required to be open.

(d) “Environmental Law” shall mean all applicable Laws and Licenses for or relating to: (i) air emissions, hazardous materials, storage, use and release to the environment of Hazardous Materials, generation, treatment, storage, and disposal of hazardous wastes, wastewater discharges and similar environmental matters, and (ii) the protection and enhancement of the environment (including without limitation the National Environmental Policy Act of 1969, 42 U.S.C. Section 4321 et seq.; Endangered Species Act of 1973, as amended, 16 U.S.C. Section 1531 et seq.; Migratory Bird Treaty Act, 16 U.S.C. Sections 703-712; Magnuson Stevens Fisheries Conservation and Management Act, 16 U.S.C. Section 1801 et seq.; the Washington State Environmental Policy Act of 1971, Chapter 43.21C RCW; Federal Water Pollution Control Act of 1972, 33 U.S.C. Section 1251 et seq.; and state Laws addressing species, impacts to water quality and wetlands).

(e) “Governmental Body” means any federal, state, local, municipal, or other government; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal; including without limitation FERC, the Securities Exchange Commission, the U.S. Department of Fish and Wildlife, the Washington Department of Fish and Wildlife, the U.S. Army Corps of Engineers and each State PUC; but does not include any Seller, Buyer, Buyer Affiliate, or any of their respective successors in interest or any owner or operator of the Facilities (if otherwise a Governmental Body) acting in their role as owner or operator.

(f) “Hazardous Materials” means any chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, which are listed as hazardous, toxic or dangerous under Environmental Law, including without limitation, petroleum products, asbestos, urea formaldehyde foam insulation, lead-containing paints or coatings and “hazardous debris,” “hazardous substances” and “hazardous wastes” as defined by WAC 173-303-040.

(g) “Knowledge” of a party shall mean with respect to such party, the extent of the actual knowledge of the Persons listed on Schedule 1.1(g) with respect to such party, with consultation of documents and Persons under their supervision in the ordinary course of their duties but without further inquiry of other Persons. Actual knowledge of any individual Seller shall not be imputed to any other individual Seller.

(h) “LLC” shall mean “Skookumchuck Dam, LLC,” a Washington limited liability company to be formed for purposes of the LLC Transaction.

(i) “Laws” shall mean all statutes, rules, regulations, ordinances, orders, common law and their legal and equitable principles, and codes of federal, foreign, state and local governmental and regulatory authorities.

(j) “Licenses” shall mean registrations, licenses, permits, authorizations and other consents or approvals of Governmental Bodies.

(k) “Material Adverse Effect”: (a) When used with respect to the LLC Interests, means a material adverse effect on the value or transferability of the LLC Interests, (b) when used with respect to the Assets or Facilities, means a material adverse effect on the Assets or Facilities and on the operation thereof, taken as a whole; (c) when used with respect to any portion of the Assets or Facilities, means a material adverse effect on such portion of the Assets or Facilities and on the operation thereof, taken as a whole; and (d) when used with respect to a Person, such as a Seller or Buyer, means a material adverse effect on the business, condition (financial or otherwise) and results of operations of such Person taken as a whole (including any subsidiaries of such entity) or on the ability of such Person to consummate the transactions contemplated hereby.

(l) “Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

(m) “PUHCA” means the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations promulgated thereunder.

(n) “Release” means any release, spill, emission, leaking, pumping, emptying, dumping, injection, abandonment, deposit, disposal, discharge, dispersal, leaching, or migration of Hazardous Materials (including, without limitation, the abandonment or discarding of Hazardous Materials in barrels, drums, or other containers) into or within the environment, including, without limitation, the migration of Hazardous Materials into, under, on, through, soil, subsurface strata, surface water, groundwater, drinking water supply, any sediments associated with any water bodies, or any other environmental medium, regardless of where such migration originates.

(o) “Safety Program” means the design and implementation of the seismic drilling program contemplated by the Federal Energy Regulatory Commission’s (“FERC”) letters of March 19, 2003, July 31, 2003 and October 7, 2003 and Sellers’ May 1, 2003 and July 30, 2003 letters to FERC which are attached hereto as Exhibit A and as may be further modified pursuant to Section 5.1(b)(ii).

(p) “State PUC” means any state commission with jurisdiction over the rates and charges of one or more Sellers.

(q) “Taxes” shall mean (i) all federal, state, county and local sales, use, real and personal property, recordation and transfer taxes, (ii) all business and occupation taxes, and (iii) any interest, penalties and additions to tax attributable to any of the foregoing, but shall not include income and other taxes described in Section 2.2(c).

(r) “Washington Ruling” shall mean a ruling letter to be issued by the Washington State Department of Revenue in response to the request to be filed by Buyer no earlier than 45 days prior to the Closing seeking confirmation that no Washington State sales or

use tax will be due in respect of (i) the transfer of the Facilities by Sellers to the LLC, and (ii) the transfer of the LLC Interests by Sellers to Buyer.

Section 1.2 Index of Other Defined Terms. In addition to those terms defined above, the following terms shall have the respective meanings given thereto in the Sections indicated below:

<u>Defined Term</u>	<u>Section</u>
AAA	13.9(a)
Agreement	Preamble
Allocation Schedule	2.3
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## ARTICLE II BASIC TRANSACTIONS

Section 2.1 Purchased Assets. On the terms and subject to the conditions contained in this Agreement, at the Closing Buyer shall, or shall cause the applicable Buyer Affiliate to, purchase, and Sellers shall sell, convey, assign, transfer and deliver to Buyer, or the applicable Buyer Affiliate, all of Sellers' rights, title and interest in the LLC (the "LLC Interests") after Sellers have contributed, conveyed, assigned, transferred and delivered to the LLC the following assets that (except to the extent otherwise noted) are used in the operations of the Facilities (the "Assets"), but excluding all Excluded Assets (as defined in Section 2.2):

(a) All of Sellers' rights, title and interest in and to the real property owned in fee (the "Owned Real Property") that is identified on Schedule 2.1(a), together with all buildings, fixtures and improvements located thereon (including all construction work-in-progress), reserving to PSE the Distribution Line described on Schedule 2.2(b).

(b) All of Sellers' easements, rights of way, licenses, franchises, water rights (including, without limitation, perfected, certificated, or otherwise, to divert, impound, consume or otherwise use waters of the State of Washington) and similar real property rights appurtenant to their ownership of the Owned Real Property or associated with their operation of the Facilities (collectively, the "Appurtenant Rights"), including, without limitation, those identified on Schedule 2.1(b).

(c) The fixed or mobile machinery and equipment, as well as similar items of tangible personal property, including, without limitation those items listed on Schedule 2.1(c) (collectively "Equipment") that are used, owned or leased by Sellers as of the Closing Date, and are used primarily in connection with the ownership or operation of the Facilities and its related support facilities (including Assets temporarily off-site for repair or other purposes), but excluding the Distribution Line described on Schedule 2.2(b).

(d) All of Sellers' rights, title and interest in and to and obligations arising under the Assigned Contracts including, without limitation, those identified on Schedule 2.1(d).

(e) All of Sellers' rights, title and interest in and to and obligations arising under all of the Licenses in favor of Sellers or any Sellers' Affiliates as of Closing that relate to or are necessary for or used in connection with the operation of the Facilities as heretofore operated by Sellers, all of such Licenses being included on Schedule 2.1(e), except for and to the extent that such Licenses relate to Excluded Assets; provided that such Licenses shall be included within the Assets only to the extent they relate exclusively to the Facilities and are lawfully transferable to the LLC.

(f) All of Sellers' rights, title and interest in and to all of the books, records, plans, sepias, drawings, instruction manuals and similar items, whether in written or electronic form, to the extent they relate to the Facilities or the operation thereof, and other procedural manuals of Sellers related primarily to the operation of the Facilities, subject to the rights of Sellers to make copies of and make non-exclusive use of the same and except to the extent such materials are subject to confidentiality or non-disclosure agreements in favor of third parties whose consent to transfer is not obtained.

(g) All of Sellers' rights, title and interest, if any, in and to unexpired warranties as of the Closing that are transferable to the LLC wholly owned by Buyer which Sellers have received from third parties which relate specifically to the Facilities, including, without limitation, warranties set forth in any equipment purchase agreement, construction agreement, lease agreement, consulting agreement or agreement for architectural or engineering services, it being understood that nothing in this paragraph shall be construed as a representation by Sellers that any such unexpired warranty remains enforceable.

(h) All of Sellers' rights, if any, to create, claim, obtain, register or otherwise hold any right to climate change, greenhouse gas or other renewable energy or emission credits or offsets relating to the Assets or their operation with respect to any period of time.

(i) Claims, choses in action, rights of recovery, rights of set-off, rights to refunds and similar rights of any kind in favor of any one or all of Sellers relating to or arising out of the period prior to Closing related to Washington State sales taxes included in the Chargeable Costs, whether such refund is received as a payment or as a credit against future Washington State sales taxes.

(j) Any of the foregoing owned or otherwise held by an Affiliate of a Seller.

Section 2.2 Excluded Assets. The Assets shall not include any of the assets, properties, rights, Licenses, or contracts of Sellers not specifically enumerated in Section 2.1 above, all such other assets, properties, rights, Licenses, and contracts collectively constituting "Excluded Assets," including, without limitation, the following specifically enumerated Excluded Assets:

(a) The fixtures, equipment and other personal property located at the Facilities comprising or constituting a part of the proprietary or specialized communications systems used by any or all of Sellers to communicate between and among their facilities or to transmit voltage and other control data and information utilized in any or all of Sellers' transmission and distribution systems.

(b) The distribution line (the "Distribution Line") described on Schedule 2.2(b) and the Distribution Line Easement described on Schedule 3.7.

(c) Claims, choses in action, rights of recovery, rights of set-off, rights to refunds and similar rights of any kind in favor of any one or all of Sellers relating to or arising out of the period prior to Closing, including, but not limited to, any refund related to real estate taxes paid prior to the Closing, whether such refund is received as a payment or as a credit

against future real estate or other taxes, excluding Washington State sales taxes included in the Chargeable Costs.

(d) Subject to the provisions of Section 2.4, all privileged or proprietary (to any or all of Sellers) materials, documents, information, media, methods, and processes owned by or licensed to any or all of Sellers and any and all rights to use same, including, without limitation, intangible assets of an intellectual property nature such as trademarks, service marks and trade names (whether or not registered), computer software that is proprietary to any or all of Sellers, or the use of which under the pertinent license therefor is limited to operation by any or all of Sellers or their Affiliates or on equipment owned by any or all of Sellers or their Affiliates, all promotional or marketing materials (including all marketing computer software), and any and all trade names under which Sellers or the Facilities prior to Closing have done business or offered programs, and all abbreviations and variations thereof.

(e) The rights of any or all of Sellers under any insurance policy (it being understood, however, that Sellers will have no obligation to take any action under any such policy to seek any recovery except at the reasonable request, and at the sole expense, of Buyer or to continue any such policies in force except to the extent expressly set forth herein).

(f) Any and all rights respecting computer and data processing hardware or firmware that is proprietary to any or all of Sellers and any computer and data processing hardware or firmware, whether or not located at the Facilities, that is part of a computer system the central processing unit of which is not located at the Facilities.

(g) Any and all data and information pertaining to customers of Sellers or their Affiliates, whether or not located at the Facilities.

(h) Miscellaneous assets, if any, identified by category on Schedule 2.2(h), which assets may have been utilized by Sellers in the ownership and operation of the Facilities but which are not intended to be included in the Assets and which are not otherwise enumerated above.

(i) Subject to Section 5.3 respecting certain expenses incurred in connection with the transactions contemplated hereby, any of Sellers' or their Affiliates' liabilities or obligations with respect to franchise taxes and with respect to foreign, federal, state or local taxes imposed upon or measured, in whole or in part, by the income for any period of Sellers or any member of any combined or consolidated group of companies of which any of Sellers are, or were at any time, a part, or with respect to interest, penalties or additions to any of such taxes, and any income, franchise, tax recapture, transfer tax, sales tax or use tax that may arise upon consummation of the transactions contemplated hereby and be due from or payable by Sellers, it being understood that neither the LLC nor Buyer shall be deemed to be Sellers' transferee with respect to any such tax liability.

Sellers may remove at any time or from time to time, up to 90 days following the Closing, any and all of the Excluded Assets from the Facilities (at Sellers' expense, but without charge by Buyer for storage), *provided* that Sellers shall do so in a manner that does not unduly or unnecessarily disrupt Buyer's normal business activities at the Facilities, and *provided further*



that Excluded Assets may be retained at the Facilities pursuant to easements, licenses or similar arrangements retained by Sellers and described above or otherwise in the Schedules to this Agreement.

Section 2.3 Facilities Purchase Price.

(a) The Facilities purchase price shall be \$7,570,373.16, which is PacifiCorp's net book value for the Facilities as of September 30, 2003 multiplied by 2.105 (as contemplated by Section 1.3(b) of the Management Agreement) ("Net Book Value"), adjusted for changes in such Net Book Value of the Facilities from September 30, 2003 to the Closing Date (the "Facilities Purchase Price").

(b) The adjustment described in Section 2.3(a) above shall be determined in accordance with U.S. GAAP and FERC accounting guidelines. The Facilities Purchase Price as so adjusted shall be communicated by written notice to Buyer not less than ten (10) Business Days prior to the Closing. Buyer shall, or shall cause one or more Buyer Affiliates to, pay to Sellers the Facilities Purchase Price in cash at the Closing by wire transfer of immediately available funds in U.S. dollars to an account specified in writing by Sellers to Buyer. Sellers shall give Buyer written notice of the account for the wire transfer not later than the tenth (10<sup>th</sup>) Business Day prior to the Closing Date.

(c) PacifiCorp and Buyer agree that for all purposes, except Washington property taxes and Washington sales taxes, the Facilities Purchase Price shall be allocated among the Assets in proportion to the Net Book Value as adjusted under this Section 2.3.

Section 2.4 License of Non-Transferred Intangible Assets. Although trade names of Sellers are Excluded Assets, such names appear on certain of the Assets, such as certain fixtures and Equipment, and on supplies, materials, stationery and similar consumable items which may be on hand at the Facilities at the Closing. Notwithstanding that such names are Excluded Assets, the LLC, Buyer and any Buyer Affiliates shall be entitled to use such consumable items for a period of three (3) months following the Closing and shall have up to six (6) months following the Closing to remove such names from fixed Assets, *provided* that none of such parties shall send correspondence or other materials to third parties on any stationery that contains a trade name or trademark of Sellers or any Affiliates of Sellers.

Section 2.5 Assignment of Rights and Obligations to Buyer Affiliate. For purposes of this Agreement, the term "Buyer Affiliate" shall refer to any Affiliate of Buyer to which any of Buyer's rights and obligations hereunder are assigned in compliance with the requirements of this Section. Notwithstanding any contrary provisions contained herein, the parties hereto agree that, prior to and after the Closing, Buyer, in its sole discretion, may assign any or all of its rights and obligations arising under this Agreement or any other agreement contemplated hereby to one or more Buyer Affiliates, *provided* that no such assignment shall relieve Buyer of any obligation or liability to Sellers hereunder or any other agreement contemplated hereby.

Section 2.6 Assumption of Liabilities. Buyer agrees to assume all liabilities related to the Facilities including, but not limited to, the Assigned Contracts and the Safety Program after Closing; *provided, however*, that the obligations set forth on Schedule 2.6 are not to be assumed

by Buyer and are to be released or otherwise discharged by Closing by Sellers pursuant to the terms and conditions of this Agreement.

Section 2.7 Water Flow Agreement. The Water Flow Agreement between Sellers and TransAlta Centralia Generation LLC dated May 4, 2000 is hereby extended to the Closing Date or date of termination of this Agreement.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby represent and warrant to Buyer, as of the date hereof, as follows, except as set forth in Schedules numbered in relation to the Sections set forth below:

Section 3.1 Authority and Enforceability. The execution, delivery and performance of this Agreement and all other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the board of directors or other applicable governing body of each Seller; no other corporate act or corporate proceeding on the part of any Seller is necessary to authorize this Agreement or any other agreement contemplated hereby or the transactions contemplated hereby and thereby. This Agreement has been and other agreements contemplated hereby will be, as of the Closing duly executed and delivered by each of Sellers, and this Agreement constitutes and such other agreements when executed and delivered will constitute, a valid and binding obligation of Sellers, enforceable against Sellers in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

Section 3.2 No Breach or Conflict. Subject to the provisions of Sections 3.3(a) and 3.3(b) below regarding private party and governmental consents, and except for any regulatory or licensing Laws applicable to the businesses and assets represented by the Facilities, the execution, delivery and performance by Sellers of this Agreement and any other agreements contemplated hereby do not:

(a) conflict with or result in a breach of any of the provisions of the Articles of Incorporation or Bylaws or similar charter documents (the "Charter Documents") of Sellers;

(b) contravene any Law presently in effect or cause the suspension or revocation of any License presently in effect, which affects or binds Sellers or any of their properties, except where such contravention, suspension or revocation will not have a Material Adverse Effect (as defined below) on the LLC Interests or the Assets and will not affect the validity or enforceability of this Agreement or any other agreement contemplated hereby or the validity of the transactions contemplated hereby and thereby; or

(c) conflict with or result in a breach of or a default (with or without notice or lapse of time or both) under any material agreement or instrument to which Sellers are a party or by which they or any of their properties may be affected or bound, the effect of which conflict,

breach, or default, either individually or in the aggregate, would be a Material Adverse Effect on the Assets or the LLC Interests.

Section 3.3 Approvals.

(a) Except as set forth on Schedule 3.3(a), the execution, delivery and performance by Sellers of this Agreement and any other agreements contemplated hereby (including the assignment of the non-governmental Assigned Contracts) do not require the authorization, consent or approval of any non-governmental third party of such a nature that the failure to obtain the same would have a Material Adverse Effect on the LLC Interests, the Assets or the Facilities substantially as they have heretofore operated.

(b) Except as set forth on Schedule 3.3(b), the execution, delivery and performance by Sellers of this Agreement and any other agreements contemplated hereby (including the assignment of any Assigned Contracts to which a Governmental Body is a party) do not require the authorization, consent, approval, certification, license or order of, or any filing, with, any court or Governmental Body of such a nature that the failure to obtain the same would have a Material Adverse Effect on the LLC Interests or the Assets.

Section 3.4 Licenses. Except as set forth on Schedule 3.4, all Licenses necessary for the operation of the Facilities at the location and in the manner presently operated, related thereto in any material respect or required in order to consummate or perform the transactions contemplated under this Agreement are set forth on Schedule 2.1(e). Except as identified on Schedule 3.4, all such Licenses are valid and in full force and effect and not subject to termination for default by notice or passage of time or both.

Section 3.5 Compliance with Law. Except as set forth on Schedule 3.5, and except for the matters that are the subject of Sections 3.4 and 3.6 and the Schedules, if any, related thereto, to Sellers' Knowledge, Sellers are in compliance in all material respects with all pertinent Laws and Licenses related to the ownership and operation of the LLC Interests or the Assets, other than violations that would not, individually or in the aggregate, have a Material Adverse Effect on the ownership, use or operation of the LLC Interests or the Assets or on the ability of Sellers to execute and deliver this Agreement or any other agreements contemplated hereby and consummate the transactions contemplated hereby and thereby.

Section 3.6 Hazardous Materials. To Sellers' Knowledge, except as disclosed on Schedule 3.6:

(a) There has not been a Release of Hazardous Material on or otherwise affecting the Assets (other than Releases involving de minimis quantities of Hazardous Materials) that: (i) constitutes an unremedied material violation of any Environmental Law by Sellers or by any third party if the effect of such violation by such third party imposes a current remediation obligation on the part of Sellers; (ii) currently imposes any material release-reporting obligations on Sellers under any Environmental Law that have not been or are not being complied with; or (iii) currently imposes any material clean-up or remediation obligations of Sellers under any Environmental Law.

