

# LOVINGER | KAUFMANN LLP

825 NE Multnomah • Suite 925  
Portland, OR 97232-2150

office (503) 230-7715  
fax (503) 972-2921

Kenneth E. Kaufmann  
Kaufmann@LKLaw.com

February 4, 2011

**VIA U.S. PRIORITY MAIL**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 W Washington Street  
Boise, ID 83702-5983

Re: Case No. PAC-E-10-08  
XRG, Complainant, vs.  
PACIFICORP dba ROCKY MOUNTAIN POWER, Defendant

Dear Ms. Jewell:

Enclosed for filing in the above-captioned docket are an original and seven (7) copies of *ROCKY MOUNTAIN POWER'S MOTION FOR SUMMARY JUDGMENT*.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,



Kenneth E. Kaufmann

cc: PAC-E-10-08 Service List

Enclosures

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Mark C. Moench  
Daniel E. Solander  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, Utah 84111  
Telephone: (801) 220-4014  
Fax: (801) 220-3299  
mark.moench@pacificorp.com  
daniel.solander@pacificorp.com

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UTILITIES COMMISSION

Jeffrey S. Lovinger  
Kenneth E. Kaufmann  
Lovinger Kaufmann LLP  
825 NE Multnomah, Suite 925  
Portland, Oregon 97232  
Telephone: (503) 230-7715  
Fax: (503) 972-2921  
lovinger@lklaw.com  
kaufmann@lklaw.com

Attorneys for Defendant  
Rocky Mountain Power

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-  
DP-10, LLCs,  
Complainant,

v.

PACIFICORP, DBA ROCKY MOUNTAIN  
POWER,  
Defendant.

Case No. PAC-E-10-08

ROCKY MOUNTAIN  
POWER'S MOTION FOR  
SUMMARY JUDGMENT

Pursuant to IDAPA Rule 31.01.01.056, PacifiCorp, dba Rocky Mountain Power (the "Company"), respectfully moves for summary judgment and denial of the relief requested by XRG-DP-7, LLC, XRG-DP-8, LLC, XRG-DP-9, LLC, and XRG-DP-10, LLC (collectively "XRG").

## I. Introduction

XRG asks the Commission to order Rocky Mountain Power to enter into power purchase agreements (“PPAs”) at superceded avoided cost rates. In Idaho, a qualifying facility (“QF”) is not entitled to grandfathered rates unless the QF: (1) signs a contract with the utility before rates change; or (2) files a meritorious complaint for grandfathered rates with the Commission before rates change.<sup>1</sup> A meritorious complaint is one in which the developer demonstrates that it pursued a contract with diligence and competence, that it was substantially mature and ready, willing and able to sign a contract and that “but for” the intransigence of the utility it was otherwise entitled and would have had a power purchase contract prior to the rate change.<sup>2</sup>

In this case, XRG requested four PPAs totaling 70 megawatts (“MW”) to be delivered to the Company’s Brady Substation. Upon consideration of this request, the Company expressed concern about its ability to transmit that much power from Brady to the rest of its system. The Company accordingly told XRG that it could only accommodate 23 MW of XRG’s output at Brady. The Company provided XRG with one draft PPA. XRG indicated that it would provide comments on the draft agreement but never did so. XRG also failed to secure interconnection or transmission rights necessary to deliver its output to Brady before rates changed. Four months after rates changed, XRG filed a complaint.

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<sup>1</sup> *A. W. Brown Co., Inc. v. Idaho PUC*, 121 Idaho 812, 817 (1992).

<sup>2</sup> *Island Power Co. v. Utah Power & Light Co.*, IPUC Case No. UPL-E-93-4, Order No. 25528, 1994 Ida. PUC LEXIS 59 at \*15 (“*Island Power I*”), *recons. denied*, Order No. 25647, 1994 Ida. PUC LEXIS 92 (“*Island Power II*”).

XRG asks the Commission to order the Company to enter into four PPAs at the old avoided cost rates.<sup>3</sup> In this motion, Rocky Mountain Power asks the Commission to deny the relief requested as a matter of law. XRG is not entitled to grandfathered rates because it failed to diligently and competently pursue a contract prior to the rate change. XRG cannot ask for four PPAs, refuse to respond to a draft PPA, fail to obtain even rudimentary transmission or interconnection arrangements, and then expect to receive grandfathered rate treatment. It is irrelevant that there is a disagreement between the parties regarding whether XRG was eligible for one or four PPAs. A QF must actively negotiate even if there is disagreement regarding a key term.<sup>4</sup> Additionally, XRG is not entitled to grandfathered rates because it filed a complaint seeking such rates more than four months after rates changed.

## II. Standard of Review

On motion for summary judgment, the Commission applies the standard for a summary judgment contained in Idaho Rule of Civil Procedure 56(c), which provides that summary judgment should be granted if “the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Upon review of a motion for summary judgment, “[a]ll disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable

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<sup>3</sup> XRG Complaint at 6 (XRG seeks rates on file “prior to March 12, 2010”).

<sup>4</sup> *Empire Lumber Co. v. Wash. Water Power Co.*, IPUC Case No. U-1008-241, Order No. 20693, 1986 Ida. PUC LEXIS 169 at \*9 (“To cease negotiations for failure to reach agreement on the first issue discussed is not to reach agreement on any issues. To initiate a complaint process at that time may resolve or clarify that particular issue but certainly doesn’t entitle one to a contract.”); *Island Power II*, 1994 Ida. PUC LEXIS 92, \*18 (order denying reconsideration) (quoting with approval *Empire Lumber Co.* on the need to continue negotiations notwithstanding a dispute regarding a key term).

inferences that can be drawn from the record are to be drawn in favor of the non-moving party.”<sup>5</sup> A moving party “is entitled to summary judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial.”<sup>6</sup>

### III. Undisputed Material Facts

The following facts are undisputed.<sup>7</sup> XRG proposes four QF projects to be located near Malta in Cassia County, Idaho. Three of the proposed projects would have a nameplate capacity of 20 MW. The remaining project would have a nameplate capacity of 10 MW. XRG proposed to interconnect the projects to Bonneville Power Administration (“BPA”) and to wheel output across BPA’s system to the Company’s Brady Substation near American Falls, Idaho.<sup>8</sup>

In late January 2009, XRG requested that the Company provide four PPAs for the proposed projects.<sup>9</sup> This request included basic information regarding each proposed project. Within two weeks, the parties held a conference call to discuss the

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<sup>5</sup> I.R.C.P. 56(c) (2010); *Frazier v. J.R. Simplot Co.*, 136 Idaho 100, 102 (2001); *In the Matter of the Petition by PacifiCorp for an Order Determining that PacifiCorp is not required to Provide Wheeling Service to Snake River Valley Electric Ass'n*, IPUC Case No. PAC-E-01-6, Order No. 28888 (2001) (Notice of Rehearing Conference).

<sup>6</sup> *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-31 (1994) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

<sup>7</sup> The facts described in this section can be found in XRG’s complaint or in Exhibit A or Exhibit B to this motion. Exhibit A consists of 26 parts: A-1 through A-25, which provide all written communication between XRG and the Company from January 2009 through April 2010 and A-0, which provides XRG’s confirmation that A-1 through A-25 are accurate and complete. Exhibit B consists of excerpts of XRG’s responses to the Company’s requests for production.

<sup>8</sup> XRG Complaint at 1 and ¶ 6; Exhibit A at 44, 49, 56, 61, 78, 83, 92. XRG proposed to interconnect to BPA in its January 2009 request for PPAs. Material provided by XRG in response to the Company’s discovery requests suggests that XRG recently determined to interconnect with Raft River Electric Cooperative. *See* pages 8-9 *infra*.

<sup>9</sup> Exhibit A at 67 (*see also* 41-95).

requests.<sup>10</sup> Two weeks later, the Company told XRG that transmission constraints out of Brady Substation might limit the Company's ability to accept 70 MW of new QF output at Brady.<sup>11</sup> A month later, the Company quantified this concern and told XRG it could not accept more than 23 MW of XRG output at Brady Substation.<sup>12</sup> In light of this constraint, the Company asked XRG to identify which one of the proposed projects it wanted to move forward with.<sup>13</sup> About a week later, XRG stated it wanted to proceed with XRG DP-10, one of the proposed 20-MW projects.<sup>14</sup> The Company acknowledged this choice the same day.<sup>15</sup> XRG subsequently indicated on multiple occasions that it thought the parties should proceed to negotiate all four PPAs and to resolve any issue involving transmission constraints on a separate negotiating path.<sup>16</sup> The Company did not yield to this request.

On May 11, 2009, the Company provided XRG with a draft PPA and asked XRG to provide redline revisions and comments for further discussion.<sup>17</sup> XRG responded the next day, indicating that it would commence review of the draft PPA, and reiterating its desire to proceed with four power purchase agreements and to address the Company's concerns with transmission constraints on a separate track.<sup>18</sup> Almost two months later, on July 6, 2010, XRG apologized for not responding to the

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<sup>10</sup> Exhibit A at 97-101.

<sup>11</sup> *Id.* at 105.

<sup>12</sup> *Id.* at 111.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 117.

<sup>15</sup> *Id.* at 123.

<sup>16</sup> *Id.* at 131, 135, 139, 197, 201, 205.

<sup>17</sup> *Id.* at 141-194.

<sup>18</sup> *Id.* at 197.

draft PPA earlier. XRG explained that it had been busy closing a 228-MW project and that it now planned to provide the Company with redline changes and comments on the draft PPA “and the other 3 identical contracts proposed for XRG - DP 7, 8, 9, and 10.”<sup>19</sup>

More than two months later, on September 18, 2009, XRG sent the Company an email. Rather than providing comments on the draft PPA, XRG noted in the email that it had received only one of the four requested PPAs. XRG requested the balance of the PPAs in ten days time, and XRG stated that, upon receipt of four PPAs it would proceed to modify and negotiate the terms and conditions of all four agreements.<sup>20</sup> Two weeks later, on October 2, 2009, the Company responded by (a) reiterating its concerns regarding accepting more than 23 MW of QF output at Brady Substation, (b) providing a revised and updated draft PPA, and (c) again requesting that XRG provide comments on the draft PPA.<sup>21</sup>

On November 10, 2009, the parties held a conference call to discuss the Company’s concerns regarding transmission constraints. During that call, XRG proposed that the Company’s concerns should be allayed if XRG moved its proposed online date to June 2011.<sup>22</sup>

On March 9, 2010, the Company received a letter from Commission staff stating that the published avoided cost rates in Idaho would be recalculated. The

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<sup>19</sup> *Id.* at 201.

<sup>20</sup> *Id.* at 205.

<sup>21</sup> *Id.* at 207-266. The updated draft PPA provided on October 2, 2009, included the Company’s standard addendum for off-system projects; it also included, for the first time, a Delay Security requirement, modeled after an Idaho Power Company agreement the Commission approved in 2009.

<sup>22</sup> *Id.* at 289.

letter solicited the Company's comments regarding staff's recalculation of rates.<sup>23</sup> On March 10, 2010, the Company sent a copy of the March 9 letter from Commission staff to XRG attorney Peter Richardson.<sup>24</sup> On March 11, 2010, XRG sent the Company an email—XRG's first communication since the parties' November 10 conference call. XRG stated that it would take the October 2 draft PPA, replicate it for all four proposed projects, and provide the draft agreements to the Company for review and approval.<sup>25</sup> To date, XRG has not done so.

On March 12, 2010, XRG attorney Peter Richardson sent the Company a letter stating that XRG understood published avoided cost rates might soon change and asking the Company to either (a) confirm XRG's understanding that it was entitled to existing rates and follow up with a contract containing the same, or (b) tender executable agreements containing the current rates by return mail.<sup>26</sup> The Company provided no such response.

On March 15, 2010, the Commission issued Order No. 31025 which reduced published avoided cost rates effective March 16, 2010. On July 29, 2010, XRG filed a complaint alleging it is entitled to grandfathered rates. At no time prior to the rate change (or prior to filing a complaint) did XRG respond with comments or revisions to the Company's May 2009 or October 2009 draft PPA. At no time prior to the rate change did XRG provide a proposed PPA or otherwise confirm the terms of the

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<sup>23</sup> XRG Complaint ¶ 12.

<sup>24</sup> *In The Matter of the Adjustment of Avoided Cost Rates for New PURPA Contracts for Avista Corporation DBA Avista Utilities, Idaho Power Company, and PacifiCorp DBA Rocky Mountain Power*, IPUC Case No. GNR-E-I0-01, Order No. 31092, 11 (2010) (stating that Mr. Richardson "concede[s he] received a copy of Staff's [March 9, 2010] letter the next day (March 10, 2010)").

<sup>25</sup> Exhibit A at 289.

<sup>26</sup> *Id.* at 296.

power sales transaction it asserts it was ready, willing and able to enter into prior to March 16, 2010.

The parties have completed two rounds of discovery. XRG's responses to the Company's discovery requests<sup>27</sup> demonstrate that XRG recently learned that BPA only operates transmission for a portion of the path to Brady Substation.<sup>28</sup> Correspondence between BPA and XRG in 2011 indicates that, to deliver output to Brady Substation, XRG must interconnect to Raft River Electric Cooperative ("Raft River") and wheel its output approximately three miles to BPA's Idahome substation.<sup>29</sup> From there, XRG must purchase BPA Point-to-Point transmission to Minidoka or Adelaide; and then purchase Idaho Power Company Point-to-Point transmission from Minidoka or Adelaide to Brady.<sup>30</sup> BPA notified XRG that its request may require transmission system upgrades,<sup>31</sup> and that, due to BPA's ambitious near-term construction plans, system upgrades for new generation projects may take 3-5 years to complete.<sup>32</sup> None of this information was disclosed to the

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<sup>27</sup> XRG refused to answer the Company's Production Request No. 41, which asked XRG to specify the physical path XRG would use to deliver net output from XRG's projects to Brady Substation. Exhibit B at 5. The facts described in this paragraph are gleaned from correspondences between BPA and XRG provided in the course of discovery.

<sup>28</sup> Exhibit B at 14 (email from Craig Hardin (BPA) to Collin Rudeen (XRG Lead Project Engineer) stating "Once the output of your proposed project leaves the BPA 138 kV Point to Point loop at Minidoka or Adelaide you will be doing transmission business with Idaho Power. They own and operate the 138 kV line that runs from Adelaide to American Falls near Brady in the Idaho Power Balancing Area Authority.").

<sup>29</sup> Exhibit B at 12.

<sup>30</sup> *Id.* at 14.

<sup>31</sup> *Id.* at 22 (email from Debby Hammack (BPA) to Collin Rudeen (XRG) stating that "The system Impact Study Report stated that there is no interconnection capacity without rerating the Minidoka PH-Bridge 138 kV line.").

<sup>32</sup> *Id.* at 16 (email from Craig Hardin (BPA) to Collin Rudeen (XRG) stating that "adding additional projects to existing workload will be challenging for us over the next few years. In an effort to maximize efficiency, BPA is coordinating design over a two-to three year work plan which will result

Company prior to the rate change.

Correspondence between BPA and XRG<sup>33</sup> further indicates that, prior to March 16, 2010, none of the XRG projects had applied for: (1) a Raft River interconnection agreement;<sup>34</sup> (2) Raft River Point-to-Point transmission;<sup>35</sup> (3) BPA Point-to-Point transmission;<sup>36</sup> or (4) Idaho Power Company Point-to-Point transmission.<sup>37</sup> Moreover, until January 5, 2011, XRG did not even know whether there was a physical transmission path from its project site to Brady Substation.<sup>38</sup>

#### IV. Argument

A QF is not entitled to grandfathered rate treatment unless it has: (a) entered into a power purchase contract before a rate change; or (b) filed a meritorious complaint for grandfathered rates before rates change.<sup>39</sup> A meritorious complaint must demonstrate that a QF “pursued a contract with diligence and competence, that it was substantially mature and ready, willing and able to sign a contract and that

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in longer lead times to complete projects. BPA is requesting your assistance by requesting you provide advance notice of at least 3 years and in some cases 5 years for such projects.”).

<sup>33</sup> XRG refused to answer the Company’s Production Request No. 38, which asked whether XRG controlled rights to transmit its power from its project site to Brady on March 15, 2010. *Id.* at 4.

<sup>34</sup> *Id.* at 9. XRG originally applied for interconnection directly to BPA. However BPA dismissed XRG’s interconnection applications because XRG failed to pay required fees. *See Id.* at 3.

<sup>35</sup> XRG did not apply to Raft River for interconnection service or transmission service, if at all, before October 7, 2010. *Id.* at 12.

<sup>36</sup> XRG did not request Point-to-Point transmission service from BPA for the XRG projects until December 9, 2010, *nine months after* the rate change. *Id.* at 13.

<sup>37</sup> *Id.* at 14 (January 5, 2011 email from Craig Hardin (BPA) to Collin Rudeen (XRG) stating “I have provided you with some contact information below at Idaho Power Transmission to initiate your wheeling discussions.”).

<sup>38</sup> *Id.* at 14 (January 5, 2011 email from Collin Rudeen (XRG) to Craig Harden (BPA) stating “At the moment we’re looking at wheeling these projects to Brady. Outside of actually doing the wheeling study, do you know if there is a clear pathway to get there? I know there may not be capacity or will incur expensive upgrades—mostly I’m just wanting to know if the pathway is there.”).

<sup>39</sup> *A.W. Brown Co., Inc. v. Idaho PUC*, 121 Idaho 812, 817 (1992). The Company notes that the Commission has on occasion made exceptions to the rule that a complaint must be filed prior to the rate change. *See* Section IV(C)(1) *infra*.

'but for' the intransigence of [the utility, the QF] was otherwise entitled and would have had a power purchase contract prior to [the date the rate changed]."<sup>40</sup>

There are three reasons the Commission should deny XRG's request for grandfathered rates. First, XRG's complaint is not meritorious because XRG has not pursued a contract with diligence and competence. As discussed in Section IV(A) below, a QF must actively negotiate. At minimum this required XRG to respond to the draft PPA proposed by the Company. XRG never did so. It is irrelevant that the parties disagreed on the number of contracts to which XRG was entitled, XRG was required to actively negotiate at least one contract. It did not. Second, XRG's complaint is not meritorious because XRG's proposal was fatally immature. As discussed in Section IV(B) below, XRG did not have transmission agreements or interconnection agreements necessary to deliver power to the Company's system at Brady before the rate change. In fact, prior to the rate change XRG had not even identified a *viable plan* for interconnecting and wheeling its output to Brady. Third, XRG's request for grandfathered rates should be denied because XRG filed its complaint more than four months after rates changed. As discussed in Section IV(C) below, the Commission's grandfathering criteria and the doctrine of laches both support the conclusion that a QF should not be allowed to file a complaint for grandfathered rates so long after a rate change.

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<sup>40</sup> *Island Power I*, 1994 Ida. PUC LEXIS 59, \*15.

**A. Failure to actively negotiate: On the undisputed facts of this case, XRG did not perfect its entitlement to grandfathered rates because it did not actively negotiate the terms of a power purchase agreement.**

It is well settled that a QF is not entitled to grandfathered rates unless it has actively negotiated a power purchase agreement.<sup>41</sup> This includes presenting the purchasing utility with an offer that can be interpreted as a binding commitment to sell power.<sup>42</sup> In this case, XRG did not actively negotiate. It requested four power purchase agreements in January 2009. It received a draft agreement in May 2009 and again in October 2009. It repeatedly indicated it would comment on those draft agreements. It never did so.

XRG likely will argue that its ability to actively negotiate was frustrated by the Company's position that it could accept no more than 23 MW of XRG output at Brady Substation. However, under the Commission's holding in *Island Power Co. v. Utah Light & Power Co.*, XRG cannot rely on an impasse regarding whether it was eligible for one or four agreements to relieve it of the responsibility to actively negotiate.<sup>43</sup> A QF must actively negotiate even if there is disagreement on a fundamental element of the proposed transaction. To fulfill this requirement, XRG

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<sup>41</sup> *Island Power II*, 1994 Ida. PUC LEXIS 92, \*16-17 (order denying reconsideration) ("An expressed desire to sell does not equate with a commitment to sell. Nor does requesting a draft power purchase contract. Active negotiation is a prerequisite to qualifying for a contract."); *Cogen Power II, Inc. v. PacifiCorp*, IPUC Case No. UPL-E-94-1, Order No. 25638, 1994 Ida. PUC LEXIS 89, \*10-11 ("Although PacifiCorp has developed a standard form contract, it is reasonable and indeed we have previously indicated that some negotiation is required before the contract is ready to sign. A standard form contract provides the foundation for negotiations. To become a final contract it must be individually tailored by the utility and the QF to match unique project specifics. Of necessity, this requires active negotiation.").

<sup>42</sup> *Cogen Power II, Inc.* 1994 Ida. PUC LEXIS 89, \*12.

<sup>43</sup> *Island Power II*, 1994 Ida. PUC LEXIS 92, \*18 (order denying reconsideration) ("To cease negotiations for failure to reach agreement on the first issue discussed is not to reach agreement on any issues. To initiate a complaint process at that time may resolve or clarify that particular issue but certainly doesn't entitle one to a contract." quoting *Empire Lumber Co.*, Order No. 20693).

needed to establish the key terms of the proposed agreement; XRG needed to make an offer to sell with sufficient specificity as to represent a binding commitment; and XRG needed to provide the Company with time to understand and evaluate that offer. XRG accomplished none of these requirements before the rate change.

The facts and holding in *Island Power* are instructive. Island Power proposed a 4.4 MW hydroelectric project to be built near Dillon, Montana. In May 1993, Island Power contacted PacifiCorp and requested a power purchase agreement. Island Power proposed to wheel output to an Idaho point of delivery and to sell net output at Idaho avoided cost rates. PacifiCorp was willing to buy Island Power's output but insisted on delivery to PacifiCorp's system in Montana and insisted on paying Montana rates. Island Power indicated that the project was not viable at Montana rates and, after a brief attempt to negotiate the issue, filed a complaint with the Idaho Commission in July 1993.

PacifiCorp immediately moved to dismiss on the grounds that Island Power could not compel the purchase of Montana generation at Idaho rates. The Commission disagreed and denied the motion to dismiss. Island Power began construction of its project in September 1993 and continued to pursue wheeling arrangements with Montana Power and Idaho Power Company. In December 1993, PacifiCorp filed for new rates. On January 14, the Commission approved new avoided cost rates. On January 20, PacifiCorp provided Island Power with a draft power purchase agreement containing the new (lower) avoided cost rates. Island Power responded that its project was not viable at the new rates and continued to pursue a contract at the old rates under its pending complaint.

The case went to hearing and the Commission held that Island Power was not entitled to grandfathered rates because it had not actively negotiated and made a specific and binding commitment to sell power to PacifiCorp before the date of the rate change. The Commission held that PacifiCorp was "entitled to a full understanding of the project, [and] that the utility must be provided with reasonable and sufficient opportunity to investigate."<sup>44</sup> Island Power argued that it had provided PacifiCorp with all information specifically requested and that if the utility had needed additional information it should have asked for it. The Commission rejected this argument stating:

Although we require and expect that the utility will negotiate in good faith with QFs, a QF must recognize that the utility is not entering into a truly "discretionary contract." A QF must therefore assume the responsibility for initiating and pursuing negotiations, for developing and perfecting its entitlement to a contract. That responsibility cannot be shifted to the utility.<sup>45</sup>

Island Power requested reconsideration of the Commission's order denying grandfathered rates. On reconsideration the Commission refused to award grandfathered rates. The Commission made it clear that a QF cannot obtain grandfathered rates by requesting a power purchase agreement and then relying on a dispute with the utility as an excuse for not fully negotiating an agreement before rates change. The Commission stated:

As this Commission has previously indicated, eligibility is to be distinguished from entitlement. Island Power has not shown that it was "otherwise entitled", that it had perfected its entitlement, that it has perfected its rights. Its pursuit of a contract was still in progress and had not reached the stage where terms were sufficiently known so it was ready, willing and able to sign a contract. It had not presented

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<sup>44</sup> *Island Power I*, 1994 Ida. PUC LEXIS 59, \*16-17.

<sup>45</sup> *Id.* at \*17.

PacifiCorp with any offer that could be interpreted as a binding commitment to sell power to PacifiCorp. An expressed desire to sell does not equate with a commitment to sell. Nor does requesting a draft power purchase contract. Active negotiation is a prerequisite to qualifying for a contract.

As we indicated in *Empire*,

**To cease negotiation for failure to reach agreement on the first issue discussed is to not reach agreement on any issues. To initiate a complaint process at that time may resolve or clarify that particular issue but certainly doesn't entitle one to a contract.**<sup>46</sup>

The Commission's decision in *Island Power* makes it clear that a QF must actively negotiate a power purchase agreement and must clarify the specific terms of a deal and manifest an enforceable commitment to sell prior to a rate change in order to establish entitlement to grandfathered rates. A QF is not entitled to cease negotiations merely because the parties disagree on a key term. Filing a complaint to resolve the dispute is not enough, even if the complaint is filed before the rate change. The QF has an obligation to actively pursue negotiations notwithstanding a dispute and to bring negotiations to a level of maturity where the utility has had an adequate opportunity to understand the QF's proposed terms and to conduct necessary due diligence prior to the rate change.<sup>47</sup> By failing to respond to the

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<sup>46</sup> *Island Power II*, 1994 Ida. PUC LEXIS 92 at \*16-18 (order denying reconsideration, emphasis added).

<sup>47</sup> *Id.* at \*17-18; see also, *Cogen Power II, Inc.*, 1994 Ida. PUC LEXIS 89, \*12 ("We...find that prior to...[the rate change the QF] never committed itself.... The initial letter request in this case cannot be interpreted as a firm, binding commitment.... Even if we found such a commitment, however, it would not eliminate the requirement of active negotiation or dispense with a reasonable time for the utility to conduct necessary investigation, review, clarification and verification of QF representations and project specifics. Realistically, it is only after active negotiation and/or a reasonable period for utility investigation and response that an otherwise eligible QF can expect to obtain a power purchase contract, that a QF can establish a basis for proving entitlement to a contract and a lock-in of avoided cost rates.").

Company's draft power purchase agreement or otherwise actively negotiate, XRG failed to timely establish its entitlement to grandfathered rates.

**B. Immature proposal: As of the date of the rate change, XRG's plans to interconnect and transmit output to the Company's system were insufficiently mature to establish entitlement to grandfathered rates.**

In *Portland General Electric Co. v. Oregon Energy Co.*,<sup>48</sup> the Public Utility Commission of Oregon ("OPUC") recognized that where a QF proposes to interconnect to one utility and wheel its output to a second utility, it must obtain a wheeling agreement before becoming eligible for a PURPA contract from the second utility. The OPUC's holding had two bases. First, it reasoned that a QF has not adequately abandoned its right to sell to intervening utilities—and hence has not obligated itself to sell to the purchasing utility—until the QF enters into a wheeling agreement with the intervening utilities.<sup>49</sup> Second, the OPUC reasoned that transmission across intervening utilities that are not directly subject to FERC Order No. 888 (e.g. public utility districts and electric cooperatives that have not filed an Open Access Transmission Tariff) cannot be taken for granted and that the QF must obtain a transmission agreement as a prerequisite to obligating itself and the purchasing utility to a QF power purchase arrangement.<sup>50</sup>

Both of the OPUC's rationales in *Oregon Energy* apply equally well to XRG. Unless and until XRG signs a wheeling agreement with Raft River Electric Cooperative ("Raft River"), it has not relinquished its right to make Raft River

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<sup>48</sup> OPUC Docket No. UC 315, Order No. 98-238 (1998), 1998 Ore. PUC LEXIS 204 (order denying reconsideration).

<sup>49</sup> *Id.* at \*17-19.

<sup>50</sup> *Portland General Electric Co. v. Oregon Energy*, OPUC Docket No. UC 315, Order No. 98-055, 1998 Ore. LEXIS 131, \*19-21, *recons. denied*, Order No. 98-238, 1998 Ida. PUC LEXIS 204.

purchase its output. And XRG cannot take for granted that Raft River (which is not a “public utility” subject to FERC Order No. 888’s mandatory open access requirements) will agree to interconnect XRG and wheel its output to another utility.<sup>51</sup> In other words, neither the Company nor XRG nor the Commission can safely assume that securing transmission and interconnection rights for an indirectly connected QF is feasible until all non-OATT interconnections and transmission services have been contractually secured. XRG’s difficulties in securing transmission for its projects, documented in Exhibit B (pages 9-22), aptly illustrate why it is reasonable for the Company to require a demonstration of transmission rights to deliver output to the Company’s system, and why the Commission should adopt the holding in *Oregon Energy*. Moreover, as the OPUC recognized in *Oregon Energy*, XRG has not relinquished its right to compel Raft River to purchase project output until XRG executes a wheeling agreement with Raft River. XRG cannot be said to have obligated itself and the Company when it has not abandoned its right to sell to Raft River.

If the Commission declines to follow the *Oregon Energy* holding, it may still find that XRG’s lack of interconnection and transmission rights prevented it from perfecting its entitlement to pre-March 16, 2010 rates as a matter of existing Idaho law. The Commission has consistently held that a QF is not entitled to grandfathered rates merely because it expresses a desire to sell prior to the rate change.<sup>52</sup> As the

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<sup>51</sup> *Oregon Energy*, OPUC Order No. 98-055, 1998 Ore. LEXIS 131, \*20 (“FERC has recognized that it lacks authority to require nonpublic utilities to file open access tariffs. As a people’s utility district, CRPUD is a nonpublic utility and is therefore not subject to FERC authority” (internal citation omitted)).

<sup>52</sup> *Island Power II*, 1994 Ida. PUC LEXIS 92 at \*17 (order denying reconsideration).

Commission noted in *Island Power II*: “Entitlement to rates under a ‘legally enforceable obligation’ carries with it a concomitant QF obligation to provide sufficient assurances that the energy or capacity will in fact be delivered, a requisite mutuality of obligation.”<sup>53</sup> As of March 16, 2010, XRG’s efforts to establish the terms of a contract were still in progress and XRG was far from having reached the stage where terms were sufficiently known so that XRG was ready and able to sign a contract. In fact, XRG still does not have an interconnection agreement or wheeling agreement with Raft River. XRG does not know if capacity exists on BPA’s system. If capacity does not exist, XRG has been notified by BPA that upgrades may take 3-5 years to implement. XRG does not know if capacity exists on Idaho Power Company’s system. XRG does not know what required interconnection facilities and system transmission upgrades will cost. In sum, XRG has not established that its interconnection and transmission plan is contractually, technically, or economically feasible. XRG was not ready or able in March 2010, indeed is not ready or able today, to commit to sell power to the Company.

The Idaho Supreme Court has recognized that PURPA does not entitle a QF to an option to sell power.<sup>54</sup> But an option is exactly what XRG was seeking. How else can one reasonably explain the fact that XRG’s lead project engineer did not know until January 5, 2011—ten months after it claims it was willing to obligate itself to deliver power to Brady commencing June 2011—that BPA does not even

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<sup>53</sup> *Id.*

<sup>54</sup> *Empire Lumber Co. v. Washington Water Power*, 114 Idaho 191, 194 (1987) (“We deem it clear that the intent of PURPA is not to require an electric utility company to enter into a contract to purchase electrical power from an entity which in essence only desires to obtain an option to sell some amount of electrical power to be generated at some plant of unknown size or capacity.”)

deliver to Brady, and that XRG will have to obtain and pay for *three* wheels to deliver output to Brady? If XRG really believed it was securing more than an option, it would not have waited until 2011 to figure out whether delivering output from its project site to Brady was even possible. Given the immature status of XRG's interconnection and transmission arrangements, the Commission may conclude, as a matter of law, that XRG is not entitled to grandfathered rates.

**C. Late complaint: XRG waited too long to file its complaint, and therefore is not entitled to grandfathered rates.**

**1. XRG fails the bright-line test of *A.W. Brown Co.***

In considering QF requests for grandfathered rate treatment, the Commission requires that a QF either; (a) enter into a power purchase contract with the utility prior to a rate change, or (b) file a meritorious complaint for grandfathered rates before rates change. The Idaho Supreme Court approved the Commission's use of this "bright-line test" in *A.W. Brown Co. v. Idaho Power Co.*<sup>55</sup> This bright line test is an effective means to establish predictability in QF PPA negotiations and to minimize legal disputes regarding grandfathered status.

Because XRG did not sign a PPA or file a timely complaint, the Commission can reject XRG's request for grandfathered rates under the bright-line test of *A.W. Brown*. XRG will argue, correctly, that the Commission has not monolithically applied the bright-line test. Nevertheless, the Company urges the Commission to embrace the bright-line test by finding that XRG's complaint does not qualify for either of the exceptions to the bright-line test previously recognized by the Commission.

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<sup>55</sup> 121 Idaho 812, 817 (1992).

In *Blind Canyon Aquaranch Inc. v. Idaho Power Co.*,<sup>56</sup> the Commission did not apply the bright-line test where the utility filed to reduce avoided cost rates and did not give the QF immediate notice of the filing, even though the QF and the utility were in the final phase of contract negotiations. This exception clearly does not apply in the XRG case because, although there was a rate change, the Company did not initiate the change and the Company forwarded notice of the impending change to XRG's attorney as soon as the Company became aware of the proposed rate change.

In *Earth Power v. Washington Water Power Co.*,<sup>57</sup> the Commission found a meritorious complaint even though the QF filed its complaint two days after rates had changed. The *Earth Power* exception appears to be an act of leniency on the part of the Commission, where the QF was barely late in filing. In contrast, XRG did not come close to meeting the Commission's bright-line test. Even though XRG contacted the Company to request grandfathered status on March 11 and March 12, 2009—thereby demonstrating XRG's awareness of the pending rate change—it waited over *four months* after the rate change before filing its complaint. The “barely late” exception in *Earth Power* should not excuse XRG's gross tardiness.

XRG has not alleged facts that, if true, would justify any recognized exception to the bright-line test. XRG filed its complaint on July 29, 2010, over four months after the March 16, 2010 rate change. XRG has identified no reason why it was unable to file a complaint prior to March 16, 2010. XRG is an experienced

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<sup>56</sup> IPUC Case No. IPC-E-94-1, Order No. 25802, 1994 Ida. LEXIS 147.

<sup>57</sup> IPUC Case No. WWP-E-96-6, Order No. 27231 (1997). The utility applied for a rate change and essentially refused to honor the then-current rates pending the rate change. In the month prior to the rate change and after significant prior negotiation, the QF developer twice sent the utility written offers to enter into PPAs at the then-current rates. The utility refused the offers and instead insisted on a PPA that used the rates the utility had applied for but that had not yet gone into effect.

developer with expert PURPA legal counsel. Its actions in early March 2010 demonstrate that no later than March 12, 2010, it was aware that a rate change was pending. Excusing XRG from a QF's duty to file a complaint before rates change would encourage lax behavior and unfairly burden the Company's customers with 70 MW of capacity at a price well above the Company's current avoided cost. Under the bright line test of *A. W. Brown*, because XRG failed to fully negotiate and execute a PPA or file a complaint while the rates in Order No. 30744 were in effect, the Commission can find that XRG is not eligible to receive those rates as a matter of law.

**2. In the alternative, XRG's claim that it is entitled to grandfathered rates is barred by laches.**

Laches is a longstanding equitable doctrine with continuing vitality, as recognized recently by the Idaho Supreme Court:

The defense of laches is a creation of equity and is a species of equitable estoppel. *Huppert v. Wolford*, 91 Idaho 249, 420 P.2d 11 (1966). Whether a party is guilty of laches primarily is a question of fact and therefore its determination is within the province of the trial court. *Id.* The decision to apply laches is committed to the sound discretion of the trial court. *Id.* Because application of laches is discretionary, the standard of review on appeal is whether the trial court properly found (1) a lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense. *Preservation Coalition, Inc. v. Pierce*, 667 F.2d 851, 854 (9th Cir. 1982).<sup>58</sup>

The Commission has equitable power to deny XRG's requested relief if: (1) XRG did not diligently pursue its claim, or its underlying rights thereto; and (2) the Company was prejudiced as a result.

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<sup>58</sup> *Sword v. Sweet*, 140 Idaho 242, 249 (2004).

**a. XRG was not diligent.**

XRG has known since March 2009 that the Company would not accept more than 23 MW at Brady Substation but XRG took no action until July 29, 2010. On March 23, 2009, the Company first informed XRG that it could only accept 23 MW at Brady.<sup>59</sup> The Company reaffirmed its position that it would not accept more than 23 MW, on May 11, 2009.<sup>60</sup> An October 2, 2009 email from Company manager Bruce Griswold left no room for doubt that the Company was not willing to purchase output from XRG unless XRG agreed to pay any costs above those that would arise from delivering to a non-constrained portion of the Company's system:

As I mentioned, PacifiCorp estimates that the available transmission capacity in its current configuration at Brady can only accept approximately 20 to 25 MW of new generation on a firm basis. \* \* \*

If PacifiCorp does have an obligation to accept output at Borah and Brady, PacifiCorp will expect you to pay for all resulting interconnection costs including network upgrades (either through an adjustment to avoided costs or through payment to PacifiCorp Transmission) such that the ultimate cost to PacifiCorp's customers is not greater than the cost avoided by PacifiCorp not constructing or purchasing an equivalent resource located on a nonconstrained portion of its system. See 18 C.F.R. §§ 292.101(b)(7)), 292.306(a). Again, if you disagree with this principle I urge you to explain your position and basis therefore.<sup>61</sup>

XRG still made no indication that it wanted to take the matter to the Commission to resolve. Even when XRG knew that the rates were about to change, it chose not to file a complaint with the Commission. It did not finally file its complaint until July

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<sup>59</sup> Exhibit A at 111 (“Based on your proposed delivery point to the Borah substation, we only have import capabilities to our Utah system to serve load from Brady on a firm basis of 23 MW total. Based on your requests, we can accommodate a single 20MW project.”).

<sup>60</sup> *Id.* at 143 (“Per our last communication (attached), we indicated PacifiCorp does not have sufficient transmission at Borah or Brady to accept any project greater than 23MW and you selected one project, XRG-DP 10, that would be developed into a PPA.”).

<sup>61</sup> *Id.* at 209.

29, 2010—more than four months after the March 16, 2010 rate change.<sup>62</sup> Waiting more than 16 months to complain about an allegedly improper act by the Company is not diligent.

**b. The Company was prejudiced by XRG's non-diligence.**

The Company was surprised when it was served with XRG's complaint so long after avoided cost rates had changed. This four-month lapse between the time rates changed and the time XRG filed suit is, in the Company's experience, unprecedented for a QF seeking grandfathered rate treatment, and it is prejudicial to both the Company and the Commission. The Company recognized, in Mr. Griswold's October 2 email to Mr. Carkulis that XRG's application raised novel legal issues regarding the relative responsibilities of XRG and the Company.<sup>63</sup> But assuming *arguendo* that those issues are still unresolved, the Company does not believe that XRG should be eligible to receive grandfathered rates where it had neither an executed agreement nor a pending meritorious complaint prior to March 16, 2010. Such a result would be unfair to the Company because, if avoided cost rates had *increased* on March 16, 2010, XRG would have had a right to seek the higher rates.<sup>64</sup> In other words, allowing XRG to reach back to pre-March 16, 2010 rates would give it the *option* to sue for the pre- or post-March 16, 2010 rate,

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<sup>62</sup> XRG and the Company disagree whether, during a telephone meeting held November 10, 2010, there was a consensus that transmission issues affecting XRG would be resolved by June 2011. The parties agree, however, that XRG did not contact the Company again until March 11, the day after the Company forwarded XRG's attorney a March 10 notice to the Company from Commission staff indicating that avoided cost rates might soon change. *See* Exhibit A at 289.

<sup>63</sup> Exhibit A at 209 ("These projects from both large and small qualifying facilities, raise several legal and technical questions for which PacifiCorp currently is seeking answers. PacifiCorp has indicated it can accept a single standard Idaho QF project at Brady and provided a draft PPA on May 11, 2009 that incorporated all Idaho orders through that date.")

<sup>64</sup> Because XRG never bound itself to the pre-March 16, 2010 rates, it was free to seek and receive the post-March 16, 2010 rates.

depending on which rate happened to be higher. This result would be harmful to the Company and its customers because, as a consequence, QFs would always receive the higher rate.

#### V. Conclusion

WHEREFORE, Rocky Mountain Power respectfully requests that the Commission find that there are no genuine issues of material fact and that Rocky Mountain Power is entitled to summary judgment as a matter of law, and requests that the Commission deny the relief sought in XRG's complaint.

Dated this 4<sup>th</sup> day of February 2011.

Respectfully submitted,

  
Mark C. Moench USB 2284  
Daniel E. Solander USB 11467  
Rocky Mountain Power

Jeffrey S. Lovinger, OSB 960147  
Kenneth E. Kaufmann, OSB 982672  
Lovinger Kaufmann LLP

*Attorneys for Rocky Mountain Power*

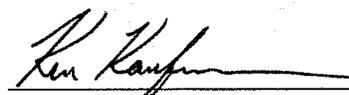
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 4<sup>th</sup> day of February, 2011, I served a true and correct copy of the foregoing *ROCKY MOUNTAIN POWER'S MOTION FOR SUMMARY JUDGMENT* in Case No. PAC-E-10-08 on the following named persons/entities by U.S. Priority Mail, properly addressed with postage prepaid:

<p>Jean Jewell Commission Secretary Idaho Public Utilities Commission 472 W Washington Street Boise, ID 83702-5983 (U.S. Priority Mail)</p> <p>Mark C. Moench Rocky Mountain Power 201 South Main Street, Suite 2300 Salt Lake City, UT 84111 (U.S. Priority Mail)</p> <p>Daniel E. Solander Rocky Mountain Power 201 South Main Street, Suite 2300 Salt Lake City, UT 84111 (U.S. Priority Mail)</p>	<p>Peter J. Richardson Richardson &amp; O'Leary, PLLC PO Box 7218 Boise, ID 83707 (U. S. Priority Mail)</p> <p>Gregory M. Adams Richardson &amp; O'Leary, PLLC PO Box 7218 Boise, ID 83707 (U.S. Priority Mail)</p>
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DATED this 4<sup>th</sup> day of February, 2011.

LOVINGER KAUFMANN LLP



Kenneth E. Kaufmann  
Attorney for Rocky Mountain Power

RECEIVED

2011 FEB -7 PM 2:11

IDAHO PUBLIC  
UTILITIES COMMISSION

XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10,  
LLCs,

Complainant,

v.

PACIFICORP, DBA ROCKY MOUNTAIN POWER,  
Defendant.

Case No. PAC-E-10-08

**EXHIBIT A AND EXHIBIT B TO**  
**ROCKY MOUNTAIN POWER'S**  
**MOTION FOR SUMMARY**  
**JUDGMENT**

Case No. PAC-E-10-08

Rocky Mountain Power's Motion for Summary Judgment

# **EXHIBIT A**

Exhibits A-0 through A-25

**EXHIBIT A-0**

**XRG's Response to Rocky Mountain Power's Production Request No. 2.**



**PRODUCTION REQUEST NO. 2**

Refer to Exhibit A to this Production Request, containing all written correspondences between Rocky Mountain Power and XRG between January 21, 2009 and July 29, 2010 (the date of XRG's Complaint) regarding XRG's PPA request for the XRG projects. Does XRG acknowledge that it either sent or received each of the correspondences contained therein? If not, please note any it did not send or receive. Please provide a copy of any correspondence between XRG and Rocky Mountain Power during that period that is not already included in Exhibit A.

**XRG RESPONSE TO REQUEST NO. 2**

XRG acknowledges that it either sent or received each of the correspondences contained in Exhibit A. XRG is aware of no additional written correspondences between the parties.



## **EXHIBIT A-1**

**to**

## **EXHIBIT A-25**

In Rocky Mountain Power's Production Request No. 2 to XRG, Rocky Mountain Power asked XRG to confirm that Exhibit A to Production Request No. 2 contained all written correspondence between Rocky Mountain Power and XRG between January 21, 2009 and July 29, 2010. XRG confirmed this to be true in its response to Production Request No. 2. *See* Exhibit A-0, *supra*. Except for the addition of a header and page numbering, the following Exhibits A-1 through A-25 are unchanged from the Exhibit A provided to XRG with Production Request No. 2.



XRG-DP-7, XRG-DP-8, XRG-DP-9, )  
XRG-DP-10, LLCs, ) Case No. PAC-E-10-08  
Complainant, )  
v. ) EXHIBIT A TO ROCKY MOUNTAIN  
PACIFICORP, DBA ROCKY MOUNTAIN ) POWER'S FIRST PRODUCTION  
POWER, ) REQUEST TO THE XRG LLCs  
Defendant. )

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**Written correspondence from between January 21, 2009 and July 28, 2010 between XRG-DP-7, LLC, XRG-DP-8, LLC, XRG-DP-9, LLC, and XRG-DP-10, LLC (collectively "XRG") and PacifiCorp Commercial & Trading ("PacifiCorp C&T") regarding the XRG wind projects.**

- Exhibit A-1 January 21, 2009 email with attached letter from Peter Richardson, attorney for XRG.
- Exhibit A-2 January 21, 2009 email with attached letter from Peter Richardson.
- Exhibit A-3 January 21, 2009 email with attached letter from Peter Richardson.
- Exhibit A-4 January 21, 2009 email with attached letter from Peter Richardson.
- Exhibit A-5 January 22, 2009 email from Peter Richardson.
- Exhibit A-6 January 22, 2009 email with attachments from Collin Rudeen, Lead Project Engineer, Exergy Technology Concepts.
- Exhibit A-7 January 23 to February 17, 2009 email exchange between James Carkulis, Manager of XRG, Collin Rudeen, and Bruce Griswold, Director of Short-Term Origination and QF Contracts, PacifiCorp C&T.
- Exhibit A-8 February 25, 2009 email exchange between James Carkulis and Bruce Griswold.
- Exhibit A-9 March 23, 2009 email from Bruce Griswold.
- Exhibit A-10 April 1, 2009 email from James Carkulis.
- Exhibit A-11 April 1, 2009 email from Bruce Griswold.
- Exhibit A-12 April 17, 2009 email from James Carkulis.
- Exhibit A-13 April 17 to April 18, 2009 email exchange between James Carkulis and Bruce Griswold.
- Exhibit A-14 May 11, 2009 email from James Carkulis.
- Exhibit A-15 May 11, 2009 email with attachments including draft power purchase agreement from Bruce Griswold.
- Exhibit A-16 May 12, 2009 email from James Carkulis.
- Exhibit A-17 July 6, 2009 email from James Carkulis.
- Exhibit A-18 September 18, 2009 email from James Carkulis.
- Exhibit A-19 October 2, 2009 email with attachments including draft power purchase agreement from Bruce Griswold.
- Exhibit A-20 October 5, 2009 email from James Carkulis.
- Exhibit A-21 October 5 to October 13, 2009 email exchange between James Carkulis and Bruce Griswold.
- Exhibit A-22 October 27 to November 9, 2009 email exchange between Bruce Griswold and

**James Carkulis.**

- Exhibit A-23 March 11, 2010 email from James Carkulis.
- Exhibit A-24 March 12, 2010 email with attachment from Peter Richardson.
- Exhibit A-25 April 13, 2010 letter from Ken Kaufmann, attorney for Rocky Mountain Power.

Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-1**

January 21, 2009 email with attached letter from Peter Richardson, attorney for XRG.



**Griswold, Bruce {Mkt Function}**

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**From:** Peter Richardson [peter@richardsonandoleary.com]  
**Sent:** Wednesday, January 21, 2009 2:59 PM  
**To:** Griswold, Bruce {Mkt Function}; Younie, John  
**Subject:** FW: Jack Ranch Wind Park, LLC

**Attachments:** Document.pdf



Document.pdf (3  
MB)

Bruce and John:

I hope you had nice holidays. Now it is back to work. Attached please find a request for a QF contract for the 78 MW Jack Ranch Wind Park, LLC. This is a larger than 30 average monthly MW project that will need for you to run the IRP methodology. Please give me a call if you have any questions. Also, I will have a couple more for you today.

Thanks, -Pete

Peter Richardson  
Richardson & O'Leary  
515 N. 27th Street  
Boise, Idaho 83702  
(208) 938-7901

-----Original Message-----

**From:** PETER@RICHARDSONANDOLEARY.COM  
[mailto:peter@richardsonandoleary.com]  
**Sent:** Wednesday, January 21, 2009 3:22 PM  
**To:** Peter Richardson  
**Subject:** Jack Ranch Wind Park, LLC



**RICHARDSON & O'LEARY, PLLC**  
ATTORNEYS AT LAW

Peter Richardson

Tel: 208-938-7901 Fax: 208-938-7904  
peter@richardsonandoleary.com  
P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

January 21, 2009

Bruce Griswold  
John Younie  
825 NW Multnomah  
Portland, Oregon 97232  
Via overnight delivery

Re: PURPA Contract for Jack Ranch Wind Park, LLC

Dear Bruce and John:

Please consider this formal request for an Idaho jurisdictional non-standard rate twenty year QF agreement with non-levelized rates. The project will produce more than 30 average monthly MW and should therefore qualify for the Idaho PUC's approved rate methodology using the Company's IRP.

The first operation date is December 31, 2010.

The project is located in Twin Falls County, Idaho. Estimated production data and a legal description of the project's location are attached for your review. Also attached is a copy of the FERC Notice of Self Certification for this project, which together with the map and production data should be sufficient for you to provide my client with a power purchase agreement. Because the project will be interconnect with Idaho Power facilities and deliver to your Brady Substation in Southern Idaho, there is no need for us to engage Rocky Mountain Power for an interconnection agreement.

Thank you for your prompt response and please give me a call if you have any questions.

Sincerely:

A handwritten signature in black ink, appearing to read "Pete Richardson", written in a cursive style.

Pete Richardson  
Attorney for Jack Ranch Wind Park, LLC

# Land Description: Jack Ranch Wind Park, LLC - Hills

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## **Twin Falls County, Idaho - Township 14S, Range 16E**

Section 26  
Section 29  
Section 32  
Section 33  
Section 34

## **Twin Falls County, Idaho - Township 15S, Range 16E**

Section 3  
Section 4  
Section 5  
Section 8  
Section 9  
Section 10  
Section 14  
Section 15  
Section 17  
Section 20  
Section 21  
Section 22  
Section 23  
Section 27  
Section 28  
Section 29  
Section 33

Rocky Mountain Power's Motion for Summary Judgment

**JR1, LLC (Ridges)**

Vestas V90, 1.8 WTG

Nameplate: 43 MW

	Month												Average
	1	2	3	4	5	6	7	8	9	10	11	12	
0	19,659	19,466	27,749	31,164	36,220	24,622	25,318	31,491	24,325	25,564	21,223	23,668	25,874
1	19,216	18,411	28,324	28,407	33,408	25,458	25,737	31,230	22,724	25,826	19,627	25,468	25,320
2	21,908	20,664	26,697	26,291	32,535	26,377	27,057	30,769	24,101	24,926	20,151	24,246	25,477
3	24,459	20,540	25,773	28,784	32,824	25,229	27,242	34,728	26,254	24,237	21,912	21,350	26,111
4	27,889	20,366	24,940	27,727	33,097	23,405	31,347	36,010	30,426	28,635	23,078	22,237	27,430
5	30,342	23,354	26,321	30,583	33,210	21,626	32,310	34,054	27,602	27,093	22,966	24,818	27,857
6	31,418	25,284	24,356	33,104	35,492	24,604	30,972	34,788	28,386	26,259	22,783	23,091	28,378
7	31,183	26,815	24,589	33,597	36,248	21,469	31,706	36,237	33,413	22,452	21,448	20,798	28,330
8	33,423	26,583	23,265	31,612	36,748	21,699	32,129	37,086	30,091	23,035	18,989	21,382	28,004
9	33,356	27,145	23,854	28,202	35,764	22,458	30,610	38,884	28,110	23,968	15,898	17,260	27,126
10	29,193	25,768	24,803	30,334	33,449	22,711	27,013	39,058	30,981	22,335	12,200	13,246	25,924
11	27,394	24,186	25,175	31,396	33,540	20,262	27,130	36,664	27,406	22,509	10,641	10,998	24,775
12	23,680	22,744	24,584	31,268	32,670	21,987	26,784	37,753	24,630	25,940	10,040	9,811	24,324
13	22,532	27,114	25,908	33,630	34,757	23,285	25,920	37,471	22,393	27,579	7,856	9,370	24,818
14	21,983	27,664	27,525	35,382	35,782	24,792	23,293	40,119	23,891	30,614	11,614	10,375	26,086
15	21,796	26,255	32,026	35,639	37,214	27,350	25,376	40,994	27,295	30,566	15,689	10,071	27,522
16	23,735	25,095	30,448	37,656	37,747	26,050	26,041	39,234	25,773	28,625	21,430	13,236	27,923
17	22,044	23,531	25,894	35,510	37,445	25,601	27,540	40,682	27,468	27,798	22,729	16,487	27,727
18	23,480	23,153	26,384	35,690	37,288	28,499	24,719	41,509	26,114	24,578	22,493	23,392	28,117
19	26,412	26,322	28,985	36,404	36,688	26,890	23,472	39,254	24,133	22,718	25,715	22,124	28,260
20	26,861	25,907	24,989	36,189	35,772	24,877	27,335	39,730	24,057	22,864	25,546	25,775	28,320
21	27,577	23,284	26,100	33,502	35,875	24,754	28,942	31,712	24,195	22,269	24,969	29,326	27,709
22	28,006	23,981	26,586	31,637	33,495	26,135	28,638	32,404	23,217	23,030	20,168	26,743	27,003
23	25,443	22,384	27,808	30,203	32,807	25,159	26,061	32,805	22,619	26,480	21,118	24,898	26,482
Average	25,958	24,001	26,378	32,246	35,001	24,387	27,612	36,449	26,234	25,413	19,179	19,590	26,482

Hour

Form Approved  
OMB Control No. 1902-0075  
Expires 7/31/2009

FERC Form No. 556  
18 C.F.R. § 131.80

**CERTIFICATION OF QUALIFYING FACILITY STATUS FOR AN EXISTING OR A  
PROPOSED SMALL POWER PRODUCTION OR COGENERATION FACILITY**

**INFORMATION ABOUT COMPLIANCE**

Compliance with the information collection requirements established by the FERC Form No. 556 is required to obtain and maintain status as a qualifying facility. *See* 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**SUBMITTING COMMENTS ON PUBLIC REPORTING BURDEN**

The estimated burden for completing FERC Form No. 556, including gathering and reporting information, is 4 hours for self-certifications and 38 hours for applications for Commission certification. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Michael Miller, Office of the Executive Director (ED-34), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira\_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

**GENERAL INSTRUCTIONS**

Complete this form by replacing bold text below with responses to each item, as required.

**PART A: GENERAL INFORMATION TO BE SUBMITTED BY ALL APPLICANTS**

1a. Full name of applicant: [Note: Applicant is the legal entity submitting this form, not the individual employee making the filing. Generally, the Applicant will be a company, corporation or organization, unless the facility is owned directly by an individual or individuals.]

**Jack Ranch Wind Park, LLC**

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any:

**None**

Purpose of instant filing (self-certification or self-recertification [18 C.F.R. § 292.207(a)(1)], or application for Commission certification or recertification [18 C.F.R. §§ 292.207(b) and (d)(2)]):

**Self-certification**

1b. Full address of applicant:

**Jack Ranch Wind Park, LLC  
c/o Richardson & O'Leary, PLC  
515 N. 27<sup>th</sup> St.  
Boise, Idaho 83702  
Attn: Peter Richardson**

**Jack Ranch Wind Park, LLC  
c/o Exergy Development Group of Idaho, LLC  
802 W Bannock, Ste 1200  
Boise, ID 83702  
Attn: James Carkulis**

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility.

**Jack Ranch Wind Park, LLC is wholly owned by Exergy Development Group of Idaho, LLC. Exergy Development Group, LLC is not an electric utility or electric utility holding company and is not owned by either. The percentage ownership held by the direct owner that is an electric utility or electric utility holding company, is zero.**

**Jack Ranch Wind Park, LLC will be the operator of the facility**

Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities.

**Other than owning and operating other qualifying facilities the owner of Jack Ranch Wind Park, LLC is not engaged in the generation or sale of electric power.**

In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant: [Note: A signature on a filing shall constitute a certificate that (1) the signer has read the filing and knows its contents; (2) the contents are true as stated, to the best

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knowledge and belief of the signer; and (3) the signer possesses full power and authority to sign the filing. A person submitting a self-certification electronically via eFiling may use typed characters representing their name to show that the person has signed the document. *See* 18 C.F.R. § 385.2005.]

**James T. Carkulis**

2. Person to whom communications regarding the filed information may be addressed:

Name: **Peter Richardson**

Title: **General Counsel**

Telephone number: **(208) 938-7901**

Mailing address: **515 N. 27<sup>th</sup> St., Boise, Idaho 83702**

3a. Location of facility to be certified:

State: **Idaho**

County: **Twin Falls**

City or town: **Rogerson**

Street address (if known): **N/A**

3b. Indicate the electric utilities that are contemplated to transact with the qualifying facility (if known) and describe the services those electric utilities are expected to provide:

**Idaho Power Company possible purchaser**  
**Idaho Power Company possible transmission entity**  
**Avista Utilities possible purchaser**  
**Rocky Mountain Power possible purchaser**

Indicate utilities interconnecting with the facility and/or providing wheeling service [18 C.F.R. §§ 292.303(c) and (d)]:

**Idaho Power Company**

Indicate utilities purchasing the useful electric power output [18 C.F.R. §§ 292.101(b)(2), 292.202(g) and 292.303(a)]:

**Idaho Power Company  
Avista Utilities**

Indicate utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service [18 C.F.R. §§ 292.101(b)(3), (b)(8), 292.303(b) and 292.305(b)]:

**Idaho Power Company**

4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their operation. Include transmission lines, transformers and switchyard equipment, if included as part of the facility.

**The facility shall consist of approximately forty-four Vestas V90 turbines, which have nameplate capacity of 1.8 MW each.**

4b. Indicate the maximum gross and maximum net electric power production capacity of the facility at the point(s) of delivery and show the derivation. [Note: Maximum gross output is the maximum amount of power that the facility is able to produce, measured at the terminals of the generator(s). Maximum net output is maximum gross output minus (1) any auxiliary load for devices that are necessary and integral to the power production process (fans, pumps, etc.), and (2) any losses incurred from the generator(s) to the point of delivery. If any electric power is consumed at the location of the QF (or thermal host) for purposes not related to the power production process, such power should not be subtracted from gross output for purposes of reporting maximum net output here.]

Gross output: 78 MW

Net output: 78 MW

Derivation (assumptions about losses, auxiliary load or lack thereof, and calculation of gross and net output):

**No losses or auxiliary load.**

4c. Indicate the actual or expected installation and operation dates of the facility, or the actual or expected date of completion of the reported modification to the facility:

**June, 2011**

4d. Describe the primary energy input (e.g., hydro, coal, oil [18 C.F.R. § 292.202(l)], natural gas [18 C.F.R. § 292.202(k)], solar, geothermal, wind, waste, biomass [18 C.F.R. § 292.202(a)], or other). For a waste energy input that does not fall within one of the

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categories on the Commission's list of previously approved wastes, demonstrate that such energy input has little or no current commercial value and that it exists in the absence of the qualifying facility industry [18 C.F.R § 292.202(b)].

**Wind**

5. Provide the average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and provide the related percentage of the total average annual hourly energy input to the facility [18 C.F.R § 292.202(j)]. For any oil or natural gas fuel, use lower heating value [18 C.F.R § 292.202(m)]:

Natural gas: **None**

Oil: **None**

Coal (applicable only to a small power production facility): **None**

6. Discuss any particular characteristic of the facility which the cogenerator or small power producer believes might bear on its qualifying status.

**None**

**PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY**

Items 7 and 8 only need to be answered by applicants seeking certification as a small power production facility. Applicants for certification as a cogeneration facility may delete Items 7 and 8 from their application, or enter "N/A" at both items.

7. Describe how fossil fuel use will not exceed 25 percent of the total annual energy input limit [18 C.F.R §§ 292.202(j) and 292.204(b)]. Also, describe how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): ignition, start-up, testing, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.

**N/A**

8. If the facility reported herein is not an eligible solar, wind, waste or geothermal facility, and if any other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above and uses the same primary energy input, provide the following information about the other facility for the purpose of demonstrating that the total of the power production

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capacities of these facilities does not exceed 80 MW [18 C.F.R. § 292.204(a)]: [See definition of an "eligible facility" below. Note that an "eligible facility" is a specific type of small power production facility that is eligible for special treatment under the Wind, Waste and Geothermal Power Production Incentives Act of 1990, as subsequently amended in 1991, and should not be confused with facilities that are generally eligible for QF status.]

Facility name, if any (as reported to the Commission):

N/A

Commission Docket Number:

N/A

Name of common owner:

N/A

Common primary energy source used as energy input:

N/A

Power production capacity (MW):

N/A

An eligible solar, wind, waste or geothermal facility, as defined in Section 3(17)(E) of the Federal Power Act, is a small power production facility that produces electric energy solely by the use, as a primary energy input, of solar, wind, waste or geothermal resources, for which either an application for Commission certification of qualifying status [18 C.F.R. § 292.207(b)] or a notice of self-certification of qualifying status [18 C.F.R. § 292.207(a)] was submitted to the Commission not later than December 31, 1994, and for which construction of such facility commences not later than December 31, 1999, or if not, reasonable diligence is exercised toward the completion of such facility, taking into account all factors relevant to construction of the facility.

#### PART C: DESCRIPTION OF THE COGENERATION FACILITY

Items 9 through 15 only need to be answered by applicants seeking certification as a cogeneration facility. Applicants for certification as a small power production facility may delete Items 9 through 15 from their application, or enter "N/A" at each item.

9. Describe the cogeneration system [18 C.F.R. §§ 292.202(c) and 292.203(b)], and state

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whether the facility is a topping-cycle [18 C.F.R § 292.202(d)] or bottoming-cycle [18 C.F.R § 292.202(e)] cogeneration facility.

N/A

10. To demonstrate the sequentiality of the cogeneration process [18 C.F.R § 292.202(s)] and to support compliance with other requirements such as the operating and efficiency standards (Item 11 below), provide a mass and heat balance (cycle) diagram depicting average annual hourly operating conditions. Also, provide:

Using lower heating value [18 C.F.R § 292.202(m)], all fuel flow inputs in Btu/hr., separately indicating fossil fuel inputs for any supplementary firing in Btu/hr. [18 C.F.R § 292.202(f)]:

N/A

Average net electric output (kW or MW) [18 C.F.R § 292.202(g)]:

N/A

Average net mechanical output in horsepower [18 C.F.R § 292.202(g)]:

N/A

Number of hours of operation used to determine the average annual hourly facility inputs and outputs:

N/A

Working fluid (e.g., steam) flow conditions at input and output of prime mover(s) and at delivery to and return from each useful thermal application, including flow rates (lbs./hr.), temperature (deg. F), pressure (psia), and enthalpy (Btu/lb.):

N/A

11. Compute the operating value [applicable to a topping-cycle facility under 18 C.F.R § 292.205(a)(1)] and the efficiency value [18 C.F.R §§ 292.205(a)(2) and (b)], based on the information provided in and corresponding to item 10, as follows:

P<sub>t</sub> = Average annual hourly useful thermal energy output  
P<sub>e</sub> = Average annual hourly electrical output  
P<sub>m</sub> = Average annual hourly mechanical output

Pi = Average annual hourly energy input (natural gas or oil)

Ps = Average annual hourly energy input for supplementary firing (natural gas or oil)

Operating standard = 5% or more

Operating value =  $P_t / (P_t + P_e + P_m)$

N/A

Efficiency standard applicable to natural gas and oil fuel used in a topping-cycle facility:

= 45% or more when operating value is less than 15%, or 42.5% or more when operating value is equal to or greater than 15%.

Efficiency value =  $(P_e + P_m + 0.5P_t) / (P_i + P_s)$

N/A

Efficiency standard applicable to natural gas and oil fuel used for supplementary firing component of a bottoming-cycle facility:

= 45% or more

Efficiency value =  $(P_e + P_m) / P_s$

N/A

#### FOR TOPPING-CYCLE COGENERATION FACILITIES

Items 12 and 13 only need to be answered by applicants seeking certification as a topping-cycle cogeneration facility. Applicants for certification as a small power production facility or bottoming-cycle cogeneration facility may delete Items 12 and 13 from their application, or enter "N/A" at each item.

12. Identify the entity (i.e., thermal host) which will purchase the useful thermal energy output from the facility [18 C.F.R § 292.202(h)]. Indicate whether the entity uses such output for the purpose of space and water heating, space cooling, and/or process use.

N/A

13. In connection with the requirement that the thermal energy output be useful [18 C.F.R § 292.202(h)]:

For process uses by commercial or industrial host(s), describe each process (or group of similar processes using the same quality of steam) and provide the average annual hourly thermal energy made available to the process, less process return. For a complex system, where the primary steam header at the host-side is divided into various sub-uses, each having different pressure and temperature characteristics, describe the processes associated with each sub-use and provide the average annual hourly thermal energy delivered to each sub-use, less process return from such sub-use. Provide a diagram showing the main steam header and the sub-uses with other relevant information such as the average header pressure (psia), the temperature (deg.F), the enthalpy (Btu/lb.), and the flow (lb./hr.), both in and out of each sub-use. For space and water heating, describe the type of heating involved (e.g., office space heating, domestic water heating) and provide the average annual hourly thermal energy delivered and used for such purpose. For space cooling, describe the type of cooling involved (e.g., office space cooling) and provide the average annual hourly thermal energy used by the chiller.

N/A

#### FOR BOTTOMING-CYCLE FACILITIES

Item 14 only needs to be answered by applicants seeking certification as a bottoming-cycle cogeneration facility. Applicants for certification as a small power production facility or topping-cycle cogeneration facility may delete Item 14 from their application, or enter "N/A."

14. Provide a description of the commercial or industrial process or other thermal application to which the energy input to the system is first applied and from which the reject heat is then used for electric power production.

N/A

#### FOR NEW COGENERATION FACILITIES

Response to Item 15 is only required for certain applicants for qualified cogeneration facility status, as described below. Applicants for small power production facilities or for cogeneration facilities not meeting the criteria outlined below may delete Item 15 from their application, or enter "N/A." In addition, per 18 C.F.R. § 292.205(d)(4) all cogeneration facilities 5 MW and smaller are presumed to comply with the requirements of 18 C.F.R. § 292.205(d)(1) and (d)(2), and therefore need not respond to Item 15. For those applicants required to respond to Item 15, see 18 C.F.R. § 292.205(d) and Order No. 671 for more information on making the demonstrations required in Item 15.

15. For any cogeneration facility that had not filed a notice of self-certification or an application for Commission certification under 18 C.F.R. § 292.207 prior to February 2, 2006, also show:

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(i) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner [18 C.F.R §§ 292.205(d)(1), (d)(4) and (d)(5)]; and

(ii) The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility [18 C.F.R §§ 292.205(d)(2), (d)(3) and (d)(4)].

N/A

Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-2**

January 21, 2009 email with attached letter from Peter Richardson.



**Griswold, Bruce {Mkt Function}**

---

**From:** Peter Richardson [peter@richardsonandoleary.com]  
**Sent:** Wednesday, January 21, 2009 3:00 PM  
**To:** Griswold, Bruce {Mkt Function}; Younie, John  
**Subject:** FW: JR1, LLC

**Attachments:** Document.pdf



Document.pdf (3  
MB)

This is another request for a QF contract of 78 MW for the JR1, LLC wind project. Again you will have to run your IRP model to arrive at a rate. Please feel free to give me a call if you have any questions. -Pete

Peter Richardson  
Richardson & O'Leary  
515 N. 27th Street  
Boise, Idaho 83702  
(208) 938-7901

-----Original Message-----

**From:** PETER@RICHARDSONANDOLEARY.COM  
[mailto:peter@richardsonandoleary.com]  
**Sent:** Wednesday, January 21, 2009 3:39 PM  
**To:** Peter Richardson  
**Subject:** JR1, LLC



**RICHARDSON & O'LEARY, PLLC**  
ATTORNEYS AT LAW

Peter Richardson

Tel: 208-938-7901 Fax: 208-938-7904  
peter@richardsonandoleary.com  
P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

January 21, 2009

Bruce Griswold  
John Younie  
825 NW Multnomah  
Portland, Oregon 97232  
Via overnight delivery

Re: PURPA Contract for JR1, LLC

Dear Bruce and John:

Please consider this formal request for an Idaho jurisdictional non-standard rate twenty year QF agreement with non-levelized rates. The project will produce more than 30 average monthly MW and should therefore qualify for the Idaho PUC's approved rate methodology using the Company's IRP.

The first operation date is December 31, 2010.

The project is located in Twin Falls County, Idaho. Estimated production data and a location map is attached for your review. Also attached is a copy of the FERC Notice of Self Certification for this project, which together with the map and production data should be sufficient for you to provide my client with a power purchase agreement. Because the project will be interconnect with Idaho Power facilities and deliver to your Brady Substation in Southern Idaho, there is no need for us to engage Rocky Mountain Power for an interconnection agreement.

Thank you for your prompt response and please give me a call if you have any questions.

Sincerely:

A handwritten signature in black ink, appearing to read "Pete Richardson", written over a horizontal line.

Pete Richardson  
Attorney for JR1, LLC

## Land Description: JR1, LLC - Flats

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### **Twin Falls County, Idaho - Township 14S, Range 15E**

Section 1  
Section 11  
Section 12  
Section 13  
Section 14  
Section 15  
Section 16  
Section 21  
Section 22  
Section 23  
Section 24  
Section 25  
Section 26  
Section 27  
Section 28  
Section 35

### **Twin Falls County, Idaho - Township 14S, Range 16E**

Section 7  
Section 8  
Section 17  
Section 18  
Section 19  
Section 20  
Section 30

FERC Form No. 556  
18 C.F.R. § 131.80

CERTIFICATION OF QUALIFYING FACILITY STATUS FOR AN EXISTING OR A  
PROPOSED SMALL POWER PRODUCTION OR COGENERATION FACILITY

INFORMATION ABOUT COMPLIANCE

Compliance with the information collection requirements established by the FERC Form No. 556 is required to obtain and maintain status as a qualifying facility. *See* 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUBMITTING COMMENTS ON PUBLIC REPORTING BURDEN

The estimated burden for completing FERC Form No. 556, including gathering and reporting information, is 4 hours for self-certifications and 38 hours for applications for Commission certification. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Michael Miller, Office of the Executive Director (ED-34), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira\_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

GENERAL INSTRUCTIONS

Complete this form by replacing bold text below with responses to each item, as required.

PART A: GENERAL INFORMATION TO BE SUBMITTED BY ALL APPLICANTS

1a. Full name of applicant: [Note: Applicant is the legal entity submitting this form, not the individual employee making the filing. Generally, the Applicant will be a company, corporation or organization, unless the facility is owned directly by an individual or individuals.]

**JR-1, LLC**

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any:

**None**

Purpose of instant filing (self-certification or self-recertification [18 C.F.R. § 292.207(a)(1)], or application for Commission certification or recertification [18 C.F.R. §§ 292.207(b) and (d)(2)]):

**Self-certification**

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1b. Full address of applicant:

**JR-1, LLC  
c/o Richardson & O'Leary, PLC  
515 N. 27<sup>th</sup> St.  
Boise, Idaho 83702  
Attn: Peter Richardson**

**JR-1, LLC  
c/o Exergy Development Group of Idaho, LLC  
802 W Bannock, Ste 1200  
Boise, ID 83702  
Attn: James Carkulis**

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility.

**JR-1, LLC is wholly owned by Exergy Development Group of Idaho, LLC. Exergy Development Group, LLC is not an electric utility or electric utility holding company and is not owned by either. The percentage ownership held by the direct owner that is an electric utility or electric utility holding company, is zero.**

**JR-1, LLC will be the operator of the facility**

Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities.

**Other than owning and operating other qualifying facilities the owner of JR-1, LLC is not engaged in the generation or sale of electric power.**

In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant: [Note: A signature on a filing shall constitute a certificate that (1) the signer has read the filing and knows its contents; (2) the contents are true as stated, to the best knowledge and belief of the signer; and (3) the signer possesses full power and authority to sign the filing.

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A person submitting a self-certification electronically via eFiling may use typed characters representing their name to show that the person has signed the document. *See* 18 C.F.R. § 385.2005.]

**James T. Carkulis**

2. Person to whom communications regarding the filed information may be addressed:

Name: **Peter Richardson**

Title: **General Counsel**

Telephone number: **(208) 938-7901**

Mailing address: **515 N. 27<sup>th</sup> St., Boise, Idaho 83702**

3a. Location of facility to be certified:

State: **Idaho**

County: **Twin Falls**

City or town: **Rogerson**

Street address (if known): **N/A**

3b. Indicate the electric utilities that are contemplated to transact with the qualifying facility (if known) and describe the services those electric utilities are expected to provide:

**Idaho Power Company possible purchaser**

**Idaho Power Company possible transmission entity**

**Avista Utilities possible purchaser**

**Rocky Mountain Power possible purchaser**

Indicate utilities interconnecting with the facility and/or providing wheeling service [18 C.F.R. §§ 292.303(c) and (d)]:

**Idaho Power Company**

Indicate utilities purchasing the useful electric power output [18 C.F.R. §§ 292.101(b)(2), 292.202(g) and 292.303(a)]:

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**Idaho Power Company  
Avista Utilities**

Indicate utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service [18 C.F.R. §§ 292.101(b)(3), (b)(8), 292.303(b) and 292.305(b)]:

**Idaho Power Company**

4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their operation. Include transmission lines, transformers and switchyard equipment, if included as part of the facility.

**The facility shall consist of approximately forty-four Vestas V90 turbines, which have nameplate capacity of 1.8 MW each.**

4b. Indicate the maximum gross and maximum net electric power production capacity of the facility at the point(s) of delivery and show the derivation. [Note: Maximum gross output is the maximum amount of power that the facility is able to produce, measured at the terminals of the generator(s). Maximum net output is maximum gross output minus (1) any auxiliary load for devices that are necessary and integral to the power production process (fans, pumps, etc.), and (2) any losses incurred from the generator(s) to the point of delivery. If any electric power is consumed at the location of the QF (or thermal host) for purposes not related to the power production process, such power should not be subtracted from gross output for purposes of reporting maximum net output here.]

Gross output: **78 MW**

Net output: **78 MW**

Derivation (assumptions about losses, auxiliary load or lack thereof, and calculation of gross and net output):

**No losses or auxiliary load.**

4c. Indicate the actual or expected installation and operation dates of the facility, or the actual or expected date of completion of the reported modification to the facility:

**June, 2011**

4d. Describe the primary energy input (e.g., hydro, coal, oil [18 C.F.R. § 292.202(l)], natural gas [18 C.F.R. § 292.202(k)], solar, geothermal, wind, waste, biomass [18 C.F.R. § 292.202(a)], or other). For a waste energy input that does not fall within one of the categories on the Commission's list of previously approved wastes, demonstrate that such

energy input has little or no current commercial value and that it exists in the absence of the qualifying facility industry [18 C.F.R § 292.202(b)].

**Wind**

5. Provide the average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and provide the related percentage of the total average annual hourly energy input to the facility [18 C.F.R § 292.202(j)]. For any oil or natural gas fuel, use lower heating value [18 C.F.R § 292.202(m)]:

Natural gas: **None**

Oil: **None**

Coal (applicable only to a small power production facility): **None**

6. Discuss any particular characteristic of the facility which the cogenerator or small power producer believes might bear on its qualifying status.

**None**

**PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY**

Items 7 and 8 only need to be answered by applicants seeking certification as a small power production facility. Applicants for certification as a cogeneration facility may delete Items 7 and 8 from their application, or enter "N/A" at both items.

7. Describe how fossil fuel use will not exceed 25 percent of the total annual energy input limit [18 C.F.R §§ 292.202(j) and 292.204(b)]. Also, describe how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): ignition, start-up, testing, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.

**N/A**

8. If the facility reported herein is not an eligible solar, wind, waste or geothermal facility, and if any other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above and uses the same primary energy input, provide the following information about the other facility for the purpose of demonstrating that the total of the power production capacities of these facilities does not exceed 80 MW [18 C.F.R § 292.204(a)]: [See

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definition of an "eligible facility" below. Note that an "eligible facility" is a specific type of small power production facility that is eligible for special treatment under the Wind, Waste and Geothermal Power Production Incentives Act of 1990, as subsequently amended in 1991, and should not be confused with facilities that are generally eligible for QF status.]

Facility name, if any (as reported to the Commission):

N/A

Commission Docket Number:

N/A

Name of common owner:

N/A

Common primary energy source used as energy input:

N/A

Power production capacity (MW):

N/A

An eligible solar, wind, waste or geothermal facility, as defined in Section 3(17)(E) of the Federal Power Act, is a small power production facility that produces electric energy solely by the use, as a primary energy input, of solar, wind, waste or geothermal resources, for which either an application for Commission certification of qualifying status [18 C.F.R § 292.207(b)] or a notice of self-certification of qualifying status [18 C.F.R § 292.207(a)] was submitted to the Commission not later than December 31, 1994, and for which construction of such facility commences not later than December 31, 1999, or if not, reasonable diligence is exercised toward the completion of such facility, taking into account all factors relevant to construction of the facility.

#### PART C: DESCRIPTION OF THE COGENERATION FACILITY

Items 9 through 15 only need to be answered by applicants seeking certification as a cogeneration facility. Applicants for certification as a small power production facility may delete Items 9 through 15 from their application, or enter "N/A" at each item.

9. Describe the cogeneration system [18 C.F.R §§ 292.202(c) and 292.203(b)], and state whether the facility is a topping-cycle [18 C.F.R § 292.202(d)] or bottoming-cycle [18

C.F.R. § 292.202(e)] cogeneration facility.

N/A

10. To demonstrate the sequentiality of the cogeneration process [18 C.F.R. § 292.202(s)] and to support compliance with other requirements such as the operating and efficiency standards (Item 11 below), provide a mass and heat balance (cycle) diagram depicting average annual hourly operating conditions. Also, provide:

Using lower heating value [18 C.F.R. § 292.202(m)], all fuel flow inputs in Btu/hr., separately indicating fossil fuel inputs for any supplementary firing in Btu/hr. [18 C.F.R. § 292.202(f)]:

N/A

Average net electric output (kW or MW) [18 C.F.R. § 292.202(g)]:

N/A

Average net mechanical output in horsepower [18 C.F.R. § 292.202(g)]:

N/A

Number of hours of operation used to determine the average annual hourly facility inputs and outputs:

N/A

Working fluid (e.g., steam) flow conditions at input and output of prime mover(s) and at delivery to and return from each useful thermal application, including flow rates (lbs./hr.), temperature (deg. F), pressure (psia), and enthalpy (Btu/lb.):

N/A

11. Compute the operating value [applicable to a topping-cycle facility under 18 C.F.R. § 292.205(a)(1)] and the efficiency value [18 C.F.R. §§ 292.205(a)(2) and (b)], based on the information provided in and corresponding to item 10, as follows:

Pt = Average annual hourly useful thermal energy output

Pe = Average annual hourly electrical output

Pm = Average annual hourly mechanical output

Pi = Average annual hourly energy input (natural gas or oil)

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$P_s$  = Average annual hourly energy input for supplementary firing (natural gas or oil)

Operating standard = 5% or more

Operating value =  $P_t / (P_t + P_e + P_m)$

N/A

Efficiency standard applicable to natural gas and oil fuel used in a topping-cycle facility:

= 45% or more when operating value is less than 15%, or 42.5% or more when operating value is equal to or greater than 15%.

Efficiency value =  $(P_e + P_m + 0.5P_t) / (P_i + P_s)$

N/A

Efficiency standard applicable to natural gas and oil fuel used for supplementary firing component of a bottoming-cycle facility:

= 45% or more

Efficiency value =  $(P_e + P_m) / P_s$

N/A

#### FOR TOPPING-CYCLE COGENERATION FACILITIES

Items 12 and 13 only need to be answered by applicants seeking certification as a topping-cycle cogeneration facility. Applicants for certification as a small power production facility or bottoming-cycle cogeneration facility may delete Items 12 and 13 from their application, or enter "N/A" at each item.

12. Identify the entity (i.e., thermal host) which will purchase the useful thermal energy output from the facility [18 C.F.R § 292.202(h)]. Indicate whether the entity uses such output for the purpose of space and water heating, space cooling, and/or process use.

N/A

13. In connection with the requirement that the thermal energy output be useful [18 C.F.R § 292.202(h)]:

For process uses by commercial or industrial host(s), describe each process (or group of similar processes using the same quality of steam) and provide the average annual hourly thermal energy made available to the process, less process return. For a complex system, where the primary steam header at the host-side is divided into various sub-uses, each having different pressure and temperature characteristics, describe the processes associated with each sub-use and provide the average annual hourly thermal energy delivered to each sub-use, less process return from such sub-use. Provide a diagram showing the main steam header and the sub-uses with other relevant information such as the average header pressure (psia), the temperature (deg.F), the enthalpy (Btu/lb.), and the flow (lb./hr.), both in and out of each sub-use. For space and water heating, describe the type of heating involved (e.g., office space heating, domestic water heating) and provide the average annual hourly thermal energy delivered and used for such purpose. For space cooling, describe the type of cooling involved (e.g., office space cooling) and provide the average annual hourly thermal energy used by the chiller.

N/A

#### FOR BOTTOMING-CYCLE FACILITIES

Item 14 only needs to be answered by applicants seeking certification as a bottoming-cycle cogeneration facility. Applicants for certification as a small power production facility or topping-cycle cogeneration facility may delete Item 14 from their application, or enter "N/A."

14. Provide a description of the commercial or industrial process or other thermal application to which the energy input to the system is first applied and from which the reject heat is then used for electric power production.

N/A

#### FOR NEW COGENERATION FACILITIES

Response to Item 15 is only required for certain applicants for qualified cogeneration facility status, as described below. Applicants for small power production facilities or for cogeneration facilities not meeting the criteria outlined below may delete Item 15 from their application, or enter "N/A." In addition, per 18 C.F.R. § 292.205(d)(4) all cogeneration facilities 5 MW and smaller are presumed to comply with the requirements of 18 C.F.R. § 292.205(d)(1) and (d)(2), and therefore need not respond to Item 15. For those applicants required to respond to Item 15, see 18 C.F.R. § 292.205(d) and Order No. 671 for more information on making the demonstrations required in Item 15.

15. For any cogeneration facility that had not filed a notice of self-certification or an application for Commission certification under 18 C.F.R. § 292.207 prior to February 2, 2006, also show:

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(i) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner [18 C.F.R §§ 292.205(d)(1), (d)(4) and (d)(5)]; and

(ii) The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility [18 C.F.R §§ 292.205(d)(2), (d)(3) and (d)(4)].

N/A

**JR1, LLC (Flats)**  
 Vestas V90, 1.8 WTG  
 Nameplate: 43 MW

Hour	Month												Average
	1	2	3	4	5	6	7	8	9	10	11	12	
0	17,972	17,715	25,758	29,132	34,285	22,562	23,857	29,085	22,414	23,815	19,685	21,926	24,017
1	17,735	16,746	26,474	26,608	31,327	23,366	24,111	29,287	20,701	23,970	18,248	23,244	23,476
2	20,258	19,015	24,841	24,411	30,282	24,452	25,426	29,022	22,263	22,932	18,840	22,178	23,660
3	22,513	19,009	24,206	26,963	30,571	23,492	25,470	32,872	24,574	22,156	20,612	19,424	24,322
4	25,997	18,654	23,384	25,946	30,759	21,476	29,290	34,307	28,471	26,398	21,729	20,372	25,565
5	28,275	21,245	24,769	28,495	30,934	19,842	30,296	32,153	25,694	24,887	21,324	22,729	25,887
6	29,140	23,418	22,717	31,090	33,406	22,839	29,316	32,905	26,541	24,105	20,959	21,108	26,462
7	28,844	24,849	22,818	31,606	34,408	19,608	30,002	34,297	31,237	20,512	19,593	18,864	26,386
8	31,286	24,795	21,662	29,495	34,952	19,706	30,428	35,096	27,966	21,092	17,341	19,338	26,096
9	31,129	25,195	22,074	26,068	33,575	20,565	28,630	36,861	26,126	22,052	14,412	15,570	25,188
10	26,895	23,933	22,953	28,389	31,298	20,797	24,895	37,015	28,780	20,236	10,949	12,005	24,012
11	25,131	22,796	23,338	29,291	31,714	18,434	24,853	34,786	25,287	20,417	9,474	9,900	22,952
12	21,766	21,246	22,742	29,252	31,023	20,011	24,573	35,766	22,684	23,676	9,033	8,805	22,548
13	20,550	25,260	24,203	31,300	32,607	21,214	23,971	35,144	20,739	25,435	6,896	8,403	22,977
14	20,192	25,636	25,563	33,401	33,594	22,698	21,542	38,035	22,183	28,272	10,344	9,225	24,224
15	20,194	24,481	29,966	33,583	34,812	25,236	23,456	38,735	26,248	28,564	14,209	8,877	25,613
16	22,068	23,322	28,496	35,406	35,607	23,920	24,241	36,594	23,798	26,853	19,744	11,942	25,998
17	20,451	21,746	24,027	33,503	35,111	23,655	25,477	37,992	25,561	26,110	20,719	14,986	25,778
18	21,920	21,347	24,414	33,469	34,774	26,307	22,866	39,296	24,211	22,698	20,351	21,612	26,107
19	24,510	24,426	27,092	34,540	34,377	24,686	21,665	37,082	22,239	20,811	23,584	20,114	26,261
20	24,759	23,884	23,166	34,393	33,799	22,576	25,444	37,550	22,165	20,983	23,421	23,503	26,304
21	25,175	21,395	24,111	31,530	33,959	22,344	27,045	29,460	22,363	20,449	22,790	26,988	25,635
22	25,607	21,766	24,365	29,668	31,406	23,807	26,893	30,130	21,530	21,211	18,315	24,468	24,931
23	23,185	20,336	25,593	28,315	30,900	22,985	24,375	30,479	20,781	24,608	19,299	22,958	24,484
Average	23,981	22,176	24,530	30,244	32,895	22,357	25,756	34,331	24,315	23,423	17,578	17,856	24,484

Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-3**

January 21, 2009 email with attached letter from Peter Richardson.



**Griswold, Bruce {Mkt Function}**

---

**From:** Peter Richardson [peter@richardsonandoleary.com]  
**Sent:** Wednesday, January 21, 2009 3:37 PM  
**To:** Griswold, Bruce {Mkt Function}; Younie, John  
**Subject:** FW: XRG-DP 7, LLC

**Attachments:** Document.pdf



Document.pdf (2 MB)

Bruce and John:

This series of projects are the ones we talked about a while back. There was some confusion as to the production data. They are all straightened out now. There will be four coming over...

Peter Richardson  
Richardson & O'Leary  
515 N. 27th Street  
Boise, Idaho 83702  
(208) 938-7901

-----Original Message-----

**From:** PETER@RICHARDSONANDOLEARY.COM  
[mailto:peter@richardsonandoleary.com]  
**Sent:** Wednesday, January 21, 2009 3:55 PM  
**To:** Peter Richardson  
**Subject:** XRG-DP 7, LLC



**RICHARDSON & O'LEARY, PLLC**  
ATTORNEYS AT LAW

Peter Richardson

Tel: 208-938-7901 Fax: 208-938-7904  
peter@richardsonandoleary.com  
P.O. Box 7218 Boise, ID 83707 • 515 N. 27th St. Boise, ID 83702

January 21, 2009

Bruce Griswold  
John Younie  
825 NW Multnomah  
Portland, Oregon 97232  
Via overnight delivery

Re: PURPA Contract for XRG-DP-7, LLC

Dear Bruce and John:

I visited with you via e-mail communications a while back regarding a PURPA agreement for the above reference company. Please consider this to be a follow up request for an Idaho jurisdictional standard twenty year QF agreement with non-levelized rates. The project will be less than 30 average monthly MW and should therefore qualify for the Idaho PUC's published rates.

The first operation date is December 31, 2010.

The project is located in Cassia County, Idaho. Estimated production data and a location map is attached for your review. Also attached is a copy of the FERC Notice of Self Certification for this project, which together with the map and production data should be sufficient for you to provide my client with a power purchase agreement. Because the project will be interconnect with BPA facilities and deliver to your Brady Substation in Southern Idaho, there is no need for us to engage Rocky Mountain Power for an interconnection agreement.

Thank you for your prompt response and please give me a call if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Pete Richardson". The signature is written in a cursive, flowing style.

Pete Richardson  
Attorney for XRG-DP-7, LLC

**Malta, XRG-DP7 (Simplot)**  
 Vestas V90, 1.8 WTG  
 Nameplate: 19.8 MW

Hour	Month												Average
	1	2	3	4	5	6	7	8	9	10	11	12	
0	4,752	5,662	8,322	8,516	6,378	7,832	5,024	5,407	4,324	6,443	6,298	5,904	6,238
1	4,236	6,003	6,637	8,537	6,760	7,973	5,747	4,931	3,992	5,458	6,193	6,223	6,067
2	4,371	6,098	5,982	8,000	6,263	7,878	5,714	5,353	4,273	4,741	6,451	6,570	5,974
3	4,327	4,804	5,751	7,234	5,841	7,941	5,956	4,805	3,500	5,527	6,982	7,027	5,791
4	4,793	4,966	6,128	6,676	6,533	8,074	6,368	5,738	4,465	5,090	6,957	6,784	6,048
5	4,994	4,742	5,415	6,789	6,454	7,855	6,415	6,480	4,668	4,951	6,745	6,889	6,033
6	5,871	4,935	4,946	6,441	6,501	6,090	6,398	5,307	5,843	5,735	6,808	6,787	5,972
7	5,698	4,327	4,642	5,728	5,208	5,083	5,488	4,613	5,582	5,584	7,492	7,501	5,579
8	5,155	4,744	4,719	5,577	5,273	4,239	3,912	2,357	2,908	4,081	6,650	6,681	4,691
9	4,852	3,495	4,627	5,753	5,679	4,552	3,280	2,353	2,114	2,441	5,951	5,732	4,236
10	4,459	3,248	5,488	5,999	6,268	4,369	3,177	2,183	2,506	2,472	4,608	5,667	4,204
11	4,281	3,278	5,692	5,526	6,418	5,051	3,167	2,519	2,763	3,053	4,056	5,656	4,297
12	5,004	3,210	6,450	5,749	5,763	4,860	3,563	2,762	2,689	3,359	4,113	5,653	4,431
13	5,092	3,462	7,363	6,946	5,624	4,503	4,242	3,122	2,924	3,808	3,817	6,143	4,729
14	4,747	4,000	7,759	5,921	6,724	5,574	4,975	3,801	3,021	4,034	4,017	5,707	5,023
15	4,720	3,787	7,739	6,498	6,831	6,342	5,596	4,503	3,275	4,124	4,467	5,053	5,245
16	4,506	3,776	8,562	7,336	6,844	6,478	6,945	6,306	3,532	5,312	4,369	5,347	5,776
17	4,757	3,589	9,099	7,019	6,393	6,411	7,618	6,702	3,735	6,011	4,307	6,200	5,987
18	5,591	4,925	8,858	7,521	6,260	6,091	7,812	7,183	4,452	7,113	5,225	6,328	6,447
19	5,560	6,204	9,691	8,439	7,016	6,398	6,200	7,081	5,683	7,710	5,446	6,719	6,846
20	5,560	6,134	9,762	9,257	7,742	7,608	5,449	7,929	6,264	7,774	5,227	6,607	7,110
21	5,195	5,404	8,783	9,613	6,821	8,275	5,602	6,967	6,117	6,761	5,930	5,808	6,773
22	5,357	6,165	8,727	8,582	7,228	7,853	5,240	6,282	5,304	7,453	5,930	6,105	6,685
23	5,256	6,147	8,669	8,331	7,698	7,557	5,527	5,797	5,405	6,934	6,244	6,422	6,665
Average	4,964	4,704	7,075	7,158	6,438	6,454	5,392	5,020	4,139	5,249	5,585	6,230	6,230



Form Approved  
OMB Control No. 1902-0075  
Expires 7/31/2009

FERC Form No. 556  
18 C.F.R. § 131.80

CERTIFICATION OF QUALIFYING FACILITY STATUS FOR AN EXISTING OR A  
PROPOSED SMALL POWER PRODUCTION OR COGENERATION FACILITY

INFORMATION ABOUT COMPLIANCE

Compliance with the information collection requirements established by the FERC Form No. 556 is required to obtain and maintain status as a qualifying facility. *See* 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUBMITTING COMMENTS ON PUBLIC REPORTING BURDEN

The estimated burden for completing FERC Form No. 556, including gathering and reporting information, is 4 hours for self-certifications and 38 hours for applications for Commission certification. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Michael Miller, Office of the Executive Director (ED-34), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira\_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

GENERAL INSTRUCTIONS

Complete this form by replacing bold text below with responses to each item, as required.

PART A: GENERAL INFORMATION TO BE SUBMITTED BY ALL APPLICANTS

1a. Full name of applicant: [Note: Applicant is the legal entity submitting this form, not the individual employee making the filing. Generally, the Applicant will be a company, corporation or organization, unless the facility is owned directly by an individual or individuals.]

**XRG-DP7, LLC**

**Primary Activity: Independent Power Producer, renewable electrical generation**

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any:

**none**

Purpose of instant filing (self-certification or self-recertification [18 C.F.R. § 292.207(a)(1)], or application for Commission certification or recertification [18 C.F.R. §§ 292.207(b) and (d)(2)]):

**Self-certification**

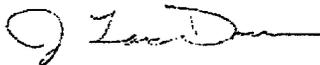
1b. Full address of applicant:

**1424 Dodge Ave.  
Helena, MT 59601**

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility. Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities. In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

**Exergy Development Group – Idaho, LLC  
Exergy Development Group – Idaho, LLC is solely owned by Exergy  
Development Group, LLC, a Montana limited liability company.  
Exergy Development Group, LLC is not comprised of any ownership by a  
public or private utility.**

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant: [Note: A signature on a filing shall constitute a certificate that (1) the signer has read the filing and knows its contents; (2) the contents are true as stated, to the best knowledge and belief of the signer; and (3) the signer possesses full power and authority to sign the filing. A person submitting a self-certification electronically via eFiling may use typed characters representing their name to show that the person has signed the document. See 18 C.F.R. § 385.2005.]



2. Person to whom communications regarding the filed information may be addressed:

Name: **J. Lars Dorr**

Title: **Lead Project Engineer, Exergy Technology Concepts, LLC**

Telephone number: **208.429.1499**

Mailing address: **802 W. Bannock, Ste 1200**

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XRG-DP7, LLC

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**Boise, ID 83702**

3a. Location of facility to be certified:

State: **Idaho**

County: **Cassia**

City or town: **Malta**

Street address (if known): **N/A**

3b. Indicate the electric utilities that are contemplated to transact with the qualifying facility (if known) and describe the services those electric utilities are expected to provide:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities interconnecting with the facility and/or providing wheeling service [18 C.F.R. §§ 292.303(c) and (d)]:

**Bonneville Power Administration**

Indicate utilities purchasing the useful electric power output [18 C.F.R. §§ 292.101(b)(2), 292.202(g) and 292.303(a)]:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service [18 C.F.R. §§ 292.101(b)(3), (b)(8), 292.303(b) and 292.305(b)]:

**Bonneville Power Administration**

4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their operation. Include transmission lines, transformers and switchyard equipment, if included as part of the facility.

**DeWind D8.2, 2.0MW Wind Turbine Generator**  
**Number of units - 10**

4b. Indicate the maximum gross and maximum net electric power production capacity of

the facility at the point(s) of delivery and show the derivation. [Note: Maximum gross output is the maximum amount of power that the facility is able to produce, measured at the terminals of the generator(s). Maximum net output is maximum gross output minus (1) any auxiliary load for devices that are necessary and integral to the power production process (fans, pumps, etc.), and (2) any losses incurred from the generator(s) to the point of delivery. If any electric power is consumed at the location of the QF (or thermal host) for purposes not related to the power production process, such power should not be subtracted from gross output for purposes of reporting maximum net output here.]

Gross output: **20 MW**

Net output: **18 MW**

Derivation (assumptions about losses, auxiliary load or lack thereof, and calculation of gross and net output):

**10.0% losses including, but not limited to, line losses, icing, availability, waking, turbulence/control, etc.**

4c. Indicate the actual or expected installation and operation dates of the facility, or the actual or expected date of completion of the reported modification to the facility:

**June 2008**

4d. Describe the primary energy input (e.g., hydro, coal, oil [18 C.F.R. § 292.202(l)], natural gas [18 C.F.R. § 292.202(k)], solar, geothermal, wind, waste, biomass [18 C.F.R. § 292.202(a)], or other). For a waste energy input that does not fall within one of the categories on the Commission's list of previously approved wastes, demonstrate that such energy input has little or no current commercial value and that it exists in the absence of the qualifying facility industry [18 C.F.R. § 292.202(b)].

**100% Wind energy input**

5. Provide the average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and provide the related percentage of the total average annual hourly energy input to the facility [18 C.F.R. § 292.202(j)]. For any oil or natural gas fuel, use lower heating value [18 C.F.R. § 292.202(m)]:

Natural gas: **None**

Oil: **None**

Coal (applicable only to a small power production facility): **None**

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XRG-DP7, LLC

2/23/2007

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6. Discuss any particular characteristic of the facility which the cogenerator or small power producer believes might bear on its qualifying status.

None

**PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY**

Items 7 and 8 only need to be answered by applicants seeking certification as a small power production facility. Applicants for certification as a cogeneration facility may delete Items 7 and 8 from their application, or enter "N/A" at both items.

7. Describe how fossil fuel use will not exceed 25 percent of the total annual energy input limit [18 C.F.R §§ 292.202(j) and 292.204(b)]. Also, describe how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): ignition, start-up, testing, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.

N/A

8. If the facility reported herein is not an eligible solar, wind, waste or geothermal facility, and if any other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above and uses the same primary energy input, provide the following information about the other facility for the purpose of demonstrating that the total of the power production capacities of these facilities does not exceed 80 MW [18 C.F.R § 292.204(a)]: [See definition of an "eligible facility" below. Note that an "eligible facility" is a specific type of small power production facility that is eligible for special treatment under the Wind, Waste and Geothermal Power Production Incentives Act of 1990, as subsequently amended in 1991, and should not be confused with facilities that are generally eligible for QF status.]

Facility name, if any (as reported to the Commission):

N/A

Commission Docket Number:

N/A

Name of common owner:

N/A

Common primary energy source used as energy input:

N/A

Power production capacity (MW):

N/A

An eligible solar, wind, waste or geothermal facility, as defined in Section 3(17)(E) of the Federal Power Act, is a small power production facility that produces electric energy solely by the use, as a primary energy input, of solar, wind, waste or geothermal resources, for which either an application for Commission certification of qualifying status [18 C.F.R § 292.207(b)] or a notice of self-certification of qualifying status [18 C.F.R § 292.207(a)] was submitted to the Commission not later than December 31, 1994, and for which construction of such facility commences not later than December 31, 1999, or if not, reasonable diligence is exercised toward the completion of such facility, taking into account all factors relevant to construction of the facility.

**PART C: DESCRIPTION OF THE COGENERATION FACILITY**

Items 9 through 15 only need to be answered by applicants seeking certification as a cogeneration facility. Applicants for certification as a small power production facility may delete Items 9 through 15 from their application, or enter "N/A" at each item.

**DELETED**

Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-4**

January 21, 2009 email with attached letter from Peter Richardson.



**Griswold, Bruce {Mkt Function}**

---

**From:** Peter Richardson [peter@richardsonandoleary.com]  
**Sent:** Wednesday, January 21, 2009 3:39 PM  
**To:** Griswold, Bruce {Mkt Function}; Younie, John  
**Subject:** FW: XRG-DP 8, LLC

**Attachments:** Document.pdf



Document.pdf (2  
MB)

Bruce and John: here is the second DP project. I have to reboot my pdf machine to get the last two to you, but in time. Anyway they are all being fed exed to you this evening so you will have them on your desk tomorrow morning.

Peter Richardson  
Richardson & O'Leary  
515 N. 27th Street  
Boise, Idaho 83702  
(208) 938-7901

-----Original Message-----

**From:** PETER@RICHARDSONANDOLEARY.COM  
[mailto:peter@richardsonandoleary.com]  
**Sent:** Wednesday, January 21, 2009 4:07 PM  
**To:** Peter Richardson  
**Subject:** XRG-DP 8, LLC



**RICHARDSON & O'LEARY, PLLC**  
ATTORNEYS AT LAW

Peter Richardson

Tel: 208-938-7901 Fax: 208-938-7904  
peter@richardsonandoleary.com  
P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

January 21, 2009

Bruce Griswold  
John Younie  
825 NW Multnomah  
Portland, Oregon 97232  
Via overnight delivery

Re: PURPA Contract for XRG-DP-8, LLC

Dear Bruce and John:

I visited with you via e-mail communications a while back regarding a PURPA agreement for the above reference company. Please consider this to be a follow up request for an Idaho jurisdictional standard twenty year QF agreement with non-levelized rates. The project will be less than 30 average monthly MW and should therefore qualify for the Idaho PUC's published rates.

The first operation date is December 31, 2010.

The project is located in Cassia County, Idaho. Estimated production data and a location map is attached for your review. Also attached is a copy of the FERC Notice of Self Certification for this project, which together with the map and production data should be sufficient for you to provide my client with a power purchase agreement. Because the project will be interconnect with BPA facilities and deliver to your Brady Substation in Southern Idaho, there is no need for us to engage Rocky Mountain Power for an interconnection agreement.

Thank you for your prompt response and please give me a call if you have any questions.

Sincerely:

  
Pete Richardson  
Attorney for XRG-DP-8, LLC

**Malta, XRG-DP8 (Pickett)**  
 Vestas V90, 1.8 WTG  
 Nameplate: 19.8 MW

Hour	Month												Average
	1	2	3	4	5	6	7	8	9	10	11	12	
0	5,465	6,512	9,570	9,793	7,334	9,007	5,778	6,218	4,972	7,409	7,242	6,790	7,174
1	4,872	6,903	7,632	9,818	7,774	9,189	6,609	5,670	4,590	6,277	7,122	7,157	6,966
2	5,027	7,013	6,879	9,200	7,203	9,080	6,571	6,156	4,914	5,452	7,418	7,555	6,871
3	4,976	5,295	6,613	8,319	6,717	9,132	6,850	5,528	4,025	6,356	8,029	8,081	6,660
4	5,512	5,711	7,047	7,677	7,513	9,235	7,323	6,599	5,135	5,864	8,000	7,802	6,955
5	5,744	5,454	6,227	7,808	7,422	9,034	7,377	7,451	5,368	5,694	7,757	7,922	6,938
6	6,752	5,676	5,688	7,408	7,476	7,004	7,357	6,103	6,720	6,595	7,830	7,805	6,868
7	6,552	4,976	5,338	6,588	5,989	5,846	6,311	5,305	6,419	6,422	8,615	8,626	6,416
8	5,928	5,455	5,427	6,414	6,064	4,875	4,499	2,711	3,344	4,693	7,648	7,683	5,395
9	5,580	4,019	5,321	6,616	6,531	5,236	3,772	2,706	2,431	2,807	6,844	6,592	4,871
10	5,128	3,735	6,311	6,899	7,208	5,024	3,654	2,510	2,882	2,843	5,299	6,517	4,834
11	4,924	3,769	6,545	6,470	7,381	5,809	3,642	2,897	3,178	3,511	4,664	6,503	4,941
12	5,755	3,691	7,417	6,612	6,627	5,589	4,098	3,176	3,093	3,863	4,730	6,501	5,096
13	5,855	3,981	8,467	7,643	6,467	5,179	4,878	3,590	3,363	4,380	4,389	7,064	5,438
14	5,459	4,599	8,923	6,809	7,732	6,410	5,722	4,371	3,474	4,640	4,619	6,563	5,777
15	5,428	4,355	8,900	7,473	7,855	7,293	6,435	5,178	3,767	4,743	5,137	5,811	6,031
16	5,182	4,342	9,846	8,437	7,871	7,449	7,987	7,252	4,062	6,108	5,024	6,149	6,642
17	5,471	4,128	10,464	8,072	7,352	7,373	8,761	7,707	4,295	6,913	4,953	7,129	6,885
18	6,430	5,664	10,187	8,649	7,199	7,005	8,983	8,261	5,120	8,180	6,009	7,278	7,414
19	6,393	7,135	11,144	9,705	8,071	7,357	7,130	8,143	6,535	8,866	6,263	7,727	7,872
20	6,394	7,054	11,227	10,645	8,904	8,749	6,266	9,119	7,204	8,940	6,011	7,598	8,176
21	5,974	6,215	10,100	11,055	7,845	9,516	6,442	8,012	7,034	7,775	6,819	6,680	7,789
22	6,160	7,090	10,036	9,869	8,313	9,031	6,026	7,224	6,100	8,570	6,819	7,021	7,688
23	6,044	7,069	9,969	9,581	8,853	8,690	6,356	6,666	6,215	7,974	7,181	7,385	7,665
Average	5,708	5,410	8,137	8,232	7,404	7,422	6,201	5,773	4,760	6,036	6,434	7,164	7,665

DELORME

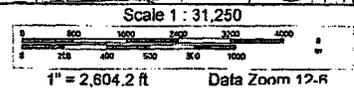
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Form Approved  
OMB Control No. 1902-0075  
Expires 7/31/2009

FERC Form No. 556  
18 C.F.R. § 131.80

**CERTIFICATION OF QUALIFYING FACILITY STATUS FOR AN EXISTING OR A  
PROPOSED SMALL POWER PRODUCTION OR COGENERATION FACILITY**

**INFORMATION ABOUT COMPLIANCE**

Compliance with the information collection requirements established by the FERC Form No. 556 is required to obtain and maintain status as a qualifying facility. *See* 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**SUBMITTING COMMENTS ON PUBLIC REPORTING BURDEN**

The estimated burden for completing FERC Form No. 556, including gathering and reporting information, is 4 hours for self-certifications and 38 hours for applications for Commission certification. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Michael Miller, Office of the Executive Director (ED-34), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira\_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

**GENERAL INSTRUCTIONS**

Complete this form by replacing bold text below with responses to each item, as required.

**PART A: GENERAL INFORMATION TO BE SUBMITTED BY ALL APPLICANTS**

1a. Full name of applicant: [Note: Applicant is the legal entity submitting this form, not the individual employee making the filing. Generally, the Applicant will be a company, corporation or organization, unless the facility is owned directly by an individual or individuals.]

**XRG-DP8, LLC**

**Primary Activity: Independent Power Producer, renewable electrical generation**

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any:

**none**

Purpose of instant filing (self-certification or self-recertification [18 C.F.R. § 292.207(a)(1)], or application for Commission certification or recertification [18 C.F.R. §§ 292.207(b) and (d)(2)]):

**Self-certification**

1b. Full address of applicant:

**1424 Dodge Ave.  
Helena, MT 59601**

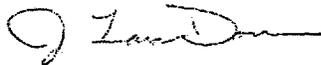
1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility. Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities. In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

**Exergy Development Group – Idaho, LLC**

**Exergy Development Group – Idaho, LLC is solely owned by Exergy Development Group, LLC, a Montana limited liability company.**

**Exergy Development Group, LLC is not comprised of any ownership by a public or private utility.**

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant: [Note: A signature on a filing shall constitute a certificate that (1) the signer has read the filing and knows its contents; (2) the contents are true as stated, to the best knowledge and belief of the signer; and (3) the signer possesses full power and authority to sign the filing. A person submitting a self-certification electronically via eFiling may use typed characters representing their name to show that the person has signed the document. See 18 C.F.R. § 385.2005.]



2. Person to whom communications regarding the filed information may be addressed:

Name: **J. Lars Dorr**

Title: **Lead Project Engineer, Exergy Technology Concepts, LLC**

Telephone number: **208.429.1499**

Mailing address: **802 W. Bannock, Ste 1200**

FERC Form No. 556  
XRG-DP8, LLC

2/23/2007

Page 3 of 6

**Boise, ID 83702**

3a. Location of facility to be certified:

State: **Idaho**

County: **Cassia**

City or town: **Malta**

Street address (if known): **N/A**

3b. Indicate the electric utilities that are contemplated to transact with the qualifying facility (if known) and describe the services those electric utilities are expected to provide:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities interconnecting with the facility and/or providing wheeling service [18 C.F.R. §§ 292.303(c) and (d)]:

**Bonneville Power Administration**

Indicate utilities purchasing the useful electric power output [18 C.F.R. §§ 292.101(b)(2), 292.202(g) and 292.303(a)]:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service [18 C.F.R. §§ 292.101(b)(3), (b)(8), 292.303(b) and 292.305(b)]:

**Bonneville Power Administration**

4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their operation. Include transmission lines, transformers and switchyard equipment, if included as part of the facility.

**DeWind D8.2, 2.0MW Wind Turbine Generator**  
**Number of units - 10**

4b. Indicate the maximum gross and maximum net electric power production capacity of

the facility at the point(s) of delivery and show the derivation. [Note: Maximum gross output is the maximum amount of power that the facility is able to produce, measured at the terminals of the generator(s). Maximum net output is maximum gross output minus (1) any auxiliary load for devices that are necessary and integral to the power production process (fans, pumps, etc.), and (2) any losses incurred from the generator(s) to the point of delivery. If any electric power is consumed at the location of the QF (or thermal host) for purposes not related to the power production process, such power should not be subtracted from gross output for purposes of reporting maximum net output here.]

Gross output: **20 MW**

Net output: **18 MW**

Derivation (assumptions about losses, auxiliary load or lack thereof, and calculation of gross and net output):

**10.0% losses including, but not limited to, line losses, icing, availability, waking, turbulence/control, etc.**

4c. Indicate the actual or expected installation and operation dates of the facility, or the actual or expected date of completion of the reported modification to the facility:

**June 2008**

4d. Describe the primary energy input (e.g., hydro, coal, oil [18 C.F.R. § 292.202(l)], natural gas [18 C.F.R. § 292.202(k)], solar, geothermal, wind, waste, biomass [18 C.F.R. § 292.202(a)], or other). For a waste energy input that does not fall within one of the categories on the Commission's list of previously approved wastes, demonstrate that such energy input has little or no current commercial value and that it exists in the absence of the qualifying facility industry [18 C.F.R. § 292.202(b)].

**100% Wind energy input**

5. Provide the average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and provide the related percentage of the total average annual hourly energy input to the facility [18 C.F.R. § 292.202(j)]. For any oil or natural gas fuel, use lower heating value [18 C.F.R. § 292.202(m)]:

Natural gas: **None**

Oil: **None**

Coal (applicable only to a small power production facility): **None**

FERC Form No. 556  
XRG-DP8, LLC

2/23/2007

Page 5 of 6

6. Discuss any particular characteristic of the facility which the cogenerator or small power producer believes might bear on its qualifying status.

None

**PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY**

Items 7 and 8 only need to be answered by applicants seeking certification as a small power production facility. Applicants for certification as a cogeneration facility may delete Items 7 and 8 from their application, or enter "N/A" at both items.

7. Describe how fossil fuel use will not exceed 25 percent of the total annual energy input limit [18 C.F.R §§ 292.202(j) and 292.204(b)]. Also, describe how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): ignition, start-up, testing, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.

N/A

8. If the facility reported herein is not an eligible solar, wind, waste or geothermal facility, and if any other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above and uses the same primary energy input, provide the following information about the other facility for the purpose of demonstrating that the total of the power production capacities of these facilities does not exceed 80 MW [18 C.F.R § 292.204(a)]: [See definition of an "eligible facility" below. Note that an "eligible facility" is a specific type of small power production facility that is eligible for special treatment under the Wind, Waste and Geothermal Power Production Incentives Act of 1990, as subsequently amended in 1991, and should not be confused with facilities that are generally eligible for QF status.]

Facility name, if any (as reported to the Commission):

N/A

Commission Docket Number:

N/A

Name of common owner:

N/A

Common primary energy source used as energy input:

N/A

Power production capacity (MW):

N/A

An eligible solar, wind, waste or geothermal facility, as defined in Section 3(17)(E) of the Federal Power Act, is a small power production facility that produces electric energy solely by the use, as a primary energy input, of solar, wind, waste or geothermal resources, for which either an application for Commission certification of qualifying status [18 C.F.R. § 292.207(b)] or a notice of self-certification of qualifying status [18 C.F.R. § 292.207(a)] was submitted to the Commission not later than December 31, 1994, and for which construction of such facility commences not later than December 31, 1999, or if not, reasonable diligence is exercised toward the completion of such facility, taking into account all factors relevant to construction of the facility.

**PART C: DESCRIPTION OF THE COGENERATION FACILITY**

Items 9 through 15 only need to be answered by applicants seeking certification as a cogeneration facility. Applicants for certification as a small power production facility may delete Items 9 through 15 from their application, or enter "N/A" at each item.

**DELETED**

Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-5**

January 22, 2009 email from Peter Richardson.



**Griswold, Bruce {Mkt Function}**

---

**From:** Peter Richardson [peter@richardsonandoleary.com]  
**Sent:** Thursday, January 22, 2009 7:24 AM  
**To:** Griswold, Bruce {Mkt Function}; Younie, John  
**Subject:** Correction to the DP Letters

Bruce and John,

Just wanted to note a typo in my cover letters for the four DP projects. In those letters I noted that the projects are entitled to the published rates because they are below 30 average monthly MW. That should have been below 10 average monthly MW. The production numbers on the enclosed spread sheets reflect the actual predicted production which is below 10 average monthly MW. The 30 number was simply an error on the lawyer's part and not the engineer's. Sorry for any confusion this may have presented.

-Pete

Peter Richardson  
Richardson & O'Leary  
515 N. 27th Street  
Boise, Idaho 83702  
(208) 938-7901



Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-6**

January 22, 2009 email with attachments from Collin Rudeen, Lead Project Engineer, Exergy Technology Concepts.



**Younie, John**

---

**From:** collin.rudeen@gmail.com on behalf of Collin Rudeen [crudeen@exergydevelopment.com]  
**Sent:** Thursday, January 22, 2009 7:51 AM  
**To:** Griswold, Bruce {Mkt Function}; Younie, John  
**Cc:** Peter Richardson; James Carkulis  
**Subject:** PURPA contract requests  
**Attachments:** PURPA Contract Request - XRG-DP9.pdf; PURPA Contract Request - XRG-DP10.pdf; FERC Form 556 - XRG-DP7.pdf

John and Bruce,

Please see the three attached files, sent at Peter Richardson's request.

Regards,

--

Collin Rudeen  
Lead Project Engineer  
Exergy Technology Concepts  
802 W Bannock, ste 1200  
Boise, ID 83702  
ph: 208.336.9793  
[crudeen@exergydevelopment.com](mailto:crudeen@exergydevelopment.com)

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FERC Form No. 556  
18 C.F.R. § 131.80

CERTIFICATION OF QUALIFYING FACILITY STATUS FOR AN EXISTING OR A  
PROPOSED SMALL POWER PRODUCTION OR COGENERATION FACILITY

INFORMATION ABOUT COMPLIANCE

Compliance with the information collection requirements established by the FERC Form No. 556 is required to obtain and maintain status as a qualifying facility. *See* 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUBMITTING COMMENTS ON PUBLIC REPORTING BURDEN

The estimated burden for completing FERC Form No. 556, including gathering and reporting information, is 4 hours for self-certifications and 38 hours for applications for Commission certification. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Michael Miller, Office of the Executive Director (ED-34), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira\_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

GENERAL INSTRUCTIONS

Complete this form by replacing bold text below with responses to each item, as required.

PART A: GENERAL INFORMATION TO BE SUBMITTED BY ALL APPLICANTS

1a. Full name of applicant: [Note: Applicant is the legal entity submitting this form, not the individual employee making the filing. Generally, the Applicant will be a company, corporation or organization, unless the facility is owned directly by an individual or individuals.]

**XRG-DP7, LLC**

**Primary Activity: Independent Power Producer, renewable electrical generation**

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any:

**none**

Purpose of instant filing (self-certification or self-recertification [18 C.F.R. § 292.207(a)(1)], or application for Commission certification or recertification [18 C.F.R. §§ 292.207(b) and (d)(2)]):

FERC Form No. 556  
XRG-DP7, LLC

2/23/2007

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### Self-certification

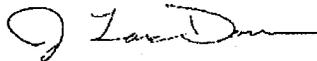
1b. Full address of applicant:

**1424 Dodge Ave.  
Helena, MT 59601**

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility. Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities. In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

**Exergy Development Group – Idaho, LLC  
Exergy Development Group – Idaho, LLC is solely owned by Exergy  
Development Group, LLC, a Montana limited liability company.  
Exergy Development Group, LLC is not comprised of any ownership by a  
public or private utility.**

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant: [Note: A signature on a filing shall constitute a certificate that (1) the signer has read the filing and knows its contents; (2) the contents are true as stated, to the best knowledge and belief of the signer; and (3) the signer possesses full power and authority to sign the filing. A person submitting a self-certification electronically via eFiling may use typed characters representing their name to show that the person has signed the document. See 18 C.F.R. § 385.2005.]



2. Person to whom communications regarding the filed information may be addressed:

Name: **J. Lars Dorr**

Title: **Lead Project Engineer, Exergy Technology Concepts, LLC**

Telephone number: **208.429.1499**

Mailing address: **802 W. Bannock, Ste 1200**

FERC Form No. 556  
XRG-DP7, LLC

2/23/2007

Page 3 of 6

**Boise, ID 83702**

3a. Location of facility to be certified:

State: **Idaho**

County: **Cassia**

City or town: **Malta**

Street address (if known): **N/A**

3b. Indicate the electric utilities that are contemplated to transact with the qualifying facility (if known) and describe the services those electric utilities are expected to provide:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities interconnecting with the facility and/or providing wheeling service [18 C.F.R. §§ 292.303(c) and (d)]:

**Bonneville Power Administration**

Indicate utilities purchasing the useful electric power output [18 C.F.R. §§ 292.101(b)(2), 292.202(g) and 292.303(a)]:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service [18 C.F.R. §§ 292.101(b)(3), (b)(8), 292.303(b) and 292.305(b)]:

**Bonneville Power Administration**

4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their operation. Include transmission lines, transformers and switchyard equipment, if included as part of the facility.

**DeWind D8.2, 2.0MW Wind Turbine Generator**

**Number of units - 10**

4b. Indicate the maximum gross and maximum net electric power production capacity of

FERC Form No. 556  
XRG-DP7, LLC

2/23/2007

Page 4 of 6

the facility at the point(s) of delivery and show the derivation. [Note: Maximum gross output is the maximum amount of power that the facility is able to produce, measured at the terminals of the generator(s). Maximum net output is maximum gross output minus (1) any auxiliary load for devices that are necessary and integral to the power production process (fans, pumps, etc.), and (2) any losses incurred from the generator(s) to the point of delivery. If any electric power is consumed at the location of the QF (or thermal host) for purposes not related to the power production process, such power should not be subtracted from gross output for purposes of reporting maximum net output here.]

Gross output: **20 MW**

Net output: **18 MW**

Derivation (assumptions about losses, auxiliary load or lack thereof, and calculation of gross and net output):

**10.0% losses including, but not limited to, line losses, icing, availability, waking, turbulence/control, etc.**

4c. Indicate the actual or expected installation and operation dates of the facility, or the actual or expected date of completion of the reported modification to the facility:

**June 2008**

4d. Describe the primary energy input (e.g., hydro, coal, oil [18 C.F.R. § 292.202(l)], natural gas [18 C.F.R. § 292.202(k)], solar, geothermal, wind, waste, biomass [18 C.F.R. § 292.202(a)], or other). For a waste energy input that does not fall within one of the categories on the Commission's list of previously approved wastes, demonstrate that such energy input has little or no current commercial value and that it exists in the absence of the qualifying facility industry [18 C.F.R. § 292.202(b)].

**100% Wind energy input**

5. Provide the average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and provide the related percentage of the total average annual hourly energy input to the facility [18 C.F.R. § 292.202(j)]. For any oil or natural gas fuel, use lower heating value [18 C.F.R. § 292.202(m)]:

Natural gas: **None**

Oil: **None**

Coal (applicable only to a small power production facility): **None**

FERC Form No. 556  
XRG-DP7, LLC

2/23/2007

Page 5 of 6

6. Discuss any particular characteristic of the facility which the cogenerator or small power producer believes might bear on its qualifying status.

None

**PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY**

Items 7 and 8 only need to be answered by applicants seeking certification as a small power production facility. Applicants for certification as a cogeneration facility may delete Items 7 and 8 from their application, or enter "N/A" at both items.

7. Describe how fossil fuel use will not exceed 25 percent of the total annual energy input limit [18 C.F.R §§ 292.202(j) and 292.204(b)]. Also, describe how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): ignition, start-up, testing, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.

N/A

8. If the facility reported herein is not an eligible solar, wind, waste or geothermal facility, and if any other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above and uses the same primary energy input, provide the following information about the other facility for the purpose of demonstrating that the total of the power production capacities of these facilities does not exceed 80 MW [18 C.F.R § 292.204(a)]: [See definition of an "eligible facility" below. Note that an "eligible facility" is a specific type of small power production facility that is eligible for special treatment under the Wind, Waste and Geothermal Power Production Incentives Act of 1990, as subsequently amended in 1991, and should not be confused with facilities that are generally eligible for QF status.]

Facility name, if any (as reported to the Commission):

N/A

Commission Docket Number:

N/A

Name of common owner:

N/A

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XRG-DP7, LLC

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Page 6 of 6

Common primary energy source used as energy input:

N/A

Power production capacity (MW):

N/A

An eligible solar, wind, waste or geothermal facility, as defined in Section 3(17)(E) of the Federal Power Act, is a small power production facility that produces electric energy solely by the use, as a primary energy input, of solar, wind, waste or geothermal resources, for which either an application for Commission certification of qualifying status [18 C.F.R § 292.207(b)] or a notice of self-certification of qualifying status [18 C.F.R § 292.207(a)] was submitted to the Commission not later than December 31, 1994, and for which construction of such facility commences not later than December 31, 1999, or if not, reasonable diligence is exercised toward the completion of such facility, taking into account all factors relevant to construction of the facility.

**PART C: DESCRIPTION OF THE COGENERATION FACILITY**

Items 9 through 15 only need to be answered by applicants seeking certification as a cogeneration facility. Applicants for certification as a small power production facility may delete Items 9 through 15 from their application, or enter "N/A" at each item.

**DELETED**

1108-37.4  
Cover



**RICHARDSON & O'LEARY, PLLC**  
ATTORNEYS AT LAW

Peter Richardson

Tel: 208-938-7901 Fax: 208-938-7904  
peter@richardsonandoleary.com  
P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

January 21, 2009

Bruce Griswold  
John Younie  
825 NW Multnomah  
Portland, Oregon 97232  
Via overnight delivery

Re: PURPA Contract for XRG-DP-10, LLC

Dear Bruce and John:

I visited with you via e-mail communications a while back regarding a PURPA agreement for the above reference company. Please consider this to be a follow up request for an Idaho jurisdictional standard twenty year QF agreement with non-levelized rates. The project will be less than 30 average monthly MW and should therefore qualify for the Idaho PUC's published rates.

The first operation date is December 31, 2010.

The project is located in Cassia County, Idaho. Estimated production data and a location map is attached for your review. Also attached is a copy of the FERC Notice of Self Certification for this project, which together with the map and production data should be sufficient for you to provide my client with a power purchase agreement. Because the project will be interconnect with BPA facilities and deliver to your Brady Substation in Southern Idaho, there is no need for us to engage Rocky Mountain Power for an interconnection agreement.

Thank you for your prompt response and please give me a call if you have any questions.

Sincerely:

  
Peter Richardson  
Attorney for XRG-DP-10, LLC

**Malta, XRG-DP10 (Newcomb West)**  
 Vestas V90, 1.8 WTG  
 Nameplate: 19.8 MW

Hour	Month												Average
	1	2	3	4	5	6	7	8	9	10	11	12	
0	5,208	6,206	9,121	9,333	6,990	8,584	5,506	5,926	4,739	7,061	6,902	6,471	6,837
1	4,643	6,579	7,274	9,357	7,409	8,738	6,299	5,404	4,375	5,982	6,788	6,821	6,639
2	4,791	6,694	6,556	8,768	6,865	8,634	6,263	5,867	4,683	5,196	7,070	7,201	6,548
3	4,742	5,046	6,303	7,929	6,402	8,703	6,528	5,266	3,836	6,057	7,652	7,701	6,347
4	5,253	5,443	6,716	7,317	7,160	8,849	6,979	6,289	4,894	5,579	7,625	7,436	6,628
5	5,474	5,198	5,934	7,441	7,073	8,610	7,031	7,102	5,116	5,427	7,393	7,551	6,612
6	6,435	5,409	5,421	7,060	7,125	6,675	7,012	5,816	6,404	6,285	7,462	7,439	6,545
7	6,245	4,743	5,088	6,278	5,708	5,571	6,015	5,056	6,118	6,120	8,211	8,221	6,114
8	5,650	5,199	5,172	6,113	5,779	4,646	4,288	2,584	3,187	4,473	7,289	7,322	5,142
9	5,318	3,831	5,071	6,306	6,224	4,989	3,595	2,579	2,317	2,675	6,523	6,282	4,643
10	4,887	3,560	6,015	6,575	6,869	4,788	3,482	2,392	2,747	2,709	5,050	6,211	4,607
11	4,692	3,592	6,238	6,166	7,034	5,536	3,471	2,761	3,029	3,346	4,445	6,198	4,709
12	5,485	3,518	7,069	6,301	6,316	5,327	3,906	3,027	2,948	3,682	4,508	6,195	4,857
13	5,581	3,794	8,070	7,284	6,164	4,936	4,649	3,422	3,205	4,174	4,183	6,732	5,183
14	5,202	4,384	8,504	6,489	7,369	6,109	5,453	4,166	3,311	4,422	4,403	6,255	5,506
15	5,173	4,151	8,482	7,122	7,486	6,951	6,133	4,935	3,590	4,520	4,896	5,538	5,748
16	4,938	4,138	9,384	8,041	7,502	7,099	7,612	6,911	3,871	5,822	4,788	5,861	6,331
17	5,214	3,934	9,973	7,693	7,007	7,026	8,350	7,345	4,094	6,588	4,720	6,795	6,562
18	6,128	5,398	9,709	8,243	6,861	6,676	8,562	7,873	4,879	7,796	5,727	6,936	7,066
19	6,093	6,800	10,621	9,249	7,692	7,012	6,795	7,760	6,228	8,450	5,969	7,364	7,503
20	6,094	6,723	10,700	10,145	8,486	8,339	5,972	8,691	6,866	8,521	5,729	7,241	7,792
21	5,693	5,923	9,626	10,536	7,476	9,089	6,140	7,636	6,704	7,410	6,498	6,366	7,423
22	5,871	6,757	9,565	9,405	7,922	8,607	5,743	6,885	5,813	8,168	6,498	6,691	7,327
23	5,761	6,737	9,501	9,131	8,437	8,282	6,058	6,353	5,924	7,599	6,844	7,038	7,305
Average	5,440	5,156	7,755	7,845	7,057	7,073	5,910	5,502	4,537	5,753	6,132	6,828	6,828



Form Approved  
OMB Control No. 1902-0075  
Expires 7/31/2009

FERC Form No. 556  
18 C.F.R. § 131.80

CERTIFICATION OF QUALIFYING FACILITY STATUS FOR AN EXISTING OR A  
PROPOSED SMALL POWER PRODUCTION OR COGENERATION FACILITY

INFORMATION ABOUT COMPLIANCE

Compliance with the information collection requirements established by the FERC Form No. 556 is required to obtain and maintain status as a qualifying facility. See 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUBMITTING COMMENTS ON PUBLIC REPORTING BURDEN

The estimated burden for completing FERC Form No. 556, including gathering and reporting information, is 4 hours for self-certifications and 38 hours for applications for Commission certification. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Michael Miller, Office of the Executive Director (ED-34), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira\_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

GENERAL INSTRUCTIONS

Complete this form by replacing bold text below with responses to each item, as required.

PART A: GENERAL INFORMATION TO BE SUBMITTED BY ALL APPLICANTS

1a. Full name of applicant: [Note: Applicant is the legal entity submitting this form, not the individual employee making the filing. Generally, the Applicant will be a company, corporation or organization, unless the facility is owned directly by an individual or individuals.]

**XRG-DP10, LLC**

**Primary Activity: Independent Power Producer, renewable electrical generation**

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any:

**none**

Purpose of instant filing (self-certification or self-recertification [18 C.F.R. § 292.207(a)(1)], or application for Commission certification or recertification [18 C.F.R. §§ 292.207(b) and (d)(2)]):

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XRG-DPI0, LLC

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### Self-certification

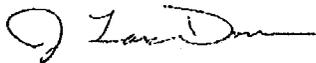
1b. Full address of applicant:

**1424 Dodge Ave.  
Helena, MT 59601**

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility. Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities. In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

**Exergy Development Group – Idaho, LLC  
Exergy Development Group – Idaho, LLC is solely owned by Exergy  
Development Group, LLC, a Montana limited liability company.  
Exergy Development Group, LLC is not comprised of any ownership by a  
public or private utility.**

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant: [Note: A signature on a filing shall constitute a certificate that (1) the signer has read the filing and knows its contents; (2) the contents are true as stated, to the best knowledge and belief of the signer; and (3) the signer possesses full power and authority to sign the filing. A person submitting a self-certification electronically via eFiling may use typed characters representing their name to show that the person has signed the document. See 18 C.F.R. § 385.2005.]



2. Person to whom communications regarding the filed information may be addressed:

Name: **J. Lars Dorr**

Title: **Lead Project Engineer, Exergy Technology Concepts, LLC**

Telephone number: **208.429.1499**

Mailing address: **802 W. Bannock, Ste 1200**

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XRG-DP10, LLC

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**Boise, ID 83702**

3a. Location of facility to be certified:

State: **Idaho**

County: **Cassia**

City or town: **Malta**

Street address (if known): **N/A**

3b. Indicate the electric utilities that are contemplated to transact with the qualifying facility (if known) and describe the services those electric utilities are expected to provide:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities interconnecting with the facility and/or providing wheeling service [18 C.F.R. §§ 292.303(c) and (d)]:

**Bonneville Power Administration**

Indicate utilities purchasing the useful electric power output [18 C.F.R. §§ 292.101(b)(2), 292.202(g) and 292.303(a)]:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service [18 C.F.R. §§ 292.101(b)(3), (b)(8), 292.303(b) and 292.305(b)]:

**Bonneville Power Administration**

4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their operation. Include transmission lines, transformers and switchyard equipment, if included as part of the facility.

**DeWind D8.2, 2.0MW Wind Turbine Generator**

**Number of units - 5**

4b. Indicate the maximum gross and maximum net electric power production capacity of

the facility at the point(s) of delivery and show the derivation. [Note: Maximum gross output is the maximum amount of power that the facility is able to produce, measured at the terminals of the generator(s). Maximum net output is maximum gross output minus (1) any auxiliary load for devices that are necessary and integral to the power production process (fans, pumps, etc.), and (2) any losses incurred from the generator(s) to the point of delivery. If any electric power is consumed at the location of the QF (or thermal host) for purposes not related to the power production process, such power should not be subtracted from gross output for purposes of reporting maximum net output here.]

Gross output: **10 MW**

Net output: **9 MW**

Derivation (assumptions about losses, auxiliary load or lack thereof, and calculation of gross and net output):

**10.0% losses including, but not limited to, line losses, icing, availability, waking, turbulence/control, etc.**

4c. Indicate the actual or expected installation and operation dates of the facility, or the actual or expected date of completion of the reported modification to the facility:

**June 2008**

4d. Describe the primary energy input (e.g., hydro, coal, oil [18 C.F.R. § 292.202(l)], natural gas [18 C.F.R. § 292.202(k)], solar, geothermal, wind, waste, biomass [18 C.F.R. § 292.202(a)], or other). For a waste energy input that does not fall within one of the categories on the Commission's list of previously approved wastes, demonstrate that such energy input has little or no current commercial value and that it exists in the absence of the qualifying facility industry [18 C.F.R. § 292.202(b)].

**100% Wind energy input**

5. Provide the average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and provide the related percentage of the total average annual hourly energy input to the facility [18 C.F.R. § 292.202(j)]. For any oil or natural gas fuel, use lower heating value [18 C.F.R. § 292.202(m)]:

Natural gas: **None**

Oil: **None**

Coal (applicable only to a small power production facility): **None**

FERC Form No. 556  
XRG-DP10, LLC

2/23/2007

Page 5 of 6

6. Discuss any particular characteristic of the facility which the cogenerator or small power producer believes might bear on its qualifying status.

None

PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY

Items 7 and 8 only need to be answered by applicants seeking certification as a small power production facility. Applicants for certification as a cogeneration facility may delete Items 7 and 8 from their application, or enter "N/A" at both items.

7. Describe how fossil fuel use will not exceed 25 percent of the total annual energy input limit [18 C.F.R §§ 292.202(j) and 292.204(b)]. Also, describe how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): ignition, start-up, testing, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.

N/A

8. If the facility reported herein is not an eligible solar, wind, waste or geothermal facility, and if any other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above and uses the same primary energy input, provide the following information about the other facility for the purpose of demonstrating that the total of the power production capacities of these facilities does not exceed 80 MW [18 C.F.R § 292.204(a)]: [See definition of an "eligible facility" below. Note that an "eligible facility" is a specific type of small power production facility that is eligible for special treatment under the Wind, Waste and Geothermal Power Production Incentives Act of 1990, as subsequently amended in 1991, and should not be confused with facilities that are generally eligible for QF status.]

Facility name, if any (as reported to the Commission):

N/A

Commission Docket Number:

N/A

Name of common owner:

N/A

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XRG-DP10, LLC

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Common primary energy source used as energy input:

N/A

Power production capacity (MW):

N/A

An eligible solar, wind, waste or geothermal facility, as defined in Section 3(17)(E) of the Federal Power Act, is a small power production facility that produces electric energy solely by the use, as a primary energy input, of solar, wind, waste or geothermal resources, for which either an application for Commission certification of qualifying status [18 C.F.R § 292.207(b)] or a notice of self-certification of qualifying status [18 C.F.R § 292.207(a)] was submitted to the Commission not later than December 31, 1994, and for which construction of such facility commences not later than December 31, 1999, or if not, reasonable diligence is exercised toward the completion of such facility, taking into account all factors relevant to construction of the facility.

**PART C: DESCRIPTION OF THE COGENERATION FACILITY**

Items 9 through 15 only need to be answered by applicants seeking certification as a cogeneration facility. Applicants for certification as a small power production facility may delete Items 9 through 15 from their application, or enter "N/A" at each item.

**DELETED**

1/08-37.3  
CME



**RICHARDSON & O'LEARY, PLLC**  
ATTORNEYS AT LAW

Peter Richardson

Tel: 208-938-7901 Fax: 208-938-7904  
peter@richardsonandoleary.com  
P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

January 21, 2009

Bruce Griswold  
John Younie  
825 NW Multnomah  
Portland, Oregon 97232  
Via overnight delivery

Re: PURPA Contract for XRG-DP-9, LLC

Dear Bruce and John:

I visited with you via e-mail communications a while back regarding a PURPA agreement for the above reference company. Please consider this to be a follow up request for an Idaho jurisdictional standard twenty year QF agreement with non-levelized rates. The project will be less than 30 average monthly MW and should therefore qualify for the Idaho PUC's published rates.

The first operation date is December 31, 2010.

The project is located in Cassia County, Idaho. Estimated production data and a location map is attached for your review. Also attached is a copy of the FERC Notice of Self Certification for this project, which together with the map and production data should be sufficient for you to provide my client with a power purchase agreement. Because the project will be interconnect with BPA facilities and deliver to your Brady Substation in Southern Idaho, there is no need for us to engage Rocky Mountain Power for an interconnection agreement.

Thank you for your prompt response and please give me a call if you have any questions.

Sincerely:

A handwritten signature in black ink, appearing to read "Pete Richardson", is written over a horizontal line.

Pete Richardson  
Attorney for XRG-DP-9, LLC



**Malta, XRG-DP9 (Newcomb East)**  
 Vestas V90, 1.8 WTG  
 Nameplate: 19.8 MW

Hour	Month												Average
	1	2	3	4	5	6	7	8	9	10	11	12	
0	5,351	6,377	9,373	9,590	7,183	8,821	5,658	6,090	4,869	7,256	7,093	6,649	7,026
1	4,771	6,760	7,474	9,615	7,614	8,979	6,473	5,553	4,495	6,147	6,975	7,009	6,822
2	4,923	6,868	6,737	9,010	7,054	8,872	6,435	6,029	4,812	5,339	7,265	7,399	6,729
3	4,873	5,185	6,476	8,147	6,578	8,943	6,708	5,412	3,941	6,224	7,863	7,914	6,522
4	5,398	5,593	6,901	7,519	7,357	9,093	7,172	6,463	5,029	5,733	7,835	7,641	6,811
5	5,625	5,341	6,098	7,646	7,268	8,847	7,224	7,297	5,257	5,576	7,596	7,759	6,795
6	6,612	5,558	5,570	7,254	7,322	6,859	7,205	5,977	6,581	6,459	7,668	7,644	6,726
7	6,417	4,874	5,228	6,451	5,865	5,725	6,181	5,196	6,286	6,289	8,437	8,447	6,283
8	5,805	5,342	5,315	6,281	5,938	4,775	4,406	2,655	3,275	4,596	7,490	7,524	5,284
9	5,465	3,936	5,211	6,480	6,396	5,126	3,694	2,650	2,381	2,749	6,703	6,456	4,770
10	5,022	3,658	6,181	6,757	7,059	4,920	3,578	2,458	2,822	2,784	5,189	6,382	4,734
11	4,822	3,691	6,410	6,336	7,228	5,689	3,567	2,837	3,112	3,439	4,567	6,368	4,839
12	5,636	3,615	7,264	6,475	6,490	5,474	4,013	3,111	3,029	3,783	4,632	6,366	4,991
13	5,734	3,899	8,292	7,485	6,334	5,072	4,778	3,516	3,293	4,289	4,298	6,918	5,326
14	5,346	4,504	8,739	6,668	7,572	6,278	5,603	4,280	3,402	4,544	4,524	6,428	5,657
15	5,315	4,265	8,716	7,318	7,693	7,142	6,302	5,071	3,689	4,645	5,031	5,691	5,906
16	5,075	4,252	9,643	8,262	7,708	7,295	7,822	7,102	3,978	5,982	4,920	6,022	6,505
17	5,358	4,042	10,247	7,905	7,200	7,220	8,580	7,547	4,206	6,770	4,850	6,982	6,742
18	6,297	5,547	9,977	8,470	7,050	6,860	8,798	8,090	5,014	8,011	5,885	7,127	7,260
19	6,261	6,987	10,914	9,504	7,904	7,205	6,983	7,974	6,400	8,683	6,133	7,567	7,710
20	6,262	6,908	10,995	10,425	8,719	8,568	6,137	8,930	7,055	8,755	5,887	7,441	8,007
21	5,850	6,086	9,891	10,826	7,682	9,319	6,309	7,847	6,889	7,614	6,678	6,542	7,628
22	6,033	6,943	9,828	9,665	8,141	8,844	5,902	7,075	5,974	8,393	6,678	6,875	7,529
23	5,919	6,922	9,763	9,383	8,670	8,511	6,224	6,528	6,087	7,809	7,032	7,232	7,507
Average	5,590	5,298	7,968	8,061	7,251	7,268	6,073	5,654	4,662	5,911	6,301	7,016	7,507

FERC Form No. 556  
18 C.F.R. § 131.80

CERTIFICATION OF QUALIFYING FACILITY STATUS FOR AN EXISTING OR A  
PROPOSED SMALL POWER PRODUCTION OR COGENERATION FACILITY

INFORMATION ABOUT COMPLIANCE

Compliance with the information collection requirements established by the FERC Form No. 556 is required to obtain and maintain status as a qualifying facility. *See* 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUBMITTING COMMENTS ON PUBLIC REPORTING BURDEN

The estimated burden for completing FERC Form No. 556, including gathering and reporting information, is 4 hours for self-certifications and 38 hours for applications for Commission certification. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Michael Miller, Office of the Executive Director (ED-34), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira\_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

GENERAL INSTRUCTIONS

Complete this form by replacing bold text below with responses to each item, as required.

PART A: GENERAL INFORMATION TO BE SUBMITTED BY ALL APPLICANTS

1a. Full name of applicant: [Note: Applicant is the legal entity submitting this form, not the individual employee making the filing. Generally, the Applicant will be a company, corporation or organization, unless the facility is owned directly by an individual or individuals.]

**XRG-DP9, LLC**

**Primary Activity: Independent Power Producer, renewable electrical generation**

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any:

**none**

Purpose of instant filing (self-certification or self-recertification [18 C.F.R. § 292.207(a)(1)], or application for Commission certification or recertification [18 C.F.R. §§ 292.207(b) and (d)(2)]):

FERC Form No. 556  
XRG-DP9, LLC

2/23/2007

Page 2 of 6

**Self-certification**

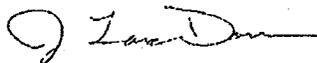
1b. Full address of applicant:

**1424 Dodge Ave.  
Helena, MT 59601**

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility. Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities. In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

**Exergy Development Group – Idaho, LLC  
Exergy Development Group – Idaho, LLC is solely owned by Exergy  
Development Group, LLC, a Montana limited liability company.  
Exergy Development Group, LLC is not comprised of any ownership by a  
public or private utility.**

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant: [Note: A signature on a filing shall constitute a certificate that (1) the signer has read the filing and knows its contents; (2) the contents are true as stated, to the best knowledge and belief of the signer; and (3) the signer possesses full power and authority to sign the filing. A person submitting a self-certification electronically via eFiling may use typed characters representing their name to show that the person has signed the document. See 18 C.F.R. § 385.2005.]



2. Person to whom communications regarding the filed information may be addressed:

Name: **J. Lars Dorr**

Title: **Lead Project Engineer, Exergy Technology Concepts, LLC**

Telephone number: **208.429.1499**

Mailing address: **802 W. Bannock, Ste 1200**

FERC Form No. 556  
XRG-DP9, LLC

2/23/2007

Page 3 of 6

**Boise, ID 83702**

3a. Location of facility to be certified:

State: **Idaho**

County: **Cassia**

City or town: **Malta**

Street address (if known): **N/A**

3b. Indicate the electric utilities that are contemplated to transact with the qualifying facility (if known) and describe the services those electric utilities are expected to provide:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities interconnecting with the facility and/or providing wheeling service [18 C.F.R. §§ 292.303(c) and (d)]:

**Bonneville Power Administration**

Indicate utilities purchasing the useful electric power output [18 C.F.R. §§ 292.101(b)(2), 292.202(g) and 292.303(a)]:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service [18 C.F.R. §§ 292.101(b)(3), (b)(8), 292.303(b) and 292.305(b)]:

**Bonneville Power Administration**

4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their operation. Include transmission lines, transformers and switchyard equipment, if included as part of the facility.

**DeWind D8.2, 2.0MW Wind Turbine Generator**

**Number of units - 10**

4b. Indicate the maximum gross and maximum net electric power production capacity of

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XRG-DP9, LLC

2/23/2007

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the facility at the point(s) of delivery and show the derivation. [Note: Maximum gross output is the maximum amount of power that the facility is able to produce, measured at the terminals of the generator(s). Maximum net output is maximum gross output minus (1) any auxiliary load for devices that are necessary and integral to the power production process (fans, pumps, etc.), and (2) any losses incurred from the generator(s) to the point of delivery. If any electric power is consumed at the location of the QF (or thermal host) for purposes not related to the power production process, such power should not be subtracted from gross output for purposes of reporting maximum net output here.]

Gross output: **20 MW**

Net output: **18 MW**

Derivation (assumptions about losses, auxiliary load or lack thereof, and calculation of gross and net output):

**10.0% losses including, but not limited to, line losses, icing, availability, waking, turbulence/control, etc.**

4c. Indicate the actual or expected installation and operation dates of the facility, or the actual or expected date of completion of the reported modification to the facility:

**June 2008**

4d. Describe the primary energy input (e.g., hydro, coal, oil [18 C.F.R. § 292.202(l)], natural gas [18 C.F.R. § 292.202(k)], solar, geothermal, wind, waste, biomass [18 C.F.R. § 292.202(a)], or other). For a waste energy input that does not fall within one of the categories on the Commission's list of previously approved wastes, demonstrate that such energy input has little or no current commercial value and that it exists in the absence of the qualifying facility industry [18 C.F.R. § 292.202(b)].

**100% Wind energy input**

5. Provide the average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and provide the related percentage of the total average annual hourly energy input to the facility [18 C.F.R. § 292.202(j)]. For any oil or natural gas fuel, use lower heating value [18 C.F.R. § 292.202(m)]:

Natural gas: **None**

Oil: **None**

Coal (applicable only to a small power production facility): **None**

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XRG-DP9, LLC

2/23/2007

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6. Discuss any particular characteristic of the facility which the cogenerator or small power producer believes might bear on its qualifying status.

None

PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY

Items 7 and 8 only need to be answered by applicants seeking certification as a small power production facility. Applicants for certification as a cogeneration facility may delete Items 7 and 8 from their application, or enter "N/A" at both items.

7. Describe how fossil fuel use will not exceed 25 percent of the total annual energy input limit [18 C.F.R §§ 292.202(j) and 292.204(b)]. Also, describe how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): ignition, start-up, testing, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.

N/A

8. If the facility reported herein is not an eligible solar, wind, waste or geothermal facility, and if any other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above and uses the same primary energy input, provide the following information about the other facility for the purpose of demonstrating that the total of the power production capacities of these facilities does not exceed 80 MW [18 C.F.R § 292.204(a)]: [See definition of an "eligible facility" below. Note that an "eligible facility" is a specific type of small power production facility that is eligible for special treatment under the Wind, Waste and Geothermal Power Production Incentives Act of 1990, as subsequently amended in 1991, and should not be confused with facilities that are generally eligible for QF status.]

Facility name, if any (as reported to the Commission):

N/A

Commission Docket Number:

N/A

Name of common owner:

N/A

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XRG-DP9, LLC

2/23/2007

Page 6 of 6

Common primary energy source used as energy input:

N/A

Power production capacity (MW):

N/A

An eligible solar, wind, waste or geothermal facility, as defined in Section 3(17)(E) of the Federal Power Act, is a small power production facility that produces electric energy solely by the use, as a primary energy input, of solar, wind, waste or geothermal resources, for which either an application for Commission certification of qualifying status [18 C.F.R § 292.207(b)] or a notice of self-certification of qualifying status [18 C.F.R § 292.207(a)] was submitted to the Commission not later than December 31, 1994, and for which construction of such facility commences not later than December 31, 1999, or if not, reasonable diligence is exercised toward the completion of such facility, taking into account all factors relevant to construction of the facility.

#### PART C: DESCRIPTION OF THE COGENERATION FACILITY

Items 9 through 15 only need to be answered by applicants seeking certification as a cogeneration facility. Applicants for certification as a small power production facility may delete Items 9 through 15 from their application, or enter "N/A" at each item.

**DELETED**



Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-7**

January 23 to February 17, 2009 email exchange between James Carkulis, Manager of XRG, Collin Rudeen, and Bruce Griswold, Director of Short-Term Origination and QF Contracts, PacifiCorp C&T.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Tuesday, February 17, 2009 5:46 AM  
**To:** Griswold, Bruce {Mkt Function}; Collin Rudeen; Lawrence R. Leib  
**Cc:** Younie, John  
**Subject:** Re: PURPA contract requests

Bruce:

I believe you have the motive force raw data and also compilations and analyses.

I would like to move both the 4 contract front and the 2 contract front forward as per your indication of getting these finished quickly.

We are conzigant of the filing by Rocky Mountain Power, but that should interfere with these negotiations.

We anticipate having online dates for these projects by 12-December-2010.

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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----- Original Message -----

**From:** Griswold, Bruce {Mkt Function}  
**To:** Collin Rudeen ; James Carkulis ; Lawrence R. Leib  
**Cc:** Younie, John  
**Sent:** Friday, January 23, 2009 3:04 PM  
**Subject:** RE: PURPA contract requests

here is the call in information - the time is 9AM Mountain and 8AM Pacific.

Bruce Griswold from PacifiCorp has invited you to a Voice Conference (Mtg ID 121212) on JAN, 28 2009 at 8:00 AM America/Los\_Angeles. If provided, use the following password: 121212

**To attend a Voice Conference:** Call 503-813-5600 (toll free #800-503-3360), follow the instructions provided and enter Mtg ID 121212 when prompted.

Bruce Griswold  
PacifiCorp C&T

503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** [collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com) [mailto:[collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com)] **On Behalf Of** Collin Rudeen  
**Sent:** Friday, January 23, 2009 12:39 PM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** Younie, John; Peter Richardson; James Carkulis; Lawrence R. Leib  
**Subject:** Re: PURPA contract requests

Bruce,

Does 9:00, MST on Wednesday next week work for you guys? Pete will not be on the call. James and maybe Larry Leib will be on the call, in addition to myself.

Regards,  
Collin

On Thu, Jan 22, 2009 at 10:18 AM, Griswold, Bruce {Mkt Function}  
<[Bruce.Griswold@pacificorp.com](mailto:Bruce.Griswold@pacificorp.com)> wrote:

Collin

Thanks for the documents. We will review and schedule a time to discuss all projects next week. Purpose of the call would be to clarify the submittals, schedules, and deliverables. Who should we schedule the call with? We would tentative look at Wednesday for a call.

If Pete will on the call, we will schedule to have our attorney also. Thanks.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** [collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com) [mailto:[collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com)] **On Behalf Of** Collin Rudeen  
**Sent:** Thursday, January 22, 2009 7:51 AM  
**To:** Griswold, Bruce {Mkt Function}; Younie, John  
**Cc:** Peter Richardson; James Carkulis  
**Subject:** PURPA contract requests

John and Bruce,

Please see the three attached files, sent at Peter Richardson's request.

Regards,

--

Collin Rudeen  
Lead Project Engineer  
Exergy Technology Concepts  
802 W Bannock, ste 1200  
Boise, ID 83702  
ph: 208.336.9793  
[crudeen@exergydevelopment.com](mailto:crudeen@exergydevelopment.com)

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--

Collin Rudeen  
Lead Project Engineer  
Exergy Technology Concepts  
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Boise, ID 83702  
ph: 208.336.9793  
[crudeen@exergydevelopment.com](mailto:crudeen@exergydevelopment.com)

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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-8**

February 25, 2009 email exchange between James Carkulis and Bruce Griswold.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Wednesday, February 25, 2009 12:51 PM  
**To:** Griswold, Bruce {Mkt Function}; Collin Rudeen; Lawrence R. Leib  
**Cc:** Younie, John  
**Subject:** Re: PURPA contract requests

Bruce:

Sorry to hear about the flu.

You may wish to think about considering the dual 345kV PacifiCorp line from Bridger also to move Jack Ranch and JR 1 at Midpoint east and west.

At Malta, swaps could occur with BPA since PacifiCorp furnishes the energy for some of the BPA syndication in the region.

I have all the faith PacifiCorp's expert transmission team will figure this out.

Regards,

**James T. Carkulis**  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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----- Original Message -----

**From:** Griswold, Bruce {Mkt Function}  
**To:** James T. Carkulis ; Collin Rudeen ; Lawrence R. Leib  
**Cc:** Younie, John  
**Sent:** Wednesday, February 25, 2009 1:39 PM  
**Subject:** RE: PURPA contract requests

James,

I have been out with the flu so I need to get back on this. We are looking at significant transmission constraints at Brady and Borah so I am waiting on a final response back from our transmission trader on our ability to accept and integrate the full amount of your requests at those points. I will have a response back to you end of this week.

Bruce Griswold  
PacifiCorp C&T

503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Tuesday, February 17, 2009 5:46 AM  
**To:** Griswold, Bruce {Mkt Function}; Collin Rudeen; Lawrence R. Leib  
**Cc:** Younie, John  
**Subject:** Re: PURPA contract requests

Bruce:

I believe you have the motive force raw data and also compilations and analyses.

I would like to move both the 4 contract front and the 2 contract front forward as per your indication of getting these finished quickly.

We are conizant of the filing by Rocky Mountain Power, but that should interfere with these negotiations.

We anticipate having online dates for these projects by 12-December-2010.

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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**From:** Griswold, Bruce {Mkt Function}  
**To:** Collin Rudeen ; James Carkulis ; Lawrence R. Leib  
**Cc:** Younie, John  
**Sent:** Friday, January 23, 2009 3:04 PM  
**Subject:** RE: PURPA contract requests

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Bruce Griswold  
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**From:** [collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com) [mailto:collin.rudeen@gmail.com] **On Behalf Of** Collin Rudeen  
**Sent:** Friday, January 23, 2009 12:39 PM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** Younie, John; Peter Richardson; James Carkulis; Lawrence R. Leib  
**Subject:** Re: PURPA contract requests

Bruce,

Does 9:00, MST on Wednesday next week work for you guys? Pete will not be on the call. James and maybe Larry Leib will be on the call, in addition to myself.

Regards,  
Collin

On Thu, Jan 22, 2009 at 10:18 AM, Griswold, Bruce {Mkt Function}  
<[Bruce.Griswold@pacificorp.com](mailto:Bruce.Griswold@pacificorp.com)> wrote:

Collin

Thanks for the documents. We will review and schedule a time to discuss all projects next week. Purpose of the call would be to clarify the submittals, schedules, and deliverables. Who should we schedule the call with? We would tentative look at Wednesday for a call.

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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-9**

March 23, 2009 email from Bruce Griswold.



**Griswold, Bruce {Mkt Function}**

---

**From:** Griswold, Bruce {Mkt Function}  
**Sent:** Monday, March 23, 2009 10:34 AM  
**To:** James T. Carkulis  
**Cc:** Collin Rudeen; Younie, John  
**Subject:** RE: PURPA contract requests

James,

As a follow-up to your QF requests, we have worked through transmission alternatives at Borah for your six proposed QF projects. Based on your proposed delivery point to the Borah substation, we only have import capabilities to our Utah system to serve load from Brady on a firm basis of 23 MW total. Based on your requests, we can accommodate a single 20MW project. For a transaction at Borah, Pac would do redirect of existing Borah reservation to Brady to facilitate a 23MW transaction.

From your project submittals, you have four standard QF projects. We will need to know which of the standard projects you would like to proceed with. We are currently preparing a draft intermittent resource PPA and can provide you the document the end of this week or first of next week. As you are aware, new avoided costs have been approved for the standard QF PPA and are published on the Idaho PUC website.

Let me know if you have questions. I will forward you the draft PPA as soon as we finish it up.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [mailto:mtl@in-tch.com]  
**Sent:** Tuesday, February 17, 2009 5:46 AM  
**To:** Griswold, Bruce {Mkt Function}; Collin Rudeen; Lawrence R. Leib  
**Cc:** Younie, John  
**Subject:** Re: PURPA contract requests

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[m] 406.459.3013  
[e] [mtll@in-tch.com](mailto:mtll@in-tch.com)

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503-813-5218 Office  
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503-813-6260 Fax

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503-813-6260 Fax

---

**From:** [collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com) [mailto:[collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com)] **On Behalf Of** Collin Rudeen

**Sent:** Thursday, January 22, 2009 7:51 AM

**To:** Griswold, Bruce {Mkt Function}; Younie, John

**Cc:** Peter Richardson; James Carkulis

**Subject:** PURPA contract requests

John and Bruce,

Please see the three attached files, sent at Peter Richardson's request.

Regards,

--

Collin Rudeen  
Lead Project Engineer  
Exergy Technology Concepts  
802 W Bannock, ste 1200  
Boise, ID 83702  
ph: 208.336.9793  
[crudeen@exergydevelopment.com](mailto:crudeen@exergydevelopment.com)

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immediately notify us by telephone, and return the original message to us at the above address.

--

Collin Rudeen  
Lead Project Engineer  
Exergy Technology Concepts  
802 W Bannock, ste 1200  
Boise, ID 83702  
ph: 208.336.9793  
[crudeen@exergydevelopment.com](mailto:crudeen@exergydevelopment.com)

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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-10**

April 1, 2009 email from James Carkulis.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Wednesday, April 01, 2009 3:39 PM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** Collin Rudeen; Younie, John  
**Subject:** Re: PURPA contract requests

Bruce:

Let's move forward on a 20 MW project until we figure out the rest. Let's use XRG-DP 10 for now as the project.

Thank you.

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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----- Original Message -----

**From:** Griswold, Bruce {Mkt Function}  
**To:** James T. Carkulis  
**Cc:** Collin Rudeen ; Younie, John  
**Sent:** Monday, March 23, 2009 11:34 AM  
**Subject:** RE: PURPA contract requests

James,

As a follow-up to your QF requests, we have worked through transmission alternatives at Borah for your six proposed QF projects. Based on your proposed delivery point to the Borah substation, we only have import capabilities to our Utah system to serve load from Brady on a firm basis of 23 MW total. Based on your requests, we can accommodate a single 20MW project. For a transaction at Borah, Pac would do redirect of existing Borah reservation to Brady to facilitate a 23MW transaction.

From your project submittals, you have four standard QF projects. We will need to know which of the standard projects you would like to proceed with. We are currently preparing a draft intermittent resource PPA and can provide you the document the end of this week or first of next week. As you are aware, new avoided costs have been approved for the standard QF PPA and are published on the Idaho PUC website.

Let me know if you have questions. I will forward you the draft PPA as soon as we finish it up.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Tuesday, February 17, 2009 5:46 AM  
**To:** Griswold, Bruce {Mkt Function}; Collin Rudeen; Lawrence R. Leib  
**Cc:** Younie, John  
**Subject:** Re: PURPA contract requests

Bruce:

I believe you have the motive force raw data and also compilations and analyses.

I would like to move both the 4 contract front and the 2 contract front forward as per your indication of getting these finished quickly.

We are conzigant of the filing by Rocky Mountain Power, but that should interfere with these negotiations.

We anticipate having online dates for these projects by 12-December-2010.

Regards,

James T. Carkulis  
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[p] 208.336.9793  
[f] 208.336.9431  
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[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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----- Original Message -----

**From:** Griswold, Bruce {Mkt Function}  
**To:** Collin Rudeen ; James Carkulis ; Lawrence R. Leib  
**Cc:** Younie, John  
**Sent:** Friday, January 23, 2009 3:04 PM  
**Subject:** RE: PURPA contract requests

here is the call in information - the time is 9AM Mountain and 8AM Pacific.

Bruce Griswold from PacifiCorp has invited you to a Voice Conference (Mtg ID 121212) on JAN, 28 2009 at 8:00 AM America/Los\_Angeles. If provided, use the following password: 121212

**To attend a Voice Conference:** Call 503-813-5600 (toll free #800-503-3360), follow the instructions provided and enter Mtg ID 121212 when prompted.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** [collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com) [mailto:[collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com)] **On Behalf Of** Collin Rudeen  
**Sent:** Friday, January 23, 2009 12:39 PM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** Younie, John; Peter Richardson; James Carkulis; Lawrence R. Leib  
**Subject:** Re: PURPA contract requests

Bruce,

Does 9:00, MST on Wednesday next week work for you guys? Pete will not be on the call. James and maybe Larry Leib will be on the call, in addition to myself.

Regards,  
Collin

On Thu, Jan 22, 2009 at 10:18 AM, Griswold, Bruce {Mkt Function}  
<[Bruce.Griswold@pacificorp.com](mailto:Bruce.Griswold@pacificorp.com)> wrote:

Collin

Thanks for the documents. We will review and schedule a time to discuss all projects next week. Purpose of the call would be to clarify the submittals, schedules, and deliverables. Who should we schedule the call with? We would tentative look at Wednesday for a call.

If Pete will on the call, we will schedule to have our attorney also. Thanks.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** [collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com) [mailto:[collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com)] **On Behalf Of** Collin Rudeen  
**Sent:** Thursday, January 22, 2009 7:51 AM  
**To:** Griswold, Bruce {Mkt Function}; Younie, John  
**Cc:** Peter Richardson; James Carkulis  
**Subject:** PURPA contract requests

John and Bruce,

Please see the three attached files, sent at Peter Richardson's request.

Regards,

--

Collin Rudeen  
Lead Project Engineer  
Exergy Technology Concepts  
802 W Bannock, ste 1200  
Boise, ID 83702  
ph: 208.336.9793  
[crudeen@exergydevelopment.com](mailto:crudeen@exergydevelopment.com)

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Collin Rudeen  
Lead Project Engineer  
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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-11**

April 1, 2009 email from Bruce Griswold.



**Griswold, Bruce {Mkt Function}**

---

**From:** Griswold, Bruce {Mkt Function}  
**Sent:** Wednesday, April 01, 2009 3:46 PM  
**To:** James T. Carkulis  
**Cc:** Collin Rudeen; Younie, John  
**Subject:** RE: PURPA contract requests

James, very good. We are currently preparing a template Idaho MAG agreement with the new pricing, MAG and other Order changes. Since this is an off-system PPA, we have a few additional changes. We will fill in data on the XRG-DP 10 project and should have it out for your review early next week.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Wednesday, April 01, 2009 3:39 PM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** Collin Rudeen; Younie, John  
**Subject:** Re: PURPA contract requests

Bruce:

Let's move forward on a 20 MW project until we figure out the rest. Let's use XRG-DP 10 for now as the project.

Thank you.

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
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----- Original Message -----  
**From:** Griswold, Bruce {Mkt Function}  
**To:** James T. Carkulis

**Cc:** Collin Rudeen ; Younie, John  
**Sent:** Monday, March 23, 2009 11:34 AM  
**Subject:** RE: PURPA contract requests

James,

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Let me know if you have questions. I will forward you the draft PPA as soon as we finish it up.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
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503-813-6260 Fax

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**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Tuesday, February 17, 2009 5:46 AM  
**To:** Griswold, Bruce {Mkt Function}; Collin Rudeen; Lawrence R. Leib  
**Cc:** Younie, John  
**Subject:** Re: PURPA contract requests

Bruce:

I believe you have the motive force raw data and also compilations and analyses.

I would like to move both the 4 contract front and the 2 contract front forward as per your indication of getting these finished quickly.

We are conglizant of the filing by Rocky Mountain Power, but that should interfere with these negotiations.

We anticipate having online dates for these projects by 12-December-2010.

Regards,

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----- Original Message -----

**From:** Griswold, Bruce {Mkt Function}  
**To:** Collin Rudeen ; James Carkulis ; Lawrence R. Leib  
**Cc:** Younie, John  
**Sent:** Friday, January 23, 2009 3:04 PM  
**Subject:** RE: PURPA contract requests

here is the call in information - the time is 9AM Mountain and 8AM Pacific.

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Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** collin.rudeen@gmail.com [mailto:collin.rudeen@gmail.com] **On Behalf Of** Collin Rudeen  
**Sent:** Friday, January 23, 2009 12:39 PM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** Younie, John; Peter Richardson; James Carkulis; Lawrence R. Leib  
**Subject:** Re: PURPA contract requests

Bruce,

Does 9:00, MST on Wednesday next week work for you guys? Pete will not be on the call. James and maybe Larry Leib will be on the call, in addition to myself.

Regards,  
Collin

On Thu, Jan 22, 2009 at 10:18 AM, Griswold, Bruce {Mkt Function}  
<Bruce.Griswold@pacificorp.com> wrote:

Collin

Thanks for the documents. We will review and schedule a time to discuss all projects next week. Purpose of the call would be to clarify the submittals, schedules, and deliverables. Who should we schedule the call with? We would tentative look at Wednesday for a call.

If Pete will on the call, we will schedule to have our attorney also. Thanks.

Bruce Griswold  
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503-813-5218 Office  
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**From:** [collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com) [mailto:[collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com)] **On Behalf Of** Collin Rudeen  
**Sent:** Thursday, January 22, 2009 7:51 AM  
**To:** Griswold, Bruce {Mkt Function}; Younie, John  
**Cc:** Peter Richardson; James Carkulis  
**Subject:** PURPA contract requests

John and Bruce,

Please see the three attached files, sent at Peter Richardson's request.

Regards,

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Collin Rudeen  
Lead Project Engineer  
Exergy Technology Concepts  
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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-12**

April 17, 2009 email from James Carkulis.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Friday, April 17, 2009 5:39 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** Contract

Bruce:

XRG is presently looking forward to receiving the draft. However, in your message of a couple of weeks ago, I would like to explore how the new line going to SLC will assist our requests, along with the notion of the other projects going to Midpoint and tying into the twin 345kV system from Jim Bridger, Jack Ranch and JR1 moving to your system via the Midpoint/Humboldt line or tying into the twin 345kV lines at Midpoint.

I do think it appropriate we proceed with all of these contracts at this time. We would like to accelerate the process of the first 20-23 MW of availability right now. I will check with Collin which XRG-DP project, but I suspect it is XRG-DP7.

Thank you.

Regards,

James T. Carkulis



Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-13**

April 17 to April 18, 2009 email exchange between James Carkulis and Bruce Griswold.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Saturday, April 18, 2009 11:30 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** RE: Contract

Bruce:

Thanks. I still think it is prudent to proceed with the balance of the contracts we agreed to back in January and then figure out if any transmission issues cannot be resolved.

As with the latest Ridgeline announcement, XRG believes there shall be a considerable hi-jacking of renewable to CA and the SW over the next few years. We would prefer to work with our local utilities with projects that avoid any controversy.

Furthermore, with the introduction of our Zilo turbine[300 kW to 2.5 MW] with integrated energy storage [xxx kW x 16 hours] scheduled for commercial deployment commencing in 2011, we believe that distributed generation may fill a portion of the RES which shall be dictated from DC in the next 12 months.

Regards,

James T. Carkulis

---

**From:** Griswold, Bruce {Mkt Function} [mailto:Bruce.Griswold@PacifiCorp.com]  
**Sent:** Friday, April 17, 2009 10:05 AM  
**To:** James T. Carkulis  
**Subject:** RE: Contract

James, I sent your request over to our transmission traders to evaluate. I am finishing up the draft PPA - there were some changes our attorneys missed from the recent orders - and will forward to you next week.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Friday, April 17, 2009 5:39 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** Contract

Bruce:

XRG is presently looking forward to receiving the draft. However, in your message of a couple of weeks ago, I would like to explore how the new line going to SLC will assist our requests, along with the notion of the other projects going to Midpoint and tying into the twin 345kV system from Jim Bridger, Jack Ranch and JR1 moving to your system via the Midpoint/Humboldt line or tying into the twin 345kV lines at Midpoint.

I do think it appropriate we proceed with all of these contracts at this time. We would like to accelerate the process of the first 20-23 MW of availability right now. I will check with Collin which XRG-DP project, but I suspect it is XRG-DP7.

Thank you.

Regards,

James T. Carkulis

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=====

Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-14**

May 11, 2009 email from James Carkulis.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Monday, May 11, 2009 5:35 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** contracts

Bruce:

In January, PacifiCorp agreed the strategy with XRG was to have all 6 contract requests before the IPUC by the end of April. To date, not one draft has been tendered by PacifiCorp. We realize these are exciting times and all are very busy, but all the Aurora work should have been accomplished on JR1 and Jack Ranch by now, the 4 drafts on XRG-DP 7 thru 10 should be in our hands for review.

We would appreciate if we could receive these contracts for review and comment to move to execution.

Thank you.

Regards,

James T. Carkulis  
Confidential & Proprietary  
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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-15**

May 11, 2009 email with attachments including draft power purchase agreement from Bruce Griswold.



**Griswold, Bruce {Mkt Function}**

---

**From:** Griswold, Bruce {Mkt Function}  
**Sent:** Monday, May 11, 2009 4:26 PM  
**To:** James T. Carkulis  
**Cc:** Younie, John; Ken Kaufmann  
**Subject:** RE: contracts  
**Attachments:** 11May09 draft Idaho MAG PPA.doc; Re: PURPA contract requests

James

Please find the attached draft Idaho standard QF PPA to be used for a wind project. It should include all the recent Idaho commission orders. It does not include Addendum W which is the bolt-on addendum for an off-system project delivering to PacifiCorp. I will send that separately. Per our last communication (attached), we indicated PacifiCorp does not have sufficient transmission at Borah or Brady to accept any project greater than 23MW and you selected one project, XRG-DP 10, that would be developed into a PPA. Please provide a redline to this document with your proposed changes for discussion. If you or your team, have questions on the PPA, please call.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Monday, May 11, 2009 5:35 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** contracts

Bruce:

In January, PacifiCorp agreed the strategy with XRG was to have all 6 contract requests before the IPUC by the end of April. To date, not one draft has been tendered by PacifiCorp. We realize these are exciting times and all are very busy, but all the Aurora work should have been accomplished on JR1 and Jack Ranch by now, the 4 drafts on XRG-DP 7 thru 10 should be in our hands for review.

We would appreciate if we could receive these contracts for review and comment to move to execution.

Thank you.

Regards,

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[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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**From:** "James T. Carkulis" <mtli@in-tch.com>  
**Subject:** **Re: PURPA contract requests**  
**Date:** April 1, 2009 3:38:38 PM PDT  
**To:** "Griswold, Bruce {Mkt Function}" <Bruce.Griswold@PacifiCorp.com>  
**Cc:** "Collin Rudeen" <crudeen@exergydevelopment.com>, "Younie, John" <John.Younie@PacifiCorp.com>

Bruce:

Let's move forward on a 20 MW project until we figure out the rest. Let's use XRG-DP 10 for now as the project.

Thank you.

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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----- Original Message -----

**From:** Griswold, Bruce {Mkt Function}

**To:** James T. Carkulis

**Cc:** Collin Rudeen ; Younie, John

**Sent:** Monday, March 23, 2009 11:34 AM

**Subject:** RE: PURPA contract requests

James,

As a follow-up to your QF requests, we have worked through transmission alternatives at Borah for your six proposed QF projects. Based on your proposed delivery point to the Borah substation, we only have import capabilities to our Utah system to serve load from Brady on a firm basis of 23 MW total. Based on your requests, we can accommodate a single 20MW project. For a transaction at Borah, Pac would do redirect of existing Borah reservation to Brady to facilitate a 23MW transaction.

From your project submittals, you have four standard QF projects. We will need to know which of the standard projects you would like to proceed with. We are currently preparing a draft intermittent resource PPA and can provide you the document the end of this week or first of next week. As you are aware, new avoided costs have been approved for the standard QF PPA and are published on the Idaho PUC website.

Let me know if you have questions. I will forward you the draft PPA as soon as we finish it up.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Tuesday, February 17, 2009 5:46 AM  
**To:** Griswold, Bruce {Mkt Function}; Collin Rudeen; Lawrence R. Leib  
**Cc:** Younie, John  
**Subject:** Re: PURPA contract requests

Bruce:

I believe you have the motive force raw data and also compilations and analyses.

I would like to move both the 4 contract front and the 2 contract front forward as per your indication of getting these finished quickly.

We are congingant of the filing by Rocky Mountain Power, but that should interfere with these negotiations.

We anticipate having online dates for these projects by 12-December-2010.

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
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----- Original Message -----

**From:** Griswold, Bruce {Mkt Function}  
**To:** Collin Rudeen ; James Carkulis ; Lawrence R. Leib  
**Cc:** Younie, John  
**Sent:** Friday, January 23, 2009 3:04 PM  
**Subject:** RE: PURPA contract requests

here is the call in information - the time is 9AM Mountain and 8AM Pacific.

Bruce Griswold from PacifiCorp has invited you to a Voice Conference (Mtg ID 121212) on **JAN, 28 2009 at 8:00 AM America/Los\_Angeles**. If provided, use the following password: **121212**

**To attend a Voice Conference:** Call **503-813-5600** (toll free #800-503-3360), follow the instructions provided and enter Mtg ID **121212** when prompted.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** collin.rudeen@gmail.com [mailto:collin.rudeen@gmail.com] **On Behalf Of** Collin Rudeen  
**Sent:** Friday, January 23, 2009 12:39 PM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** Younie, John; Peter Richardson; James Carkulis; Lawrence R. Leib

**Subject:** Re: PURPA contract requests

Bruce,

Does 9:00, MST on Wednesday next week work for you guys? Pete will not be on the call. James and maybe Larry Leib will be on the call, in addition to myself.

Regards,  
Collin

On Thu, Jan 22, 2009 at 10:18 AM, Griswold, Bruce {Mkt Function} <[Bruce.Griswold@pacificorp.com](mailto:Bruce.Griswold@pacificorp.com)> wrote:  
Collin

Thanks for the documents. We will review and schedule a time to discuss all projects next week. Purpose of the call would be to clarify the submittals, schedules, and deliverables. Who should we schedule the call with? We would tentative look at Wednesday for a call.

If Pete will on the call, we will schedule to have our attorney also. Thanks.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** [collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com) [mailto:[collin.rudeen@gmail.com](mailto:collin.rudeen@gmail.com)] **On Behalf Of** Collin Rudeen  
**Sent:** Thursday, January 22, 2009 7:51 AM  
**To:** Griswold, Bruce {Mkt Function}; Younie, John  
**Cc:** Peter Richardson; James Carkulis  
**Subject:** PURPA contract requests

John and Bruce,

Please see the three attached files, sent at Peter Richardson's request.

Regards,

--

Collin Rudeen  
Lead Project Engineer  
Exergy Technology Concepts  
802 W Bannock, ste 1200  
Boise, ID 83702  
ph: 208.336.9793  
[crudeen@exergydevelopment.com](mailto:crudeen@exergydevelopment.com)

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--

Collin Rudeen  
Lead Project Engineer  
Exergy Technology Concepts  
802 W Bannock, ste 1200  
Boise, ID 83702  
ph: 208.336.9793  
[crudeen@exergydevelopment.com](mailto:crudeen@exergydevelopment.com)

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**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 EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL) AND ALL REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS 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.**

**POWER PURCHASE AGREEMENT  
BETWEEN**

---

[a non-fueled, Intermittent Resource with Mechanical Availability Guarantee, Idaho  
Qualifying Facility—10aMW/Month or less]

**AND**

**PACIFICORP**

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**DRAFT**

**POWER PURCHASE AGREEMENT**

THIS POWER PURCHASE AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, is between \_\_\_\_\_ [Seller's name], an \_\_\_\_\_ [Seller's state of incorporation] \_\_\_\_\_ [corporation, partnership, or limited liability company] (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 \_\_\_\_\_ [state type of facility] facility for the generation of electric power located in \_\_\_\_\_ [City, County] with an expected Facility Capacity Rating of \_\_\_\_\_-kilowatts (kW) ("Facility").

B. Seller intends to operate the Facility as a Qualifying Facility; as such term is defined in Section 1.50 below.

C. Seller estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is \_\_\_\_\_ kilowatt-hours (kWh) ("Average Annual Net Output") pursuant to the monthly Energy Delivery Schedule in Exhibit D hereto, which amount of energy PacifiCorp will include in its resource planning.

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

E. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol and, as such, the costs of QF energy under this Agreement shall be allocated as a system resource unless any portion of those costs exceeds the cost PacifiCorp would have otherwise incurred acquiring comparable resources. In that event, the Revised Protocol assigns those excess costs on a situs basis to the state in which the Facility is located. In addition, for the purposes of inter-jurisdictional cost allocation, PacifiCorp represents that the costs of this Agreement do not exceed the costs PacifiCorp would have otherwise incurred acquiring resources in the market that are defined as "Comparable Resources" in Appendix A to the Inter-Jurisdictional Cost Allocation Revised Protocol. For the purposes of inter-jurisdictional cost allocation, PacifiCorp represents that the costs and revenues from the energy and capacity sold to Seller by PacifiCorp will be assigned on a situs basis to the state to which Net Output from the Facility is delivered.

F. Seller  has  has not authorized Transmission Provider to release generation data to PacifiCorp. If yes, the authorization is attached as Exhibit H.

NOW, THEREFORE, the Parties mutually agree as follows:

**SECTION 1: DEFINITIONS**

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

**DRAFT**

1.1 **"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.

1.2 **"Availability"** means, for any Billing Period, the ratio, expressed as a percentage, of (x) the aggregate sum of the turbine-minutes in which each of the Wind Turbines at the Facility was available to generate at the Maximum Facility Delivery Rate during the Billing Period over (y) the product of the number of Wind Turbines that comprise the Facility Capacity Rating as of Commercial Operation multiplied by the number of minutes in such Contract Year. A Wind Turbine shall be deemed not available to operate during minutes in which it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; or (c) otherwise not operational or capable of delivering at the Maximum Facility Delivery Rate to the Point of Delivery; unless if unavailable due solely to (i) a default by PacifiCorp; (ii) a curtailment in accordance with Section 6.2.1 or Section 6.2.2(b) or (d); or (iii) insufficient wind (including the normal amount of time required by the generating equipment to resume operations following a period when wind speed is below the Cut-In Wind Speed).

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

1.4 **"Commercial Operation"** means that not less than the 90% of the expected Facility Capacity Rating is fully operational and reliable and the Facility is fully interconnected, fully integrated, 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 date and moment on which Seller gives PacifiCorp notice that Commercial Operation has occurred:

1.4.1 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 and in accordance with all other terms and conditions of this Agreement.

1.4.2 Start-Up Testing of the Facility has been completed in accordance with **Exhibit E**.

1.4.3 PacifiCorp has received a certificate (attached hereto as **Exhibit I**) addressed to PacifiCorp from a Licensed Professional Engineer, an attorney in good standing in Idaho, or a letter from Transmission Provider, stating that, in accordance with the Generation 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 Generation Interconnection Agreement and able to deliver energy consistent with the

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terms of this Agreement, and the Facility is fully integrated and synchronized with the System.

1.4.4 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, Seller shall have provided copies of any or all such requested Required Facility Documents.

1.4.5 Seller has complied with the security requirements of Section 11.

Seller shall provide written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation and its Facility Capacity Rating accompanied by the certificates described above. PacifiCorp shall have ten days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PacifiCorp reasonably believes has not been satisfied. If, within such ten day period, PacifiCorp does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PacifiCorp notifies Seller within such ten day period that PacifiCorp believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in PacifiCorp's notice to the mutual satisfaction of both Parties, and Commercial Operation shall occur on the date of such satisfaction, as specified in a notice from PacifiCorp to Seller. If Commercial Operation is achieved at less than one hundred percent (100%) of the expected Facility Capacity Rating, Seller shall provide PacifiCorp an expected date for achieving the expected Facility Capacity Rating, and the Facility Capacity Rating on that date shall be the final Facility Capacity Rating under this Agreement. In no event will delay in achieving the expected Facility Capacity Rating beyond the Commercial Operation Date postpone the Expiration Date specified in Section 2.1.

1.5 "Commercial Operation Date" means the date the Facility first achieves Commercial Operation.

1.6 "Commission" means the Idaho Public Utilities Commission.

1.7 "Conforming Energy" means all Net Energy except Non-Conforming Energy and Inadvertent Energy.

1.8 "Conforming Energy Purchase Price" means the applicable price for Conforming Energy and capacity, specified in Section 5.1.

1.9 "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.

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1.10 **"Curtailed Energy"** shall have the meaning set forth in Section 6.2.1 of this Agreement.

1.11 **"Cut-in Wind Speed"** means the wind speed at which a stationary wind turbine begins producing Net Energy, as specified by the turbine manufacturer and set forth in Exhibit A.

1.12 **"Delay Liquidated Damages", "Delay Period", "Delay Price" and "Delay Volume"** shall have the meanings set forth in Section 2.3 of this Agreement. **"Delay Security"** shall have the meaning set forth in Section 11.1.1 of this Agreement.

1.13 **"Default Security"** shall have the meaning set forth in Section 11.2 of this Agreement.

1.14 **"Effective Date"** shall have the meaning set forth in Section 2.1 of this Agreement.

1.15 **"Energy Delivery Schedule"** shall have the meaning set forth in Section 4.3 of this Agreement.

1.16 **"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 (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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.

1.17 **"Expiration Date"** shall have the meaning set forth in Section 2.1 of this Agreement.

1.18 **"Facility"** means Seller's project, including the Seller's Interconnection Facilities, as described in the Recitals, Exhibit A, and Exhibit B.

1.19 **"Facility Capacity Rating"** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.20 **"Force Majeure"** has the meaning set forth in Section 15.1.

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1.21 **"Forced Outage"** means an outage that requires removal of one or more Wind Turbines 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.

1.22 **"Generation Interconnection Agreement"** means the generation interconnection agreement to be entered into separately between Seller and Transmission Provider, as applicable, specifying the Point of Delivery and providing for the construction and operation of the Interconnection Facilities.

1.23 **"Inadvertent Energy"** means: (1) energy delivered to the Point of Delivery 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 on an hour-averaged basis.

1.24 **"Index Price"** shall mean the average of: (1) the weighted average of the daily On-Peak and Off-Peak Dow Jones Mid-Columbia index prices for firm energy; and (2) the weighted average of the daily On-Peak and Off-Peak Dow Jones Palo Verde index (Dow Jones Palo Verde Index) prices for firm energy. For Sunday and NERC holidays, the 24-Hour Index Price shall be used, unless Dow Jones shall publish a Firm On-Peak and Firm Off-Peak Price for such days for Mid-C and Palo Verde, in which event such indices shall be utilized for such days. If the Dow Jones 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.

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

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

1.27 **"Licensed Professional Engineer"** means a person acceptable to PacifiCorp in its reasonable judgment 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.

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1.28 **"Maintenance Outage"** means any outage of one or more Wind Turbines 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 Wind Turbine(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.

1.29 **"Material Adverse Change"** shall mean, with respect to the Seller, if the Seller, in the reasonable opinion of PacifiCorp, has experienced a material adverse change in ability to fulfill its obligations under this Agreement.

1.30 **"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, and in compliance with the Generation Interconnection Agreement.

1.31 **"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.

1.32 **"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.

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

1.34 **"Net Energy"** means the energy component, in kWh, of Net Output.

1.35 **"Net Output"** means all energy and capacity 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.

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

1.37 **"Network Service Provider"** means PacifiCorp Transmission, as a provider of network service to PacifiCorp under the Tariff.

1.38 **"Non-Conforming Energy"** means Net Output produced by the Facility prior to the Commercial Operation Date.

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

**DRAFT**

1.40 **"Off-Peak Hours"** means all hours of the week that are not On-Peak Hours.

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

1.42 **"Output Shortfall"** and **"Output Shortfall Damages"** shall have the meanings set forth in Section 4.5 of this Agreement.

1.43 **"PacifiCorp"** is defined in the first paragraph of this Agreement, and excludes PacifiCorp Transmission.

1.44 **"PacifiCorp Transmission"** means PacifiCorp, an Oregon corporation, acting in its interconnection and transmission function capacity.

1.45 **"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.

1.46 **"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 Generation Interconnection Agreement and in **Exhibit B**.

1.47 **"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.

1.48 **"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 produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Facility is eligible.

1.49 **"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.

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1.50 “**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.

1.51 “**Required Facility Documents**” means all deeds, titles, leases, licenses, permits, authorizations, and agreements demonstrating that seller controls the necessary property rights and government authorizations to construct, operate, and maintain the Facility, including without limitation those set forth in **Exhibit C**.

1.52 “**Scheduled Commercial Operation Date**” means the date by which Seller promises to achieve Commercial Operation, as specified in Section 2.2.6.

1.53 “**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.

1.54 “**Seller’s Forecast-Cost Share**” and “**Seller’s Capped Forecast-Cost Share**” shall have the meanings set forth in Sections 8.2 and 8.3 respectively.

1.55 “**Subsequent Energy Delivery Schedule**” shall have the meaning set forth in Section 4.3.3.

1.56 “**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 Generation Interconnection Agreement.

1.57 “**Tariff**” means the PacifiCorp Transmission FERC Electric Tariff Seventh Revised Volume No.11 Pro Forma Open Access Transmission Tariff or the Transmission Provider’s corresponding FERC tariff or both, as revised from time to time.

1.58 “**Transmission Provider**” means PacifiCorp Transmission or a successor, including any regional transmission organization (“**RTO**”).

1.59 “**Wind Turbine**” means a [description of intended wind turbine model]. At its full Facility Capacity Rating, the Facility will consist of \_\_\_ Wind Turbines.

**SECTION 2: TERM, 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 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.

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Unless earlier terminated as provided herein, the Agreement shall remain in effect until \_\_\_\_\_ [enter date that is no later than 20 years after the Scheduled Commercial Operation Date] ("**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 \_\_\_\_\_, Seller shall obtain and provide to PacifiCorp copies of all governmental permits and authorizations necessary for construction of the Facility.

2.2.2 By \_\_\_\_\_, Seller shall provide to PacifiCorp a copy of an executed Generation Interconnection Agreement, whose terms shall be consistent with the terms of this Agreement.

2.2.3 By the date 5 business days after the Effective Date, Seller shall provide Delay Security required under Section 11.1.1, as applicable.

2.2.4 By the date 30 calendar days after the Effective Date, Seller shall provide Default Security required under Section 11.2, as applicable.

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

2.2.6 By \_\_\_\_\_, Seller shall have achieved Commercial Operation ("**Scheduled Commercial Operation Date**").

2.2.7 Beginning \_\_\_\_\_, Seller shall provide PacifiCorp a one-page monthly update by e-mail on the progress of the milestones in this Section 2.2.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be liable to pay PacifiCorp delay damages for the number of days ("**Delay Period**") the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, up to a total of 120 days ("**Delay Liquidated Damages**").

Delay Liquidated Damages equals the sum of: the Delay Price times the Delay Volume, for each day of the Delay Period

Where:

"**Delay Price**" equals the positive difference, if any, of the Index Price minus the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices; and

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“Delay Volume” equals the applicable Scheduled Monthly Energy Delivery divided by the number of days in that month.

The Parties agree that the damages PacifiCorp would incur due to delay in the Facility achieving Commercial Operation on or before the Scheduled Commercial Operation Date would be difficult or impossible to predict with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages.

**SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp 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 hereby.

3.1.4 Subject to Commission approval, the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

3.1.5 Subject to Commission approval, this Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a \_\_\_\_\_ [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of \_\_\_\_\_ [state of Seller's incorporation].

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

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3.2.3 Seller's shareholders, directors, and officers have taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission self-certification to PacifiCorp prior to PacifiCorp's execution of this Agreement. At any time PacifiCorp has reason to believe during the term of this Agreement that Seller's status as a QF is in question, PacifiCorp may require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing in the state of Idaho and who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.

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3.2.8 Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.

3.2.9 Seller is not in default under any of its other agreements and is current on all of its financial obligations.

3.2.10 Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall 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 pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

**SECTION 4: DELIVERY OF POWER; AVAILABILITY GUARANTY**

4.1 Delivery and Acceptance of Net Output. Unless otherwise provided herein, PacifiCorp will purchase and Seller will sell all Net Output from the Facility.

4.2 No Sales to Third Parties. During the term of this Agreement, Seller shall not sell any Net Output from the Facility to any entity other than PacifiCorp.

4.3 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:

4.3.1 During the first twelve full calendar months following the Commercial Operation Date, Seller predicts that the Facility will produce and deliver the following monthly amounts ("Initial Year Energy Delivery Schedule"):

<u>Month</u>	<u>Energy Delivery (kWh)</u>
January	
February	
March	
April	
May	
June	

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July  
August  
September  
October  
November  
December

4.3.2 Seller may revise the Initial Year Energy Delivery Schedule any time prior to the Commercial Operation Date.

4.3.3 Beginning at the end of the ninth full calendar month of operation, and at the end of every 3rd month thereafter, Seller shall supplement the Energy Delivery Schedule with three additional months of forward estimates (which shall be appended to this Agreement as Exhibit D) ("Subsequent Energy Delivery Schedule"), such that the Energy Delivery Schedule will provide at least three months of scheduled energy estimates at all times. Seller shall provide Subsequent Energy Delivery Schedules no later than 5:00 pm of the 5th day after the due date. If Seller does not provide a Subsequent Energy Delivery Schedule by the above deadline, scheduled energy for the omitted period shall equal the amounts scheduled by Seller for the same three-month period during the previous year.

4.3.4 Beginning with the end of the third month after the Commercial Operation Date and at the end of every third month thereafter the Seller may not revise the immediate next three months of previously provided Energy Delivery Schedules. But by written notice given to PacifiCorp no later than 5:00 PM of the 5th day after the end of any such third month, the Seller may revise all other previously provided Energy Delivery Schedules. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

4.4 Minimum Availability Obligation. Seller shall cause the Facility to achieve an Availability of at least 85% during each month ("**Guaranteed Availability**").

4.5 Liquidated Damages for Output Shortfall. If the Availability in any given month falls below the Guaranteed Availability, the resulting shortfall shall be expressed in kWh as the "**Output Shortfall.**" The Output Shortfall shall be calculated in accordance with the following formula:

$$\text{Output Shortfall} = (\text{Guaranteed Availability} - \text{Availability}) * \text{Scheduled Monthly Energy Delivery}$$

Seller shall pay PacifiCorp for any Output Shortfall at the lower of (1) the positive difference, if any, of the Index Price minus the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices; or (2) the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices ("**Output Shortfall Damages**").

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$$\text{Output Shortfall Damages} = \text{Output Shortfall} * \text{Output Shortfall Price}$$

Where:

$$\text{Output Shortfall Price} = (\text{Index Price} - \text{Weighted Average CEPP}), \text{ except that if Output Shortfall Price} < 0, \text{ then Output Shortfall Price} = 0$$

$$\text{Weighted Average CEPP} = \text{the weighted average On-Peak and Off-Peak Conforming Energy Purchase Prices for the month of Output Shortfall}$$

If an Output Shortfall occurs in any given month, Seller may owe PacifiCorp liquidated damages. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to the Facility's failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty, and (b) the liquidated damages contemplated in this Section 4.5 are a fair and reasonable calculation of such damages.

4.6 Audit Rights. In addition to data provided under Sections 9.2 and 9.3, PacifiCorp shall have the right, but not the obligation, to audit the Facility's compliance with its Guaranteed Availability using any reasonable methods. Seller agrees to retain all performance related data for the Facility for a minimum of three years, and to cooperate with PacifiCorp in the event PacifiCorp decides to audit such data.

**SECTION 5: PURCHASE PRICES**

5.1 Energy Purchase Price. Except as provided in Section 5.3, PacifiCorp will pay Seller Conforming Energy or Non-Conforming Energy Purchase Prices for Net Output adjusted for the month and On-Peak Hours or Off-Peak Hours and the wind integration cost using the following formulae, in accordance with Commission Order Nos. 30423, 30497, and 30744:

$$\text{Conforming Energy Purchase Price} = (\text{AR}_{\text{ce}} * \text{MPM}) - \text{WIC}$$

$$\text{Non-Conforming Energy Purchase Price} = (\text{AR}_{\text{ncc}} * \text{MPM}) - \text{WIC}$$

Where:

$$\text{AR}_{\text{ce}} = \text{Conforming Energy annual rate from Table 1, below, for the year of the Net Output.}$$

$$\text{AR}_{\text{ncc}} = \text{the lower of:}$$

85% of the Conforming Energy annual rate from Table 1, below, for the year of Net Output

*or*

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85% of weighted average of the daily On-Peak and Off-Peak Dow Jones Mid-Columbia index prices for firm energy for the month, or portion of month, of 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.

WIC = \$5.10/MWh, the wind integration cost prescribed in Commission Order No. 30497.

Example calculations are provided in **Exhibit G**.

**Table 1: Conforming Energy Annual Rates (from Commission Order No. 30744)\***

Year	Conforming Energy Annual Rate (AR <sub>ce</sub> ) \$/MWh
2009	76.73
2010	75.83
2011	77.95
2012	80.24
2013	82.14
2014	84.09
2015	86.09
2016	88.25
2017	90.34
2018	92.60
2019	94.80
2020	97.05
2021	99.36
2022	101.73
2023	104.15
2024	106.64
2025	109.19
2026	112.30
2027	115.50
2028	118.80
2029	122.20
2030	125.71
2031	128.55

**Table 2: Monthly On-Peak/Off-Peak Multipliers (from Commission Order No. 30423)**

Month	On-Peak	Off-Peak
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\* If Seller has elected levelized pricing for Net Output, additional security requirements in Section 11.2 apply.

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	<b>Hours</b>	<b>Hours</b>
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%

**5.2 Payment.**

For each Billing Period in each Contract Year, PacifiCorp shall pay Seller as follows:

For delivery of Conforming Energy:

$$\text{Payment} = (\text{CEnergy}_{\text{On-Peak}} * \text{CEPPrice}_{\text{On-Peak}} / 1000) + (\text{CEnergy}_{\text{Off-Peak}} * \text{CEPPrice}_{\text{Off-Peak}} / 1000)$$

For delivery of Non-Conforming Energy:

$$\text{Payment} = (\text{NCEnergy}_{\text{On-Peak}} * \text{NCEPPrice}_{\text{On-Peak}} / 1000) + (\text{NCEnergy}_{\text{Off-Peak}} * \text{NCEPPrice}_{\text{Off-Peak}} / 1000)$$

Where:

- CEnergy = Conforming Energy in kWh
- CEPPrice = Conforming Energy Purchase Price in \$/MWh
- NCEnergy = Non-Conforming Energy in kWh
- NCEPPrice = Non-Conforming Energy Purchase Price in \$/MWh
- On-Peak = the corresponding value for On-Peak Hours
- Off-Peak = the corresponding value for Off-Peak Hours

**5.3 Inadvertent Energy.** PacifiCorp may accept Inadvertent Energy at its sole discretion, but will not purchase or pay for Inadvertent Energy.

**SECTION 6: OPERATION AND CONTROL**

6.1 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or

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interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

### 6.2 Energy Acceptance.

6.2.1 Voluntary Curtailment by PacifiCorp. Seller shall curtail deliveries of Net Output and associated Environmental Attributes at any time, in whole or in part, and for any duration specified by PacifiCorp with no less than ten (10) minutes (or such lesser time as may be provided for, as between Transmission Provider and Interconnection Provider, in the Generation Interconnection Agreement) prior notice (which may be given by telephone) from PacifiCorp to Seller. PacifiCorp shall take reasonable steps to confirm Seller's receipt of such notice. The MWh amount of Net Output curtailed pursuant to this Section 6.2.1 ("**Curtailment Energy**") shall be reasonably determined by Seller after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output at the Point of Delivery but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of Curtailment Energy based on (1) the time and duration of the curtailment period and (2) the number of MWhs that would have been generated based on the wind velocities recorded at the Facility during the period of curtailment and the tested and verified power curve for the Wind Turbines provided in **Exhibit A**. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of Curtailment Energy. PacifiCorp shall pay Seller for the Curtailment Energy at the then applicable Conforming Energy Purchase Price. Notwithstanding any other provision hereof, during any period of curtailment pursuant to this Section 6.2.1, Seller shall not generate Net Output to the extent curtailed by PacifiCorp, or sell any portion of the Facility's energy to any third party. Notwithstanding the foregoing, PacifiCorp's obligation to pay for Curtailment Energy pursuant to this Section 6.2.1 shall not apply during any times Seller would otherwise have been required to curtail pursuant to Section 6.2.2 and during any times prior to the Commercial Operation Date.

6.2.2 Required Curtailment. PacifiCorp shall not be obligated to purchase, receive or pay for Net Output (nor shall it be liable for associated unrealized Production Tax Credits or Environmental Attributes) that is not delivered to the Point of Delivery during times and to the extent that such Net Output is not delivered to the Point of Delivery because (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, pursuant to the terms of

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the Generation Interconnection Agreement, (b) the Network Service Provider or Transmission Provider Curtails (as defined in the Tariff) Net Output or order PacifiCorp to curtail Net Output, (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. The MWh amount of Net Output curtailed pursuant to this Section 6.2.2 shall be reasonably determined by Seller after the fact 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 shall determine the quantity of such curtailed energy based on (x) the time and duration of the curtailment period and (y) wind conditions recorded at the Facility during the period of curtailment and the tested and verified power curve for the Wind Turbines. Seller shall 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 6.2.2.

6.2.3 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 or any successor Transmission Provider.

### 6.3 Outages.

6.3.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule Planned Outage during any portion of the months of [(list peak months) November, December, January, February, June, July, and August], except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above. Seller shall, in Exhibit D, provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more that three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule more than one hundred fifty (150) hours of Planned Outages for each calendar year. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval may be withheld by PacifiCorp in its sole discretion.

6.3.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then existing wind conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp. Seller shall take all

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reasonable measures and use best efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: [June 15 through June 30, July, August, and September 1 through September 15]. Seller shall include in such notice of a proposed Maintenance Outage 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. Seller may provide notices under this Section 6.3.2 orally. Seller shall confirm any such oral notification in writing as soon as practicable. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with PacifiCorp's request to modify the schedule for a Maintenance Outage if such modification has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity of the Facility during such Maintenance Outage and any changes in the Maintenance Outage completion date and time. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.3.3 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp, of any Forced Outage of the Facility. Such report shall include the amount of generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date and time of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. If the Forced Outage resulted in more than 15% of the Facility Capacity Rating of the Facility being unavailable, Seller shall confirm the oral report in writing as soon as practicable. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.3.4 Notice of Deratings and Outages. Without limiting other notice requirements, Seller shall notify PacifiCorp, via telephone to a number specified by PacifiCorp, of any limitation, restriction, derating or outage known to Seller that affects the generation capacity of the Facility in an amount greater than five percent (5%) of the Facility Capacity Rating for the following day. Seller shall promptly update such notice to reflect any material changes to the information in such notice.

6.3.5 Effect of Outages on Estimated Output. Seller shall factor Planned Outages and Maintenance Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility into the Scheduled Monthly Energy Delivery amounts in the Energy Delivery Schedule set forth in **Exhibit D**.

6.4 Scheduling.

6.4.1 Daily Scheduling. [provide if applicable]

6.4.2 Cooperation and Standards. With respect to any and all scheduling requirements in this Agreement, (a) Seller shall cooperate with PacifiCorp with respect

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to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder.

6.4.3 Schedule Coordination. If, as a result of this Agreement, PacifiCorp is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement due to Seller's lack of standing as a "scheduling coordinator" or other RTO recognized designation, qualification or otherwise, then (a) Seller shall acquire such RTO recognized standing (or shall contract with a third party who has such RTO recognized standing) such that PacifiCorp is no longer responsible for Seller's performance under the Generation Interconnection Agreement, and (b) Seller shall defend, indemnify and hold PacifiCorp harmless against any liability arising due to Seller's performance or failure to perform under the Generation Interconnection Agreement or RTO requirement.

6.5 Delivery Exceeding the Maximum Facility Delivery Rate. Seller shall not deliver energy from the Facility to the Point of Delivery in an amount that exceeds the Maximum Facility Delivery Rate. Seller's failure to limit such deliveries to the Maximum Facility Delivery Rate shall be a material breach of this Agreement.

6.6 Increase to the Maximum Facility Delivery Rate. Seller may, in accordance with this Section 6.6 and upon written approval by PacifiCorp, increase the Maximum Facility Delivery Rate, unless, after such increase, under normal or average design conditions the Net Output would exceed the Maximum Monthly Purchase Obligation in any given month. PacifiCorp approval of such increase is conditioned on the Public Utility Regulatory Policies Act (16 U.S.C. 824a-3) and other applicable law requiring PacifiCorp to purchase the incremental Net Output. If Seller increases the Maximum Facility Delivery Rate, PacifiCorp will continue to pay for base Net Output at the rate(s) prescribed by Section 5 of this Agreement, and PacifiCorp will pay for incremental Net Output resulting from the increase to the Maximum Facility Delivery Rate at the rate(s) prescribed by the Commission at the time of PacifiCorp's approval, if granted, of the increase in the Maximum Facility Delivery Rate. PacifiCorp shall, in its approval, if granted, specify a reasonable means of distinguishing such base Net Output from such incremental Net Output.

### SECTION 7: MOTIVE FORCE

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a motive force plan including an hourly wind profile acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit F-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit F-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Average Annual Net Output.

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**SECTION 8: GENERATION FORECASTING COSTS**

8.1 **Forecast Service Election.** PacifiCorp may, in its discretion, add forecasting services for Seller's Facility to PacifiCorp's existing contract with a qualified wind-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement.

8.2 **Seller's Forecast-Cost Share.** Pursuant to Commission Order No. 30497, Seller shall be responsible for 50% of PacifiCorp's cost of adding such forecasting services ("Seller's Forecast-Cost Share") up to Seller's Capped Forecast-Cost Share.

8.3 **Cap on Seller's Forecast-Cost Share.** Seller's Forecast-Cost Share for a given Contract Year is capped at 0.1% of total payments made by PacifiCorp to Seller for Net Output during the previous Contract Year ("**Seller's Capped Forecast-Cost Share**"). If the last Contract Year of this Agreement is shorter than a full calendar year, the cap will be prorated for that shortened year. For the year(s) prior to the second Contract Year of this agreement that equals a full calendar year, Seller's Forecast-Cost Share is capped at 0.1% of estimated payments for Net Output based on the Energy Delivery Schedule.

8.4 **Payment.** Seller shall pay to PacifiCorp Seller's Forecast-Cost Share uncapped by Section 8.3 for each Contract Year in equal payments for each month of such year except the last month of such year. (For example, in a Contract Year equaling a full calendar year, Seller would pay 1/11th of Seller's Forecast-Cost Share during each of the first 11 months.) In the last month of each Contract Year, PacifiCorp shall refund to Seller the amount paid by Seller under this Section in excess, if any, of Seller's Capped Forecast-Cost Share. For a Contract Year encompassed by just one calendar month, Seller's payment to PacifiCorp and PacifiCorp's refund to Seller shall be calculated and paid simultaneously. To the extent practicable, payments and refunds under this Section shall be included in monthly payments and invoices under Section 10.

**SECTION 9: METERING; REPORTS AND RECORDS**

9.1 **Metering Equipment.** PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement.

9.1.1 **Location of Metering Equipment.** Metering shall be performed at the location and in the manner specified in **Exhibit B** and the Generation Interconnection Agreement. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of power flowing into PacifiCorp's system at the Point of Delivery. The loss adjustment shall be a reduction of 2% of the kWh energy production recorded on the Facility output meter until actually measured and calibrated at the meter by PacifiCorp.

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9.1.2 Maintenance of Metering Equipment. PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement or at the request of Seller if Seller has reason to believe metering may be off and requests an inspection in writing. Seller shall bear the cost for any Seller requests. If any of the inspections or tests disclose an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered.

9.1.3 Costs of Metering Equipment. To the extent not otherwise provided in the Generation Interconnection Agreement, all PacifiCorp's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

9.2 Telemetering. Seller shall provide telemetering equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Generation Interconnection Agreement and to PacifiCorp on a real-time basis, and will operate such equipment when requested by PacifiCorp to indicate:

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

Seller shall also transmit to PacifiCorp any other data from the Facility that Seller receives on a real-time basis, including meteorological data, wind speed data, wind direction data and gross output data. Seller shall provide such real-time data to PacifiCorp in the same detail that Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp shall also receive the data in four second intervals). PacifiCorp shall have the right from time to time to require Seller to provide additional telemetering equipment and facilities to the extent necessary and reasonable.

9.3 Monthly Reports and Logs. Within thirty (30) days after the end of each Billing Period, Seller shall provide to PacifiCorp the following:

9.3.1 Reports. A report in electronic format, which report shall include (a) summaries of the Facility's wind and output data for the Billing Period in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Billing Period; (c) details of Availability of the Facility for the Billing Period sufficient to calculate Availability and

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including hourly average wind velocity measured at turbine hub height and ambient air temperature; and (d) any supporting information that PacifiCorp may from time to time reasonably request (including historical wind data for the Facility).

9.3.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the term of this Agreement commencing on the Commercial Operation Date. Seller shall provide PacifiCorp with a copy of the electronic fault log within thirty (30) days after the end of the Billing Period to which the fault log applies.

9.4 Cost of Performance Monitoring. Seller shall pay for and design, furnish, install, own, inspect, test, maintain and replace all equipment required in order to record data required for the reports and logs in Sections 9.3.

#### **SECTION 10: BILLINGS, COMPUTATIONS AND PAYMENTS**

10.1 Payment for Net Output. On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, and any other agreement(s) between the Parties. Any such offsets shall be separately itemized on the statement accompanying each payment to Seller.

10.2 Annual Invoicing for Output Shortfall. Thirty calendar days after the end of each Contract Year, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of Output Shortfall, if any, for all Billing Periods in the prior Contract Year and Output Shortfall Damages, if any. In preparing such invoices, PacifiCorp shall utilize the meter data provided to PacifiCorp for the Contract Year in question, but may also rely on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation if the meter data for such Contract Year is then incomplete or otherwise not available. To the extent required, PacifiCorp shall prepare any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Year. Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, and shall within thirty (30) days after receiving the invoice raise any objections regarding any disputed portion of the invoice. Objections not made by Seller within the thirty-day period shall be deemed waived.

10.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of

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the statement that is undisputed, on or before the due date. Except with respect to invoices provided under Section 10.2, any such notice shall 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 to the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days after such determination or resolution, along with interest in accordance with Section 10.3.

**SECTION 11: SECURITY**

**11.1 Delay Security:**

11.1.1 Duty to Post Security. Seller, within 5 business days after IPUC approval of this Agreement, shall post a letter of credit in the amount of \_\_\_\_\_ (“Delay Security”). The letter of credit shall be an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from Standard & Poors or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder. To the extent PacifiCorp’s draws on the letter of credit cause the remaining balance of the letter of credit to drop below \_\_\_\_\_, Seller, within 15 calendar days, shall restore the letter of credit to no less than \$ \_\_\_\_\_.

11.1.2 Right to Draw on Security. PacifiCorp shall have the right to draw on the Delay Security to collect Delay Liquidated Damages. Commencing on or about first of each month, PacifiCorp will invoice Seller for Delay Liquidated Damages incurred, if any, during the preceding month. If Seller fails to pay any undisputed amount within 30 calendar days of the invoice date, PacifiCorp shall draw such amount on the Delay Security. The Parties will make billings and payments for Delay Liquidated Damages in accordance with Section 10.

11.1.3 Additional Security. In the event PacifiCorp reasonably determines at any time that the remaining amount of Delay Security is less than the estimated value of Delay Liquidated Damages (due to upward changes in market price and/or due to Seller’s inability to meet the Scheduled Commercial Operation Date), PacifiCorp may demand that Seller post, and Seller will post within 5 business days of receipt of such demand, additional Delay Security equal to the estimated (unpaid) Delay Liquidated Damages.

11.1.4 Termination of Letter of Credit. Unless PacifiCorp disputes whether Seller has paid all Delay Liquidated Damages, Seller may terminate the Delay Security letter of credit on or after the 180th calendar day following commencement of Commercial Operation by providing PacifiCorp with no less than thirty-day advance written notice of its intent to do so.

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11.1.5 Default. Seller's failure to post and maintain Delay Security in accordance with Section 11.1 will constitute an event of default, unless cured in accordance with Section 12.1.1 of this Agreement.

11.2 Default Security (Levelized Pricing Only). If Seller has adopted levelized pricing for Net Output, Seller will provide security to PacifiCorp pursuant to Commission Order Nos. 21690, 21800, 29482, 29587 and related orders ("**Default Security**") as set forth in Addendum \_\_ [add addendum if Seller elects levelized pricing].

## **SECTION 12: DEFAULTS AND REMEDIES**

12.1 The following events shall constitute defaults under this Agreement:

12.1.1 Non-Payment. Seller's failure to make a payment when due under this Agreement or post and maintain security in conformance with the requirements of Section 11 or maintain insurance in conformance with the requirements of Section 14 of 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.

12.1.2 Breach of Material Term. Breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within thirty (30) days following written notice.

12.1.3 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

12.1.4 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) 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; (c) becomes insolvent; or (d) is unable to pay its debts when due.

12.1.5 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, within fifteen (15) days from the date of such request.

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12.1.6 Sale to Third-Party. Seller's sale of Net Output to an entity other than PacifiCorp, as prohibited by Section 4.2.

12.1.7 Non-Delivery. Unless excused by an event of Force Majeure, Seller's failure to deliver any Net Energy for three consecutive calendar months.

12.1.8 A Party otherwise fails to perform any material obligation (including but not limited to failure by Seller to meet any deadline set forth in Section 2.2) imposed upon that Party by 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, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

12.2 In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default. If the default has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 12 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

12.3 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output from the facility using the same motive force to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller do so subject to the terms of this Agreement, including but not limited to the purchase prices as set forth in (Section 5), until the Expiration Date (as set forth in Section 2.1). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

12.4 If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp for Output Shortfall for a period of eighteen (18) months from the date of termination plus the estimated administrative cost to acquire the replacement power.

### 12.5 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of

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such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

12.6 Upon an event of default or termination event resulting from default under this Agreement, in addition to and not in limitation of any other right or remedy under this Agreement or applicable law (including any right to set-off, counterclaim, or otherwise withhold payment), the non-defaulting Party may at its option set-off, against any amounts owed to the defaulting Party, any amounts owed by the defaulting Party under any contract(s) or agreement(s) between the Parties. The obligations of the Parties shall be deemed satisfied and discharged to the extent of any such set-off. The non-defaulting Party shall give the defaulting Party written notice of any set-off, but failure to give such notice shall not affect the validity of the set-off.

12.7 Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

### **SECTION 13: INDEMNIFICATION**

#### **13.1 Indemnities.**

13.1.1 **Indemnity by Seller.** Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

13.1.2 **Indemnity by PacifiCorp.** PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, lenders or representatives.

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13.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

13.3 CONSEQUENTIAL DAMAGES. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL 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.

**SECTION 14: LIABILITY AND INSURANCE**

14.1 Certificates and Certified Copies of Policies. Seller shall provide PacifiCorp with certificates of insurance evidencing the policies contemplated by Section \_\_\_ prior to the date by which such policies are required to be maintained as set forth in Section \_\_\_. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims-made." PacifiCorp shall have the right to request certified "true and correct" copies of the insurance policies at any time during the term of the Agreement and Seller shall furnish to PacifiCorp within 30 days of the request.

14.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, prior to the commencement of interconnection with the System and until the termination of this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by A.M. Best Company (or with a company or companies having equivalent rating) the following insurance coverage:

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14.2.1 Employers' Liability insurance with limits of at least \$1,000,000;

14.2.2 Commercial General Liability insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in this Agreement, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, products/completed operations liability, and, where applicable, watercraft protection and indemnity liability;

14.2.3 Excess Umbrella Liability insurance with a single limit of at least \$20,000,000 per occurrence in excess of the limits of insurance provided above; and

14.2.4 All-Risk insurance in an amount at least equal to the 80% of the replacement value of the Facility. The policy shall provide coverage in an amount equal to the full replacement value of the Facility for "all risks" of physical loss or damage except as hereinafter provided, including coverage for earth movement, flood, boiler and machinery, transit and off-site storage accident exposure, but excluding the equipment owned or leased by Operator and its subcontractors and their personal property. The policy may contain separate sublimits and deductibles subject to insurance company underwriting guidelines. Seller shall maintain the policy in accordance with terms available in the insurance market for similar electric generating facilities. The policy shall include coverage for business interruption in an amount covering a period of indemnity equal to twelve (12) months.

14.3 Insurance Structure. Seller may satisfy the amounts of insurance required in Section 14.2 above by purchasing primary coverage in the amounts specified or by buying a separate excess umbrella liability policy together with lower limit primary underlying coverage. The structure of the coverage is at Seller's option, but the total amount of insurance must the above requirements.

14.4 Occurrence-Based Coverage. The coverage required above, and any umbrella or excess coverage, shall be "occurrence" form policies. In the event that any policy is written on a "claims-made" basis and such policy is not renewed or the retroactive date of such policy is to be changed, the first insured Party shall obtain or cause to be obtained for each such policy or policies the broadest basic and supplemental extended reporting period coverage or "tail" reasonably available in the commercial insurance market for each such policy or policies and shall provide the other Party with proof that such basic and supplemental extended reporting period coverage or "tail" has been obtained.

14.5 Endorsement Items. Seller shall immediately cause its insurers to amend its Commercial General Liability and Umbrella or Excess Liability policies with all of the following endorsement items, and to amend its Workers' Compensation and Auto Liability policies with the endorsement items set forth in Sections 14.5.3 and 14.5.4 below:

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14.5.1 PacifiCorp and its Affiliates, their respective directors, officers, employees, and agents as an additional insured under this policy and to the maximum extent allowed by law, shall be provided with coverages at least as broad as those required of the Seller by this Agreement;

14.5.2 This insurance is primary with respect to the interest of PacifiCorp and its Affiliates, their respective directors, officers, employees, and agents; and any other insurance maintained by them in excess and not contributory with this insurance;

14.5.3 Insurer hereby waives all rights of subrogation against PacifiCorp and its Affiliates, their respective directors, officers, employees, and agents; and

14.5.4 Notwithstanding any provision of the policy, this policy may not be canceled, non-renewed or materially changed by the insurer without giving ten (10) days' prior written notice to PacifiCorp.

14.6 Periodic Review. PacifiCorp may review this schedule of required insurance provided in Section 14 as often as once every two (2) years. PacifiCorp may in its discretion require the Seller to make changes to the insurance coverage requirements in this Section 14 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 of PacifiCorp's review takes place with the consent of Seller, which shall not be unreasonably withheld.

**SECTION 15: FORCE MAJEURE**

15.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which is in each case (i) beyond the reasonable control of such Party, (ii) by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and (iii) by the exercise of due diligence, such Party shall be unable to prevent or overcome. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

15.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence, including the start date of the Force Majeure, the cause

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of Force Majeure, whether the Facility remains partially operational and the expected end date of the Force Majeure;

15.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure;

15.1.3 the non-performing Party uses its best efforts to remedy its inability to perform; and

15.1.4 the non-performing Party shall provide prompt written notice to the other Party at the end of the Force Majeure event detailing the end date, cause thereof, damage caused there by and any repairs that were required as a result of the Force Majeure event, and the end date of the Force Majeure.

15.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

15.3 Neither Party shall 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.

#### **SECTION 16: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### **SECTION 17: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Idaho, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### **SECTION 18: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the 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 the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

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**SECTION 19: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

**SECTION 20: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

PacifiCorp's compliance with the terms of this Agreement is conditioned on Seller's submission to PacifiCorp prior to the Commercial Operation Date and Seller's maintenance thereafter of copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility.

**SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no assignment hereof by either Party shall become effective without the written consent of both Parties being first obtained. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, any entity with which PacifiCorp may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of PacifiCorp's rights, obligations, and interests under this Agreement. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. PacifiCorp shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

**SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, each Party releases the other from any claims, known or unknown, that may have arisen prior to the Effective Date with respect to the Facility and any predecessor facility proposed to have been constructed on the site of the Facility.

**SECTION 23: NOTICES**

All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

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Notices	PacifiCorp	Seller
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232  Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
<b>All Invoices:</b>	Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	
<b>Scheduling:</b>	Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
<b>Payments:</b>	Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	
<b>Wire Transfer:</b>	Bank One N.A. To be provided in separate letter from PacifiCorp to Seller	
<b>Credit and Collections:</b>	Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813-5609	
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	

The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section.

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

PacifiCorp

Seller

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By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**  
**[Seller to Complete]**

Seller's Facility consists of \_\_\_\_\_ generator(s) manufactured by \_\_\_\_\_ . More specifically, each generator at the Facility is described as:

**Type (synchronous or inductive):**

**Model:**

**Number of Phases:**

**Rated Output (kW):**

**Rated Output (kVA):**

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

**Rated Current (A):** Stator: \_\_\_\_\_ A; Rotor: \_\_\_\_\_ A

**Maximum kW Output:** \_\_\_\_\_ kW      **Maximum kVA Output:** \_\_\_\_\_ kVA

**Minimum kW Output:** \_\_\_\_\_ kW

**Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:**

**Facility Capacity Rating:** \_\_\_\_\_ kW at \_\_\_\_\_

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

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**Location of the Facility:** The Facility is located in \_\_\_\_\_ County, Idaho. The location is more particularly described as follows:

[legal description of parcel]

**Power factor requirements:**

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

Attach documentation of the power curve for the generator(s).

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**EXHIBIT B**

**POINT OF DELIVERY / PARTIES' INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

**Instructions to Seller:**

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.

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**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

Qualifying Facility Number from FERC:

The following Documents are required to complete this project:

Easements:

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Permits:

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**EXHIBIT D**  
**ENERGY DELIVERY SCHEDULE**

<b>[Project Name]</b>		
	<b>Scheduled Monthly Energy Delivery</b>	
		<b>Ave kW/mo</b>
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		
<b>TOTAL:</b>		

Planned Outages. Seller will provide a Planned Outage schedule annually not to exceed \_\_\_\_ hours per \_\_\_\_ per year.

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**EXHIBIT E**  
**START-UP TESTING**

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to:

1. Test of mechanical and electrical equipment;
2. Calibration of all monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Point-to-point continuity tests;
6. Bench tests of protective devices; and
7. Tests required by manufacturer(s) and designer(s) of equipment.

Required start-up tests are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PacifiCorp's electrical system, which may include but are not limited to:

1. Turbine/generator mechanical runs and functionality;
2. System operation tests;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Excitation and voltage regulation operation tests;
7. Auto stop/start sequence;
8. Completion of any state and federal environmental testing requirements; and
9. Tests required by manufacturer(s) and designer(s) of equipment.

For wind projects only, the following Wind Turbine Generator Installation Checklists are required documents to be signed off by Manufacturer or Subcontract Category Commissioning Personnel as part of the Commissioning and startup testing:

Turbine Installation  
Foundation Inspection  
Controller Assembly  
Power Cables

Cable Installation Checklists including:

Controller  
Top Deck / Yaw Deck  
Tower Top Section / Saddle  
Mid Section Cables or buss bars  
Base Section

Tower Base Section  
Tower Lights and Outlets  
Tower Mid Section  
Tower Top Section  
Nacelle  
Rotor

**DRAFT**

**EXHIBIT F-1**  
**MOTIVE FORCE PLAN**  
**WIND SPEED DATA SUMMARIES & HOURLY WIND PROFILE**

**DRAFT**

**EXHIBIT F-2**

**ENGINEER'S CERTIFICATION**

(1) THAT THE WIND DATA SUMMARIES IN EXHIBIT F-1 ARE ACCURATE;

\_\_\_\_\_ [Licensed Professional Engineer's certification]

(2) THAT THE AVERAGE ANNUAL NET OUTPUT ESTIMATE IS \_\_\_\_\_ KWH PER YEAR IN EACH FULL CALENDAR YEAR OF THIS AGREEMENT BASED ON THE MOTIVE FORCE PLAN IN EXHIBIT F-1;

\_\_\_\_\_ [Licensed Professional Engineer's certification]

(3) THAT THE FACILITY, UNDER AVERAGE DESIGN CONDITIONS, LIKELY WILL GENERATE NO MORE THAN 10 aMW IN ANY CALENDAR MONTH.

\_\_\_\_\_ [Licensed Professional Engineer's certification]

**DRAFT**

**EXHIBIT G**  
**SAMPLE ENERGY PURCHASE PRICE CALCULATIONS**

The following are samples of calculations of energy purchase prices using the formula and tables in Section 5.1.

The calculation for the non-levelized purchase price during an On-Peak Hour in May of 2009 equals \$76.73/MWh (the 2009 annual rate for Conforming Energy) multiplied by 92% (0.92) (the May On-Peak Hour multiplier) minus \$5.10/MWh (the wind integration cost), which equals \$65.49/MWh.

**Table 3:** Sample calculations for non-levelized On-Peak Conforming Energy in 2009: Purchase Price = (annual rate \* monthly On-Peak multiplier) – wind integration cost.

<b>Month</b>	<b>Conforming Energy Annual Rate for 2009 (per MWh)</b>	<b>On-Peak Hour Multiplier</b>	<b>Wind Integration Cost</b>	<b>Calculated Purchase Price for 2009 On-Peak Conforming Energy (per MWh)</b>
January	\$76.73	103%	\$5.10	\$73.93
February	\$76.73	105%	\$5.10	\$75.47
March	\$76.73	95%	\$5.10	\$67.79
April	\$76.73	95%	\$5.10	\$67.79
May	\$76.73	92%	\$5.10	\$65.49
June	\$76.73	94%	\$5.10	\$67.03
July	\$76.73	121%	\$5.10	\$87.74
August	\$76.73	121%	\$5.10	\$87.74
September	\$76.73	109%	\$5.10	\$78.54
October	\$76.73	115%	\$5.10	\$83.14
November	\$76.73	110%	\$5.10	\$79.30
December	\$76.73	129%	\$5.10	\$93.88

**Table 4:** Sample calculations for non-levelized Off-Peak Conforming Energy in 2009: Purchase Price = (annual rate \* monthly Off-Peak multiplier) – wind integration cost.

<b>Month</b>	<b>Conforming Energy Annual Rate for 2009 (per MWh)</b>	<b>Off-Peak Hour Multiplier</b>	<b>Wind Integration Cost</b>	<b>Calculated Purchase Price for 2009 Off-Peak Conforming Energy (per MWh)</b>
January	\$76.73	94%	\$5.10	\$67.03
February	\$76.73	97%	\$5.10	\$69.33
March	\$76.73	80%	\$5.10	\$56.28
April	\$76.73	76%	\$5.10	\$53.21

**DRAFT**

<b>Month</b>	<b>Conforming Energy Annual Rate for 2009 (per MWh)</b>	<b>Off-Peak Hour Multiplier</b>	<b>Wind Integration Cost</b>	<b>Calculated Purchase Price for 2009 Off-Peak Conforming Energy (per MWh)</b>
May	\$76.73	63%	\$5.10	\$43.24
June	\$76.73	65%	\$5.10	\$44.77
July	\$76.73	92%	\$5.10	\$65.49
August	\$76.73	106%	\$5.10	\$76.23
September	\$76.73	99%	\$5.10	\$70.86
October	\$76.73	105%	\$5.10	\$75.47
November	\$76.73	96%	\$5.10	\$68.56
December	\$76.73	120%	\$5.10	\$86.98

**DRAFT**

**EXHIBIT H**

**Seller Authorization to Release Generation Data to PacifiCorp**

*[Interconnection Customer Letterhead]*

Transmission Services

Attn: Director, Transmission Services

825 NE Multnomah, Suite 1600

Portland, OR 97232

**RE: \_\_\_\_\_ Interconnection Request**

Dear Sir:

\_\_\_\_\_ hereby voluntarily authorizes PacifiCorp's Transmission business unit to share \_\_\_\_\_'s generator interconnection information and generator meter data relating to \_\_\_\_\_'s \_\_\_\_\_ Qualifying Facility located in the town of \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_ with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group. \_\_\_\_\_ acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**DRAFT**

**EXHIBIT I**

**Template Seller Certification of Conditions for Commercial Operation**

*[Seller Letterhead]*

*[Address to PacifiCorp]*

**RE: \_\_\_\_\_ Qualifying Facility**

Dear Sir:

[Template for certification to be added.]

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-16**

May 12, 2009 email from James Carkulis.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Tuesday, May 12, 2009 6:55 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** Younie, John; 'Ken Kaufmann'  
**Subject:** RE: contracts

Bruce:

Thank you. We shall commence reviewing.

But, also as identified, transmission access is an issue which is not part and parcel of PURPA contract requests and XRG is convinced that issue can be dealt with outside of the requests for contracts. Therefore, XRG would appreciate the tendering of the balance of our submissions. We have third party experts who have a high level of confidence there is sufficient access currently or in the very near future.

Again, thanks and we shall be getting back to you shortly.

James

Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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---

**From:** Griswold, Bruce {Mkt Function} [mailto:[Bruce.Griswold@PacifiCorp.com](mailto:Bruce.Griswold@PacifiCorp.com)]  
**Sent:** Monday, May 11, 2009 5:26 PM  
**To:** James T. Carkulis  
**Cc:** Younie, John; Ken Kaufmann  
**Subject:** RE: contracts

James

Please find the attached draft Idaho standard QF PPA to be used for a wind project. It should include all the recent Idaho commission orders. It does not include Addendum W which is the bolt-on addendum for an off-system project delivering to PacifiCorp. I will send that separately. Per our last communication (attached), we indicated PacifiCorp does not have sufficient transmission at Borah or Brady to accept any project greater than 23MW and you selected one project, XRG-DP 10, that would be developed into a PPA. Please provide a redline to this document with your proposed changes for discussion. If you or your team, have questions on the PPA, please call.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office

503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Monday, May 11, 2009 5:35 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** contracts

Bruce:

In January, PacifiCorp agreed the strategy with XRG was to have all 6 contract requests before the IPUC by the end of April. To date, not one draft has been tendered by PacifiCorp. We realize these are exciting times and all are very busy, but all the Aurora work should have been accomplished on JR1 and Jack Ranch by now, the 4 drafts on XRG-DP 7 thru 10 should be in our hands for review.

We would appreciate if we could receive these contracts for review and comment to move to execution.

Thank you.

Regards,

**James T. Carkulis**  
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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-17**

July 6, 2009 email from James Carkulis.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Monday, July 06, 2009 10:35 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** Younie, John; 'Ken Kaufmann'  
**Subject:** RE: contracts

Bruce:

It has been a bit hectic moving to financial close on the 228 MW for 2009. Please accept our apologies on not getting back to you sooner.

We shall provide a redline to this contract and the other 3 identical contracts proposed for XRG -DP 7, 8, 9, and 10. We are also wondering if you have completed the Aurora modeling under your current IRP on the two 78 MW projects known as Jack Ranch and JR 1? The turbine opportunity which XRG can avail itself for 2009 is also carrying us into 2010. We wish to install all projects under the PacifiCorp relationship in 2010.

Thank you.

Regards,

James T. Carkulis  
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Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
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[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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---

**From:** Griswold, Bruce {Mkt Function} [mailto:[Bruce.Griswold@PacifiCorp.com](mailto:Bruce.Griswold@PacifiCorp.com)]  
**Sent:** Monday, May 11, 2009 5:26 PM  
**To:** James T. Carkulis  
**Cc:** Younie, John; Ken Kaufmann  
**Subject:** RE: contracts

James

Please find the attached draft Idaho standard QF PPA to be used for a wind project. It should include all the recent Idaho commission orders. It does not include Addendum W which is the bolt-on addendum for an off-system project delivering to PacifiCorp. I will send that separately. Per our last communication (attached), we indicated PacifiCorp does not have sufficient transmission at Borah or Brady to accept any project greater than 23MW and you selected one project, XRG-DP 10, that would

be developed into a PPA. Please provide a redline to this document with your proposed changes for discussion. If you or your team, have questions on the PPA, please call.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Monday, May 11, 2009 5:35 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** contracts

Bruce:

In January, PacifiCorp agreed the strategy with XRG was to have all 6 contract requests before the IPUC by the end of April. To date, not one draft has been tendered by PacifiCorp. We realize these are exciting times and all are very busy, but all the Aurora work should have been accomplished on JR1 and Jack Ranch by now, the 4 drafts on XRG-DP 7 thru 10 should be in our hands for review.

We would appreciate if we could receive these contracts for review and comment to move to execution.

Thank you.

Regards,

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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-18**

September 18, 2009 email from James Carkulis.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Friday, September 18, 2009 5:55 AM  
**To:** Griswold, Bruce {Mkt Function}; 'Lawrence R. Leib'  
**Subject:** QF Projects

Bruce:

In January of 2009, we initiated contact with Rocky Mountain Power and with your affirmation to proceed on 4 – 20 MW contracts under the published rate and 2 – 78 MW contracts under the Aurora methodology. We have received but one of the 20 MW contract drafts to date. Exergy has waited patiently and has repeatedly sent notices to you on providing the balance of the draft contracts for our perusal and modifications.

To this date we have received only the one contract for standard published rates for 20 MW. Your stated reason was there was insufficient transmission capacity along the route you propose. While we can appreciate the supply side of PacifiCorp investigating on its own where they wish the energy from these contracts to deliver, whether the supply side of PacifiCorp determines capacity is not a function of whether the contracts which were promised to us in the first quarter of 2009 were to be let. Exergy asked for contracts and Rocky Mountain Power agreed they would be forthcoming.

We would appreciate in the next 10 days the balance of 5 contracts per the above.

Then we shall proceed in modifying and negotiating the terms and conditions of all 6 power agreements.

Thank you.

Regards,

James T. Carkulis  
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Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-19**

October 2, 2009 email with attachments including draft power purchase agreement from Bruce Griswold.



**Griswold, Bruce {Mkt Function}**

---

**From:** Griswold, Bruce {Mkt Function}  
**Sent:** Friday, October 02, 2009 4:02 PM  
**To:** James T. Carkulis  
**Subject:** FW: Exergy QF PPA requests

**Importance:** High

**Attachments:** PURPA Contract Request - XRG-DP10.pdf; 01Oct09 draft Idaho MAG Off-System PPA CLEAN.doc

Dear James:

I have been in receipt of your September 18 email, in which you voiced your frustration at receiving only one of six power purchase agreements (PPAs) you requested from PacifiCorp for six planned wind projects you are developing, located outside of PacifiCorp's service territory and delivered to our system at Brady substation. I apologize for the delayed response but in order to adequately address your concerns, I talked through the transmission situation again with our transmission traders at PacifiCorp merchant and also discussed our PURPA obligations with legal counsel.

As I explained previously, the point of delivery you propose (Brady substation) are remote sites that interconnect with PacifiCorp's system where the Company's ability to assimilate delivered power and move it elsewhere on our system is very limited. As I mentioned, PacifiCorp estimates that the available transmission capacity in its current configuration at Brady can only accept approximately 20 to 25 MW of new generation on a firm basis. In order to accommodate your request to deliver the full 235 MW, PacifiCorp merchant must request network upgrades from PacifiCorp Transmission, and we understand that such upgrades likely would take four to five years to complete.

In addition to the physical obstacles to accommodating your request, PacifiCorp believes that it has the right to specify a point of delivery onto its system that is reasonable in terms of its needs, and PacifiCorp reserves that right. See *Water Power Co., Inc. v. PacifiCorp*, 99 Or App 125, 781 P2d 860 (1989). If you think PacifiCorp's position is wrong, please explain your position, and the basis therefore.

If PacifiCorp does have an obligation to accept output at Borah and Brady, PacifiCorp will expect you to pay for all resulting interconnection costs including network upgrades (either through an adjustment to avoided costs or through payment to PacifiCorp Transmission) such that the ultimate cost to PacifiCorp's customers is not greater than the cost avoided by PacifiCorp not constructing or purchasing an equivalent resource located on a non-constrained portion of its system. See 18 C.F.R. §§ 292.101(b)(7)), 292.306(a). Again, if you disagree with this principle I urge you to explain your position and basis therefore.

Your six proposed projects would wheel wind energy to a PacifiCorp point of receipt from which we have very limited available transmission capacity to move the power to our network load. These projects from both large and small qualifying facilities, raise several legal and technical questions for which PacifiCorp currently is seeking answers. PacifiCorp has indicated it can accept a single standard Idaho QF project at Brady and provided a draft PPA on May 11, 2009 that incorporated all Idaho orders through that date. You have indicated that you would pursue project XRG-DP-10, LLC for this PPA. I have attached the project specs to ensure that is still the case. I have also attached our updated draft PPA with the off-system addendum to reflect scheduled deliveries versus as generated deliveries. Please provide comments on this draft for your XRG-DP-10, LLC project including any updated project information. We have not provided draft PPAs for the remaining five projects since it will require substantial time and effort and, given the challenges identified above, PacifiCorp does not want to undertake this effort if your projects have fatal flaws such as the available transmission issue identified. It was my understanding from our previous communications that you were agreeable to move

forward on a single project and investigate alternatives, if any, for the other five; however your September 18 email could be interpreted as a demand for a draft PPA pursuant to PURPA.

I would be happy to meet with you and your team at a mutually convenient time to discuss your remaining five projects and determine a plan for addressing each of those in a timely manner should it be determined that you can deliver to an alternate point of delivery where PacifiCorp can receive and deliver the power to its network



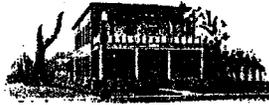
PURPA Contract Request - XRG-D...Idaho MAG Off-Sy... 01Oct09 draft

load on a firm basis or overcome the transmission capacity constraint at Brady. Let know if you would like to schedule a conference call or meeting. Thanks.

Regards,  
Bruce Griswold

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

1108-37.4  
Cover



**RICHARDSON & O'LEARY, PLLC**  
ATTORNEYS AT LAW

Peter Richardson

Tel: 208-938-7901 Fax: 208-938-7904  
peter@richardsonandoleary.com  
P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

January 21, 2009

Bruce Griswold  
John Younie  
825 NW Multnomah  
Portland, Oregon 97232  
Via overnight delivery

Re: PURPA Contract for XRG-DP-10, LLC

Dear Bruce and John:

I visited with you via e-mail communications a while back regarding a PURPA agreement for the above reference company. Please consider this to be a follow up request for an Idaho jurisdictional standard twenty year QF agreement with non-levelized rates. The project will be less than 30 average monthly MW and should therefore qualify for the Idaho PUC's published rates.

The first operation date is December 31, 2010.

The project is located in Cassia County, Idaho. Estimated production data and a location map is attached for your review. Also attached is a copy of the FERC Notice of Self Certification for this project, which together with the map and production data should be sufficient for you to provide my client with a power purchase agreement. Because the project will be interconnect with BPA facilities and deliver to your Brady Substation in Southern Idaho, there is no need for us to engage Rocky Mountain Power for an interconnection agreement.

Thank you for your prompt response and please give me a call if you have any questions.

Sincerely:

A handwritten signature in black ink, appearing to read "Peter Richardson", written in a cursive style.

Pete Richardson  
Attorney for XRG-DP-10, LLC

**Malta, XRG-DP10 (Newcomb West)**

Vestas V90, 1.8 WTG  
 Nameplate: 19.8 MW

Hour	Month												Average
	1	2	3	4	5	6	7	8	9	10	11	12	
0	5,208	6,206	9,121	9,333	6,990	8,584	5,506	5,926	4,739	7,061	6,902	6,471	6,837
1	4,643	6,579	7,274	9,357	7,409	8,738	6,299	5,404	4,375	5,982	6,788	6,821	6,639
2	4,791	6,684	6,556	8,768	6,865	8,634	6,263	5,867	4,883	5,196	7,070	7,201	6,548
3	4,742	5,046	6,303	7,929	6,402	8,703	6,528	5,266	3,836	6,057	7,652	7,701	6,347
4	5,253	5,443	6,716	7,317	7,160	8,849	6,979	6,289	4,894	5,579	7,625	7,436	6,628
5	5,474	5,198	5,934	7,441	7,073	8,610	7,031	7,102	5,116	5,427	7,393	7,551	6,612
6	6,435	5,409	5,421	7,060	7,125	5,675	7,012	5,816	6,404	6,285	7,462	7,439	6,545
7	6,245	4,743	5,088	6,278	5,708	5,571	6,015	5,056	6,118	6,120	8,211	8,221	6,114
8	5,650	5,199	5,172	6,113	5,779	4,646	4,288	2,584	3,187	4,473	7,289	7,322	5,142
9	5,318	3,831	5,071	6,306	6,224	4,989	3,595	2,579	2,317	2,675	6,523	6,282	4,643
10	4,887	3,560	6,015	6,575	6,869	4,788	3,482	2,392	2,747	2,709	5,050	6,211	4,607
11	4,692	3,592	6,238	6,166	7,034	5,536	3,471	2,761	3,029	3,346	4,445	6,198	4,709
12	5,485	3,518	7,069	6,301	6,316	5,327	3,906	3,027	2,948	3,682	4,508	6,195	4,857
13	5,581	3,794	8,070	7,284	6,164	4,936	4,649	3,422	3,205	4,174	4,183	6,732	5,133
14	5,202	4,384	8,504	6,489	7,369	6,109	5,453	4,166	3,311	4,422	4,403	6,255	5,506
15	5,173	4,151	8,482	7,122	7,486	6,961	6,133	4,935	3,590	4,520	4,896	5,538	5,748
16	4,938	4,138	9,384	8,041	7,502	7,099	7,612	6,911	3,871	5,822	4,788	5,861	6,331
17	5,214	3,934	9,973	7,693	7,007	7,026	8,350	7,345	4,094	6,588	4,720	6,795	6,562
18	6,128	5,398	9,709	8,243	6,861	6,676	8,562	7,873	4,879	7,796	5,727	6,936	7,066
19	6,093	6,800	10,621	9,249	7,892	7,012	6,795	7,760	6,228	8,450	5,969	7,364	7,503
20	6,094	6,723	10,700	10,145	8,486	8,339	5,972	8,691	6,866	8,521	5,729	7,241	7,792
21	5,693	5,923	9,626	10,536	7,476	9,089	6,140	7,636	6,704	7,410	6,499	6,366	7,423
22	5,871	6,757	9,565	9,405	7,922	8,607	5,743	6,885	5,813	8,168	6,499	6,691	7,327
23	5,761	6,737	9,501	9,131	8,437	8,282	6,058	6,353	5,924	7,599	6,844	7,038	7,305
Average	5,440	5,156	7,755	7,845	7,057	7,073	5,910	5,502	4,537	5,753	6,132	6,828	6,828



FERC Form No. 556  
18 C.F.R. § 131.80

CERTIFICATION OF QUALIFYING FACILITY STATUS FOR AN EXISTING OR A  
PROPOSED SMALL POWER PRODUCTION OR COGENERATION FACILITY

INFORMATION ABOUT COMPLIANCE

Compliance with the information collection requirements established by the FERC Form No. 556 is required to obtain and maintain status as a qualifying facility. *See* 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUBMITTING COMMENTS ON PUBLIC REPORTING BURDEN

The estimated burden for completing FERC Form No. 556, including gathering and reporting information, is 4 hours for self-certifications and 38 hours for applications for Commission certification. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Michael Miller, Office of the Executive Director (ED-34), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira\_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

GENERAL INSTRUCTIONS

Complete this form by replacing bold text below with responses to each item, as required.

PART A: GENERAL INFORMATION TO BE SUBMITTED BY ALL APPLICANTS

1a. Full name of applicant: [Note: Applicant is the legal entity submitting this form, not the individual employee making the filing. Generally, the Applicant will be a company, corporation or organization, unless the facility is owned directly by an individual or individuals.]

**XRG-DP10, LLC**

**Primary Activity: Independent Power Producer, renewable electrical generation**

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any:

**none**

Purpose of instant filing (self-certification or self-recertification [18 C.F.R. § 292.207(a)(1)], or application for Commission certification or recertification [18 C.F.R. §§ 292.207(b) and (d)(2)]):

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XRG-DP10, LLC

2/23/2007

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### Self-certification

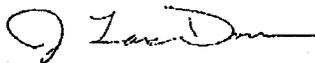
1b. Full address of applicant:

**1424 Dodge Ave.  
Helena, MT 59601**

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility. Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities. In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

**Exergy Development Group – Idaho, LLC  
Exergy Development Group – Idaho, LLC is solely owned by Exergy  
Development Group, LLC, a Montana limited liability company.  
Exergy Development Group, LLC is not comprised of any ownership by a  
public or private utility.**

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant: [Note: A signature on a filing shall constitute a certificate that (1) the signer has read the filing and knows its contents; (2) the contents are true as stated, to the best knowledge and belief of the signer; and (3) the signer possesses full power and authority to sign the filing. A person submitting a self-certification electronically via eFiling may use typed characters representing their name to show that the person has signed the document. See 18 C.F.R. § 385.2005.]



2. Person to whom communications regarding the filed information may be addressed:

Name: **J. Lars Dorr**

Title: **Lead Project Engineer, Exergy Technology Concepts, LLC**

Telephone number: **208.429.1499**

Mailing address: **802 W. Bannock, Ste 1200**

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**Boise, ID 83702**

3a. Location of facility to be certified:

State: **Idaho**

County: **Cassia**

City or town: **Malta**

Street address (if known): **N/A**

3b. Indicate the electric utilities that are contemplated to transact with the qualifying facility (if known) and describe the services those electric utilities are expected to provide:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities interconnecting with the facility and/or providing wheeling service [18 C.F.R. §§ 292.303(c) and (d)]:

**Bonneville Power Administration**

Indicate utilities purchasing the useful electric power output [18 C.F.R. §§ 292.101(b)(2), 292.202(g) and 292.303(a)]:

**Pacificorp DBA, Rocky Mountain Power**

Indicate utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service [18 C.F.R. §§ 292.101(b)(3), (b)(8), 292.303(b) and 292.305(b)]:

**Bonneville Power Administration**

4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their operation. Include transmission lines, transformers and switchyard equipment, if included as part of the facility.

**DeWind D8.2, 2.0MW Wind Turbine Generator**

**Number of units - 5**

4b. Indicate the maximum gross and maximum net electric power production capacity of

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the facility at the point(s) of delivery and show the derivation. [Note: Maximum gross output is the maximum amount of power that the facility is able to produce, measured at the terminals of the generator(s). Maximum net output is maximum gross output minus (1) any auxiliary load for devices that are necessary and integral to the power production process (fans, pumps, etc.), and (2) any losses incurred from the generator(s) to the point of delivery. If any electric power is consumed at the location of the QF (or thermal host) for purposes not related to the power production process, such power should not be subtracted from gross output for purposes of reporting maximum net output here.]

Gross output: **10 MW**

Net output: **9 MW**

Derivation (assumptions about losses, auxiliary load or lack thereof, and calculation of gross and net output):

**10.0% losses including, but not limited to, line losses, icing, availability, waking, turbulence/control, etc.**

4c. Indicate the actual or expected installation and operation dates of the facility, or the actual or expected date of completion of the reported modification to the facility:

**June 2008**

4d. Describe the primary energy input (e.g., hydro, coal, oil [18 C.F.R. § 292.202(l)], natural gas [18 C.F.R. § 292.202(k)], solar, geothermal, wind, waste, biomass [18 C.F.R. § 292.202(a)], or other). For a waste energy input that does not fall within one of the categories on the Commission's list of previously approved wastes, demonstrate that such energy input has little or no current commercial value and that it exists in the absence of the qualifying facility industry [18 C.F.R. § 292.202(b)].

**100% Wind energy input**

5. Provide the average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and provide the related percentage of the total average annual hourly energy input to the facility [18 C.F.R. § 292.202(j)]. For any oil or natural gas fuel, use lower heating value [18 C.F.R. § 292.202(m)]:

Natural gas: **None**

Oil: **None**

Coal (applicable only to a small power production facility): **None**

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6. Discuss any particular characteristic of the facility which the cogenerator or small power producer believes might bear on its qualifying status.

None

**PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY**

Items 7 and 8 only need to be answered by applicants seeking certification as a small power production facility. Applicants for certification as a cogeneration facility may delete Items 7 and 8 from their application, or enter "N/A" at both items.

7. Describe how fossil fuel use will not exceed 25 percent of the total annual energy input limit [18 C.F.R §§ 292.202(j) and 292.204(b)]. Also, describe how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): ignition, start-up, testing, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.

N/A

8. If the facility reported herein is not an eligible solar, wind, waste or geothermal facility, and if any other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above and uses the same primary energy input, provide the following information about the other facility for the purpose of demonstrating that the total of the power production capacities of these facilities does not exceed 80 MW [18 C.F.R § 292.204(a)]: [See definition of an "eligible facility" below. Note that an "eligible facility" is a specific type of small power production facility that is eligible for special treatment under the Wind, Waste and Geothermal Power Production Incentives Act of 1990, as subsequently amended in 1991, and should not be confused with facilities that are generally eligible for QF status.]

Facility name, if any (as reported to the Commission):

N/A

Commission Docket Number:

N/A

Name of common owner:

N/A

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Common primary energy source used as energy input:

N/A

Power production capacity (MW):

N/A

An eligible solar, wind, waste or geothermal facility, as defined in Section 3(17)(E) of the Federal Power Act, is a small power production facility that produces electric energy solely by the use, as a primary energy input, of solar, wind, waste or geothermal resources, for which either an application for Commission certification of qualifying status [18 C.F.R § 292.207(b)] or a notice of self-certification of qualifying status [18 C.F.R § 292.207(a)] was submitted to the Commission not later than December 31, 1994, and for which construction of such facility commences not later than December 31, 1999, or if not, reasonable diligence is exercised toward the completion of such facility, taking into account all factors relevant to construction of the facility.

PART C: DESCRIPTION OF THE COGENERATION FACILITY

Items 9 through 15 only need to be answered by applicants seeking certification as a cogeneration facility. Applicants for certification as a small power production facility may delete Items 9 through 15 from their application, or enter "N/A" at each item.

**DELETED**

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**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 EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL) AND ALL REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS 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.**

**POWER PURCHASE AGREEMENT**

BETWEEN

---

[a non-fueled, wind-powered resource with Mechanical Availability Guarantee, Idaho Qualifying Facility interconnected to non-PacifiCorp system in \_\_\_[STATE] delivering power to PacifiCorp in Idaho —10aMW/Month or less]

AND

PACIFICORP

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**POWER PURCHASE AGREEMENT**

THIS POWER PURCHASE AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is between \_\_\_\_\_ [Seller's name], an \_\_\_\_\_ [Seller's state of incorporation] \_\_\_\_\_ [corporation, partnership, or limited liability company] (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 \_\_\_\_\_ [state type of facility] facility for the generation of electric power located in \_\_\_\_\_ [City, County, State] with an expected Facility Capacity Rating of \_\_\_\_\_-kilowatts (kW) ("**Facility**").

B. Seller intends to operate the Facility as a Qualifying Facility; as such term is defined in Section 1.52 below.

C. Seller estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is \_\_\_\_\_ kilowatt-hours (kWh) ("**Average Annual Net Output**") pursuant to the monthly Energy Delivery Schedule in **Exhibit D** 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.

E. Seller intends to transmit Net Output to PacifiCorp via transmission facilities operated by a third party(ies), and PacifiCorp intends to accept scheduled firm delivery of Seller's Net Output, under the terms of this Agreement, including the Generation Scheduling Addendum attached as **Addendum W** and incorporated contemporaneously herewith.

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol and, as such, the costs of QF energy under this Agreement shall be allocated as a system resource unless any portion of those costs exceeds the cost PacifiCorp would have otherwise incurred acquiring comparable resources. In that event, the Revised Protocol assigns those excess costs on a situs basis to the state in which the Facility is located. In addition, for the purposes of inter-jurisdictional cost allocation, PacifiCorp represents that the costs of this Agreement do not exceed the costs PacifiCorp would have otherwise incurred acquiring resources in the market that are defined as "Comparable Resources" in Appendix A to the Inter-Jurisdictional Cost Allocation Revised Protocol. For the purposes of inter-jurisdictional cost allocation, PacifiCorp represents that the costs and revenues from the energy and capacity sold to Seller by PacifiCorp will be assigned on a situs basis to the state to which Net Output from the Facility is delivered.

G. Seller has authorized Interconnected Utility to release generation data to PacifiCorp. The authorization is attached as **Exhibit H**.

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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 “**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.

1.2 “**Availability**” means, for any Billing Period, the ratio, expressed as a percentage, of (x) the aggregate sum of the turbine-minutes in which each of the Wind Turbines at the Facility was available to generate at the Maximum Facility Delivery Rate during the Billing Period over (y) the product of the number of Wind Turbines that comprise the Facility Capacity Rating as of Commercial Operation multiplied by the number of minutes in such Billing Period. A Wind Turbine shall be deemed not available to operate during minutes in which it is (a) in an emergency, stop, service mode or pause state; (b) in “run” status and faulted; or (c) otherwise not operational or capable of delivering at the Maximum Facility Delivery Rate to the Point of Interconnection; unless if unavailable due solely to (i) a default by PacifiCorp; (ii) a curtailment in accordance with Section 6.2.1(b) or (d); or (iii) insufficient wind (including the normal amount of time required by the generating equipment to resume operations following a period when wind speed is below the Cut-In Wind Speed).

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

1.4 “**Commercial Operation**” means that not less than the 90% of the expected Facility Capacity Rating is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the Interconnected Utility's electric 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 date and moment on which Seller gives PacifiCorp notice that Commercial Operation has occurred:

1.4.1 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 and in accordance with all other terms and conditions of this Agreement.

1.4.2 Start-Up Testing of the Facility has been completed in accordance with **Exhibit E**.

1.4.3 PacifiCorp has received an executed copy of Seller's Generation Interconnection Agreement and Transmission Agreement(s).

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1.4.4 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, an attorney in good standing in Idaho or \_\_\_[State], or a letter from the Interconnected Utility, stating that, in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the Interconnected Utility's electric system in conformance with the Generation Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement, and the Facility is fully integrated and synchronized with the the Interconnected Utility's electric system.

1.4.5 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, or an attorney in good standing in \_\_\_\_\_[State], 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.

1.4.6 Seller has complied with the security requirements of Section 11.

Seller shall provide written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation and its Facility Capacity Rating accompanied by the certificates described above. PacifiCorp shall have ten days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PacifiCorp reasonably believes has not been satisfied. If, within such ten day period, PacifiCorp does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PacifiCorp notifies Seller within such ten day period that PacifiCorp believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in PacifiCorp's notice to the mutual satisfaction of both Parties, and Commercial Operation shall occur on the date of such satisfaction, as specified in a notice from PacifiCorp to Seller. If Commercial Operation is achieved at less than one hundred percent (100%) of the expected Facility Capacity Rating, Seller shall provide PacifiCorp an expected date for achieving the expected Facility Capacity Rating, and the Facility Capacity Rating on that date shall be the final Facility Capacity Rating under this Agreement. In no event will delay in achieving the expected Facility Capacity Rating beyond the Commercial Operation Date postpone the Expiration Date specified in Section 2.1.

1.5 "**Commercial Operation Date**" means the date the Facility first achieves Commercial Operation.

1.6 "**Commission**" means the Idaho Public Utilities Commission.

1.7 "**Conforming Energy**" means all Net Energy except Non-Conforming Energy and Inadvertent Energy.

1.8 "**Conforming Energy Purchase Price**" means the applicable price for Conforming Energy and capacity, specified in Section 5.1.

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1.9 “**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.

1.10 “**Cut-in Wind Speed**” means the wind speed at which a stationary wind turbine begins producing Net Energy, as specified by the turbine manufacturer and set forth in **Exhibit A**.

1.11 “**Delay Liquidated Damages**”, “**Delay Period**”, “**Delay Price**” and “**Delay Volume**” shall have the meanings set forth in Section 2.3 of this Agreement. “**Delay Security**” shall have the meaning set forth in Section 11.1.1 of this Agreement.

1.12 “**Default Security**” shall have the meaning set forth in Section 11.2 of this Agreement.

1.13 “**Effective Date**” shall have the meaning set forth in Section 2.1 of this Agreement.

1.14 “**Energy Delivery Schedule**” shall have the meaning set forth in Section 4.3 of this Agreement.

1.15 “**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 (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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.

1.16 “**Expiration Date**” shall have the meaning set forth in Section 2.1 of this Agreement.

1.17 “**Facility**” means Seller’s project, including the Seller’s Interconnection Facilities, as described in the **Recitals, Exhibit A, and Exhibit B**.

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 15.1.

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1.20 “**Forced Outage**” means an outage that requires removal of one or more Wind Turbines 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 “**Generation Interconnection Agreement**” means the generation interconnection agreement to be entered into separately between Seller and the Interconnected Utility, as applicable, specifying the Point of Interconnection and providing for the construction and operation of the Interconnection Facilities.

1.22 “**Generation Scheduling Addendum**” means **Addendum W**, the portion of this Agreement providing for the measurement, scheduling, and delivery of Net Output from the Facility to the Point of Delivery via the electric system(s) of non-PacifiCorp Transmission Entity(s).

1.23 “**Inadvertent Energy**” means: (1) energy delivered to the Point of Interconnection or Point of Delivery in excess of the Maximum Monthly Purchase Obligation; and (2) energy delivered to the Point of Interconnection at a rate exceeding the Maximum Facility Delivery Rate on an hour-averaged basis.

1.24 “**Index Price**” shall mean the average of: (1) the weighted average of the daily On-Peak and Off-Peak Intercontinental Exchange (ICE) Mid-Columbia index prices for firm energy; and (2) the weighted average of the daily On-Peak and Off-Peak Intercontinental Exchange (ICE) Palo Verde index (Intercontinental Exchange (ICE) Palo Verde Index) prices for firm energy. For Sunday and NERC holidays, the 24-Hour Index Price shall be used, unless Intercontinental Exchange (ICE) shall publish a Firm On-Peak and Firm Off-Peak Price for such days for Mid-C and Palo Verde, in which event such indices shall be utilized for such days. If the Intercontinental Exchange (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.

1.25 “**Initial Year Energy Delivery Schedule**” shall have the meaning set forth in Section 4.3.1.

1.26 “**Interconnected Utility**” means \_\_\_\_\_, the operator of the electric utility system at the Point of Interconnection.

1.27 “**Interconnection Facilities**” means all the facilities and ancillary equipment used to interconnect the Facility to the Interconnected Utility's electric utility system, as defined in the Generation Interconnection Agreement.

1.28 “**Licensed Professional Engineer**” means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of \_\_\_\_\_ [State of Facility], 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

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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.

1.29 “**Maintenance Outage**” means any outage of one or more Wind Turbines 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 Wind Turbine(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.

1.30 “**Material Adverse Change**” shall mean, with respect to the Seller, if the Seller, in the reasonable opinion of PacifiCorp, has experienced a material adverse change in ability to fulfill its obligations under this Agreement.”

1.31 “**Maximum Facility Delivery Rate**” means the maximum instantaneous rate (kW) at which the Facility is capable of delivering Net Output at the Point of Interconnection, as specified in **Exhibit A**, and in compliance with the Generation Interconnection Agreement.

1.32 “**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.

1.33 “**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.

1.34 “**NERC**” means the North American Electric Reliability Corporation.

1.35 “**Net Energy**” means the energy component, in kWh, of Net Output.

1.36 “**Net Output**” means all energy and capacity 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 Interconnection, less any station use not provided by the Facility. Net Output does not include Inadvertent Energy.

1.37 “**Network Resource**” shall have the meaning set forth in the Tariff.

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1.38 “**Network Service Provider**” means PacifiCorp Transmission, as a provider of network service to PacifiCorp under the Tariff.

1.39 “**Non-Conforming Energy**” means Net Output produced by the Facility prior to the Commercial Operation Date.

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

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

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

1.43 “**Output Shortfall**” and “**Output Shortfall Damages**” shall have the meanings set forth in Section 4.5 of this Agreement.

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

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

1.46 “**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.

1.47 “**Point of Delivery**” means \_\_\_\_\_, a point of interconnection between \_\_\_\_\_’s electric system and PacifiCorp Transmission’s electric system at the \_\_\_\_\_ Substation, as specified in **Exhibit B**.

1.48 “**Point of Interconnection**” means the point where Seller’s Facility interconnects with the Interconnected Utility’s electric utility system, as defined in the Generation Interconnection Agreement and specified in **Exhibit B**.

1.49 “**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.

1.50 “**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 produced from wind resources and any correlative state tax credit determined by

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reference to renewable electric energy produced from wind resources for which the Facility is eligible.

1.51 “**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.

1.52 “**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.

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

1.54 “**Scheduled Commercial Operation Date**” means the date by which Seller promises to achieve Commercial Operation, as specified in Section 2.2.6.

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

1.56 “**Seller's Forecast-Cost Share**” and “**Seller's Capped Forecast-Cost Share**” shall have the meanings set forth in Sections 8.2 and 8.3 respectively.

1.57 “**Subsequent Energy Delivery Schedule**” shall have the meaning set forth in Section 4.3.3.

1.58 “**Tariff**” means the PacifiCorp Transmission FERC Electric Tariff Seventh Revised Volume No.11 Pro Forma Open Access Transmission Tariff or a Transmission Entity's corresponding Open Access Transmission Tariff or both, as revised from time to time.

1.59 “**Transmission Agreement(s)**” means the agreement(s) (or contemporaneous agreements) between Seller and the Transmitting Entity(s) providing for Seller's uninterrupted right to transmit Net Output to the Point of Delivery.

1.60 “**Transmitting Entity(s)**” means \_\_\_\_\_, the (non-PacifiCorp) operator(s) of the transmission system(s) between the Point of Interconnection and the Point of Delivery or successor(s) including any regional transmission organization (“**RTO**”).

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1.61 "**Wind Turbine**" means a [description of intended wind turbine model] as further described in **Exhibit A**. At its full Facility Capacity Rating, the Facility will consist of \_\_\_ Wind Turbines.

**SECTION 2: TERM, 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 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 \_\_\_\_\_ [enter date that is no later than 20 years after the Scheduled Commercial Operation Date] ("**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 \_\_\_\_\_, Seller shall obtain and provide to PacifiCorp copies of all governmental permits and authorizations necessary for construction of the Facility.

2.2.2 By \_\_\_\_\_, Seller shall provide to PacifiCorp a copy of an executed Generation Interconnection Agreement and an executed Transmission Agreement(s), whose terms shall be consistent with the terms of this Agreement.

2.2.3 By the date 5 business days after the Effective Date, Seller shall provide Delay Security required under Section 11.1.1, as applicable.

2.2.4 Prior to Commercial Operation, Seller shall provide Default Security required under Section 11.2, as applicable.

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

2.2.6 By \_\_\_\_\_, Seller shall achieve Commercial Operation ("**Scheduled Commercial Operation Date**").

2.2.7 Beginning \_\_\_\_\_, Seller shall provide PacifiCorp a one-page monthly update by e-mail on the progress of the milestones in this Section 2.2.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled

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Commercial Operation Date, Seller shall be liable to pay PacifiCorp delay damages for the number of days ("**Delay Period**") the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, up to a total of 120 days ("**Delay Liquidated Damages**").

Delay Liquidated Damages equals the sum of: the Delay Price times the Delay Volume, for each day of the Delay Period

Where:

"**Delay Price**" equals the positive difference, if any, of the Index Price minus the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices; and

"**Delay Volume**" equals the applicable Scheduled Monthly Energy Delivery divided by the number of days in that month.

The Parties agree that the damages PacifiCorp would incur due to delay in the Facility achieving Commercial Operation on or before the Scheduled Commercial Operation Date would be difficult or impossible to predict with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages.

### **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp 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 hereby.

3.1.4 Subject to Commission approval, the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

3.1.5 Subject to Commission approval, this Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

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3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a \_\_\_\_\_ [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of \_\_\_\_\_ [state of Seller's incorporation].

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Seller's shareholders, directors, and officers have taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission self-certification to PacifiCorp prior to PacifiCorp's execution of this Agreement. At any time PacifiCorp has reason to believe during the term of this Agreement that Seller's status as a QF is in question, PacifiCorp may require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing in the state of Idaho and who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.

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3.2.8 Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.

3.2.9 Seller is not in default under any of its other agreements and is current on all of its financial obligations.

3.2.10 Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall 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 pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF POWER; AVAILABILITY GUARANTY**

4.1 Delivery and Acceptance of Net Output. Unless otherwise provided herein, PacifiCorp will purchase and Seller will sell all Net Output from the Facility.

4.2 No Sales to Third Parties. During the term of this Agreement, Seller shall not sell any Net Output from the Facility to any entity other than PacifiCorp.

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

4.3.1 During the first twelve full calendar months following the Commercial Operation Date, Seller predicts that the Facility will produce and deliver to the Point of Delivery the following monthly amounts ("**Initial Year Energy Delivery Schedule**"):

<u>Month</u>	<u>Energy Delivery (kWh)</u>
January	
February	
March	
April	
May	
June	

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July  
August  
September  
October  
November  
December

4.3.2 Seller may revise the Initial Year Energy Delivery Schedule any time prior to the Commercial Operation Date.

4.3.3 Beginning at the end of the ninth full calendar month of operation, and at the end of every 3rd month thereafter, Seller shall supplement the Energy Delivery Schedule with three additional months of forward estimates (which shall be appended to this Agreement as **Exhibit D**) ("**Subsequent Energy Delivery Schedule**"), such that the Energy Delivery Schedule will provide at least three months of scheduled energy estimates at all times. Seller shall provide Subsequent Energy Delivery Schedules no later than 5:00 pm of the 5th day after the due date. If Seller does not provide a Subsequent Energy Delivery Schedule by the above deadline, scheduled energy for the omitted period shall equal the amounts scheduled by Seller for the same three-month period during the previous year.

4.3.4 Beginning with the end of the third month after the Commercial Operation Date and at the end of every third month thereafter the Seller may not revise the immediate next three months of previously provided Energy Delivery Schedules. But by written notice given to PacifiCorp no later than 5:00 PM of the 5th day after the end of any such third month, the Seller may revise all other previously provided Energy Delivery Schedules. Failure to provide timely written notice of changed amounts will be deemed to be an election of no change.

4.4 Minimum Availability Obligation. Seller shall cause the Facility to achieve an Availability of at least 85% during each month ("**Guaranteed Availability**").

4.5 Liquidated Damages for Output Shortfall. If the Availability in any given month falls below the Guaranteed Availability, the resulting shortfall shall be expressed in kWh as the "**Output Shortfall**." The Output Shortfall shall be calculated in accordance with the following formula:

$$\text{Output Shortfall} = \frac{(\text{Guaranteed Availability} - \text{Availability}) *}{\text{Scheduled Monthly Energy Delivery}}$$

Seller shall pay PacifiCorp for any Output Shortfall at the lower of (1) the positive difference, if any, of the Index Price minus the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices; or (2) the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Purchase Prices ("**Output Shortfall Damages**").

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$$\text{Output Shortfall Damages} = \text{Output Shortfall} * \text{Output Shortfall Price}$$

Where:

Output Shortfall Price = (Index Price – Weighted Average CEPP); provided that if Output Shortfall Price < 0, then Output Shortfall Price = 0; and provided, further, that if Output Shortfall Price > Weighted Average CEPP, then Output Shortfall Price = Weighted Average CEPP

Weighted Average CEPP = the weighted average On-Peak and Off-Peak Conforming Energy Purchase Prices for the month of Output Shortfall

If an Output Shortfall occurs in any given month, Seller may owe PacifiCorp liquidated damages. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to the Facility's failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty, and (b) the liquidated damages contemplated in this Section 4.5 are a fair and reasonable calculation of such damages.

4.6 Audit Rights. In addition to data provided under Sections 9.2 and 9.3, PacifiCorp shall have the right, but not the obligation, to audit the Facility's compliance with its Guaranteed Availability using any reasonable methods. Seller agrees to retain all performance related data for the Facility for a minimum of three years, and to cooperate with PacifiCorp in the event PacifiCorp decides to audit such data.

## **SECTION 5: PURCHASE PRICES**

5.1 Energy Purchase Price. Except as provided in Section 5.3, PacifiCorp will pay Seller Conforming Energy or Non-Conforming Energy Purchase Prices for Net Output delivered to the Point of Delivery and adjusted for the month and On-Peak Hours or Off-Peak Hours and the wind integration cost using the following formulae, in accordance with Commission Order Nos. 30423, 30497, and 30744:

$$\text{Conforming Energy Purchase Price} = (\text{AR}_{\text{ce}} * \text{MPM}) - \text{WIC}$$

$$\text{Non-Conforming Energy Purchase Price} = (\text{AR}_{\text{ncc}} * \text{MPM}) - \text{WIC}$$

Where:

$\text{AR}_{\text{ce}}$  = Conforming Energy annual rate from Table 1, below, for the year of the Net Output.

$\text{AR}_{\text{ncc}}$  = Non-Conforming Energy annual rate, equal to the lower of:  
85% of the Conforming Energy annual rate from Table 1, below, for the year of Net Output

*or*

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85% of weighted average of the daily On-Peak and Off-Peak Intercontinental Exchange (ICE) Mid-Columbia index prices for firm energy for the month, or portion of month, of 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.

WIC = the wind integration cost prescribed in Commission Order No. 30497 or subsequent order in effect at the time of execution.

Example calculations are provided in **Exhibit G**.

**Table 1: Conforming Energy Annual Rates** (from Commission Order No. 30744)\*

<b>Year</b>	<b>Conforming Energy Annual Rate (AR<sub>ce</sub>) \$/MWh</b>
2010	75.83
2011	77.95
2012	80.24
2013	82.14
2014	84.09
2015	86.09
2016	88.25
2017	90.34
2018	92.60
2019	94.80
2020	97.05
2021	99.36
2022	101.73
2023	104.15
2024	106.64
2025	109.19
2026	112.30
2027	115.50
2028	118.80
2029	122.20
2030	125.71

**Table 2: Monthly On-Peak/Off-Peak Multipliers** (from Commission Order No. 30423)

<b>Month</b>	<b>On-Peak Hours</b>	<b>Off-Peak Hours</b>
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\* If Seller has elected levelized pricing for Net Output, additional security requirements in Section 11.2 apply.

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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%

**5.2 Payment.**

For each Billing Period in each Contract Year, PacifiCorp shall pay Seller as follows:

For Conforming Energy delivered to the Point of Delivery:

$$\text{Payment} = (\text{CEnergy}_{\text{On-Peak}} * \text{CEPPrice}_{\text{On-Peak}} / 1000) + (\text{CEnergy}_{\text{Off-Peak}} * \text{CEPPrice}_{\text{Off-Peak}} / 1000)$$

For Non-Conforming Energy delivered to the Point of Delivery:

$$\text{Payment} = (\text{NCEnergy}_{\text{On-Peak}} * \text{NCEPPrice}_{\text{On-Peak}} / 1000) + (\text{NCEnergy}_{\text{Off-Peak}} * \text{NCEPPrice}_{\text{Off-Peak}} / 1000)$$

Where:

- CEnergy = Conforming Energy in kWh
- CEPPrice = Conforming Energy Purchase Price in \$/MWh
- NCEnergy = Non-Conforming Energy in kWh
- NCEPPrice = Non-Conforming Energy Purchase Price in \$/MWh
- On-Peak = the corresponding value for On-Peak Hours
- Off-Peak = the corresponding value for Off-Peak Hours

**5.3 Inadvertent Energy.** PacifiCorp may accept Inadvertent Energy at its sole discretion, but will not purchase or pay for Inadvertent Energy.

**SECTION 6: OPERATION AND CONTROL**

6.1 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Transmission Agreement(s), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent that any interconnections or portion of the path of delivery between the Facility and PacifiCorp Transmission's electric system is disconnected, suspended or interrupted, in whole or in part,

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pursuant to the Generation Interconnection Agreement, the Transmission Agreement(s), or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement or Transmission Agreement(s). PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.2 Energy Acceptance.

6.2.1 Required Curtailment. PacifiCorp shall not be obligated to purchase, receive or pay for Net Output (nor shall it be liable for associated unrealized Production Tax Credits or Environmental Attributes) that is not delivered to the Point of Delivery during times and to the extent that such Net Output is not delivered to the Point of Delivery because (a) the interconnection between the Facility and the Interconnected Utility's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the terms of the Generation Interconnection Agreement, (b) a Network Service Provider or Transmission Entity Curtails (as defined in the applicable Tariff) Net Output or orders PacifiCorp to curtail Net Output, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the Interconnected Utility's electric system, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output. The MWh amount of Net Output curtailed pursuant to this Section 6.2.1 shall be reasonably determined by Seller after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp at the Point of Delivery as Net Output but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of such curtailed energy based on (x) the time and duration of the curtailment period and (y) wind conditions recorded at the Facility during the period of curtailment and the tested and verified power curve for the Wind Turbines. Seller shall 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 6.2.1.

6.2.2 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.

6.3 Outages.

6.3.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule Planned Outage during any portion of the months of November, December, January, February, June, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above. Seller shall, in **Exhibit D**, provide PacifiCorp

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with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule more than one hundred fifty (150) hours of Planned Outages for each calendar year. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval may be withheld by PacifiCorp in its sole discretion.

6.3.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then existing wind conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp. Seller shall take all reasonable measures and use best efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: June 15 through June 30, July, August, and September 1 through September 15. Seller shall include in such notice of a proposed Maintenance Outage 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. Seller may provide notices under this Section 6.3.2 orally. Seller shall confirm any such oral notification in writing as soon as practicable. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with PacifiCorp's request to modify the schedule for a Maintenance Outage if such modification has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity of the Facility during such Maintenance Outage and any changes in the Maintenance Outage completion date and time. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.3.3 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp, of any Forced Outage of the Facility. Such report shall include the amount of generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date and time of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. If the Forced Outage resulted in more than 15% of the Facility Capacity Rating of the Facility being unavailable, Seller shall confirm the oral report in writing as soon as practicable. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.3.4 Notice of Deratings and Outages. Without limiting other notice requirements, Seller shall notify PacifiCorp, via telephone to a number specified by

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PacifiCorp, of any limitation, restriction, derating or outage known to Seller that affects the generation capacity of the Facility in an amount greater than five percent (5%) of the Facility Capacity Rating for the following day. Seller shall promptly update such notice to reflect any material changes to the information in such notice.

6.3.5 Effect of Outages on Estimated Output. Seller shall factor Planned Outages and Maintenance Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility into the Scheduled Monthly Energy Delivery amounts in the Energy Delivery Schedule set forth in **Exhibit D**.

6.4 Scheduling.

6.4.1 Daily Scheduling. Daily scheduling shall be done in accordance with Section 2 of Addendum W.

6.4.2 Cooperation and Standards. With respect to any and all scheduling requirements in this Agreement, (a) Seller shall cooperate with PacifiCorp with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder.

**SECTION 7: MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a motive force plan including an hourly wind profile acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit F-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit F-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Average Annual Net Output.

**SECTION 8: GENERATION FORECASTING COSTS**

8.1 Forecast Service Election. PacifiCorp may, in its discretion, add forecasting services for Seller's Facility to PacifiCorp's existing contract with a qualified wind-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement.

8.2 Seller's Forecast-Cost Share. Pursuant to Commission Order No. 30497, Seller shall be responsible for 50% of PacifiCorp's cost of adding such forecasting services ("**Seller's Forecast-Cost Share**") up to Seller's Capped Forecast-Cost Share.

8.3 Cap on Seller's Forecast-Cost Share. Seller's Forecast-Cost Share for a given Contract Year is capped at 0.1% of total payments made by PacifiCorp to Seller for Net Output during the previous Contract Year ("**Seller's Capped Forecast-Cost Share**"). If the last Contract Year of this Agreement is shorter than a full calendar year, the cap will be prorated for that shortened year. For the year(s) prior to the second Contract Year of this agreement that

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equals a full calendar year, Seller's Forecast-Cost Share is capped at 0.1% of estimated payments for Net Output based on the Energy Delivery Schedule.

8.4 Payment. Seller shall pay to PacifiCorp Seller's Forecast-Cost Share uncapped by Section 8.3 for each Contract Year in equal payments for each month of such year except the last month of such year. (For example, in a Contract Year equaling a full calendar year, Seller would pay 1/11th of Seller's Forecast-Cost Share during each of the first 11 months.) In the last month of each Contract Year, PacifiCorp shall refund to Seller the amount paid by Seller under this Section in excess, if any, of Seller's Capped Forecast-Cost Share. For a Contract Year encompassed by just one calendar month, Seller's payment to PacifiCorp and PacifiCorp's refund to Seller shall be calculated and paid simultaneously. To the extent practicable, payments and refunds under this Section shall be netted and included in monthly payments and invoices under Section 10.

## **SECTION 9: METERING; REPORTS AND RECORDS**

9.1 Metering Equipment. PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required for purposes of Sections 9.1.1 and 9.1.2.

9.1.1 Location of Metering Equipment. Metering shall be performed at the location and in the manner specified in **Exhibit B**. Seller shall provide to PacifiCorp meter readings of Net Output (or if Net Output is a composite reading, readings of all meters necessary to calculate Net Output) in hourly increments, and any other data inputs required to administer this Agreement. Upon PacifiCorp's request, Seller shall provide PacifiCorp with the same telemeter data that Seller provides to the Transmitting Entity(s), if any, if such data is useful to PacifiCorp's administration of this Agreement. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Interconnection, so that the purchased amount reflects the net amount of power flowing into the Interconnected Utility's electric system at the Point of Interconnection. The loss adjustment shall be a reduction of 2% of the kWh energy production recorded on the Facility output meter until actually measured and calibrated at the meter by PacifiCorp.

9.1.2 Maintenance of Metering Equipment. PacifiCorp shall periodically inspect, test, repair and replace the metering equipment required for purposes of Sections 9.1.1 and 9.1.2 or at the request of Seller if Seller has reason to believe metering may be off and requests an inspection in writing. Seller shall bear the cost for any Seller requests. If any of the inspections or tests disclose an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered.

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9.1.3 Costs of Metering Equipment. All PacifiCorp's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

9.2 Telemetering. Seller shall provide telemetering 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:

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

Seller shall also transmit to PacifiCorp any other data from the Facility that Seller receives on a real-time basis, including meteorological data, wind speed data, wind direction data and gross output data. Seller shall provide such real-time data to PacifiCorp in the same detail that Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp shall also receive the data in four second intervals). PacifiCorp shall have the right from time to time to require Seller to provide additional telemetering equipment and facilities to the extent necessary and reasonable.

9.3 Monthly Reports and Logs. Within thirty (30) days after the end of each Billing Period, Seller shall provide to PacifiCorp the following:

9.3.1 Reports. A report in electronic format, which report shall include (a) summaries of the Facility's wind and output data for the Billing Period in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Billing Period; (c) details of Availability of the Facility for the Billing Period sufficient to calculate Availability and including hourly average wind velocity measured at turbine hub height and ambient air temperature; and (d) any supporting information that PacifiCorp may from time to time reasonably request (including historical wind data for the Facility).

9.3.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the term of this Agreement commencing on the Commercial Operation Date. Seller shall provide PacifiCorp with a copy of the electronic fault log within thirty (30) days after the end of the Billing Period to which the fault log applies.

9.4 Cost of Performance Monitoring. Seller shall pay for and design, furnish, install, own, inspect, test, maintain and replace all equipment required in order to record data required for the reports and logs in Sections 9.3.

**SECTION 10: BILLINGS, COMPUTATIONS AND PAYMENTS**

10.1 Payment for Net Output. On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output

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to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement and any other agreement(s) between the Parties. Any such offsets shall be separately itemized on the statement accompanying each payment to Seller.

10.2 Annual Invoicing for Output Shortfall. Thirty calendar days after the end of each Contract Year, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of Output Shortfall, if any, for all Billing Periods in the prior Contract Year and Output Shortfall Damages, if any. In preparing such invoices, PacifiCorp shall utilize the meter data provided to PacifiCorp for the Contract Year in question, but may also rely on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation if the meter data for such Contract Year is then incomplete or otherwise not available. To the extent required, PacifiCorp shall prepare any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Year. Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, and shall within thirty (30) days after receiving the invoice raise any objections regarding any disputed portion of the invoice. Objections not made by Seller within the thirty-day period shall be deemed waived.

10.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Except with respect to invoices provided under Section 10.2, any such notice shall 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 to the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days after such determination or resolution, along with interest in accordance with Section 10.3.

## **SECTION 11: SECURITY**

### 11.1 Delay Security:

11.1.1 Duty to Post Security. By the date provided in Section 2.2.3, shall post a letter of credit in the amount of \_\_\_\_\_ ("**Delay Security**"). The letter of credit shall be an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of "A" or greater from Standard & Poors or "A2" or greater from Moody's, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder. To the extent PacifiCorp's draws on the letter of credit cause the remaining balance of the letter of

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credit to drop below \_\_\_\_\_, Seller, within 15 calendar days, shall restore the letter of credit to no less than \$ \_\_\_\_\_.

11.1.2 Right to Draw on Security. PacifiCorp shall have the right to draw on the Delay Security to collect Delay Liquidated Damages. Commencing on or about first of each month, PacifiCorp will invoice Seller for Delay Liquidated Damages incurred, if any, during the preceding month. If Seller fails to pay any undisputed amount within 30 calendar days of the invoice date, PacifiCorp shall draw such amount on the Delay Security. The Parties will make billings and payments for Delay Liquidated Damages in accordance with Section 10.

11.1.3 Additional Security. In the event PacifiCorp reasonably determines at any time that the remaining amount of Delay Security is less than the estimated value of Delay Liquidated Damages (due to upward changes in market price and/or due to Seller's inability to meet the Scheduled Commercial Operation Date), PacifiCorp may demand that Seller post, and Seller will post within 5 business days of receipt of such demand, additional Delay Security equal to the estimated (unpaid) Delay Liquidated Damages.

11.1.4 Termination of Letter of Credit. Unless PacifiCorp disputes whether Seller has paid all Delay Liquidated Damages, Seller may terminate the Delay Security letter of credit on or after the 180th calendar day following commencement of Commercial Operation by providing PacifiCorp with no less than thirty-day advance written notice of its intent to do so.

11.1.5 Default. Seller's failure to post and maintain Delay Security in accordance with Section 11.1 will constitute an event of default, unless cured in accordance with Section 12.1.1 of this Agreement.

11.2 Default Security (Levelized Pricing Only). If Seller has adopted levelized pricing for Net Output, by the date provided in Section 2.2.4, Seller will provide security to PacifiCorp pursuant to Commission Order Nos. 21690, 21800, 29482, 29587 and related orders ("**Default Security**") as set forth in Addendum \_\_\_ [add addendum if Seller elects levelized pricing].

## **SECTION 12: DEFAULTS AND REMEDIES**

12.1 The following events shall constitute defaults under this Agreement:

12.1.1 Non-Payment. Seller's failure to make a payment when due under this Agreement or post and maintain security in conformance with the requirements of Section 11 or maintain insurance in conformance with the requirements of Section 14 of 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.

12.1.2 Breach of Material Term. Breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within thirty (30) days following written notice.

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12.1.3 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement and Transmission Agreement(s)) within the time allowed for a cure under such agreement or instrument.

12.1.4 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) 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; (c) becomes insolvent; or (d) is unable to pay its debts when due.

12.1.5 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, within fifteen (15) days from the date of such request.

12.1.6 Sale to Third-Party. Seller's sale of Net Output to an entity other than PacifiCorp, as prohibited by Section 4.2.

12.1.7 Non-Delivery. Unless excused by an event of Force Majeure, Seller's failure to deliver any Net Energy to the Point of Delivery for three consecutive calendar months.

12.1.8 A Party otherwise fails to perform any material obligation (including but not limited to failure by Seller to meet any deadline set forth in Section 2.2) imposed upon that Party by 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, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

12.2 In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default. If the default has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 12 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

12.3 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output from the facility using the same motive force to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller do so subject to the terms of this Agreement, including but not limited to the purchase prices as set forth in

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(Section 5), until the Expiration Date (as set forth in Section 2.1). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

12.4 If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp for Output Shortfall for a period of eighteen (18) months from the date of termination plus the estimated administrative cost to acquire the replacement power.

12.5 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may (in addition to any other remedy at law) collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

12.6 Upon an event of default or termination event resulting from default under this Agreement, in addition to and not in limitation of any other right or remedy under this Agreement or applicable law (including any right to set-off, counterclaim, or otherwise withhold payment), the non-defaulting Party may at its option set-off, against any amounts owed to the defaulting Party, any amounts owed by the defaulting Party under any contract(s) or agreement(s) between the Parties. The obligations of the Parties shall be deemed satisfied and discharged to the extent of any such set-off. The non-defaulting Party shall give the defaulting Party written notice of any set-off, but failure to give such notice shall not affect the validity of the set-off.

12.7 Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

**SECTION 13: INDEMNIFICATION**

13.1 Indemnities.

13.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property

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belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

13.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, lenders or representatives.

13.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

13.3 CONSEQUENTIAL DAMAGES. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL 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.

#### **SECTION 14: LIABILITY AND INSURANCE**

14.1 Insurance Coverage Requirements. Without limiting any liabilities or any other obligations of Seller, Seller shall, prior to the Effective Date, secure and continuously carry with insurers acceptable to PacifiCorp the following insurance coverage:

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- 14.1.1 Special Form Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against special form property physical loss or damage with normal and customary exclusions, including coverage for earth earthquake, flood, and boiler and machinery. This property insurance may contain separate sub-limits and deductibles. This property insurance will be maintained in accordance with terms available in the insurance market for similar facilities.
- 14.1.2 Employers' Liability insurance with minimum limits of \$1,000,000 applicable to each accident/disease-each employee/disease-policy limit.
- 14.1.3 Commercial General Liability insurance, to include contractual liability, premises and operations, and broad form property damage, with a minimum single limit of \$1,000,000 each occurrence/\$2,000,000 general aggregate 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.
- 14.1.4 Business Automobile Liability insurance with a minimum single limit of \$1,000,000 each accident for bodily injury and property damage with respect to Seller's vehicles whether owned, hired or non-owned, assigned to or used in connection with this Agreement.
- 14.1.5 Umbrella Liability insurance with a minimum limit of \$5,000,000 each occurrence/aggregate where applicable to be excess of the coverages and limits required in Employers' Liability insurance, Commercial General Liability insurance, and Business Automobile Liability insurance above. Seller shall notify PacifiCorp, if at any time this minimum umbrella limit is not available during the term of this Agreement, and may be required to purchase additional limits of coverage.
- 14.1.6 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Directors, Officers, agents and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.
- 14.1.7 All liability policies required by this Agreement shall 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 provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10)

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days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason. A certificate in a form satisfactory to PacifiCorp certifying to the issuance of such insurance, shall be furnished to PacifiCorp. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

14.1.8 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement.

14.2 Periodic Review. PacifiCorp may review this schedule of required insurance provided in Section 14 as often as once every two (2) years. PacifiCorp may in its discretion require the Seller to make changes to the insurance coverage requirements in this Section 14 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 of PacifiCorp's review takes place with the consent of Seller, which shall not be unreasonably withheld.

## **SECTION 15: FORCE MAJEURE**

15.1 As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which is in each case (i) beyond the reasonable control of such Party, (ii) by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and (iii) by the exercise of due diligence, such Party shall be unable to prevent or overcome. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

15.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence, including the start date of the Force Majeure, the cause of Force Majeure, whether the Facility remains partially operational and the expected end date of the Force Majeure;

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15.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure;

15.1.3 the non-performing Party uses its best efforts to remedy its inability to perform; and

15.1.4 the non-performing Party shall provide prompt written notice to the other Party at the end of the Force Majeure event detailing the end date, cause there of, damage caused there by and any repairs that were required as a result of the Force Majeure event, and the end date of the Force Majeure.

15.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

15.3 Neither Party shall 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.

#### **SECTION 16: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### **SECTION 17: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Idaho, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### **SECTION 18: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the 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 the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

#### **SECTION 19: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must

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be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

**SECTION 20: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

PacifiCorp's compliance with the terms of this Agreement is conditioned on Seller's submission to PacifiCorp prior to the Commercial Operation Date and Seller's maintenance thereafter of copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility.

**SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, except that no assignment hereof by either Party shall become effective without the written consent of both Parties being first obtained. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, any entity with which PacifiCorp may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of PacifiCorp's rights, obligations, and interests under this Agreement. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. PacifiCorp shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

**SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, each Party releases the other from any claims, known or unknown, that may have arisen prior to the Effective Date with respect to the Facility and any predecessor facility proposed to have been constructed on the site of the Facility.

**SECTION 23: NOTICES**

All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland,	

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Notices	PacifiCorp	Seller
	OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
<b>All Invoices:</b>	Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	
<b>Scheduling:</b>	Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
<b>Payments:</b>	Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	
<b>Wire Transfer:</b>	Bank One N.A. To be provided in separate letter from PacifiCorp to Seller	
<b>Credit and Collections:</b>	Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813-5609	
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	

The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section.

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

PacifiCorp

Seller

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By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**  
**[Seller to Complete]**

Seller's Facility consists of \_\_\_\_\_ generator(s) manufactured by \_\_\_\_\_ . More specifically, each generator at the Facility is described as:

**Type (synchronous or inductive):**

**Model:**

**Number of Phases:**

**Rated Output (kW):**

**Rated Output (kVA):**

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

**Rated Current (A):** Stator: \_\_\_\_\_ A; Rotor: \_\_\_\_\_ A

**Maximum kW Output:** \_\_\_\_\_ kW      **Maximum kVA Output:** \_\_\_\_\_ kVA

**Minimum kW Output:** \_\_\_\_\_ kW

**Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:** \_\_\_\_\_

**Facility Capacity Rating:** \_\_\_\_\_ kW at \_\_\_\_\_

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Location of the Facility:** The Facility is located in \_\_\_\_\_ County, Idaho. The location is more particularly described as follows:

[legal description of parcel]

**Power factor requirements:**

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

Attach documentation of the power curve for the generator(s).

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**EXHIBIT B**

**POINT OF INTERCONNECTION / POINT OF DELIVERY / INTERCONNECTION  
FACILITIES / TRANSMISSION PATH**

[Seller to provide its own diagram and description]

**Instructions to Seller:**

1. Include description of point of metering, and Point of Interconnection
2. Include description of Point of Delivery
3. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Interconnection.
4. Provide transmission single line drawing of the transmission path from the Point of Interconnection to the Point of Delivery as the path is defined in the Transmission Agreement(s).

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**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

Qualifying Facility Number from FERC:

The following Documents are required to complete this project:

Facility Site Lease

Easements:

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Permits:

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Executed Transmission Services Agreement with Transmission Entity:

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**EXHIBIT D**  
**ENERGY DELIVERY SCHEDULE**

<b>[Project Name]</b>	
<b>Scheduled Monthly Energy Delivery, kWh</b>	<b>Average kW/month</b>
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	
<b>TOTAL:</b>	

Planned Outages. Seller will provide a Planned Outage schedule annually not to exceed \_\_\_\_ hours per \_\_\_\_ per year.

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**EXHIBIT E**

**START-UP TESTING**

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to:

1. Test of mechanical and electrical equipment;
2. Calibration of all monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Point-to-point continuity tests;
6. Bench tests of protective devices; and
7. Tests required by manufacturer(s) and designer(s) of equipment.

Required start-up tests are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PacifiCorp's electrical system, which may include but are not limited to:

1. Turbine/generator mechanical runs and functionality;
2. System operation tests;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Excitation and voltage regulation operation tests;
7. Auto stop/start sequence;
8. Completion of any state and federal environmental testing requirements; and
9. Tests required by manufacturer(s) and designer(s) of equipment.

**DRAFT**

For wind projects only, the following Wind Turbine Generator Installation Checklists are required documents to be signed off by Manufacturer or Subcontract Category Commissioning Personnel as part of the Commissioning and startup testing:

Turbine Installation  
Foundation Inspection  
Controller Assembly  
Power Cables

Cable Installation Checklists including:

Controller  
Top Deck / Yaw Deck  
Tower Top Section / Saddle  
Mid Section Cables or buss bars  
Base Section

Tower Base Section  
Tower Lights and Outlets  
Tower Mid Section  
Tower Top Section  
Nacelle  
Rotor

**DRAFT**

**EXHIBIT F-1**  
**MOTIVE FORCE PLAN**  
**WIND SPEED DATA SUMMARIES & HOURLY WIND PROFILE**

**DRAFT**

**EXHIBIT F-2**

ENGINEER'S CERTIFICATION

(1) THAT THE WIND DATA SUMMARIES IN EXHIBIT F-1 ARE ACCURATE;

\_\_\_\_\_ [Licensed Professional Engineer's certification]

(2) THAT THE AVERAGE ANNUAL NET OUTPUT ESTIMATE IS \_\_\_\_\_ KWH PER YEAR IN EACH FULL CALENDAR YEAR OF THIS AGREEMENT BASED ON THE MOTIVE FORCE PLAN IN EXHIBIT F-1;

\_\_\_\_\_ [Licensed Professional Engineer's certification]

(3) THAT THE FACILITY, UNDER AVERAGE DESIGN CONDITIONS, LIKELY WILL GENERATE NO MORE THAN 10 aMW IN ANY CALENDAR MONTH.

\_\_\_\_\_ [Licensed Professional Engineer's certification]

**DRAFT**

**EXHIBIT G**  
**SAMPLE ENERGY PURCHASE PRICE CALCULATIONS**

The following are samples of calculations of energy purchase prices using the formula and tables in Section 5.1. (TO BE COMPLETED)

**DRAFT**

**EXHIBIT H**

**Seller Authorization to Release Generation Data to PacifiCorp**

*[Interconnection Customer Letterhead]*

*[Address to Interconnected Utility]*

**RE: \_\_\_\_\_ Interconnection Request**

Dear Sir:

\_\_\_\_\_ [Seller] hereby voluntarily authorizes \_\_\_\_\_ [Interconnected Utility] to share \_\_\_\_\_ [Seller]'s generator interconnection information and generator meter data relating to \_\_\_\_\_ [Seller]'s \_\_\_\_\_ Qualifying Facility located in the town of \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_ with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group. \_\_\_\_\_ [Seller] acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**DRAFT**

**ADDENDUM W**

**GENERATION SCHEDULING ADDENDUM**

WHEREAS, Seller's Facility will not interconnect directly to PacifiCorp Transmission's electric system;

WHEREAS, Seller and PacifiCorp Transmission have not executed, and will not execute, a generation interconnection agreement in conjunction with the Power Purchase Agreement;

WHEREAS, Seller has elected to exercise its right under PURPA to deliver Net Output from its QF Facility to PacifiCorp via one (or more) Transmitting Entities.

WHEREAS, PacifiCorp desires that Seller schedule delivery of Net Output to the Point of Delivery on a firm, hourly basis;

WHEREAS, PacifiCorp does not intend to buy, and Seller does not intend to deliver, more or less than Net Output from the Facility (except as expressly provided, below);

THEREFORE, Seller and PacifiCorp do hereby agree to the following, which shall become part of their Power Purchase Agreement:

**DEFINITIONS**

The meaning of the terms defined in the Power Purchase Agreement ("this Agreement") and this **Addendum W** shall apply to this Addendum:

**"Day"** means midnight to midnight, prevailing local time at the Point of Delivery, or any other mutually agreeable 24-hour period.

**"Energy Imbalance Accumulation,"** or **"EIA,"** means, for a given Settlement Period, the accumulated difference (beginning at zero (0) at the start of each Settlement Period) between Seller's Net Output and the energy actually delivered at the Point of Delivery. Each Settlement Period contains two independent EIAs, one for On-Peak Hours and one for Off-Peak Hours. A positive accumulated difference indicates Seller's delivery of Surplus Delivery.

**"Firm Delivery"** means uninterruptible transmission service that is reserved and/or scheduled between the Point of Interconnection and the Point of Delivery pursuant to Seller's Transmission Agreement(s).

**"Settlement Period"** means one month unless changed pursuant to Section 9 of this Addendum.

**"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 to the Point of Delivery by the Facility in excess of hourly Net Output that is not offset by the delivery of energy to the Point of Delivery in deficit of hourly Net Output during the Settlement Period. PacifiCorp shall accept Surplus Delivery, but shall not pay for it.

**DRAFT**

**SELLER'S OBLIGATIONS IN LIEU OF THOSE CONTAINED IN A  
GENERATION INTERCONNECTION AGREEMENT.**

1. **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 Agreement(s) between the Seller and the Transmitting Entity(s). Delivery of Net Output via non-firm transmission rights shall be considered a material breach under Section 12.1.2 of this Agreement.

2. **Seller's Responsibility to Schedule Delivery.** Seller shall coordinate with the Transmitting Entity(s) to provide PacifiCorp with a schedule of the next Day's hourly scheduled Net Output deliveries to the Point of Delivery at least 24 (twenty-four) hours prior to the beginning of the day being scheduled, and otherwise in accordance with the WECC Prescheduling Calendar (which is updated annually and may be downloaded at: <http://www.wecc.biz/>).

3. **Seller's Responsibility to Maintain Interconnection Facilities.** PacifiCorp shall have no obligation to install or maintain any interconnection facilities on Seller's side of the Point of Interconnection. PacifiCorp shall not pay any costs arising from Seller interconnecting its Facility with the Transmitting Entity(s).

4. **Seller's Responsibility to Pay Transmission Costs.** Seller shall make all arrangements for, and pay all costs associated with, transmitting firm delivery of Net Output to PacifiCorp, scheduling energy into the PacifiCorp system and any other costs associated with firm delivery of the Seller's Net Output to the Point of Delivery.

5. **Energy Reserve Requirements.** The Transmitting Entity(s) shall provide all generation reserves as required by the WECC and/or as required by any other governing agency or industry standard to deliver the Net Energy to the Point of Delivery, at no cost to PacifiCorp.

6. **Seller's Responsibility to Report Net Output.** On or before the tenth (10<sup>th</sup>) day following the end of each Billing Period, Seller shall send a report documenting hourly station service, Inadvertent Energy (energy delivered to the Point of Interconnection at an average hourly rate exceeding the Maximum Facility Delivery Rate), and Net Output from the Facility during the previous Billing Period, in columnar format substantially similar to the attached **Example 1**. 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 10.1 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 three years from the date of discovery.

7. **Seller's Supplemental Representations and Warranties.** In addition to the Seller's representations and warranties contained in Section 3.2 of this Agreement, Seller warrants that:

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

**DRAFT**

(b) The Transmitting Entity(s) requires Seller to procure the service, above, as a condition of providing transmission service;

(c) The Transmitting Entity(s) requires Seller to schedule deliveries of Net Output to the Point of Delivery 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 the QF and the actual real-time production by the QF.

8. **Seller's Right to Deliver Supplemented Output.** In reliance upon Seller's warranties in Section 7 of this Addendum, PacifiCorp agrees to accept and pay for Supplemented Output by treating it as Net Output for those purposes; *provided, however, that* Seller agrees to achieve an EIA of zero (0) kilowatt-hours during On-Peak Hours and an EIA of zero (0) kilowatt-hours during Off-Peak Hours at the end of each Settlement Period.

(a) **Remedy for Seller's Positive Energy Imbalance Accumulations.** In the event Seller does not achieve zero (0) EIA at the end of a Settlement Period, any positive balance shall be Surplus Delivery and shall not be included in or treated as Net Output. 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.** A negative EIA at the end of a Settlement Period (indicating that the Transmitting Entity has delivered less than Seller's Net Output) will not result in any corresponding compensation by PacifiCorp.

9. **PacifiCorp's Option to Change Settlement Period.** In the event PacifiCorp reasonably determines that doing so likely will have a *de minimis* net effect upon the cost of Seller's Net Output to PacifiCorp, it may elect to enlarge the Settlement Period, up to a maximum of one Contract Year. Conversely, if PacifiCorp reasonably determines, based on the QF's performance during the current year, that reducing the Settlement Period likely will significantly lower the net cost of Seller's Net Output to PacifiCorp, it shall have the right to shorten Seller's EIA settlement period beginning the first day of the following Contract Year. However, in no case shall the Settlement Period be less than one month. If a Settlement Period does not coincide with a Billing Period, PacifiCorp shall deduct any amount paid for Surplus Delivery during that Settlement Period from the Billing Period terminating concurrently or soonest subsequently to the Settlement Period.

**DRAFT**

**Example of Seller's Output Reporting Requirement**

		<b>A</b>	<b>B</b>	<b>C</b> <b>(=A-B)</b>	<b>D</b>	<b>E</b> <b>(=Max (0,</b> <b>C-D))</b>	<b>F</b> <b>(C-E)</b>
		Meter Reading <sup>ψ</sup> at Point of Interconnection (MWh)	Meter reading at Station Power Meter* (MWh)	Adjusted Gross Output (MWh)	Maximum Facility Delivery Rate (MW)	Inadvertent Energy (MWh)	Net Output (MWh)
Day	Hour ending (HE)						
1	7:00	0.50	0.01	0.49	1.50	0	0.49
1	8:00	0.50	0.02	0.48	1.50	0	0.48
1	9:00	0.50	0.01	0.49	1.50	0	0.49
1	10:00	0.50	0.01	0.49	1.50	0	0.49
1	11:00	0.50	0.01	0.49	1.50	0	0.49
1	12:00	1.60	0.01	1.59	1.50	0.09	1.50
1	13:00	1.70	0.01	1.69	1.50	0.19	1.50
1	14:00	1.60	0.01	1.59	1.50	0.09	1.50
1	15:00	1.50	0.01	1.49	1.50	0	1.49
1	16:00	1.50	0.01	1.50	1.50	0	1.50
1	17:00	1.50	0.00	1.50	1.50	0	1.50
1	18:00	1.50	0.01	1.49	1.50	0	1.49
1	19:00	0.50	0.02	0.48	1.50	0	0.48
1	20:00	0.50	0.01	0.49	1.50	0	0.49

ψ Seller shall show adjustment of Meter Reading for losses, if any, between point of metering and the Point of Interconnection, in accordance with Section 9.1.

\* Does not apply if Station Service is provided from the gross output of the Facility.

Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-20**

October 5, 2009 email from James Carkulis.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Monday, October 05, 2009 8:32 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** RE: Exergy QF PPA requests

Bruce:

I appreciate your comments but PacifiCorp is rapidly encouraging growth on both the N-S path and E-W path at Borah and Brady. The current 345kV line being installed which shall eventually make its way to Brady or Borah [sorry, could not remember which] and the 500kV Jim Bridger to the Idaho border line are very real projects. Capacity in the not so distant future is very distinct and I maintain a good look at flow gives PacifiCorp much latitude in where they can accept delivery. Maybe the key is to accept flow at the BPA 138kV lines and then decide on what path or swap PacifiCorp would like to establish.

Thanks

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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-----Original Message-----

**From:** Griswold, Bruce {Mkt Function} [mailto:[Bruce.Griswold@PacifiCorp.com](mailto:Bruce.Griswold@PacifiCorp.com)]  
**Sent:** Friday, October 02, 2009 5:02 PM  
**To:** James T. Carkulis  
**Subject:** FW: Exergy QF PPA requests  
**Importance:** High

Dear James:

I have been in receipt of your September 18 email, in which you voiced your frustration at receiving only one of six power purchase agreements (PPAs) you requested from PacifiCorp for six planned wind projects you are developing, located outside of PacifiCorp's service territory and delivered to our system at Brady substation. I apologize for the delayed response but in order to adequately address your concerns, I talked through the transmission situation again with our transmission traders at PacifiCorp merchant and also discussed our PURPA obligations with legal counsel.

As I explained previously, the point of delivery you propose (Brady substation) are remote sites that

interconnect with PacifiCorp's system where the Company's ability to assimilate delivered power and move it elsewhere on our system is very limited. As I mentioned, PacifiCorp estimates that the available transmission capacity in its current configuration at Brady can only accept approximately 20 to 25 MW of new generation on a firm basis. In order to accommodate your request to deliver the full 235 MW, PacifiCorp merchant must request network upgrades from PacifiCorp Transmission, and we understand that such upgrades likely would take four to five years to complete.

In addition to the physical obstacles to accommodating your request, PacifiCorp believes that it has the right to specify a point of delivery onto its system that is reasonable in terms of its needs, and PacifiCorp reserves that right. See *Water Power Co., Inc. v. PacifiCorp*, 99 Or App 125, 781 P2d 860 (1989). If you think PacifiCorp's position is wrong, please explain your position, and the basis therefore.

If PacifiCorp does have an obligation to accept output at Borah and Brady, PacifiCorp will expect you to pay for all resulting interconnection costs including network upgrades (either through an adjustment to avoided costs or through payment to PacifiCorp Transmission) such that the ultimate cost to PacifiCorp's customers is not greater than the cost avoided by PacifiCorp not constructing or purchasing an equivalent resource located on a non-constrained portion of its system. See 18 C.F.R. §§ 292.101(b)(7)), 292.306(a). Again, if you disagree with this principle I urge you to explain your position and basis therefore.

Your six proposed projects would wheel wind energy to a PacifiCorp point of receipt from which we have very limited available transmission capacity to move the power to our network load. These projects from both large and small qualifying facilities, raise several legal and technical questions for which PacifiCorp currently is seeking answers. PacifiCorp has indicated it can accept a single standard Idaho QF project at Brady and provided a draft PPA on May 11, 2009 that incorporated all Idaho orders through that date. You have indicated that you would pursue project XRG-DP-10, LLC for this PPA. I have attached the project specs to ensure that is still the case. I have also attached our updated draft PPA with the off-system addendum to reflect scheduled deliveries versus as generated deliveries. Please provide comments on this draft for your XRG-DP-10, LLC project including any updated project information. We have not provided draft PPAs for the remaining five projects since it will require substantial time and effort and, given the challenges identified above, PacifiCorp does not want to undertake this effort if your projects have fatal flaws such as the available transmission issue identified. It was my understanding from our previous communications that you were agreeable to move forward on a single project and investigate alternatives, if any, for the other five; however your September 18 email could be interpreted as a demand for a draft PPA pursuant to PURPA.

I would be happy to meet with you and your team at a mutually convenient time to discuss your remaining five projects and determine a plan for addressing each of those in a timely manner should it be determined that you can deliver to an alternate point of delivery where PacifiCorp can receive and deliver the power to its network load on a firm basis or overcome the transmission capacity constraint at Brady. Let know if you would like to schedule a conference call or meeting. Thanks.

Regards,  
Bruce Griswold

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-21**

October 5 to October 13, 2009 email exchange between James Carkulis and Bruce Griswold.



**Griswold, Bruce {Mkt Function}**

---

**From:** James T. Carkulis [mtli@in-tch.com]  
**Sent:** Tuesday, October 13, 2009 7:22 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** RE: Exergy QF PPA requests

Bruce:

Thank you. The 15<sup>th</sup> would be a better date or on Friday morning the 16<sup>th</sup>. I do have two other conference calls on Thursday with our turbine supply OEM and with IPCo.

James

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*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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---

**From:** Griswold, Bruce {Mkt Function} [mailto:[Bruce.Griswold@PacifiCorp.com](mailto:Bruce.Griswold@PacifiCorp.com)]  
**Sent:** Monday, October 12, 2009 4:04 PM  
**To:** James T. Carkulis  
**Subject:** RE: Exergy QF PPA requests

James, let me know if we could discuss Wednesday the 14th and an available time for you.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [mailto:[mtli@in-tch.com](mailto:mtli@in-tch.com)]  
**Sent:** Monday, October 05, 2009 3:36 PM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** RE: Exergy QF PPA requests

Bruce:

We would be happy to discuss. Our partner and EPC contractor are in this week to Boise, so next week would be ideal.

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
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---

**From:** Griswold, Bruce {Mkt Function} [<mailto:Bruce.Griswold@PacifiCorp.com>]  
**Sent:** Monday, October 05, 2009 9:36 AM  
**To:** James T. Carkulis  
**Subject:** RE: Exergy QF PPA requests

Thank James

I would propose we have a call on the constraints and include our merchant transmission trader to discuss. Let me know your availability this week. I am pretty much tied up on meetings and other work items until this Wednesday.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [<mailto:mtli@in-tch.com>]  
**Sent:** Monday, October 05, 2009 8:32 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** RE: Exergy QF PPA requests

Bruce:

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Borah and Brady. The current 345kV line being installed which shall eventually make its way to Brady or Borah [sorry, could not remember which] and the 500kV Jim Bridger to the Idaho border line are very real projects. Capacity in the not so distant future is very distinct and I maintain a good look at flow gives PacifiCorp much latitude in where they can accept delivery. Maybe the key is to accept flow at the BPA 138kV lines and then decide on what path or swap PacifiCorp would like to establish.

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Subject: FW: Exergy QF PPA requests  
Importance: High

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In addition to the physical obstacles to accommodating your request, PacifiCorp believes that it has the right to specify a point of delivery onto its system that is reasonable in terms of its needs, and PacifiCorp reserves that right. See *Water Power Co., Inc. v. PacifiCorp*, 99 Or App 125, 781 P2d 860 (1989). If you think PacifiCorp's position is wrong, please explain your position, and the basis therefore.

If PacifiCorp does have an obligation to accept output at Borah and Brady, PacifiCorp will expect you to pay for all resulting interconnection costs including network upgrades (either through an adjustment to avoided costs or through payment to PacifiCorp Transmission) such that the ultimate cost to PacifiCorp's customers is not greater than the cost avoided by PacifiCorp not constructing or purchasing an equivalent resource located on a non-constrained portion of its system. See 18 C.F.R. §§ 292.101(b)(7)), 292.306(a). Again, if you disagree with this principle I urge you to explain your position and basis therefore.

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Regards,  
Bruce Griswold

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-22**

October 27 to November 9, 2009 email exchange between Bruce Griswold and James Carkulis.



**Griswold, Bruce {Mkt Function}**

---

**From:** Griswold, Bruce {Mkt Function}  
**Sent:** Monday, November 09, 2009 4:37 PM  
**To:** James Carkulis  
**Subject:** RE: update

very good - we will call your office number.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James Carkulis [mailto:jcarkulis@exergydevelopment.com]  
**Sent:** Monday, November 09, 2009 4:35 PM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** RE: update

Bruce:

Tomorrow is fine. Just got into Boise.

James  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [jcarkulis@exergydevelopment.com](mailto:jcarkulis@exergydevelopment.com)

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**From:** Griswold, Bruce {Mkt Function} [mailto:Bruce.Griswold@PacifiCorp.com]  
**Sent:** Monday, November 09, 2009 5:33 PM  
**To:** James Carkulis  
**Subject:** RE: update

James

I wanted to confirm that we are available for a call tomorrow AM - 930AM PST - 1030 MST. If you are still available, let me know. If not then we can reschedule to next week.

Regards  
Bruce

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James Carkulis [mailto:jcarkulis@exergydevelopment.com]  
**Sent:** Thursday, October 29, 2009 7:32 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** RE: update

Bruce:

I finish the EPC contract for starting construction next week on our current 220 MW in Idaho and then on to NYC where we have successfully negotiated a 3 year 100% turbine and construction financing instrument of which we are wrapping up for future projects beyond our IPCo projects.

The week after next would be best.

James  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] jcarkulis@exergydevelopment.com

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---

**From:** Griswold, Bruce {Mkt Function} [mailto:Bruce.Griswold@PacifiCorp.com]  
**Sent:** Thursday, October 29, 2009 8:27 AM  
**To:** James Carkulis  
**Subject:** Re: update

James  
Sorry for the delayed response. Our trans guy has been unavailable. Could we target Monday or Tuesday for a

call?

Bruce Griswold  
Ph 503-813-5218  
Cell 503-702-1445

---

**From:** James Carkulis <jcarkulis@exergydevelopment.com>  
**To:** Griswold, Bruce {Mkt Function}  
**Sent:** Tue Oct 27 06:40:36 2009  
**Subject:** update  
Bruce:

Update on the call, if you please?

Thanks.

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [jcarkulis@exergydevelopment.com](mailto:jcarkulis@exergydevelopment.com)

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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-23**

March 11, 2010 email from James Carkulis.



**Griswold, Bruce {Mkt Function}**

---

**From:** James Carkulis [jcarkulis@exergydevelopment.com]  
**Sent:** Thursday, March 11, 2010 5:41 AM  
**To:** James T. Carkulis; Griswold, Bruce {Mkt Function}  
**Cc:** Younie, John; 'Ken Kaufmann'; Peter Richardson; DeGrandis, Bill D.  
**Subject:** RE: contracts

Bruce:

Good morning. Just a brief recap: In January of 2009, Exergy asked for standard rate avoid cost contracts for 4-20 MW projects in Cassia County Idaho named XRG-DP7, XRG-DP8, XRG-DP9, and XRG-DP10, along with 2 - 78 MW Qualified Facility contracts for Twin Falls County, Idaho Jack Ranch and JR1.

An Aurora model was to be prepared for the 78 MW contracts and the Rocky Mountain Power standard contract for the 20 MW projects. To our knowledge, an Aurora model to establish cost was never prepared by RMP.

In May, we received a standard contract for 1 – 20 MW contract and RMP mentioned that 22 MW was all the capacity available at the Borah or Brady POR.

On November 10<sup>th</sup>, in a conference call between RMP transmission, you, and I, it became clear if we delayed the online dates to June of 2011, ample upgrade work shall have been performed to allow all 4 – 20 MW requests to be processed.

As of this date, March 11, 2010 we have not seen the other 3 contract drafts. Exergy shall take the original sent for the 1 – 20 MW project contract draft and replicate that for the other 3 – 20 MW projects in Cassia County. We shall present a redline of all four projects as originally requested back in January 2009 for your review and approval. Since the online date of our current projects with Idaho Power is end of 2010, these should fit nicely in a continued construction cycle for Exergy.

Thank you for your consideration and work with transmission allowing this to be processed.

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [jcarkulis@exergydevelopment.com](mailto:jcarkulis@exergydevelopment.com)

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---

**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Tuesday, May 12, 2009 7:55 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** Younie, John; Ken Kaufmann  
**Subject:** RE: contracts

Bruce:

Thank you. We shall commence reviewing.

But, also as identified, transmission access is an issue which is not part and parcel of PURPA contract requests and XRG is convinced that issue can be dealt with outside of the requests for contracts. Therefore, XRG would appreciate the tendering of the balance of our submissions. We have third party experts who have a high level of confidence there is sufficient access currently or in the very near future.

Again, thanks and we shall be getting back to you shortly.

James

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Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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---

**From:** Griswold, Bruce {Mkt Function} [mailto:Bruce.Griswold@PacifiCorp.com]  
**Sent:** Monday, May 11, 2009 5:26 PM  
**To:** James T. Carkulis  
**Cc:** Younie, John; Ken Kaufmann  
**Subject:** RE: contracts

James

Please find the attached draft Idaho standard QF PPA to be used for a wind project. It should include all the recent Idaho commission orders. It does not include Addendum W which is the bolt-on addendum for an off-system project delivering to PacifiCorp. I will send that separately. Per our last communication (attached), we indicated PacifiCorp does not have sufficient transmission at Borah or Brady to accept any project greater than 23MW and you selected one project, XRG-DP 10, that would be developed into a PPA. Please provide a redline to this document with your proposed changes for discussion. If you or your team, have questions on the PPA, please call.

Bruce Griswold  
PacifiCorp C&T  
503-813-5218 Office  
503-702-1445 Cell  
503-813-6260 Fax

---

**From:** James T. Carkulis [mailto:mtli@in-tch.com]  
**Sent:** Monday, May 11, 2009 5:35 AM  
**To:** Griswold, Bruce {Mkt Function}  
**Subject:** contracts

Bruce:

In January, PacifiCorp agreed the strategy with XRG was to have all 6 contract requests before the IPUC by the end of April. To date, not one draft has been tendered by PacifiCorp. We realize these are exciting times and all are very busy, but all the Aurora work should have been accomplished on JR1 and Jack Ranch by now, the 4 drafts on XRG-DP 7 thru 10 should be in our hands for review.

We would appreciate if we could receive these contracts for review and comment to move to execution.

Thank you.

Regards,

James T. Carkulis  
Confidential & Proprietary  
*Successfully Merging Free Market Principles with Societal Expectations*  
Exergy Development Group, LLC  
[p] 208.336.9793  
[f] 208.336.9431  
[m] 406.459.3013  
[e] [mtli@in-tch.com](mailto:mtli@in-tch.com)

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Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-24**

March 12, 2010 email with attachment from Peter Richardson.



**Griswold, Bruce {Mkt Function}**

---

**From:** Peter Richardson [peter@richardsonandoleary.com]  
**Sent:** Friday, March 12, 2010 12:53 PM  
**To:** Griswold, Bruce {Mkt Function}  
**Cc:** James Carkulis  
**Subject:** XRG-DP-7, 8, 9, 10 PURPA Contracts  
**Attachments:** Document.pdf

Bruce this letter is addressed to both you and John Younie, but I am only forwarding it to you with the request that you provide John with a copy. If you would like I can send it to John as well. A hard copy is in the mail. Thanks, -Pete

Peter Richardson

Richardson & O'Leary

515 N. 27th Street

Boise, Idaho 83702

(208) 938-7901



**RICHARDSON & O'LEARY, PLLC**  
ATTORNEYS AT LAW

Peter Richardson

Tel: 208-938-7901 Fax: 208-938-7904  
peter@richardsonandoleary.com  
P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

March 12, 2010

Bruce Griswold  
John Younie  
825 NW Multnomah  
Portland, Oregon 97232  
Via overnight and electronic delivery

Re: PURPA Contracts for XRG-DP-7, LLC; XRG-DP-8; XRG-DP-9; XRG-DP-10

Dear Bruce and John:

Please reference the letters I sent to you in January of 2009 requesting PURPA power purchase agreements for the above referenced projects with an on line date of December 2010.

I understand that one draft contract was transmitted to Exergy in May of 2009 with no follow up with the other three contracts. In addition, in a telephone conversation between you and Mr. Carkulis in November 2009, it was noted that Rocky Mountain Power would be able to accommodate these four projects without additional transmission upgrades if the on line date were delay until June 2011.

Exergy is still prepared to enter into these contracts and has been so prepared since January of 2009.

I understand that you are in the process of lowering the avoided cost rates with the Idaho Commission. I am sure you can understand my client's interest in securing the requested contract before the rates are lowered. Since we requested contracts over one year ago and have followed those requests up with transmission interconnection requests, I believe Exergy remains entitled to the current rates as of today.

Would you please either; (1) confirm our understanding that we are entitled to the current rates and follow up with a contract containing the same; or (2) please tender an execution ready agreement containing the current rates by return mail? Thank you for your prompt attention to this matter.

Sincerely yours:

  
Pete Richardson

Case: PAC-E-10-08  
Exhibit A to Rocky Mountain  
Power's First Production  
Request to XRG

## **EXHIBIT A-25**

April 13, 2010 letter from Ken Kaufmann, attorney for Rocky Mountain Power.



**LOVINGER | KAUFMANN LLP**

825 NE Multnomah • Suite 925  
Portland, OR 97232-2150

office (503) 230-7715  
fax (503) 972-2921

---

Ken Kaufmann  
kaufmann@kklaw.com

April 13, 2010

***Via U.S. Mail and electronic mail***

Mr. Peter Richardson  
Richardson & O'Leary PLLC  
P.O. Box 7218  
Boise, ID 83707  
Peter@richardsonandoleary.com

**Re: Exergy's Inquiry Regarding Power Purchase Agreements**

Dear Mr. Richardson:

On behalf of PacifiCorp Energy's merchant business unit (PacifiCorp Merchant, or PacifiCorp), I am writing you—PURPA legal counsel for Exergy Development Group, LLC ("Exergy")—concerning your March 12, 2010 letter, in which you requested a commitment from PacifiCorp to buy output from four wind projects named XRG-DP7, XRG-DP8, XRG-DP9, and XRG-DP10 ("Projects DP7-DP10") at the then-current avoided cost rates for small (under 10 average megawatt) qualifying facilities (QFs). I understand the following regarding Projects DP7-DP10: The planned facilities will be similar wind QFs with design capacities of 19.8 MWs. They will be located in Cassia County, interconnected to Idaho Power's system in Idaho Power's service territory, and will deliver net output to PacifiCorp at its Borah or Brady substation. They are scheduled to become commercially operational December 31, 2010. I understand, further, that Exergy owns two more projects, Jack Ranch Wind Park and JR-1, 78.0 megawatts each, from which it also wishes to sell net output to PacifiCorp at either Borah or Brady substation. Together, the six projects total 235 MW of new capacity.

To date there have been multiple communications between PacifiCorp and Exergy regarding the above projects, starting with Exergy's request for four standard and two non-standard power purchase agreements (PPAs) in January 2009. PacifiCorp agreed, in March 2009, to offer Exergy one standard PPA; in April 2009, James Carkulis asked that PacifiCorp prepare a PPA for Project DP-10; and PacifiCorp did so, in May 2009. PacifiCorp has not offered to purchase net output from any remaining Exergy project because PacifiCorp lacks the ability to accept more than approximately 23 MW of new capacity at either its Borah or Brady substations and XRG has not offered to pay for system upgrades necessary to accept more than 23 MW.

When, after being told of PacifiCorp's transmission system limitations, Exergy renewed its request for additional PPAs, in September 2009, PacifiCorp responded, in an October 2, 2009 email to James Carkulis, with a substantive explanation of its position. That email explained

Mr. Peter Richardson  
April 13, 2010  
Page 2

that PacifiCorp can only accept 20-25 megawatts of new generation at Borah or Brady; that Exergy's net output required network upgrades to PacifiCorp's system, and that PacifiCorp believes that it is not obligated to purchase Exergy's net output at prices (inclusive of any required system upgrade paid for by PacifiCorp) that exceed PacifiCorp's administratively determined Idaho avoided cost. PacifiCorp offered to continue discussing the remaining XRG projects with Exergy by working with Exergy to identify and address potential fatal flaws.

To date, Exergy has not clearly indicated that it seeks more than a mere option to deliver net output to PacifiCorp. Nor has it indicated that it would agree to pay for any system upgrades on PacifiCorp's system necessary to move its net output to PacifiCorp's system load. Nor has Exergy, to PacifiCorp's knowledge, obtained transmission service agreements with Idaho Power for any of its projects to move the power to Borah or Brady. PacifiCorp presumes that Exergy continues to look to multiple utilities for the best possible deal for its projects' output.<sup>1</sup>

On November 10, 2009, PacifiCorp Merchant and Exergy participated in a telephone call, in which a planned upgrade to its transmission system in the vicinity of Borah and Brady substations, was discussed. However PacifiCorp disagrees with Mr. Carkulis's reliance on that phone call to conclude that PacifiCorp Transmission will be able to accommodate all Exergy projects after completion by PacifiCorp Transmission of the upgrade in mid-2011. Before PacifiCorp Merchant will agree to purchase more than 20 MW of new capacity at Borah or Brady, it must make a formal request to PacifiCorp Transmission and receive confirmation from PacifiCorp Transmission that transmission is available. PacifiCorp Transmission will charge PacifiCorp Merchant approximately \$15,000 per project to perform a system integration study. At that point, PacifiCorp Merchant will know when and if sufficient capacity will be available at Borah or Brady to accept more than 20 MW of new capacity. If capacity is available, PacifiCorp will buy whatever output Exergy wishes to sell. If capacity is not available, PacifiCorp will still buy Exergy's output, provided that Exergy pays for system upgrades necessary for PacifiCorp to move Exergy's power from Borah or Brady to PacifiCorp's load.

On March 16, 2010, the PUC issued Order No. 31025, which contains new avoided cost rates for PURPA contracts. Because the PUC made the new rates applicable to PURPA contracts executed on or after March 15, 2010, the new rates would apply to any PPA between PacifiCorp and Exergy for QFs under 10 average megawatts. This includes XRG-DP10, for which Exergy received a draft PPA in May 2009 but has not yet sent responsive comment to PacifiCorp. In order to move forward with the XRG-DP10 PPA, PacifiCorp requests that Exergy provide confirmation that the existing project information provided in early 2009 is still valid. If it is still valid, please let PacifiCorp know as soon as possible and PacifiCorp will prepare and send Exergy an updated PPA that conforms to PacifiCorp's current practice (including a requirement that the QF post delay security). If the project configuration has been updated, then please provide any updates to the project.

---

<sup>1</sup> Exergy's self-certifications for its projects list Idaho Power only, or else Idaho Power, Avista, and PacifiCorp (Rocky Mountain Power) as potential purchasers of Net Output.

Mr. Peter Richardson  
April 13, 2010  
Page 3

If, in light of the recent avoided cost rate revisions, Exergy still wishes to pursue PPAs for its remaining projects, it will need to demonstrate its ability to deliver net output to PacifiCorp's system via firm transmission. PacifiCorp recommends a meeting with Exergy to discuss: 1) XRG's firm transmission arrangements for its six projects; and 2) a process for determining whether new transmission capacity scheduled to be installed in mid-2011 will enable PacifiCorp to purchase Exergy's power without additional system upgrades (and therefore pay Exergy the standard avoided cost rates established by the Idaho PUC), or whether additional system upgrades will be required, and if so, what will be the resulting cost to Exergy. I understand that this proposal may not be the quick and final solution your client prefers; however PacifiCorp remains willing to work through the challenges presented by Exergy's six projects if Exergy is committed to working with PacifiCorp on a deal that does not require PacifiCorp to purchase output at a price that exceeds its avoided cost.

PacifiCorp requests that all written communications from Exergy's attorney be copied to my email address, above. If you, or any other attorney for Exergy, wish to talk with PacifiCorp regarding this matter, please schedule an appointment in advance so that PacifiCorp may have an attorney present. PacifiCorp continues to welcome direct communication between Exergy's non-attorney representatives. PacifiCorp will hold off responding further to Exergy's request until Exergy has clarified its intent regarding the matters raised in this letter.

Sincerely,



Ken Kaufmann  
Attorney for PacifiCorp

**cc (via e-mail):**

James Carkulis, Exergy Development Group LLC  
Greg Adams, Richardson & O'Leary  
Bruce Griswold, PacifiCorp Energy  
Jeff Erb, PacifiCorp Energy  
Daniel Solander, Rocky Mountain Power

Case No. PAC-E-10-08  
Rocky Mountain Power's Motion for Summary Judgment

# **EXHIBIT B**

Excerpts from XRG's Responses to Rocky Mountain Power's  
Production Requests

**PRODUCTION REQUEST NO. 6**

Please provide copies of all communications between any representative of XRG or Exergy and the Bonneville Power Administration concerning the XRG projects. Does XRG currently have: (1) rights to interconnect the XRG projects to Bonneville Power Administration's (BPA's) system; and (2) firm rights to deliver all output from the XRG projects across BPA's system to PacifiCorp at Brady? Did XRG control such rights on July 29, 2010; March 15, 2010; November 10, 2009; October 2, 2009; or January 21, 2009? (Please answer separately for each date).

**XRG RESPONSE TO REQUEST NO. 6**

XRG's communications with BPA are attached hereto.

REQUEST FOR PRODUCTION NO. 32

Did XRG work on aspects of the XRG projects other than the PPA during 2010? If so please list all milestones (e.g. contracts awarded, engineering completed; permits granted, etc.) related to the XRG projects that occurred in 2010.

XRG RESPONSE TO REQUEST NO. 32

Despite Rocky Mountain Power's continued resistance to executing PPAs in 2010, XRG did continue to work on the projects in 2010. That work included:

- Engaged third party environmental consultants who completed investigation into likely endangered species impacts.
- Engaged in landowner negotiations, and maintained XRG's good standing on its leases.
- Continued wind data monitoring and analysis, which was initially commenced July 2006 with erection of met towers.
- Continued Sodar monitoring and analysis of wind, which commenced initially in 2008.
- Resubmitted Interconnection requests to BPA -- G0411 (XRG-DP9 submitted 3/12/10), and G0412 (XRG-DP10 submitted 3/12/10). Due to BPA's rejection of these submittals, XRG resubmitted the requests to comply with BPA's concerns. BPA accepted the submittal for XRG-DP9, which now has a Queue No. G0445 effective on 12/6/10. XRG is still awaiting confirmation from BPA on the submittal and deposit for the XRG-DP10 interconnection, which it signed and sent to BPA on 11/24/10.
- Received completed interconnection system impact studies from BPA for Queue Nos. G0388 (XRG-DP7), G0395 (XRG DP8) and executed Facilities Study Agreements for same.
- Engaged a third party consultant to complete a microwave beam study for all 4 projects, to ensure the projects will not interfere with any microwave tower operations.
- Engaged a third party consultant to complete a study coordinating with the National Telecommunications and Information Administration to ensure all 4 projects will avoid interference with government systems.
- Initiated formal TSR process in order to become a BPA transmission customer and engaged in discussions with BPA transmission personnel regarding PTP transmission from the XRG projects to Brady substation.

REQUEST FOR PRODUCTION NO. 37

Does XRG currently have rights to interconnect the XRG projects to Bonneville Power Administration's (BPA's) system? If yes, did XRG control such rights on December 14, 2010? On March 15, 2010? On November 10, 2009? On October 2, 2009? On January 21, 2009? Please answer separately for each date.

XRG RESPONSE TO REQUEST NO. 37

XRG objects on the ground this request calls for irrelevant information. XRG maintains its right to obligate itself to PPAs, and the risks inherent therewith, prior to securing interconnection rights and transmission rights for the entire output. Reference, e.g., IPUC Order No. 32144. XRG further objects on the ground that the request is ambiguous as to the meaning of "rights." Without waiving these objections, XRG states as follows.

See XRG's Response to Request Nos. 31 and 32 for XRG's efforts and rights obtained regarding interconnection. The timing of the interconnection process with the PPA process has been difficult, and has been made no easier by Rocky Mountain Power's reluctance to execute PPAs for these projects since the PPA requests submitted January 21, 2009. XRG has initiated and paid for several interconnection applications and studies since 2006. Each interconnection application requires a \$2,500 deposit, and each system impact study deposit is \$5,000. Each Facilities Study deposit is \$7,000. BPA additionally requested a \$20,000 deposit for an environmental study for each project in January 2009, which would have been an \$80,000 deposit at a time when Rocky Mountain Power maintained it could not accept the output of all 4 projects. XRG has incurred substantial interconnection study costs, and, largely as a result of the delay in securing PPAs, has been bumped out of its initial queue positions for these projects. Nevertheless, XRG has continued to proceed through BPA's interconnection process and has current rights to interconnection proceeding through BPA's study processes.

In preparing this response, XRG discovered additional correspondence with BPA not provided in XRG's initial response to Request No. 6. XRG has omitted confidential study materials for the reasons explained in XRG's Response to Request No. 49. XRG hereby provides that additional correspondence as XRG Attachment to RMP Request No. 37.

REQUEST FOR PRODUCTION NO. 38

Does XRG currently have Firm rights as defined in the transmission service provider's OATT to deliver all output from the XRG projects across the transmission services provider's system to Rocky Mountain Power at Brady for the full 20-year term requested in the PPAs? If yes, please describe the specific transmission provider(s) and did XRG control such rights on December 14, 2010? On March 15, 2010? On November 10, 2009? On October 2, 2009? On January 21, 2009? Please answer separately for each date. If no, please explain current status of transmission service request(s) with the transmission services provider(s).

XRG RESPONSE TO REQUEST NO. 38

XRG objects on the ground this request calls for irrelevant information. XRG maintains its right to obligate itself to PPAs, and the risks inherent therewith, prior to securing interconnection rights and transmission rights for the entire output. Reference, e.g., IPUC Order No. 32144. Without waiving this objection, XRG states as follows.

See XRG's Response to Request No. 32 for XRG's efforts and rights to PTP transmission. As expressed to Rocky Mountain Power many times previously, and most recently at the meeting between the parties on December 7, 2010 and in XRG's letter and attachments dated December 14, 2010, XRG is confident that transmission to Rocky Mountain Power will be achievable and cost-effective. This is particularly so if Rocky Mountain Power agrees to accept conditional firm transmission, which it stated it was able to do when the parties met on December 7, 2010.

REQUEST FOR PRODUCTION NO. 41

Please describe and provide a one-line diagram of the physical path by which net output from the XRG projects will be delivered to Rocky Mountain Power's system. Please describe the total transmission capacity on each segment of the path, the available transmission capacity on each segment, and who owns each segment of such path.

XRG RESPONSE TO REQUEST NO. 41

XRG objects on the ground this request calls for irrelevant information and documents not in the possession of XRG. XRG maintains its right to obligate itself to PPAs, and the risks inherent therewith, prior to securing interconnection rights and transmission rights for the entire output. Reference, e.g., IPUC Order No. 32144.

REQUEST FOR PRODUCTION NO. 42

Please describe what steps XRG must take before it has a legal right to firm transmission (e.g. Firm PTP or Conditional Firm PTP) from the XRG projects to Rocky Mountain Power's system in the amount needed to deliver all net output for the XRG projects.

XRG RESPONSE TO REQUEST NO. 42

XRG objects on the ground this request calls for irrelevant information and requests a legal opinion. XRG maintains its right to obligate itself to PPAs, and the risks inherent therewith, prior to securing interconnection rights and transmission rights for the entire output. Reference, e.g., IPUC Order No. 32144.

REQUEST FOR PRODUCTION NO. 49

Please provide copies of all agreements, correspondence and documentation demonstrating XRG's proof of rights to (1) interconnect to BPA's transmission system, either now or since January 21, 2008 and; (2) deliver net output across BPA transmission on a long-term firm basis as defined in BPA's OATT to the proposed Point of Delivery with Rocky Mountain Power, either now or since January 21, 2008, for the XRG projects.

XRG RESPONSE TO REQUEST NO. 49

XRG objects on the ground this request is unduly burdensome and calls for irrelevant information. XRG maintains its right to obligate itself to PPAs, and the risks inherent therewith, prior to securing interconnection rights and transmission rights for the entire output. Reference, e.g., IPUC Order No. 32144. XRG further objects on the ground that the request is ambiguous as to the meaning of "rights." Without waiving these objections, XRG states as follows.

See XRG's Response to Request Nos. 31, 32, 37, and 38. To the extent this request calls for interconnection and transmission studies, XRG will not provide the same. These studies are generally confidential between BPA and XRG, as stated in the July 15, 2010 BPA letters providing system impact studies. XRG has provided the interconnection queue numbers for the projects where Rocky Mountain Power can view the public information on BPA's OASIS website. For on-system PURPA projects, Rocky Mountain Power C&T may not demand such transmission studies due to FERC's requirement for functional separation of the merchant and transmission sides of the Company. Rocky Mountain power has provided no reason why XRG's off-system QFs must provide more information than on-system QFs to obtain a PPA. Therefore, XRG objects to providing confidential interconnection studies.

REQUEST FOR PRODUCTION NO. 51

Did XRG ever apply to BPA for Firm transmission for the XRG Projects? What is the current status of those applications?

XRG RESPONSE TO REQUEST NO. 51

XRG objects on the ground this request calls for irrelevant information. XRG maintains its right to obligate itself to PPAs, and the risks inherent therewith, prior to securing interconnection rights and transmission rights for the entire output. Reference, e.g., IPUC Order No. 32144. Without waiving this objection, XRG states as follows.

Yes. See XRG's Responses to Requests No. 32 and 39.

## Collin Rudeen

**From:** Hall, James L - TPC-TPP-4 [jhall@bpa.gov]  
**Sent:** Thursday, December 09, 2010 12:00 PM  
**To:** Collin Rudeen; Taylor, Eric K - TSE-TPP-2  
**Cc:** Hairston, Jason L - TSES-TPP-2; Glans, Dusty L - TPC-IDAHO FALLS  
**Subject:** RE: Badger Peak (G0388)

Collin,  
I think Eric is your point of contact for a wheeling request.  
Thanks  
James

---

**From:** Collin Rudeen [mailto:crudeen@exergydevelopment.com]  
**Sent:** Thursday, December 09, 2010 8:54 AM  
**To:** Hall, James L - TPC-TPP-4  
**Subject:** RE: Badger Peak (G0388)

James, are you the right person to ask about wheeling requests? We're looking to go from four of our projects on your system to the Brady substation.



**Collin Rudeen**  
Lead Project Engineer  
802 W Bannock, 12th Floor Boise, ID 83702  
Office: 208-336-9793  
[www.exergydevelopment.com](http://www.exergydevelopment.com)

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**From:** Hall, James L - TPC-TPP-4 [mailto:jhall@bpa.gov]  
**Sent:** Wednesday, December 08, 2010 5:20 PM  
**To:** Collin Rudeen  
**Cc:** Hammack, Debby - TPP-OPP-3; Realica, Antoinette V - TPM-OPP-3; Fiedler, Paul A - TPC-TPP-4; Glans, Dusty L - TPC-IDAHO FALLS  
**Subject:** RE: Badger Peak (G0388)

Collin,

Note Section 1.4 of the SGIP, in regards to a change in the requested point of interconnection, it says "may be deemed a withdrawal and require submission of a new Interconnection request".

Based upon BPA's internal stakeholders evaluation of this issue, changing the POI from BPA's Idaho Substation at 115 kV to Raft River's distribution line at 34.5 will result in withdrawal of the original interconnection request and require a new interconnection request.

Exergy's change in the POI is too extreme to allow BPA to consider studying under the previous request.

Thanks  
James

---

**From:** Collin Rudeen [mailto:crudeen@exergydevelopment.com]  
**Sent:** Wednesday, December 08, 2010 3:46 PM  
**To:** Collin Rudeen; Hall, James L - TPC-TPP-4  
**Cc:** Hammack, Debby - TPP-OPP-3; Realica, Antoinette V - TPM-OPP-3; Fiedler, Paul A - TPC-TPP-4; Glans, Dusty L - TPC-IDAHO FALLS  
**Subject:** RE: Badger Peak (G0388)

James, just checking back in for clarification. Your email below sounds like to interconnect with Raft River instead of the Idaho Substation, we would have to start over with a new queue position in the study process. That's not what we'd talked about before, so I wasn't sure. Please advise.

Regards,



**Collin Rudeen**  
Lead Project Engineer  
802 W. Bannock, 12th Floor Boise, ID 83702  
Office: 208.338.9793  
www.exergydevelopment.com

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**From:** Collin Rudeen  
**Sent:** Monday, December 06, 2010 9:51 AM  
**To:** Hall, James L - TPC-TPP-4  
**Cc:** Hammack, Debby - TPP-OPP-3; Realica, Antoinette V - TPM-OPP-3; Fiedler, Paul A - TPC-TPP-4; Glans, Dusty L - TPC-IDAHO FALLS  
**Subject:** RE: Badger Peak (G0388)

James, just to be clear, you're talking about an ADDITIONAL interconnection request, not withdrawing our current queue number and starting over?



**Collin Rudeen**  
Lead Project Engineer  
802 W. Bannock, 12th Floor Boise, ID 83702  
Office: 208.338.9793  
www.exergydevelopment.com

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**From:** Hall, James L - TPC-TPP-4 [mailto:jihall@bpa.gov]  
**Sent:** Friday, December 03, 2010 12:13 PM  
**To:** Collin Rudeen  
**Cc:** Hammack, Debby - TPP-OPP-3; Realica, Antoinette V - TPM-OPP-3; Fiedler, Paul A - TPC-TPP-4; Glans, Dusty L - TPC-IDAHO FALLS  
**Subject:** RE: Badger Peak (G0388)

Collin,

You've gotten feedback from BPA since the email below through a number of phone conversations.  
Has the content or intent of your items 1 and 2 in your email below of Thursday, October 07, 2010 10:22 AM changed?

Initially with your item 1) below (We are NOT planning on interconnecting at the Idaho Substation.) BPA has been reevaluating the validity of your interconnection request in light of section 1.4 of the SGIP (see below).

If I've heard correctly, it has since been determined that your intended point of interconnection (POI) is on a Raft River owned section of 34.5 kV distribution line which is connected back to BPA's Idaho Substation.  
Is that correct?

If yes, it appears that a new small generation interconnection request is required for this project.

Your original request was to connect at Idaho Substation at 115 kV.  
A POI on Raft River's 34.5 kV distribution line will require a different system modeling and studies.  
Raft River does not have the staff to do system studies nor do they have extensive data on the characteristics of their lines.

With no data line characteristics would have to be determined (i.e. via LIDAR - Light Detection And Ranging).

Please advise as to what your present intended point of interconnection is.

Thanks

Best Regards,  
James Leonard Hall  
Customer Service Engineering  
Bonneville Power Administration

Work phone: 360-619-6057  
Cell phone: 360-609-0319  
Secretary: 360-619-6075  
FAX: 360-619-6070  
(Please leave a voice mail on my work phone that you have sent a FAX.)

Mail Stop: TPC-TPP-4

Email: [jlhall@bpa.gov](mailto:jlhall@bpa.gov)

Post Office Address: PO Box 61409, TPC-TPP-4  
Vancouver, WA 98666-1409

UPS and FEDEX Deliveries: 7500 N.E. 41st Street, Suite 130  
Vancouver, WA 98662-7905

## SMALL GENERATOR INTERCONNECTION PROCEDURES (SGIP)

### 1.4 Modification of the Interconnection Request

Any modification to machine data or equipment configuration or to the interconnection site of the Small Generating Facility not agreed to in writing by the Transmission Provider and the Interconnection Customer may be deemed a withdrawal of the Interconnection Request and may require submission of a new Interconnection

Request, unless proper notification of each Party by the other and a reasonable time to cure the problems created by the changes are undertaken.

---

**From:** Collin Rudeen [mailto:crudeen@exergydevelopment.com]  
**Sent:** Thursday, October 07, 2010 10:22 AM  
**To:** Hall, James L - TPC-TPP-4  
**Cc:** Hammack, Debby - TPP-OPP-3  
**Subject:** Badger Peak (G0388)

James,

Not sure if I've had a chance to talk with you about this previously, but I've got two questions for you on our Badger Peak project.

- 1) We are planning on interconnecting the project on a Raft River 34.5 kV line that goes through the project land, about 2 or 3 miles east of the Idahome Substation. We are NOT planning on interconnecting at the Idahome Substation. What impacts will this change have? Metering, interfacing with Raft River, study of that 2 to 3 mile section of line?
- 2) The System Impact Study Report on the project mentions rerating the Minidoka - Bridge line between the Minidoka and Idahome Substations. However, Heber Carpenter at Raft River thought that this section of line had been rated pretty recently. Is that true? What are the chances that we will not be able to rerate this line after studying it with lidar?

Thanks for your time. Feel free to give me a call if you've got additional questions for me.



**Collin Rudeen**  
Lead Project Engineer  
802 W. Bannock, 12th Floor Boise, ID 83702  
Office: 208.336.8793  
collinrudeen@exergydevelopment.com

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**Collin Rudeen**

---

**From:** Taylor, Eric K - TSE-TPP-2 [ektaylor@bpa.gov]  
**Sent:** Friday, December 10, 2010 5:02 PM  
**To:** Collin Rudeen  
**Cc:** Hardin, Craig A - TSE-TPP-2; Ten Eyck, Donna L - TSES-TPP-2  
**Subject:** RE: Wheeling Request  
**Attachments:** NewCustomer.pdf

Hi Collin,

I cc'd both Craig Hardin and Donna Ten Eyck, who will be working with Exergy on this request. Craig and Donna support BPA transmission customers in Idaho, and will be the ones working with folks on generation and transmission requests in the area.

That being said, the first thing that Exergy must do prior to submitting a wheeling request is to obtain a Point-to-Point Enabling Agreement. PTP agreements are necessary in order for customers to submit transmission requests. I've attached a business practice on becoming a BPA transmission customer. Prior to issuing a PTP Agreement, the customer needs to first submit some info to BPA, which is identified in the business practice. Exergy may have already submitted some of this info when making your interconnection requests.

Craig, Donna and I will work together to insure a smooth transition. Please let us know if you have any questions, thanks!

Eric

---

**From:** Collin Rudeen [mailto:crudeen@exergydevelopment.com]  
**Sent:** Thursday, December 09, 2010 11:38 AM  
**To:** Taylor, Eric K - TSE-TPP-2  
**Subject:** Wheeling Request

Eric, we'd like to request four wheeling requests - three for 20 MW each on the Minidoka - Unity 138 kV line and one 20 MW one on the Minidoka - Bridge 138 kV line.

Thanks,



**Collin Rudeen**  
Lead Project Engineer  
602 W. Bankrock, 12th Floor Boise, ID 83703  
Office: 208-338-9793  
www.exergydevelopment.com

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**Collin Rudeen**

---

**From:** Hardin, Craig A - TSE-TPP-2 [cahardin@bpa.gov]  
**Sent:** Wednesday, January 05, 2011 4:40 PM  
**To:** Collin Rudeen  
**Subject:** RE: Wheeling to Brady

Collin,

The study that BPA may/will be performing will be on the existing 138 kV line that BPA owns and operates around the Burley area only.

Once the output of your proposed project leaves the BPA 138 kV Point to Point loop at Minidoka or Adelaide you will be doing transmission business with Idaho Power. They own and operate the 138 kV line that runs from Adelaide to American Falls near Brady in the Idaho Power Balancing Area Authority. BPA is not a Balancing Area Authority in this region.

So having said that Exergy will need to contact Idaho Power to arrange for transmission wheeling services under Idaho Power's Tariff. There is a pathway to get there as you state using Idaho Power's facilities, but the availability of transmission capacity on Idaho Power's facilities is a discussion that Exergy needs to have with Idaho Power as a transmission provider.

I have provided you with some contact information below at Idaho Power Transmission to initiate your wheeling discussions.

Rowena Bishop @ 208-388-2658

Kelly Kiler @ 208-388-5118

Thanks Craig

---

**From:** Collin Rudeen [mailto:crudeen@exergydevelopment.com]  
**Sent:** Wednesday, January 05, 2011 3:17 PM  
**To:** Hardin, Craig A - TSE-TPP-2  
**Subject:** Wheeling to Brady

Craig,

At the moment we're looking at wheeling these projects to Brady. Outside of actually doing the wheeling study, do you know if there's a clear pathway to get there? I know there may not be capacity or will incur expensive upgrades - mostly I'm just wanting to know if the pathway is there.

Thanks,



**Collin Rudeen**  
Lead Project Engineer  
802 W. Bennock, 12th Floor Boise, ID 83702  
Office: 208.336.9793  
[www.exergydevelopment.com](http://www.exergydevelopment.com)



**Collin Rudeen**

---

**From:** Hardin, Craig A - TSE-TPP-2 [cahardin@bpa.gov]  
**Sent:** Thursday, January 06, 2011 2:42 PM  
**To:** Collin Rudeen  
**Subject:** BPA Letter Regarding Transmission Asset Planning.  
**Attachments:** Transmission Asset Management Plan.pdf

Collin,

Attached below is a letter from Hardev Juj, Acting BPA Vice President of Planning and Asset Management, describing a serious planning situation BPA and its customers will be facing in the coming years.

In summary, BPA has significantly increased its Capital Budget and work plan for the current and upcoming fiscal years. BPA's capital program has doubled and there are numerous internally driven projects that are required to meet reliability requirements, as well as replacing the aging BPA transmission system. Simultaneously, a large amount of externally driven projects are underway in response to Transmission Services' Network Open Season and to generator interconnection requests.

BPA is employing numerous strategies to accomplish this work, however; adding additional projects to existing workload will be challenging for us over the next few years. In an effort to maximize efficiency, BPA is coordinating design over a two to three year work plan which will result in longer lead times to complete projects. BPA is requesting your assistance by requesting you provide advance notice of at least 3 years and in some cases 5 years for such projects. I realize this may be a difficult endeavor but appreciate your support and communication on new projects.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

Craig Hardin

Craig Hardin  
Transmission Account Executive  
Bonneville Power Administration  
7500 NE 41st Street, Suite 200  
Vancouver, WA 98662  
360-619-6011 office.  
360-852-6489 cell.

**Collin Rudeen**

---

**From:** Hammack, Debby - TPP-OPP-3 [dlhammack@bpa.gov]  
**Sent:** Friday, January 07, 2011 3:23 PM  
**To:** Collin Rudeen  
**Cc:** Randall, Cheryl C - TPC-TPP-4; Realica, Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

Hi Collin -

You only need to go to Idaho for the LIDAR you are financing. The LIDAR doesn't offset anything, it just tells us if the existing line has the capacity to support your project. If it doesn't, you will have to choose a different Point of interconnection.

*Debby Hammack*

Bonneville Power Administration  
Transmission Planning

(360) 619-6848

---

**From:** Collin Rudeen [mailto:crudeen@exergydevelopment.com]  
**Sent:** Friday, January 07, 2011 2:17 PM  
**To:** Hammack, Debby - TPP-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

Debby,

For this LIDAR study, can you tell us how will we know if we need to only go Idaho, or if it's going to be all the way to Bridge? And can you point me to where in the SIS it spells out the cost of exactly what this LIDAR study will be offsetting?

Thanks,



**Collin Rudeen**  
Lead Project Engineer  
802 W Bannock, 12th Floor Boise, ID 83702  
Office: 208.336.9735  
[www.exergydevelopment.com](http://www.exergydevelopment.com)

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---

**From:** Randall, Cheryl C - TPC-TPP-4 [mailto:ccrandall@bpa.gov]  
**Sent:** Thursday, January 06, 2011 10:12 AM  
**To:** Hammack, Debby - TPP-OPP-3; Collin Rudeen

**Cc:** Hardin,Craig A - TSE-TPP-2; Hall,James L - TPC-TPP-4; Cosola,Anna M - TPC-TPP-4; Matthews,Chuck - TPP-OPP-3; Realica,Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

Got some numbers on the LiDAR. Not as bad as I had feared. These are "typical" estimates based on recent projects. The BPA labor shown is for the survey group to take the raw numbers and put them into a format that can be read by most GIS programs. No overhead is included and I understand that the cost for the additional work to get the GIS data into maps and plot plans that the line designers can use is also not included, so the final numbers for getting to a point where the line designers can be involved would probably be close to double what's listed below. Still nowhere near as bad as I thought.

**Minidoka - Idahohome = 24 miles AACF (scaled from eGIS map)**

BPA labor cost =  $24/10 * 4 = 10$  staff days = at \$528 per day average = \$5,280

LiDAR cost =  $2 * 24 * 883 = \$42,384$

Aircraft = \$5,000

**Grand total = \$52,664 ( approx. \$2,200 per mile )**

**Minidoka - Bridge = 45 miles AACF (scaled from eGIS map)**

BPA labor cost =  $45/10 * 4 = 18$  staff days = at \$528 per day average = \$9,504

LiDAR cost =  $2 * 45 * 883 = \$79,470$

Aircraft = \$6,000

**Grand total = \$94,947 ( approx. \$2,100 per mile )**

---

**From:** Hammack,Debby - TPP-OPP-3  
**Sent:** Thursday, December 16, 2010 9:05 AM  
**To:** Randall,Cherilyn C - TPC-TPP-4; 'Collin Rudeen'  
**Cc:** Hardin,Craig A - TSE-TPP-2; Hall,James L - TPC-TPP-4; Cosola,Anna M - TPC-TPP-4; Matthews,Chuck - TPP-OPP-3; Realica,Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

We need at least from Minidoka to the Idahohome Tap, but it would be nice to get a second quote that covers Minidoka all the way to Bridge.

---

**From:** Randall,Cherilyn C - TPC-TPP-4  
**Sent:** Thursday, December 16, 2010 9:03 AM  
**To:** 'Collin Rudeen'  
**Cc:** Hammack,Debby - TPP-OPP-3; Hardin,Craig A - TSE-TPP-2; Hall,James L - TPC-TPP-4; Cosola,Anna M - TPC-TPP-4; Matthews,Chuck - TPP-OPP-3; Realica,Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

I need to know the number of miles, from where to where?

---

**From:** Collin Rudeen [mailto:crudeen@exergydevelopment.com]  
**Sent:** Thursday, December 16, 2010 8:38 AM  
**To:** Randall,Cherilyn C - TPC-TPP-4  
**Subject:** RE: G0388 Study Delay Notification

A fairly serious price tag. Can you get a preliminary bid like you mentioned? That would be great.

Thanks.



**Collin Rudeen**  
Lead Project Engineer  
802 W Bannock, 12th Floor Boise, ID 83702  
Office: 208 336 9793  
www.exergydevelopment.com

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---

**From:** Randall,Cherilyn C - TPC-TPP-4 [mailto:ccrandall@bpa.gov]  
**Sent:** Thursday, December 16, 2010 9:34 AM  
**To:** Collin Rudeen; Hammack,Debby - TPP-OPP-3  
**Cc:** Hardin,Craig A - TSE-TPP-2; Hall,James L - TPC-TPP-4; Cosola,Anna M - TPC-TPP-4; Matthews,Chuck - TPP-OPP-3; Realica,Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

Well, first, we need clear ground. Has it snowed out there already?  
Second, we would bid the job out to our LIDAR contractors - we have a few we work with on a regular basis. The last LIDAR job we did for a situation like this cost about \$400k. Of course, that was for about 200 miles of line. Still, just to get a helicopter crew out there, regardless of the number of miles to be surveyed, costs around \$200k. I can get a preliminary bid from the contractors with no obligation on your part, but to actually go through with the study, you would have to put up the money. So if you're serious about this, then after we get a preliminary bid, we'd put an agreement in place and you would have to front the cash. Once we have the payment in hand, we send the contractors out to do the study, and then our in house group takes the raw data and converts it to a computer model of the line, and then our line group analyzes it. The whole process can take three to four months, longer if we have to wait for clear ground. Hope that explains it well enough.

Thanks,  
Cherilyn

---

**From:** Collin Rudeen [mailto:crudeen@exergydevelopment.com]  
**Sent:** Thursday, December 16, 2010 8:21 AM  
**To:** Randall,Cherilyn C - TPC-TPP-4; Hammack,Debby - TPP-OPP-3  
**Cc:** Hardin,Craig A - TSE-TPP-2; Hall,James L - TPC-TPP-4; Cosola,Anna M - TPC-TPP-4; Matthews,Chuck - TPP-OPP-3; Realica,Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

Thanks for your responses. Sound like Chad must have been mistaken. What will it take to initiate a lidar study?



**Collin Rudeen**  
Lead Project Engineer  
802 W. Bannock, 12th Floor Boise, ID 83702  
Office: 208.336.9793  
[www.exergydevelopment.com](http://www.exergydevelopment.com)

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**From:** Randall,Cherilyn C - TPC-TPP-4 [mailto:ccrandall@bpa.gov]  
**Sent:** Wednesday, December 15, 2010 4:54 PM  
**To:** Hammack,Debby - TPP-OPP-3; Collin Rudeen  
**Cc:** Hardin,Craig A - TSE-TPP-2; Hall,James L - TPC-TPP-4; Cosola,Anna M - TPC-TPP-4; Matthews,Chuck - TPP-OPP-3; Realica,Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

I haven't heard about any lidar studies. If some have been conducted, I'd sure like a copy of the results.

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**From:** Hammack,Debby - TPP-OPP-3  
**Sent:** Wednesday, December 15, 2010 3:36 PM  
**To:** 'Collin Rudeen'  
**Cc:** Hardin,Craig A - TSE-TPP-2; Hall,James L - TPC-TPP-4; Cosola,Anna M - TPC-TPP-4; Matthews,Chuck - TPP-OPP-3; Realica,Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

Hi Collin -

If LIDAR studies have been completed, I haven't heard about it. Transmission Planning has not received any new data. -Craig - have you heard anything from Raft River about a recent LIDAR study?

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**From:** Collin Rudeen [mailto:crudeen@exergydevelopment.com]  
**Sent:** Wednesday, December 15, 2010 3:32 PM  
**To:** Hammack,Debby - TPP-OPP-3  
**Cc:** Hardin,Craig A - TSE-TPP-2; Hall,James L - TPC-TPP-4; Cosola,Anna M - TPC-TPP-4; Matthews,Chuck - TPP-OPP-3; Realica,Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

Yes, I asked James about that a while ago. Chad Black from Raft River seemed to think that the line had recently been re-rated – or at least lidar studies had been completed – and that the chances of re-rating the line based on a new lidar study seemed pretty remote. Is that accurate?



**Collin Rudeen**  
Lead Project Engineer  
802 W. Bannock, 12th Floor Boise, ID 83702  
Office: 208.336.9793  
[www.exergydevelopment.com](http://www.exergydevelopment.com)

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**From:** Hammack, Debby - TPP-OPP-3 [mailto:dlhammack@bpa.gov]  
**Sent:** Wednesday, December 15, 2010 4:30 PM  
**To:** Collin Rudeen  
**Cc:** Hardin, Craig A - TSE-TPP-2; Hall, James L - TPC-TPP-4; Cosola, Anna M - TPC-TPP-4; Matthews, Chuck - TPP-OPP-3;  
Realica, Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

Hi Collin -

Please be aware that we also need the re-rating information on the Minidoka PH-Bridge line. Otherwise, the information from the SIS stating that there is no available capacity still stands.

Thank you

*Debby Hammack*

Bonneville Power Administration  
Transmission Planning

(360) 619-8848

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**From:** Collin Rudeen [mailto:crudeen@exergydevelopment.com]  
**Sent:** Wednesday, December 15, 2010 3:20 PM  
**To:** Hammack, Debby - TPP-OPP-3  
**Cc:** Hardin, Craig A - TSE-TPP-2; Hall, James L - TPC-TPP-4; Cosola, Anna M - TPC-TPP-4; Matthews, Chuck - TPP-OPP-3;  
Realica, Antoinette V - TPM-OPP-3  
**Subject:** RE: G0388 Study Delay Notification

And here's G0388:



**Collin Rudeen**  
Lead Project Engineer  
802 W Bannock, 12th Floor Boise, ID 83702  
Office: 208.328.8793  
www.exergydevelopment.com

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**From:** Hammack, Debby - TPP-OPP-3 [mailto:dlhammack@bpa.gov]  
**Sent:** Wednesday, December 15, 2010 2:07 PM  
**To:** Collin Rudeen  
**Cc:** Hardin, Craig A - TSE-TPP-2; Hall, James L - TPC-TPP-4; Cosola, Anna M - TPC-TPP-4; Matthews, Chuck - TPP-OPP-3;  
Realica, Antoinette V - TPM-OPP-3  
**Subject:** G0388 Study Delay Notification

To eXergy Development Group (XRG):

This e-mail serves as our notification to XRG (per Section 4.1 of the Small Generator Interconnection Procedure - SGIP) that we will not complete the Facilities Study for the generation interconnection request number #G0388, (Agreement 10TX-14597) by December 17, 2010.

Section 4.1 of the SGIP states that the Transmission Provider shall use Reasonable Efforts to meet all time frames agreed to with the customer. It also states that if the Transmission Provider is unable to complete the Interconnection Feasibility Study within the time period, it shall notify Interconnection Customer and provide an estimated completion date with an explanation of the reasons why additional time is required.

The system Impact Study Report stated that there is no interconnection capacity without rerating the Minidoka PH-Bridge 138 kV line. In order to complete the requested FAS study, XRG will need to provide the re-rating information on the Minidoka PH-Bridge line.

Also, Transmission Planning requires micrositing data from the developer, that information is also necessary for the completion of the Facilities Study.

BPA will proceed to complete the Study with an estimated completion date of 30 Business Days after the rerating data for the Minidoka PH-Bridge line and the requested micrositing data is received. Please see the attached Turbine Location Substation Criteria document attached.

Thank you for your attention to this matter.

*Debby Hammack*

Bonneville Power Administration  
Transmission Planning

(360) 619-6848