

TEN-YEAR POWER PURCHASE AGREEMENT

made

between

PACIFICORP POWER MARKETING, INC.,

as Seller

and

THE CALIFORNIA DEPARTMENT OF WATER RESOURCES,

as Power Purchaser

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## TEN-YEAR POWER PURCHASE AGREEMENT

This Ten-Year Power Purchase Agreement (the "Agreement"), dated as of this 6<sup>th</sup> day of July, 2001, is between PacificCorp Power Marketing, Inc., an Oregon corporation ("Seller"), and the State of California Department of Water Resources, an agency of the State of California, acting with respect to the Fund (hereinafter defined) and the powers and responsibilities of the Department of Water Resources with respect thereto as set forth in the Act (as hereinafter defined), separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (the State of California Department of Water Resources acting in such capacities being herein called the "Power Purchaser"). Seller and Power Purchaser are sometimes referred to in this Agreement collectively as the "Parties" and individually as "Party."

### WITNESSETH:

WHEREAS, Seller has secured 237 MW of electrical generating capacity through a long-term power purchase from the approximately 484 MW combined-cycle generation facility owned by the City of Klamath Falls, Oregon (the "Original Klamath Facility"); and

WHEREAS, Seller may construct or otherwise cause construction of a second combined-cycle generating facility in Klamath County, Oregon during the term of this Agreement (the "Second Klamath Facility"); and

WHEREAS, the Original Klamath Facility and, if built, the Second Klamath Facility will generate electric power for sale; and

WHEREAS, Seller and Power Purchaser desire to set forth in this Agreement the terms pursuant to which Power Purchaser will purchase electric power from Seller.

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

### ARTICLE 1 DEFINITIONS

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

Act: This term shall mean Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the Water Code, as amended.

Affiliate: This term shall mean, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person,

shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

Bankrupt: This term shall mean with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition remains undismissed and unstayed for a period of 60 days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

Bonds: Any bonds, notes or other obligations (howsoever designated) incurred for money borrowed that are secured by a pledge or assignment of the Trust Estate, including without limitation the interim loans undertaken by the Power Purchaser pursuant to Executive Order D-42-01 issued by the Governor of the State of California on June 19, 2001.

BPA TBL: This term shall mean the Bonneville Power Administration's Transmission Business Line.

Business Day: Any Day Monday through Friday, inclusive, but excluding Days that are observed as business holidays by either Party or that are statutory holidays in the WSCC.

COB: This term shall mean the point of control area interchange at the California-Oregon border between the 500 kV transmission system owned and/or controlled by BPA TBL and other Pacific Northwest entities (including its or their successor(s)), and the 500 kV transmission system owned and/or controlled by the California Independent System Operator ("ISO") and other California entities (including its or their successor(s)).

Contract Delivery Rate: 150 MW or 150,000 kW from the Date of Commercial Operation through June 30, 2002; and 200 MW or 200,000 kW for the period July 1, 2002 through June 30, 2004; and 300 MW or 300,000 kW thereafter.

Contract Heat Rate: 7,200 Btu/kWh or 7.2 MMBtu/Mwh. The Contract Heat Rate shall apply only for deliveries period beginning January 1, 2003.

Contract Price: The price for Power per MWh required to be paid hereunder by Power Purchaser to Seller, that is: (a) for the period prior to January 1, 2003, the "Contract Price" shall be the Energy Price; and (b) for the period beginning January 1, 2003, the "Contract Price" shall be the sum of all charges set forth in Article 5.3 hereof. It being understood and agreed that for purposes of calculating the "Contract Price" for the period beginning January 1, 2003 for purposes of Section 11.6.1: (i) any Article 5.3 charges stated in \$/kW-mo. (e.g. the Monthly Capacity Charge and the Monthly Fixed O&M Charge) shall be converted to \$ per MWh using an assumed 94% capacity factor; and (ii) the Monthly Fuel Charge shall be calculated, net of any credit against the Monthly Fuel Charge pursuant to Section 5.4.2.2, using the Contract Heat Rate and the forward market price for gas at the Monthly Gas Index point for the applicable period

and the Current Exchange Rate based on the most recent month; and (iii) Transmission Losses Charge shall be based on the then applicable loss percentage (as set forth in Exhibit H) and the forward price of flat power at COB for the applicable period; and (iv) Operating Reserves shall be based on the then applicable Operating Reserves charge (as set forth in Exhibit G). To illustrate the intent of subpart (b) of this definition, an example calculation of the Contract Price for December, 2004 is set forth in Exhibit K hereto.

Current Exchange Rate: Applicable only for the period beginning January 1, 2003, this term shall mean the "Canada/U.S. Exchange Rate" as published for the Month of delivery in the Canadian Gas Price Reporter under the table "Monthly Canadian and U.S. Natural Gas Price Summary." For purposes of illustration, a copy of an actual page from the Canadian Gas Price Reporter with the Current Exchange Rate is attached to this Agreement as Exhibit A.

Daily Gas Index: This term shall mean the daily spot gas price reported daily in the Canadian Gas Price Reporter under the table "Canadian Domestic Gas Price Report", under the column heading "Avg. Price US\$/MMBtu." For purposes of illustration, a copy of an actual page from the Canadian Gas Price Reporter with the Daily Gas Index circled is attached to this Agreement in Exhibit A.

Date of Commercial Operation: The Date of Substantial Completion of the Original Klamath Facility as that term is defined in the EPC Contract.

Day: This term means a calendar day.

Defaulting Party: This term shall have the meaning given to it in Article 11.2.

Early Termination Date: This term means the effective date of termination of this Agreement pursuant to Article 11.4 hereof.

Effective Date: This term shall have the meaning given to it in Article 2 hereof.

EPC Contract: The Design, Engineering, Procurement and Construction Services Contract dated August 31, 1998 between Owner and Black & Veatch Construction, Inc. providing for the design, construction and start up of the Original Klamath Facility, as such contract has been or may be amended from to time.

Energy Price: The Energy Price shall be \$70/Mwh for the period beginning on the day following the Date of Commercial Operation through December 31, 2002. The term Energy Price shall have no application for deliveries of Power after December 31, 2002.

Facility: When used herein on a stand-alone basis, the term shall mean the Seller's share of the Original Klamath Facility (i.e., 237 MW), as constructed pursuant to the EPC Contract, until the commercial in-service date of the Second Klamath Facility, at which time the term Facility shall mean the Second Klamath Facility; *provided that* if the commercial in-service date of the Second Klamath Facility has not occurred by July 1, 2005, then this term shall mean the Seller's share of the Original Klamath Facility.

Facility Outage and Maintenance Pool: This term shall have the meaning given to it in Article 6.3.1 of this Agreement.

First Period: The period beginning on (and including) the day following the Effective Date and ending on (and including) December 31, 2002.

Force Majeure: Any act or event that delays or prevents Seller or Power Purchaser from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event is beyond the reasonable control of the Party relying thereon as justification for such delay, nonperformance or noncompliance, including, without limitation, (a) an act of God or the elements, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, strike or other labor difficulty caused or suffered by third parties beyond the reasonable control of Power Purchaser or Seller (whether such cause is similar or dissimilar to the foregoing or is foreseen, unforeseen, or foreseeable); or (b) any restraint or restriction imposed by law or by rule, regulation, or other acts of governmental authorities, whether federal, state or local (other than an act of either Party) which by exercise of due diligence and in compliance with applicable law a Party could not reasonably have been expected to avoid and to the extent which by exercise of due diligence and in compliance with applicable law has been unable to overcome. A Party is not prevented from performing its obligations to the extent that, in the case of the Seller, the Power may be purchased from a third party at the Point of Delivery at any price or, in the case of the Power Purchaser, the Power may be sold to a third party at the Point of Delivery at any price. A Party may not claim Force Majeure based in whole or in part on curtailment by any transmission provider unless (i) such Party has contracted for firm transmission with such transmission provider for the Power to be delivered to or received at the Point of Delivery; (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under such transmission provider's tariff; and (iii) such Party is unable to obtain alternate transmission services to or from the Point of Delivery. Seller may not claim Force Majeure based in whole or in part on curtailment of gas transmission by any gas transmission provider affecting deliveries to the Facility unless (1) Seller has contracted for firm gas transmission; (2) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under such gas transmission provider's tariff; and (3) Seller is unable to obtain alternate gas transmission services to the Facility. Seller may not claim Force Majeure based in whole or in part on curtailment of gas supply to the Facility unless (1) Seller has contracted for firm gas supply for the Facility; and (2) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under such firm gas supply agreement. In addition: (A) the Seller may not claim Force Majeure based in whole or in part on the circumstance that the cost to the Seller of producing or purchasing from third parties the Power required to be delivered hereunder by Seller to Power Purchaser may, for any period of time, be equal to or greater than the Contract Price to be paid hereunder by Power Purchaser to Seller for such Power; and (B) the Power Purchaser may not claim Force Majeure based in whole or in part on the circumstance that the Contract Price required to be paid by Power Purchaser to Seller hereunder for the Power may, for any period of time, be more than the price at which Power Purchaser could acquire the same from another source; it being expressly understood and agreed by the Parties that Seller shall bear the risk of the circumstance described in (A) above and Power Purchaser shall bear the risk of the circumstance described in (B) above. In the case of the Power Purchaser, Force Majeure

does not include any action taken by the State of California (regardless of the State agency, department, commission, authority, division or other organizational, operational, statutory or constitutional unit or entity through which it may act), regardless of whether such action is taken in its governmental capacity. In the case of Seller, until such time as the Second Klamath Facility is in commercial operation, if a Force Majeure event occurs that prevents the Facility from operating, Seller shall, during the period of such Force Majeure event, only be excused from delivering Power hereunder in an amount equal to the lesser of: (i) the then current Contract Delivery Rate; or (ii) 237 MW.

Forced Outage: A declared occurrence by Seller to Power Purchaser of an unplanned reduction or suspension of the electrical output from the Facility (reducing Seller's share of Facility output) in response to mechanical, electrical or hydraulic control systems trips or operator-initiated trips or shutdowns in response to unit alarms or equipment malfunction at the Facility, or to prevent such trips, alarms or malfunctions, which reduction or suspension may be immediate or delayed no longer than the end of the then-applicable daily preschedule.

Fund: This term shall mean the Department of Water Resources Electric Power Fund established by Article 80200 of the Water Code.

kW: This term shall mean kilowatt.

Market Quotation Average Price: This term shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

Minimum Generation Level: The Facility output corresponding to the lowest output level achievable without causing a violation of any permit conditions. The Minimum Generation Level for each Month shall be determined by Seller at its commercially reasonable discretion; *provided, however*, that (a) for projected "2x1" operations (i.e., both of the Facility's combustion turbine generators and its sole steam generator are projected to be in operation), the Minimum Generation Level shall not be greater than 375 MW; and (b) for projected "1x1" operations (i.e., only one (1) of the Facility's combustion turbine generators and its sole steam generator are projected to be in operation), the Minimum Generation Level shall not be greater than 225 MW.

MMBtu: This term shall mean 1,000,000 Btu, or 1 Dth.

Month: This term shall mean a calendar month.

Monthly Capacity Charge: This term shall have the meaning given to it in Article 5.3.1 and Exhibit B to this Agreement. The Monthly Capacity Charge shall apply only for the period beginning January 1, 2003.

Monthly Firm Schedules: This term shall mean those firm monthly schedules, if any, established pursuant to Article 6.2 herein, which apply to all On Peak and/or all Off Peak hours

during the Month, unless otherwise specifically provided for in this Agreement. The term shall apply for the period beginning January 1, 2003.

Monthly Fixed O&M Charge: This term shall have the meaning given to it in Article 5.3.2 and Exhibit C to this Agreement. The Monthly Fixed O&M Charge shall apply only for the period beginning January 1, 2003.

Monthly Fuel Charge: This term shall have the meaning given to it in Article 5.3.4 and Exhibit E to this Agreement. The Monthly Fuel Charge shall apply only for the period beginning January 1, 2003.

Monthly Gas Index: This term shall mean the "Alberta Spot Price - AECO 'C' & N.I.T. (7A)" price reported monthly in the Canadian Gas Price Reporter under the table "Monthly Canadian and U.S. Natural Gas Price Summary", in Canadian \$ per Gigajoule (GJ) or \$US per Dth, as set forth below, then rounded to the nearest 0.001. The Monthly Gas Index shall be the index published in Canadian \$ per GJ and converted to \$US per MMBtu using 1.055056 GJ/MMBtu and the Current Exchange Rate. For purposes of illustration, a copy of an actual page from the Canadian Gas Price Reporter with the Monthly Gas Index circled is attached to this Agreement in Exhibit A.

Monthly Variable O&M Charge: This term shall mean the charge described in Article 5.4 and Exhibit D to this Agreement. The Monthly Variable O&M Charge shall apply only for the period beginning January 1, 2003.

Moody's: Moody's Investor Services, Inc. or its successor.

MW: This term shall mean megawatt, or 1,000 kW.

MWh(s): This term shall mean megawatt-hour(s).

Non-Defaulting Party: This term shall have the meaning given to it in Article 11.2 of this Agreement.

Off-Peak: This term shall mean all hours other than On-Peak hours.

Off-Peak COB Market Index: This term shall mean the daily price for Off-Peak electricity for the applicable Day as published by Dow Jones in its "COB Electricity Index" under the Article "Firm Off-Peak." For purposes of illustration only, a copy of an actual page from Dow Jones is attached to this Agreement as Exhibit L.

On-Peak: This term shall mean the hours ending 0700 Pacific Prevailing Time to 2200 Pacific Prevailing Time, Monday through Saturday, exclusive of any North American Electric Reliability Council holidays.

On-Peak COB Market Index: This term shall mean the daily price for On-Peak electricity for the applicable Day as published by Dow Jones in its "COB Electricity Index" under the

Article "Firm On-Peak." For purposes of illustration only, a copy of an actual page from Dow Jones is attached to this Agreement as Exhibit L.

Operating Reserves: This term shall mean Spinning Reserve Service and Supplemental Reserve Service, as defined by the Federal Energy Regulatory Commission (or the applicable successor organization) in Order 888, as it may be amended or replaced, and defined and implemented in accordance with prevailing regional standards, including but not limited to the Western Systems Coordinating Council's "Minimum Operating Reliability Criteria."

Operating Reserves Charge: This term shall have the meaning given to it in Article 5.3.6. The Operating Reserves Charge shall apply only for the period beginning January 1, 2003.

Operating Year: This term shall mean each twelve (12) Month period during the Term commencing July 1 and ending June 30; provided that the initial Operating Year shall begin on the first Day following the Date of Commercial Operation and end on June 30, 2002.

Original Klamath Facility: This term shall have the meaning set forth in the recitals hereto.

Parties: This term shall have the meaning given to it in the preamble of this Agreement.

Party: This term shall have the meaning given to it in the preamble of this Agreement.

Person: This term shall mean any individual or a corporation, limited liability company, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, government (or any agency or political subdivision thereof) or other entity of any kind.

Per Unit Market Price: This term means the applicable price for Power per MWh determined in accordance with Articles 11.6.1.2 and 11.6.1.3.

PG&E GT NW: This term shall mean the pipeline system from Kingsgate, Idaho to Malin, Oregon, owned by the PG&E Gas Transmission, Northwest Corporation, and its successors or assigns, and interconnecting with TC-BC to the north and Pacific Gas & Electric Corporation's California intrastate pipeline system to the south.

Pipeline Loss Percentage: The term shall mean the pipeline losses on TC-AB, TC-BC, and PG&E GT NW from the Monthly Gas Index point in Alberta, Canada, to Malin, Oregon, pursuant to published tariffs in effect from time to time.

Point of Delivery: This term shall mean COB.

Power: Electrical energy and capacity from the Facility, or from other resources of the Seller, as measured at the Point of Delivery, or as otherwise provided in Articles 3.3 or 3.4, sold to Power Purchaser pursuant to this Agreement.

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

Prime Rate: The publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. 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.

Prudent Utility Practices: At a particular time, those practices, methods, equipment, and acts then engaged in or approved by a significant portion of the electric utility industry and commonly used in utility engineering and operations to design, construct, operate and maintain equipment similar to the Facility's equipment consistent with good business practices, economy, reliability, safety, and expedition.

Ramp Rate: Five (5) megawatts/minute per gas turbine unit then operating or such other rate as may be reasonably determined from time to time by the Seller.

Reference Market-maker: This term means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's and Baa2 or better by Moody's Investor Services.

Replacement Contract: This term means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Point of Delivery and product to be provided under this Agreement.

Required Rating: This term means:

(1) In the case of Moody's: (a) prior to the time Moody's first assigns a published rating to the Bonds, a private rating indication from Moody's that the Bonds are in the investment grade rating category or higher; and (b) from and after the time Moody's first assigns a published rating to the Bonds, "Baa3" or higher; and

(2) In the case of S&P: (a) prior to the time S&P first assigns a published rating to the Bonds, a private rating indication from S&P that the Bonds are in the investment grade rating category or higher; and (b) from and after the time S&P first assigns a published rating to the Bonds, "BBB-" or higher.

Scheduled Maintenance Outage: A declared occurrence by Seller to Power Purchaser of an outage or reduced generating capability at the Facility that would affect deliveries hereunder, other than a Forced Outage or an outage due to an event of Force Majeure.

Second Klamath Facility: This term shall have the meaning set forth in the recitals hereto.

Second Period: The period beginning on (and including) January 1, 2003 and ending on (and including) June 30, 2011.

Seller: This term shall have the meaning given to it in the preamble of this Agreement.

Standard & Poor's or S&P: These terms shall each mean Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

Supplemental Pool: This term shall have the meaning given to it in Article 6.3.2 of this Agreement.

TC-AB: This term shall mean the pipeline system in Alberta, Canada, owned by TransCanada PipeLines Limited, and its successors and assigns, and interconnecting with TC-BC.

TC-BC: This term shall mean the pipeline system in British Columbia, Canada, owned by TransCanada PipeLines Limited, and its successors or assigns, and interconnecting with TC-AB and PG&E GT NW.

Term: This term shall have the meaning given to it in Article 2 of this Agreement.

Termination Payment: This term shall mean the Termination Payment calculated as provided in Article 11.6.1 of this Agreement.

Transmission Losses Charge: This term shall have the meaning given to it in Article 5.3.5 of this Agreement. The Transmission Losses Charge shall apply only for the period beginning January 1, 2003.

Trust Estate: This term shall mean all revenues under any obligation entered into by Power Purchaser, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.

Unqualified Opinion of Legal Counsel: An opinion addressed to the Seller of General Counsel or Acting General Counsel in the form attached hereto as Exhibit M.

Variable Pipeline Charges: This term shall mean the variable pipeline charges on TC-AB, TC-BC, and PG&E GT NW from the Monthly Gas Index point in Alberta, Canada, to Malin, Oregon, pursuant to published tariffs in effect from time to time. Variable Pipeline Charges shall apply only for the period beginning January 1, 2003.

WSCC: This term means Western Systems Coordinating Council.

Year: This term shall mean a calendar year during the Term of this Agreement.

**ARTICLE 2**  
**TERM**

This Agreement shall become effective and shall bind the Parties beginning on the Effective Date, and shall expire on the earlier to occur of: (i) the termination of this Agreement by either Party in accordance with the termination rights expressly provided for herein; or (ii) at 2400 hours Pacific Prevailing Time, on June 30, 2011 (the "Term").

As used herein, the term "Effective Date" shall mean the first date upon which all of the following conditions precedent have been met:

(1) this Agreement has been duly authorized, executed and delivered by each Party; and

(2) Power Purchaser causes to be delivered to Seller an Unqualified Opinion of Legal Counsel in the form attached hereto as Exhibit M.

**ARTICLE 3**  
**PURCHASE AND SALE OF POWER**

3.1 Purchase and Sale. Power Purchaser shall purchase and Seller shall sell Power pursuant to the terms of this Agreement at the Contract Delivery Rate.

3.2 Commencement of Deliveries. As of the date of this Agreement, Seller estimates that the Date of Commercial Operation will occur between July 25 and July 30, 2001. Seller shall promptly inform Power Purchaser of any changes to such date, and shall provide Power Purchaser with written notice of the actual Date of Commercial Operation as soon as reasonably practicable but not less than three (3) Business Days in advance of such date, unless otherwise mutually agreed by the Parties. Beginning at 0000 hours on the later to occur of: (i) the Effective Date; or (ii) the Day following the Date of Commercial Operation, Power Purchaser shall schedule electrical Power for delivery, as set forth in Article 6.

3.3 Delivery. Except as provided in Article 3.4, all Power sold to Power Purchaser under this Agreement shall be delivered to Power Purchaser at the Point of Delivery, or as the Parties may otherwise agree from time to time, in accordance with the scheduling procedures set forth in Article 6.4.

3.4 Alternate Delivery Rights: Consistent with the scheduling procedures set forth in Article 6, Seller may alternatively and at its sole discretion deliver Power via scheduling coordinator to scheduling coordinator transfer or otherwise, at NP-15 (or its successor); up to (a) 50 MW of Power on a monthly schedule basis pursuant to notice delivered by Seller one (1) Business Day prior to the date notice is required to be delivered by Power Purchaser pursuant to Section 6.2.1.2, and (b) 50 MW of Power on a daily prescheduled basis; provided, however, that the changes set forth in Exhibit G shall not apply to any such deliveries; provided, further, however, that Seller may not change the point of delivery if such change would result in a Force Majeure event.

ARTICLE 4  
TERMINATION WITHOUT RECOURSE

In addition to any other termination provisions set forth herein if at any time there is any action by any federal or local governmental authority (other than the State of California or any agency thereof), whether such action is executive, legislative, judicial, administrative or otherwise, the effect of which is to reduce the payments required to be made by the Power Purchaser hereunder or that prevents the Seller from collecting such payments from the Power Purchaser or that prevents the Power Purchaser from making payments to Seller hereunder, then Seller shall have the right, but not the obligation, to terminate this Agreement by giving written notice of such termination to the Power Purchaser, which termination shall be effective at 2400 hours, Prevailing Pacific Time on the date such termination notice is given.

In the event this Agreement is terminated pursuant to this Article 4, no Termination Payment shall be owing by either Party to the other hereunder and neither Party shall have any further recourse against the other for any other costs or damages resulting from such damages; *provided that* notwithstanding any such termination, Power Purchaser shall be and remain liable to the Seller for the payment of the Contract Price for any Power delivered to Power Purchaser prior to the effective time of such termination.

ARTICLE 5  
PAYMENTS

5.1 Payments by Power Purchaser. Beginning on the day following the Date of Commercial Operation and continuing for deliveries through December 31, 2002, Power Purchaser's monthly payment to Seller shall be based on the Energy Price, as set forth in Article 5.2. Thereafter, Power Purchaser's monthly payment to Seller shall be based on the Monthly Capacity Charge, the Monthly Fixed O&M Charge, the Monthly Variable O&M Charge, the Monthly Fuel Charge, the Transmission Losses Charge, and the Operating Reserves Charge, all as set forth in this Article 5.3, as well as any amounts payable or credited pursuant to Articles 5.4, , 6.2.4, or 6.3, or as otherwise provided for in this Agreement hereof.

5.2 Payments Associated with Deliveries Prior to January 1, 2003. For Power delivered by Seller to Power Purchaser prior to January 1, 2003, Power Purchaser's periodic payments to Seller shall equal the applicable Energy Price, times the number of Mwhs delivered by Seller to Power Purchaser for the period to which such periodic payment pertains.

5.3 Payments Associated with Deliveries Beginning January 1, 2003. For Power delivered by Seller to Power Purchaser after June 30, 2004, Power Purchaser's monthly payment shall be based on the charges set forth in this Article 5.3 as well as any additional amounts payable or creditable pursuant to Articles 5.4, 6.2.4 or 6.3, or as otherwise provided for in this Agreement. For dollar per Mwh charges, the billing determinant shall be the number of Mwhs delivered by Seller to Power Purchaser in such Month at the Point of Delivery.

- 5.3.1. Monthly Capacity Charge. Power Purchaser shall pay a Monthly Capacity Charge equal to the product of the Contract Delivery Rate (converted to kW) and the dollar per kW-month capacity charge as set forth in Exhibit B hereto. As noted in Exhibit B, the Monthly Capacity Charge includes fixed costs, as stated in published tariffs for firm service in effect from time to time, associated with (a) gas transportation from the Monthly Gas Index point to the Facility, and (b) power transmission from the Facility to COB under BPA TBE's Southern Intertie rate schedule (or its successor). Seller shall amend Exhibit B to reflect changes in these tariffs as provided in Article 5.5.
- 5.3.2. Monthly Fixed O&M Charge. Power Purchaser shall pay the Monthly Fixed O&M Charge equal to the product of the Contract Delivery Rate (converted to kW) and the dollar per kW-month fixed operating and maintenance charge, as set forth in Exhibit C, such charge to be revised as provided in Exhibit C. The Monthly Fixed O&M Charge is based on all operating and maintenance costs associated with the Facility that do not vary directly as a function of Facility output.
- 5.3.3. Monthly Variable O&M Charge. Power Purchaser shall pay the Monthly Variable O&M Charge based on the product of the MWhs delivered to Power Purchaser in a Month and the Monthly Variable O&M Charge (in \$ per MWh) set forth in Exhibit D hereto, such charge to be revised as provided in Exhibit D. The Monthly Variable O&M Charge is based on all operating and maintenance costs associated with the Facility that vary directly as a function of Facility output.
- 5.3.4. Monthly Fuel Charge.

5.3.4.1 The Monthly Fuel Charge is the cost of gas commodity, as measured by the Monthly Gas Index and/or the Daily Gas Index; adjusted for the Pipeline Loss Percentage and Variable Pipeline Charges to deliver such gas commodity to the Facility. For purposes of calculating the Monthly Fuel Charge: (a) the Monthly Gas Index shall apply to an amount of MMBtu's calculated using the Monthly Firm Schedules and converted to MMBtus at the Contract Heat Rate; and (b) all other fuel charges (including those associated with any heat rate surcharges on any schedules, whether Monthly Firm Schedules or otherwise) shall be calculated using the Gas Daily Index and the Contract Heat Rate plus any applicable heat rate surcharges pursuant to Article 6.2.4.2 and Exhibit P.

5.3.4.2 That portion of the Monthly Fuel Charge associated with the Monthly Gas Index shall be calculated according to the following formula:

*Total MMBtu on Monthly Gas Index \* (((Monthly Gas Index \* (1 + Pipeline*

*Loss Percentage)) + Variable Pipeline Losses]*

That portion of the Monthly Fuel Charge associated with the Daily Gas Index shall be calculated according to the following formula:

*Total MMBtu on Daily Gas Index \* [((Daily Gas Index + \$0.03/MMBtu) \* (1 + Pipeline Loss Percentage)) + Variable Pipeline Losses]*

A detailed example of the calculation of the Monthly Fuel Charge for one day is set forth in Exhibit E hereto. The sum of such daily (or hourly, as necessary) calculations shall determine the Monthly Fuel Charge for a Month.

5.3.4.3 Any changes to Power deliveries within the Month (e.g. for Force Majeure or for Articles, 6.2.2, 6.2.3, 6.2.5 or 6.3) shall be applied to MMBtus associated with the Daily Gas Index, if any, prior to application to any MMBtus associated with the Monthly Gas Index.

5.3.4.4 The Pipeline Loss Percentage and the Variable Pipeline Charge as set forth in published tariffs for firm service in effect on the Effective Date are set forth in Exhibit F hereto. Seller shall update the Pipeline Loss Percentage and the Variable Pipeline Charge as provided in Article 5.5.

5.3.5. Transmission Losses Charge.

5.3.5.1. Power Purchaser shall reimburse Seller for transmission losses incurred by Seller to COB, if any, as set forth in this article. Power Purchaser's monthly payment associated with transmission losses shall be equal to: (a) the MWhs purchased by Power Purchaser and delivered to Power Purchaser in a Month; times (b) the transmission loss percentage charged to Seller for that Month; times (c) the applicable energy cost for purposes of transmission losses.

5.3.5.2. The applicable transmission loss percentage shall be the loss percentage charged to Seller under Seller's transmission service agreement with BPA TBL, as set forth in Exhibit H hereto.

5.3.5.3. The applicable energy cost shall be as provided by BPA TBL from time to time for purposes of calculating transmission losses under its Southern Intertie Point to Point Tariff (or its successor). In the event that BPA TBL no longer provides energy associated with losses at a specified rate, then with sufficient prior notice consistent with the requirements of BPA

TBL (or its successor), Power Purchaser may elect to: (a) reimburse Seller for Seller's costs in purchasing energy for losses associated with Power Purchaser's deliveries hereunder; or (b) reduce deliveries hereunder by the transmission loss percentage charged to Seller by BPA TBL (or its successor).

- 5.3.6. Operating Reserves Charge. Power Purchaser shall reimburse Seller for all costs of Operating Reserves required by BPA TBL, or as required by a successor control area operator. The charge to Power Purchaser for Operating Reserves shall be BPA TBL's applicable rate schedule for Operating Reserves, or the charge as required by a successor control area operator, as set forth in Exhibit G. The Operating Reserves Charge shall be assessed to Power Purchaser based on the Contract Delivery Rate or MWhs delivered, as applicable. Seller shall update the Operating Reserves Charge in Exhibit G as provided in Article 5.5.

5.4 Power Purchaser's Right to Deliver Firm Physical Gas Supply for the Period Beginning January 1, 2003.

5.4.1. [Reserved]

- 5.4.2. Upon giving Seller written notice not less than 45 days notice prior to the start of an Operating Year, Power Purchaser may elect to make available to Seller a fixed daily amount of firm physical gas supply capacity at the Monthly Gas Index point (i.e. AECO) for such Operating Year, subject to the following:

5.4.2.1. The Power Purchaser's annual election to supply gas for an Operating Year, pursuant to Article 5.4.2, may be for any portion of the daily fuel requirements necessary to supply its power purchase from Seller. For example, assuming a Contract Delivery Rate of 300 MW, Power Purchaser's annual election could be for up to 51,840 MMBtu per Day (i.e.  $300 \text{ MW} * 24 \text{ hours} * 7.2 \text{ MMBtu/MW}$ ).

5.4.2.2. The Monthly Fuel Charge shall be calculated as it otherwise would be (i.e. as if Seller had provided all gas and there was no physical gas delivery by Power Purchaser to Seller) and subsequently credited by an amount equal to the Monthly Gas Index times the MMBtu's delivered to Seller by Power Purchaser in the Month. It is the intent of this Section 5.4.2.2 that such credit for any gas delivered by Power Purchaser would offset the Monthly Fuel Charge other than for transport-related costs.

5.4.2.3. Seller shall each day during such Operating Year nominate with Power Purchaser the fixed daily amount of physical gas, if

any, elected by Power Purchaser for such Operating Year pursuant to Article 5.4.2, provided that Seller may change the nomination: (a) for events of Force Majeure; (b) for reductions in deliveries pursuant to Article 6.3; or (c) to the extent Power Purchaser's actual Power schedule, pursuant to Article 6.2, requires less gas each day (calculated at the Contract Heat Rate) than Power Purchaser's annual election. Power Purchaser shall deliver the amount of gas so nominated by Seller. If as a result of such a reduced nomination (i.e. below the amount of physical gas Power Purchaser elected to supply for the Operating Year), Seller determines, in accordance with commercially reasonable practices, that it has available pipeline capacity from the Monthly Gas Index Point (i.e. AECO) to Malin, Oregon, then at Power Purchaser's request Seller shall make such pipeline capacity available to Power Purchaser for use during the period of such reduced nomination, provided that in so doing it is not in violation of any pipeline tariff or otherwise subject to penalty. To the extent Power Purchaser so uses such pipeline capacity, it shall reimburse Seller for all associated variable charges.

5.4.2.4. A Party shall make the other Party whole on any pipeline imbalance or related charges incurred as a result of any actions of the first Party.

5.4.2.5. If Power Purchaser makes an election to supply gas pursuant to Section 5.4.2 during any Operating Year and fails at any time during such Operating Year to provide the amount of gas specified by Power Purchaser pursuant to Section 5.4.2 as adjusted pursuant to Section 5.4.2.3 (the "Undelivered Gas"), Power Purchaser shall pay to Seller any additional costs or expenses incurred by Seller in replacing such Undelivered Gas.

5.5 Adjustments for Changes to Applicable Tariffs. If there are any changes after the Effective Date to any of the tariffs used or referred to in an attached Exhibit, Seller shall amend the Exhibit to reflect the change in the tariff by sending a notice of the amendment to Power Purchaser. Seller shall send the notice of amendment as promptly as practicable after it becomes aware of the change in the tariff; *provided, however*, that the amendment shall be retroactively effective to the date on which the change in the tariff took effect and shall be used thereafter in the calculation of all charges to which the tariff applies under this Agreement.

5.6 Changes in Index. If any index used in this Agreement (including but not limited to the Monthly Gas Index, the Daily Gas Index, or the escalation indices referred to in Exhibits B and C) or any revision or equivalent of that index ceases to be published, Seller shall select as a replacement a substantially equivalent index that, after any necessary adjustments, provides the most reasonable substitute for the index in question. Seller's selection shall be subject to the Power Purchaser's consent (which the Power Purchaser shall not unreasonably withhold,

condition or delay). Any such substitute index shall have retroactive effect to the date at which the previous index terminated.

5.7 Taxes. Power Purchaser shall be responsible for paying when due any sales, excise, business, use, energy or other taxes applicable to the purchase of Power arising at or from the Point of Delivery or alternate points of delivery. Seller shall be responsible for paying when due any sales, excise, business, use, energy or other taxes applicable to the purchase of Power arising to the Point of Delivery or alternate points of delivery; provided, however, that the Contract Price shall be increased to account for the effect of any liability, loss, cost, damage and expense, including gross-up, arising out of a tax or other imposition enacted by the State of California or any agency thereof after the date of this Agreement that is not of general applicability and is instead directed at the generation, sale, purchase, ownership and/or transmission of electric power, gas and/or other utility or energy goods and services (any such tax being herein called a "New Tax"). The Contract Price shall be decreased to account for the effect of any tax credit or other reduction with respect to any such New Tax enacted by the State of California or any agency thereof after the date of this Agreement.

As soon as practicable after a New Tax becomes payable, the Seller shall: (i) calculate the increase to the payments required to be made by Power Purchaser hereunder that results from the addition of such New Tax to the such payments (which increase shall, to the extent practicable, be stated as an increase in the price per Mwh applicable hereunder), (ii) determine whether such New Tax is affects the Seller's net return on payments that have already been made by Power Purchaser to Seller hereunder, and (iii) provide Power Purchaser with written notice setting forth such calculations and the amount (if any) owing as a result of such New Tax being applicable to payments already made by Power Purchaser to Seller hereunder (the "Adjustment Notice"). In the event such New Tax affects the Seller's net return on payments that have already been made by Power Purchaser to Seller hereunder, the Power Purchaser shall pay to the Seller an amount equal to the New Tax Adjustment Amount that affects the Seller's net return the payments that have already been made hereunder as stated in the Adjustment Notice, which payment shall be made within five (5) Business Days from the date the Adjustment Notice is given to Power Purchaser. In the event such New Tax affects the Seller's net return on payments that have not yet been made by Power Purchaser to Seller hereunder, then from and after the time the New Tax becomes applicable the payments due from Power Purchaser hereunder shall be increased by an amount equal to the increase calculated as set forth herein and shall be paid by Power Purchaser to Seller on a periodic basis as provided in Article Eight hereof with respect to payment of other amounts owing by Power Purchaser to Seller hereunder. The Power Purchaser's obligation to pay to the Seller any increased payments resulting from a New Tax as provided herein shall survive termination of this Agreement and expiration of this Agreement in accordance with its terms.

## ARTICLE 6 SCHEDULING AND DELIVERY OF POWER

6.1 Monthly Schedules for deliveries prior to January 1, 2003. All schedules and deliveries of Power under this Agreement prior to January 1, 2003 shall be at the Contract Delivery Rate on a flat basis (i.e., twenty-four hours per Day, seven Days per week), subject to Seller's rights pursuant to Article 6.3.

6.2 Schedules Beginning January 1, 2003. All schedules and deliveries of Power under this Agreement beginning January 1, 2003 shall be up to the Contract Delivery Rate, as determined pursuant to this Article 6.2, and subject to Seller's rights pursuant to Article 6.3.

6.2.1 Monthly Schedules.

6.2.1.1 Seller's Monthly Notification. Seller shall inform Power Purchaser of the Facility Minimum Generation Level, in both a 1x1 and a 2x1 operation, for the upcoming Month, no later than six (6) Business Days prior to the start of the Month.

6.2.1.2 Monthly Firm Schedules. With at least five (5) Business Days written notice before the start of a Month, Power Purchaser may nominate:

- (a) Power up to the Contract Delivery Rate during all On Peak hours for the Month, and
- (b) Power up to the Contract Delivery Rate during all Off Peak hours for the Month.

If Power Purchaser has not provided such timely notice to Seller, as set forth above, a Monthly Firm Schedule at the Contract Delivery Rate during On Peak hours and Off Peak hours shall automatically apply for the Month.

6.2.1.3 Full Schedules. Power Purchaser's nomination of a Monthly Firm Schedule at the Contract Delivery Rate during On Peak hours and Off Peak hours shall be deemed confirmed as a monthly schedule upon receipt by Seller.

6.2.1.4 No Schedules. Power Purchaser's nomination for Monthly Firm Schedule during On Peak hours and Off Peak hours shall be deemed confirmed as a monthly schedule upon receipt by Seller.

6.2.1.5 All Other Schedules. Power Purchaser's nomination of a monthly schedule at amounts other than those contemplated under Article 6.2.1.3 or 6.2.1.4 shall be reviewed by Seller subject to the following criteria: (a) the Minimum Generation Level; (b) the Ramp Rate; (c) cycling costs of the Facility; and (d) schedules by other purchasers of Facility output under contracts executed by Seller prior to the execution date of this Agreement. As a result of such review, Seller shall determine, at its sole discretion (but in a commercially reasonable manner using Prudent Utility Practices) the expected monthly generation pattern for the Facility. Seller shall notify Power Purchaser of the resulting Monthly Firm Schedule no later than 10 a.m.

Pacific Prevailing Time on the fourth (4<sup>th</sup>) Business Day prior to the Month. By 4 p.m. Pacific Prevailing Time on such Business Day the Parties shall confirm the Monthly Firm Schedule.

6.2.1.6 Good Faith Forecast. In addition to nominating a Monthly Firm Schedule, with at least five (5) Business Days notice before the start of a Month, Power Purchaser shall provide in writing to Seller a non-binding good faith forecast of Power Purchaser's anticipated daily dispatch for each day of the Month.

6.2.2 Daily Schedules. To the extent that Power Purchaser's Monthly Firm Schedule for On Peak hours and/or Off Peak hours established in Article 6.2.1 is less than the Contract Delivery Rate, Power Purchaser shall have the right to submit incremental daily schedules as set forth in this Article 6.2.2. In addition, Power Purchaser may submit a daily schedule that is decremental to the Monthly Firm Schedule for On Peak hours and/or Off Peak hours established in Article 6.2.1; provided that to the extent Seller provides gas (a) the Monthly Fuel Charge shall be calculated with respect to such gas as it otherwise would be had no such decremental schedules occurred, and (b) Power Purchaser shall receive a fuel credit with respect to such gas to the extent such resulting actual schedule is less than the Monthly Firm Schedule, such credit to be calculated using the Contract Heat Rate and the Daily Gas Index less \$0.03/MMBtu. With notice to Seller by 7:00 am Pacific Prevailing Time (or as otherwise mutually agreed) on the preschedule Day, Power Purchaser may submit such incremental or such decremental schedule adjustment for all On Peak hours and/or all Off Peak hours. Seller shall not be required to accept a schedule change that would require the Facility to operate below the Minimum Generation Level or operate in a manner inconsistent with the Ramp Rate. Power Purchaser will pay any additional costs incurred by the Facility as the result of such schedule change, including, but not limited to cycling costs and increased costs resulting from an increase in heat rate resulting from such schedule change (see Exhibit P). Seller shall notify Power Purchaser of Power Purchaser's resulting daily schedule no later than 10 a.m. Pacific Prevailing Time on preschedule Day.

6.2.3 Hourly Schedules. To the extent that Power Purchaser experiences a change in retail load or a loss of a generating resource, Power Purchaser shall have the right to submit an hourly schedule adjustment of not less than 25 MW as set forth in this Article 6.2.3. With at least two (2) hours notice prior to the scheduling deadline for the delivery hour, Power Purchaser may submit a schedule adjustment request between the applicable Monthly Firm Schedule and the Contract Delivery Rate. To the extent such adjustment is decremental to the Monthly Firm Schedule and Seller provides gas, (a) the Monthly Fuel Charge shall be calculated as it otherwise would be with respect to such gas had no such decremental

schedules occurred, and (b) Power Purchaser shall receive a fuel credit with respect to such gas to the extent such resulting actual schedule is less than the Monthly Firm Schedule, such credit to be calculated using the Contract Heat Rate and the Daily Gas Index less \$0.03/MMBtu. Seller shall not be required to accept a schedule change that would require the Facility to operate below the Minimum Generation Level or operate in a manner inconsistent with the Ramp Rate. Power Purchaser will pay any additional costs incurred by the Facility as the result of such schedule change, including, but not limited to cycling costs and increased costs resulting from an increase in heat rate resulting from such schedule change (see Exhibit P).

6.2.4 Charges Related to Power Purchaser's Schedule Elections. In addition to charges set forth in Article 5, the following charges and conditions shall apply as a result of Power Purchaser's schedule elections pursuant to Articles 6.2.1, 6.2.2, and 6.2.3:

6.2.4.1 Article 5 Charges. Regardless of Power Purchaser's delivered schedules, (a) unless otherwise specifically provided for in this Agreement, Power Purchaser shall continue to pay all fixed charges under Article 5 of this Agreement based on the Contract Delivery Rate, and (b) charges in Article 5 which vary as a function of power schedule (e.g. the Monthly Fuel Charge, the Monthly Variable O&M Charge, etc.) shall apply based on actual Power deliveries.

6.2.4.2 Heat Rate Surcharges. To the extent that Power Purchaser's delivered schedule requires Seller to operate the Facility at below full "2x1" operation (i.e. the Facility's two combustion turbines and one steam turbine generator), Power Purchaser shall pay Seller the applicable surcharge to the Contract Heat Rate, as set forth in Exhibit P hereto.

6.2.4.3 Cycling Surcharges. To the extent that Power Purchaser's delivered schedule requires Seller to cycle the Facility, Power Purchaser shall pay Seller a cycling surcharge based on the applicable charges set forth in Exhibit P. The application of such surcharges shall depend on the nature of the cycling (i.e., cycling one combustion turbine, or cycling both combustion turbines and the steam turbine).

6.2.4.4 Gas Imbalance Charges. To the extent that Seller incurs any additional costs related to gas pipeline imbalances attributable to Power Purchaser's delivered schedule, Power Purchaser shall pay its pro rata share of such costs.

6.2.4.5 Adjustments to Surcharges. Seller may, upon thirty (30) days

advance written notice, amend Exhibit P from time to time to reflect changes to applicable costs.

6.2.4.6 Itemization of Charges Related to Power Purchaser's Schedule Elections. Seller shall calculate and itemize on Power Purchaser's monthly invoice all charges applicable under this Article 6.2.4.

6.2.5 Limitations due to Operational Flow Orders. Notwithstanding Articles 6.2.1 through 6.2.3, Seller may adjust Power Purchaser's schedule as necessary if required to as result of an operational flow order on the pipelines serving the Facility.

6.3 Seller's Rights to Not Deliver. Consistent with Article 16.5, Seller shall be relieved of its obligations to schedule and deliver Power hereunder due to an event or events of Force Majeure. Seller may additionally reduce deliveries to Power Purchaser as set forth in Articles 6.3.1 and 6.3.2.

6.3.1. Forced Outages and Scheduled Maintenance at the Facility. Seller may, but is not obligated to, declare and curtail deliveries to Power Purchaser for any Forced Outage or Scheduled Maintenance Outage at the Facility, subject to a maximum per Operating Year of twelve percent (12%) of the Mwhts that could otherwise be delivered in such Operating Year assuming a flat schedule at the Contract Delivery Rate (the "Facility Outage and Maintenance Pool"). For example, assuming a Contract Delivery Rate of 100 MW and 8760 hours in the Operating Year, the Facility Outage and Maintenance Pool would be 105,120 Mwh (i.e 12% times 100 MW times 8760 hours).

6.3.1.1. Forced Outages. Seller may curtail Power Purchaser's schedule for Forced Outages at the Facility that affect Seller's output, provided that: (a) such curtailment shall not take effect until the start of the next available scheduling hour; and (b) Power Purchaser shall bear a pro rata share of the resulting reduction of the output Seller receives from the Facility, based on the ratio of its schedule to the total unit contingent schedules from the Facility. Seller shall use commercially reasonable efforts to provide Power Purchaser with notice of the expected duration of a Forced Outage, and shall use commercially reasonable efforts to provide Power Purchaser with updates of such notice as circumstances may change.

6.3.1.2. Scheduled Maintenance. Unless otherwise agreed, Seller shall provide Power Purchaser with at least 30 days non-binding advance notice of the estimated time and duration of a Scheduled Maintenance Outage. If Seller has not provided such timely notice, unless otherwise agreed it shall continue to

deliver during scheduled maintenance at the Facility. If Seller does provide such timely notice, it shall update Power Purchaser as better information becomes available and shall provide at least 48 hours notice of the start of a Scheduled Maintenance Outage, as well as 48 hours notice of the estimated completion of such Outage. Seller shall use commercially reasonable efforts, consistent with other commitments from the Facility, to consider maintenance outage schedule adjustment requests made by Power Purchaser.

6.3.1.3. To the extent the Facility Outage and Maintenance Pool is exceeded in any Operating Year, then: (i) for the period ending December 31, 2002, Seller shall pay liquidated damages based upon the positive difference, if any, between the On-Peak COB Market Index or Off-Peak COB Market Index, as applicable, and the Energy Price; and (ii) for the period thereafter, Seller shall provide as liquidated damages a pro-rata refund of the Monthly Capacity Charge and Monthly Fixed O&M Charge. Such pro-rata refund shall be based on the following ratio: (a) the numerator shall be the excess number of Mwhs curtailed in an Operating Year for Forced Outages or Scheduled Maintenance Outages at the Facility (i.e., in excess of the Facility Outage and Maintenance Pool); and (b) the denominator shall be the number of MWhs that could be delivered assuming the Facility had an average availability of 88% in such Operating Year with deliveries on a flat schedule at the Contract Delivery Rate (excluding reductions in deliveries for Force Majeure or pursuant to Article 6.3.2). Such ratio shall be applied to the total dollar amount for such Operating Year of both the Monthly Capacity Charge and the Monthly Fixed O&M Charge to determine Power Purchaser's refund. This Article 6.3.1.3 shall not apply to any willful acts of Seller that causes the Facility Outage and Maintenance Pool to be exceeded in any Operating Year.

6.3.1.4 For the period ending December 31, 2002, for any Month when liquidated damages calculated pursuant to Article 6.3.1.3 occur, they shall be reflected as a credit in a separate line item in the monthly invoice. See Exhibit I as an example. For the period beginning January 1, 2003, for any Operating Year when liquidated damages calculated pursuant to Article 6.3.1.3 occur, they shall be reflected as a credit in a separate line item in the invoice for the last Month of such Operating Year (i.e. July) or in the invoice for the first Month thereafter that such liquidated damages calculation is available. See Exhibit J as an example.

6.3.2. Seller's Right to Not Deliver For Any Other Reason. Notwithstanding Article 6.3.1, Seller may additionally and for any reason reduce deliveries by up to the Contract Delivery Rate for up to 3% of the MWhs that could otherwise be delivered in an Operating Year assuming a flat schedule at the Contract Delivery Rate (the "Supplemental Pool"). For example, assuming a Contract Delivery Rate of 100 MW and 8760 hours in the Operating Year, the Supplemental Pool would be 26,280 Mwh (i.e. 3% times 100 MW times 8760 hours). Reductions in delivery pursuant to the Supplemental Pool shall not occur in the June 15th through October 15th period without Power Purchaser's mutual consent. Seller shall provide notice to Power Purchaser by 1500 hours 2 Business Days prior to such reduced deliveries. Such reduction shall apply to a On Peak, Off Peak or flat (24 hour) schedule for the Day, as specified by Seller. See Exhibits I and J for examples. For the period beginning January 1, 2003, the Monthly Capacity Charge and the Monthly Fixed O&M Charge shall be partially reduced for any curtailments pursuant to this Article 6.3.2. Such reduction, if any, shall equal: (i) the number of MWhs so curtailed in such month divided by the total MWhs that could otherwise be delivered in such month had such curtailment not occurred, assuming flat deliveries at the Contract Delivery Rate; times (ii) the sum of the Monthly Capacity Charge and the Monthly Fixed O&M Charge.

6.3.3. Seller shall keep an accounting of the Facility Outage and Maintenance Pool and the Supplemental Pool and provide such accounting to Power Purchaser with each Month's invoice.

6.3.4. Changes to Power schedules associated with this Article 6.3 shall first be applied to any deliveries in excess of Monthly Firm Schedules.

6.4 Scheduling Procedures. Seller shall schedule, or cause to have scheduled, Power from the Facility, or otherwise, to the Point of Delivery, or as otherwise provided in Articles 3.3 or 3.4, for delivery to Power Purchaser under this Agreement consistent with Prudent Utility Practices. The amount of Power to be so scheduled by Seller shall be the amount determined pursuant to Article 6.1 hereof (in the case of deliveries during the First Period) or Article 6.2 hereof (in the case of deliveries during the Second Period), but subject in all cases to reductions made pursuant to Article 6.3 hereof. Power Purchaser shall similarly schedule, or cause to have scheduled, an amount of Power, as determined pursuant to Article 6.1 hereof or Article 6.2 hereof, as applicable, and subject to Article 6.3, from the Point of Delivery, or from alternate points as provided in Articles 3.3 or 3.4, to a legitimate control area or load-serving entity consistent with Prudent Utility Practices. Schedules shall be established by Seller no later than 10 a.m. Pacific Prevailing Time on the immediately preceding Business Day prior to the Day (except as provided in Article 6.3.2) on which Power-deliveries are to be made; *provided, however,* that for scheduling of deliveries on weekends and holidays (as defined by the North American Electric Reliability Council and as periodically established by the WSCC Interchange Scheduling Subcommittee), Seller and Power Purchaser shall follow prevailing scheduling procedures within the WSCC with regard to multiple day scheduling. Once schedules are established, changes to schedules shall be made only pursuant to Article 6.2.3, Article 6.3.1.1,

Force Majeure, or by written agreement of the Parties.

6.5 Substantive Changes to Industry Scheduling Practices. In the event that the normal scheduling procedures (including those of the California Independent System Operator or its successor) for electric energy are or become in conflict with the provisions of this Agreement, the Parties shall make reasonable best efforts to make necessary changes to this Agreement to conform to such prevailing scheduling practices in effect at that time.

6.6 Acceptance of Scheduled Power. Power Purchaser shall accept all Power delivered by Seller that has been scheduled in accordance with this Agreement.

## ARTICLE 7 QUANTITY

For purposes of calculating billings pursuant to Article 5, the determination of MWhs delivered to Power Purchaser for a Month shall be based upon the sum of the actual daily schedules in such Month delivered by Seller to Power Purchaser at COB and/or at alternate points as provided and defined in Articles 3.3 or 3.4. Such delivered amounts in a Month shall be verified by Seller with Power Purchaser as soon as reasonably practicable after the Month in which delivery occurs and billed in accordance with Article 8.

## ARTICLE 8 BILLING AND PAYMENT

8.1 Billing Address: Billing by Fax. Billings to Power Purchaser under this Agreement shall be addressed as follows:

California Department of Water Resources  
1416 Ninth Street  
Sacramento, California 95814  
Attn: Contracts Payable  
Phone: (916) 653-6404  
Facsimile: (916) 654-9882

or to such other address as Power Purchaser may designate in writing from time to time. Billings may be transmitted by fax to the fax number set forth above or to such other fax number as Power Purchaser may hereafter designate in writing to the Seller.

8.2 Payment Terms During Period of Downgrade Event. Notwithstanding the monthly payment provisions set forth in Section 8.3 hereof or any other provision of this Agreement to the contrary, if at any time the Power Purchaser fails to maintain a rating on the Bonds of not less than:

(1) the Required Rating from S&P; or

(2) the Required Rating from Moody's;

then, until such time as the Required Rating from Moody's or S&P is restored or reinstated, Power Purchaser shall pay Seller for charges determined under Article 5 hereof on a bi-weekly basis in accordance with the provisions set forth in this Article 8.2. During such period, Seller shall bill Power Purchaser for charges owing under Article 5 hereof during consecutive 14 day periods, with each such period commencing on a Sunday and ending on the Saturday that is the thirteenth (13<sup>th</sup>) day next following such Sunday (the "Billing Period"). Seller shall transmit to Power Purchaser by fax the bill for each such Billing Period, such bill to be transmitted for receipt by Power Purchaser no later than the Monday next following the close of such Billing Period. Power Purchaser shall pay the amount specified in the bill by wire transfer of immediately available federal funds on or before the Friday next following the end of the Billing Period to which such bill relates.

8.3 Billings and Payment. Seller shall bill Power Purchaser no later than the fifteenth (15<sup>th</sup>) Day of each Month for charges determined under Article 5 for the preceding Month and shall transmit the bill to Power Purchaser by fax. An example of the billing calculation at the Contract Price applicable during the First Period is set forth in Exhibit I hereto.

An example of the billing calculation at the Contract Price applicable during the Second Period is set forth in Exhibit J hereto. For billings relating to the Second Period, Seller may use its estimate of the Current Exchange Rate in calculating the Monthly Fuel Charge included in each bill; *provided, however*, that Seller shall provide a retroactive adjustment in the next Month's invoice based on the actual Current Exchange Rate, with interest on the retroactive adjustment calculated pursuant to Article 16.6 hereto. Seller shall include in each faxed bill sufficient detail to allow Power Purchaser to verify the billing.

For all payments owing hereunder Purchaser shall pay the amount specified in the bill by wire transfer of immediately available federal funds on or before the later of the twentieth (20<sup>th</sup>) day of the month in which such invoice is rendered, or the tenth (10<sup>th</sup>) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day, in accordance with instructions given by Seller to Power Purchaser from time to time; *provided, however*, that any changes to such wire transfer instructions will not be effective until two (2) Business Days after the date on which notice of the change is sent to the Power Purchaser.

8.4 Disputed or Erroneous Payments; Late Payments. If Power Purchaser pays any bill under protest and its position is subsequently upheld, or if an error in any billing is discovered within two (2) Years of when it was submitted, interest shall accrue at the rate for late payments as specified in Article 16.6, applied to the amount of any billing adjustment from the date the bill was initially paid to the date of the adjustment. Late payments shall bear interest from the date due until paid at the rate specified in Article 16.6.

ARTICLE 9  
AUDIT RIGHTS

During the Term of this Agreement (and for a period of two (2) years after the date on which this Agreement terminates), upon reasonable written notice to the Seller the Power Purchaser may review, at the Facility, the Facility availability log to review Facility operation during the prior Operating Year. Power Purchaser shall utilize all information acquired from any such review of the Facility availability log solely for the purposes of determining compliance with the terms and conditions of this Agreement, and the Power Purchaser shall, to the fullest extent permitted under applicable law, keep all such information confidential and shall not disclose any portion thereof.

ARTICLE 10  
NOTICES

10.1 General. Except as specifically provided below, any notice or notification required, permitted or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be deemed to have been validly served, given or delivered (i) five (5) Business Days following deposit in the United States mail, with proper first class postage prepaid, (ii) the next Business Day after such notice was delivered to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) upon receipt of notice given by fax or personal delivery:

To Seller:                      Manager, Middle Office  
   PacifiCorp Power Marketing, Inc.  
   830 NE Holladay, Suite 250  
   Portland, OR 97232  
   Fax:                      (503) 813-5707

To Power Purchaser:        California Department of Water Resources  
   1416 Ninth Street  
   Sacramento, California 95814  
   Attn: Executive Manager Power Systems  
   Phone:                  (916) 653-5913  
   Facsimile:              (916) 653-0267

10.2 Force Majeure and Forced Outage Notices: Notices of Force Majeure or Forced Outages declared by Seller shall be made verbally to Power Purchaser, followed by written notice delivered by Seller to Power Purchaser. Notice will be effective at the time verbally given. Such notices shall be made to the person(s) specified in Exhibit N hereto, as unilaterally revised by Power Purchaser from time to time upon written notice to Seller.

ARTICLE 11  
DEFAULTS AND REMEDIES

11.1 Defaults. The following events shall constitute an event of default under this Agreement:

11.1.1 The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice of such failure; the Party failing to make any such payment shall be deemed to be the Defaulting Party;

11.1.2 The failure to perform any material covenant or obligation set forth in this Agreement (but not including any default described in 11.1.1, 11.1.3 or 11.1.4 hereof) if such failure is not remedied within thirty (30) Business Days after written notice, with respect to which the Party failing to so perform shall be deemed to be the Defaulting Party;

11.1.3 Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, with respect to which the Party who made such representation or warranty shall be deemed to be the Defaulting Party;

11.1.4 A Party becomes Bankrupt, in which event the Bankrupt Party shall be deemed to be the Defaulting Party; or

11.1.5 If the State of California or any agency thereof takes any action that reduces the payments required to be made by the Power Purchaser hereunder or that prevents Seller from collecting such payments from Power Purchaser or that prevents the Power Purchaser from making such payments to Seller hereunder, with respect to which event the Power Purchaser shall be deemed to be the Defaulting Party.

11.2 Notice of Default. The Party in default under this Agreement shall be referred to as the "Defaulting Party," and the other Party shall be referred to as the "Non-Defaulting Party." The Non-Defaulting Party shall have the right to give the Defaulting Party a written Notice of Default, which shall describe the default in reasonable detail and state the date by which the default must be cured.

11.3 Opportunity to Cure. With respect to an event of default referred to in subArticle 11.1.2:

(a) if the Defaulting Party cures the default the thirty (30) Business Day cure period, or

(b) if the failure is one that cannot in good faith be corrected within such thirty (30) day period and the Defaulting Party begins to correct the default within the

applicable period and continues corrective efforts with reasonable diligence until a cure is effected,

the Notice of Default shall be inoperative, and the Defaulting Party shall lose no rights under this Agreement; *provided, however*, that such extended cure period shall not exceed one hundred twenty (120) Days after receipt of the Notice of Default. If, within the specified applicable periods, the Defaulting Party does not cure the default as provided above, the Non-Defaulting Party may exercise the remedies contemplated by Articles 11.4 and 11.5.

11.4 Right To Terminate Upon Default. After providing notice and upon expiration of any cure period expressly provided for herein without a cure having been effected, the Non-Defaulting Party shall have the right (but not the duty) to terminate this Agreement by giving written notice to the Defaulting Party, which notice shall specify date upon which such termination will become effective, which date may not be earlier than the date of such notice of termination and not later than twenty (20) days following the date of such notice.

11.5 Remedies Not Exclusive. Except as otherwise provided in Articles 4.1 and 11.6.1 hereof, each and every power and remedy given to the Non-Defaulting Party (a) shall be in addition to every other power and remedy now or hereafter available to the Non-Defaulting Party at law or in equity (including the right to specific performance), (b) may be exercised from time to time and as often and in such order as may be deemed expedient, and (c) shall be cumulative, so that the exercise of one power or remedy shall not waive the right to exercise any other or others. No delay or omission in the exercise of any power or remedy and no renewal or extension of any performance due under this Agreement shall impair any such power or remedy or waive any default. Notwithstanding any termination of this Agreement, all financial obligations that have accrued under this Agreement shall remain until paid. Notwithstanding the foregoing, any claim for damages shall be governed exclusively by Article 11.6.

11.6 Termination Payments Upon Termination Following Default. Without limiting its remedies under this Agreement, if this Agreement is terminated for a default arising under Article 11.1 hereof, the Non-Defaulting Party shall be entitled to recover from the Defaulting Party, and the Defaulting Party shall be obligated to pay to the Non-Defaulting Party, a Termination Payment in an amount determined in accordance with Article 11.6.1 below. Any Termination Payment owing hereunder shall be paid by the Defaulting Party to the Non-Defaulting Party not later than the later to occur of: (i) the one hundred eightieth (180th) day after the Early Termination Date; or (ii) five (5) Business Days following the date on which the Non-Defaulting Party submits an invoice to the Defaulting Party setting forth the Non-Defaulting Party's calculation of the Termination Payment.

11.6.1 Calculation of Termination Payment. The Termination Payment shall be calculated by the Non-Defaulting Party as provided in this Article 11.6.1.

11.6.1.1 The Termination Payment shall be:

(i) in the case Power Purchaser is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) the Contract Price that would have been paid by the Power Purchaser under

this Agreement for the remaining term hereof had this Agreement not been terminated (the "nominal remaining term") and the Power been delivered to the Power Purchaser during such nominal remaining term as provided herein; and

(ii) in the case Seller is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) the Contract Price that would have been paid by the Power Purchaser under this Agreement for the nominal remaining term hereof had this Agreement not been terminated and the Power been delivered to the Power Purchaser during such nominal remaining term as provided herein, and (B) payments under a Replacement Contract based on the Per Unit Market Price;

in each case using the Present Value Rate as of the Early Termination Date (to take account of the period between the Early Termination Date and when such the Contract Price for the nominal remaining term would have otherwise been due by Power Purchaser to Seller pursuant to the terms of this Agreement had this Agreement not been terminated and the Product delivered to the Power Purchaser during such nominal remaining as provided herein). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities mutually agreed to in a writing signed by the Power Purchaser and the Seller) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average nominal remaining of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

11.6.1.2 If, as of the Early Termination Date, the nominal remaining term of this Agreement is less than one year, then to ascertain the Per Unit Market Price of a Replacement Contract for purposes of determining the Termination Payment, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.

11.6.1.3 If, as of the Early Termination Date, the nominal remaining term of this Agreement is one year or longer, then to ascertain the Per Unit Market Price of a Replacement Contract for purposes of determining the Termination Payment, the Non-Defaulting Party shall use the Market Quotation Average Price; *provided, however, that* if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in Article 11.6.1.2 hereof.

11.6.1.4 In no event, however, shall a party's calculation of the

Termination Payment include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

11.7 Closeout Setoffs. After calculation of the Settlement Payment in accordance with Article 11.6.2, if the Defaulting Party would be owed the Settlement Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such Settlement Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party.

11.8 Time is of the Essence. Time is of the essence for each and every obligation set forth in this Agreement.

## ARTICLE 12 LIMITATION OF LIABILITY

NEITHER PARTY HEREUNDER SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT OR TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) AND INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF THE SELLER OR OF POWER PURCHASER FOR SUCH DAMAGES.

## ARTICLE 13 DISPUTE RESOLUTION

If the Parties are unable to resolve a dispute with respect to this Agreement, either Party may send a notice to the other requesting a meeting at which senior officers or officials of the Parties will attempt to resolve the dispute. If the Parties are unable to resolve the dispute within ten (10) Days after the meeting notice is received by the Party to whom it is directed, or such longer period as the Parties may agree, then either Party may initiate binding arbitration as set forth herein. Such arbitration shall be submitted to a single disinterested arbitrator, mutually agreed to by the Parties, with significant experience in the electric power industry. If the Parties cannot mutually agree on the selection of the arbitrator, the arbitrator shall be selected in accordance with the Rules of the American Arbitration Association as they pertain to the selection of arbitrators. The arbitration shall otherwise be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be instructed to use all reasonable efforts to render a written decision setting forth its findings and conclusions within thirty (30) Days of the date on which the arbitration proceedings are concluded. The arbitrator's decision concerning the item or items in dispute shall be final and binding on the Parties. Each Party shall bear its own attorneys fees and costs of pursuing the arbitration; the Parties shall share equally all fees and costs of the American Arbitration Association, the arbitrator and similar expenses.

ARTICLE 14  
ASSIGNMENT

14.1 Restriction on Assignment. (a) Power Purchaser may not assign this Agreement without Seller's prior written consent, which Seller shall not unreasonably withhold. Seller may withhold its consent if Power Purchaser proposes to assign its rights or delegate its duties under this Agreement to any party that has a credit rating from a Standard & Poor's Rating Group of BBB or less, or has a credit rating from a Moody's Rating Group of Baa2 or less. If Power Purchaser wishes to assign or delegate any rights or obligations under this Agreement, it shall provide Seller with a detailed description of the nature and duration of the proposed assignment and information concerning the proposed assignee. Any assignment in violation of this provision shall be void. Notwithstanding the foregoing, Power Purchaser may, without the consent of, but with prior written notice to, the Seller, transfer and assign all of its right, title and interest to this Agreement and the Fund to: (i) another governmental entity created or designated by law to carry out, and being vested with, the rights, powers, duties and obligations of the Power Purchaser under the Act, or (ii) transfer or assign this Agreement to any electrical corporation, as defined in the Act, whose long-term unsecured senior debt is rated "A" or better by Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.), or its successor, and "A" or better by Moody's Investor Services, Inc., or its successor, *provided that* notwithstanding anything expressed or implied herein to the contrary, upon any transfer and assignment by the Power Purchaser to an electrical corporation as provided above, the obligations of such electrical corporation under this Agreement shall not be limited recourse obligations of such electrical corporation but shall be and remain general unsecured obligations of such electrical corporation payable from and by recourse against any and all of such electrical corporation's funds, properties, revenues and assets.

(b) Seller may not assign this Agreement without Power Purchaser's prior written consent, which Power Purchaser shall not unreasonably withhold.

14.2 Additional Assignments of Security Interests. Seller or Power Purchaser may from time to time assign as security, grant one or more security interests in its interest in, this Agreement.

14.3 Assumption of and Release from Liabilities. Any permitted assignee or transferee of Seller's or Power Purchaser's interest in this Agreement shall assume in writing all existing and future obligations of Seller or Power Purchaser, as the case may be, to be performed under this Agreement; provided, however, that in the event this Agreement is pledged or assigned to a bond trustee as collateral for Bonds issued by Power Purchase, such bond trustee shall not be required to assume in writing all existing and future obligations of Power Purchaser to be performed under this Agreement. Upon any permitted assignment of this Agreement (including without limitation an assignment pursuant to Article 14.2), the assigning Party shall nevertheless continue to be and remain liable for the performance of its obligations hereunder in accordance with the terms hereof.

14.4 Binding Effect. This Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns.

ARTICLE 15  
REPRESENTATIONS, COVENANTS, AND WARRANTIES

15.1 Power Purchaser's Representations, Covenants, and Warranties. Power Purchaser represents, covenants, and warrants to Seller that as of the Effective Date:

15.1.1 Corporate Organization. Power Purchaser is duly created and validly existing as an agency of the State of California duly authorized under applicable law to execute and deliver, and perform its obligations under, this Agreement, and is entitled to exercise the powers conferred upon it under the Act.

15.1.2 Regulatory Authorizations. Power Purchaser has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

15.1.3 Due Authorization. The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Power Purchaser's ordinances, bylaws or other laws or regulations, and the execution, delivery and performance of this Agreement by the Power Purchaser do not violate any of the terms and conditions of the Act, in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

15.1.4 Not Bankrupt or Insolvent. The Power Purchaser is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in Power Purchaser being or becoming Bankrupt. The Fund is not insolvent and has sufficient revenues available to it to pay when due all obligations payable from the Fund.

15.1.5 Enforceability. This Agreement constitutes the legally valid and binding obligation of the Power Purchaser enforceable against it 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).

15.1.6 No Litigation. There is not pending or, to its knowledge, threatened against the Power Purchaser or any of its officials or officer, or against the Fund, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.

15.1.7 No Default. As of the Effective Date, no default on the part of the Power Purchaser under this Agreement, and no event which, with notice or the passage of time or both, would constitute a default by the Power Purchaser under this Agreement,

has occurred and is continuing. Neither the Fund nor the Power Purchaser is in default with respect to the payment of any obligation payable from the Fund.

15.1.8 [Reserved]

15.1.9 Power Purchaser Acting Independently. The Power Purchaser is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the Seller in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

15.1.10 Payments Just and Reasonable. The Power Purchaser has found and determined that the payments required to be made by it hereunder and the other terms and conditions of this Agreement (including, without limitation, the terms and provisions hereof which increase the Contract Price required to be made hereunder pursuant to Article 5.7 and any Termination Payments that may become owing hereunder) are just and reasonable for purposes of Article 451 of the California Public Utilities Code.

15.1.11 Capacity to Accept Delivery. The Power Purchaser has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to accept delivery of all Power provided for in this Agreement.

15.1.12 [Reserved.]

15.1.13 Incumbency of Officials: All persons making up the governing body of Power Purchaser are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law.

15.1.14 Proper Public Purpose. The execution and delivery of this Agreement by the Power Purchaser, and performance of this Agreement by the Power Purchaser, are for a proper public purpose for the purposes of the Act and all other relevant constitutional, organic or other governing documents and applicable law.

15.1.15 Term Not In Excess of Legal Limits. The term of this Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law.

15.1.16 Payments Under Agreement an Operating Expense. Payments under this Agreement (including, without limitation, the terms and provisions hereof which increase the Contract Price required to be made hereunder pursuant to Article 5.7 and any Termination Payments that may become owing hereunder) shall constitute an operating expense of the Fund payable prior to: (i) all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate, or (ii) payments to the general fund.

15.1.17 Payments under this Agreement (including, without limitation, the terms and provisions hereof which increase the Contract Price required to be made hereunder pursuant to Article 5.7 and any Termination Payments that may become owing hereunder) shall constitute an operating expense of the Fund payable prior to: (i) all bonds, notes or other indebtedness payable from the Trust Estate, or (ii) payments - to the general fund. The purpose of this provision is to prevent any circumvention of Section 15.1.16 by not specifically pledging or assigning the Trust Estate to bonds or notes issued by the Department and accordingly the term "bonds, notes or other indebtedness" as used in this Section 15.1.17 shall be limited solely to certificated or book entry securities issued by the Department for borrowed money payable from, but not secured by a specific pledge or assignment of, the Trust Estate and shall accordingly specifically exclude any contract or agreement entered into by the Department that is payable as an operation or maintenance expense under any bond resolution or indenture providing for the issuance of bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate, including, but not limited to, any power purchase, gas purchase, power or gas transmission, gas storage, lease, swap, hedge, forward or option agreement.

15.1.18 Not Indebtedness In Violation of Applicable Law. The Power Purchaser's obligations to make payments hereunder do not constitute any kind of indebtedness of Power Purchaser or the State of California or create any kind of lien on, or security interest in, any property or revenues of the Power Purchaser which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

15.1.13 Terms Result of Negotiation. The material economic terms of this Agreement and the transactions contemplated hereby have been subject to individual negotiation by the Parties.

15.2 Seller's Representations, Covenants, and Warranties. Seller represents, covenants, and warrants to Power Purchaser that as of the Effective Date:

15.2.1 Corporate Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of Oregon.

15.2.2 Power and Authority. The Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof and Seller has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement.

15.2.3 Due Authorization. The Seller's Board of Directors has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

15.2.4 No Violation. The execution, delivery and performance of this Agreement are within the Seller's powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.

15.2.5 Enforceability. This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

15.2.6 Not Bankrupt. Seller is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

15.2.7 No Litigation. There is not pending or, to Seller's knowledge, threatened against Seller or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.

15.2.8 No Default. No default hereunder with respect to Seller has occurred and is continuing and no such default hereunder will occur as a result of Seller entering into or performing its obligations under this Agreement.

15.2.9 Independent Determination. Seller is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment; Seller is not relying upon the advice or recommendations of the Power Purchaser in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

15.2.10 Forward Contract Merchant. Seller is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

15.2.11 Capacity to Make Delivery. Seller has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make delivery of all Power required to be provided to Power Purchaser under this Agreement.

15.2.12 Terms Result of Negotiation. The material economic terms of the transactions contemplated by this Agreement have been subject to individual negotiation by the Parties.

15.2.13 Gas Transmission. Seller has secured firm, either directly or indirectly, gas transmission for the Original Klamath Facility for at least the Term hereof.

15.3 Financial Information.

15.3.1 Power Purchaser Financial Information. During the term of this Agreement, the Power Purchaser shall provide to the Seller the following financial information at the times indicated below:

15.3.1.1 Audited Financial Statements. Not later than October 1 of each year, commencing October 1, 2001, Power Purchaser shall provide to Seller a complete copy of the audited financial statements for the Fund for the fiscal year ending the preceding June 30<sup>th</sup>, prepared by a firm of independent certified public accountants in accordance with generally accepted accounting principles consistently applied.

15.3.1.2 Annual Budget. Not later than July 15 of each year, commencing July 15, 2001, Power Purchaser shall provide to Seller a true and complete copy of the final annual budget for the Fund for the fiscal year beginning on the immediately preceding July 1, as adopted and approved in accordance with the applicable laws of the State of California.

15.3.1.3 Unaudited Quarterly Financial Statements. Not later than September 1, December 1, March 1 and June 1 of each year, commencing September 1, 2001, Power Purchaser shall provide Seller with unaudited financial statements for the Fund for the fiscal quarter ending on the immediately preceding June 30, September 30, December 31 and March 31, as the case may be, prepared in accordance with generally accepted accounting principles consistently applied, which unaudited quarterly financial statements.

15.3.1.4 Other Information. Power Purchaser shall also provide to Seller: (a) concurrently with the delivery thereof to any other person, copies of all reports and financial information sent to any seller under a power purchase agreement; and (b) such other publicly available information concerning the Fund, the Bonds or Power Purchaser's financial situation as Seller may reasonably request from time to time.

15.3.2 Seller Financial Information. Not later than September 1, December 1, March 1 and June 1 of each year, commencing September 1, 2001, Seller shall provide Power Purchaser with unaudited quarterly financial statements of the Seller for the fiscal quarter ending on the immediately preceding June 30, September 30, December 31 and March 31, as the case may be, prepared in accordance with generally accepted accounting principles consistently applied.

ARTICLE 16  
MISCELLANEOUS

16.1 Severability. The invalidity, in whole or in part, of any of the articles, Articles or paragraphs of this Agreement will not affect the validity of the remainder of such articles, Articles or paragraphs.

16.2 Amendment. No modification, amendment, or other change to this Agreement will be effective unless consented to in writing by each of the Parties.

16.3 Waiver. Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies. No Party shall be deemed to have waived or forborne any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

16.4 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

16.5 Effect of Force Majeure. Power Purchaser or Seller, as the case may be, shall be excused from performance under this Agreement to the extent, but only to the extent, that performance hereunder is prevented by an act or event of Force Majeure. Power Purchaser or Seller, as the case may be, shall use its reasonable efforts to overcome or mitigate the effects of such an act or event of Force Majeure; *provided, however*, that nothing in this Agreement shall be deemed to obligate the Party affected by an act or event of Force Majeure to forestall or settle any strike, lock-out or other labor dispute against its will.

Notwithstanding the foregoing, upon the occurrence and continuation of a Force Majeure, in the event that Seller is the claiming party, Power Purchaser shall continue to pay the Contract Price, except that Power Purchaser's obligation to pay any capacity payment as it relates to the Facility affected by the Force Majeure shall be suspended for the period commencing 60 days after the commencement of the event of Force Majeure being claimed by Seller and continuing until the day the event of Force Majeure no longer exists.

16.6 Interest on Amounts Due. 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.

16.7 Further Assurances. The Parties shall do and shall perform all such acts and things and shall execute all such deeds, documents and writings and shall give all such further assurances as may be necessary to carry out the intent of this Agreement.

16.8 No Third Party Beneficiaries. Except for Persons to whom this Agreement is assigned in compliance with Article 14, there are no third party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any Person that is not a Party.

16.9 Time. Unless otherwise specified in this Agreement, all references to specific times under this Agreement shall be references to Pacific Standard or Pacific Daylight Savings Time, whichever is then prevailing.

16.10 Headings. The various headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the provisions.

16.11 Interpretation. Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporate and vice versa, as the context so requires. Whenever the words include(s) or including are used in this Agreement, they should be interpreted to mean include(s) or including, but not limited to. Because both Parties have participated in the drafting of this Agreement, the usual rule of contract construction that resolves ambiguities against the drafter shall not apply.

16.12 Entire Agreement. This Agreement (including the attached Exhibits, which are incorporated by this reference) and all amendments to this Agreement contain the complete agreement between the Seller and the Power Purchaser with respect to the matters contained in this Agreement and supersede all other agreements, whether written or oral, with respect to the matters contained in this Agreement.

16.13 No Immunity Claim. California law authorizes suits based on contract against the State or its agencies (including without limitation the Power Purchaser), and the Power Purchaser agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court.

16.15 Payments Under Agreement an Operating Expense. Payments under this Agreement (including, without limitation, the terms and provisions hereof which increase the Contract Price required to be made hereunder pursuant to Article 5.7 and any Termination Payments that may become owing hereunder) shall constitute an operating expense of the Fund payable prior to: (i) all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate, or (ii) payments to the general fund. Payments under this Agreement (including, without limitation, the terms and provisions hereof which increase the Contract Price required to be made hereunder pursuant to Article 5.7 and any Termination Payments that may become owing hereunder) shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness payable from the Trust Estate. The purpose of the foregoing sentence is to prevent any circumvention of the first sentence of this Section 16.15 by not specifically pledging or assigning the Trust Estate to bonds or notes issued by the Department and accordingly the term "bonds, notes, or other indebtedness" as used in the foregoing sentence shall be limited solely to certificated or book entry securities issued by the Department for borrowed money payable from, but not secured by a specific pledge or assignment of, the Trust Estate and shall accordingly specifically exclude any contract or agreement entered into by the Department that is payable as an operation or maintenance expense under any bond resolution or indenture providing for the issuance of bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate, including, but not limited to, any power purchase, gas purchase, power or gas transmission, gas storage, lease, swap, hedge, forward or option agreement.

16.16 Rate Covenant: No Impairment. In accordance with Article 80134 of the Water Code, Power Purchaser covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Power Purchaser pursuant to this Agreement. As provided in Article 80200 of the Water Code, while any obligations of Power Purchaser pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Power Purchaser and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement.

16.17 No More Favorable Terms. Power Purchaser shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Seller, without in each case offering such arrangements to Seller.

16.18 Sources of Payment: No Debt of State. Power Purchaser's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Power Purchaser arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Power Purchaser hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

16.19 Application of Government Code and the Public Contracts Code. Seller has stated that, because of the administrative burden and delays associated with such requirements and because Power Purchaser has advised Seller of Power Purchaser's desire to enter into this Agreement at the earliest practicable date in order to secure the Product provided for herein to meet Power Purchaser's needs, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Article 80014(b) of the Water Code, Power Purchaser has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Article 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

16.20 Governing Law, Venue. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF

LAW. THE PARTIES HEREBY SUBMIT TO THE JURISDICTION OF ANY OF THE CALIFORNIA STATE COURTS HAVING SUBJECT MATTER JURISDICTION LOCATED IN THE CITY OF SACRAMENTO, CALIFORNIA FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH PROCEEDINGS BROUGHT IN SUCH COURTS AND ANY CLAIM THAT ANY SUCH PROCEEDINGS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM.

16.21 Amendment of Confidentiality Provisions of Memoranda of Understanding. Preliminary to negotiating the terms of this Agreement, the Parties entered into the following memoranda of understanding (collectively, the "Memoranda"):

- (1) a Memorandum of Understanding dated March 1, 2001; and
- (2) a Memorandum of Understanding date May 5, 2001.

Reference is made to the confidentiality provisions set forth in Article 2 of each of the Memoranda (the "Confidentiality Provisions"). The Parties hereby agree that the Confidentiality Provisions shall not apply to the disclosure of the terms of this Agreement, but that either Party may disclose the terms of this Agreement to any third party.

PacifiCorp Power Marketing, Inc.  
an Oregon corporation

By: [Signature]  
Its: President  
Date: July 6, 2001

State of California Department of Water Resources  
an agency of the State of California, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System

By: [Signature]  
Its: Acting Deputy Director  
Date: July 6, 2001

**EXHIBIT A - Example of Publication Containing the Monthly Gas Index, the Daily Gas Index, and the Current Exchange Rate**



EXHIBIT A - Example of Publication Containing the Monthly Gas Index, the Daily Gas Index, and the Current Exchange Rate (Page 2)

Canadian Gas Price Reporter

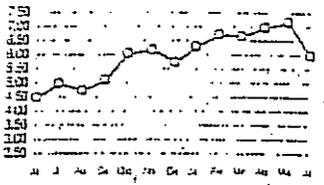
June 2001

# Canadian domestic gas price report

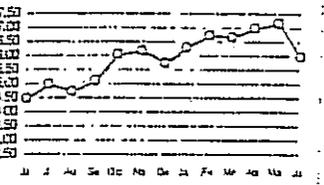
Current	Last Month	Last Year
5.25	4.12	4.20



Current	Last Month	Last Year
5.02	7.16	4.51



Current	Last Month	Last Year
6.02	7.16	4.51



## NATURAL GAS MARKET COMMENTARY

One-month spot prices at AECO/N.I.T. fell to \$5.4750/GJ, a decrease of \$1.57 from May. Daily spot prices averaged \$5.5803/GJ at AECO/N.I.T. and \$5.6100/GJ at Empress for May.

Bids & offers for Nov/2001 one-year fixed-price deals averaged \$5.9141/GJ and \$6.0245/GJ at AECO/NIT and Empress respectively.

The average Empress-AECO/NIT one-month market differential for June

Daily Spot Gas Price at AECO C & Nova inventory transfer

Month	Volume	Number of Transactions	Price (\$/GJ)		Avg. Price	Avg. Price (C\$/GJ)
Day			LW	HW		
Monday	302.3	43	5.370	6.170	5.553	5.553
Tuesday	300.3	51	5.300	6.070	5.577	5.557
Wednesday	311.1	42	5.350	6.170	5.650	5.650
Thursday	357.3	41	5.340	6.030	5.610	5.610
Friday	323.1	33	5.350	6.000	5.603	5.603
Saturday	303.3	24	5.350	6.000	5.645	5.645
Sunday	303.0	27	5.700	6.370	5.820	5.820
Monday	348.5	42	5.740	6.300	5.815	5.815
Tuesday	333.3	31	5.710	6.350	5.703	5.703
Wednesday	392.3	33	5.370	6.370	5.509	5.509
Thursday	355.3	38	5.335	6.280	5.704	5.704
Friday	325.5	31	5.320	6.250	5.688	5.688
Saturday	375.0	31	5.315	6.325	5.688	5.688
Sunday	324.5	21	5.550	6.200	5.824	5.824
Monday	425.5	32	5.770	6.350	5.829	5.829
Tuesday	353.3	29	6.010	6.325	6.110	6.110
Wednesday	445.7	30	5.700	6.090	5.957	5.957
Thursday	430.3	33	5.350	6.350	5.545	5.545
Friday	420.3	44	5.250	6.400	5.390	5.390
Saturday	304.0	29	5.320	6.390	5.399	5.399
Sunday	331.0	43	5.240	6.300	5.279	5.279
Monday	335.0	37	5.300	6.450	5.383	5.383
Tuesday	403.3	38	5.290	6.350	5.315	5.315
Wednesday	422.3	37	5.400	6.500	5.459	5.459
Thursday	412.0	40	5.400	6.720	5.564	5.564
Friday	325.0	43	5.190	6.550	5.273	5.273
Saturday	399.0	46	5.000	6.350	5.219	5.219
Sunday	355.0	74	4.800	6.080	5.102	5.102
Monday	435.3	174	4.900	6.040	4.974	4.974
Tuesday	404.3	132	4.850	6.010	4.974	4.974
Wednesday	424.4	156	4.730	6.180	4.929	4.929
Thursday	422.4	165	4.755	6.020	4.811	4.811

1. Tot./Wtd. Avg. **	3253.4	3970	4.730	6.325	5.5803	5.8200
1A. Arithmetic Avg. **					5.5507	5.8095
2. Tot./Wtd. Avg. *	27743.6	3394	4.730	6.325	5.5795	5.8194
2A. Arithmetic Avg. *					5.5479	5.7986
3. Tot./Wtd. Avg. **	29468.9	3571	4.730	6.325	5.5998	5.8332
3A. Arithmetic Avg. **					5.5806	5.8202
4. Tot./Wtd. Avg. *	35541.6	4291	4.730	6.325	5.5911	5.8280
4A. Arithmetic Avg. *					5.5736	5.8163

\*Weighted average price. \*\*Weighted average of NGX instruments - W, Wtd, LW3 & LW4. \*\* Includes Weekend deals.

\* Excludes Weekend deals. \*\* Includes Weekend deals and excludes Saturday, Sunday and statutory holiday deals.

\* Does not include day deals done during the weekend or on statutory holidays that fall in conjunction with the weekend.

the weekend number is used instead as a proxy for each of the weekend days and statutory holidays.

Note: LW3 & LW4 instruments included for Canadian statutory holidays. \*Weekend deals include statutory holiday

Fridays and Mondays. Source: Natural Gas Exchange. Exchange rate from Bank of Canada (noon day rate).

was -0.0286¢/GJ down from -0.0244¢ for May.

Export prices fell at all major export points, dropping about \$1.25 in the east, \$1.20 in the midwest and \$1.85 in the west.

The June Henry Hub futures contract last 3-day average was \$3.922. Spot prices fell \$1.22 to an average of \$4.37/MMBtu.

The outlook for day-to-day Alberta spot gas prices is for rising prices at around \$5.50-6.00. One-month prices are expected to be around the \$6.00/GJ range for July. One-year prices are expected to be around \$6.50/GJ for November/2001 gas. U.S. spot prices are expected to gain strength due to rising seasonal and storage gas demand.

## EXHIBIT B – Monthly Capacity Charge

### Monthly Capacity Charge

\$15.00 per kW-month

### Notes

The Monthly Capacity Charge above incorporates the following fixed charge for gas transportation, which tariff may be changed from time to time pursuant to Article 5.5 of the Agreement:

### Gas Transportation Reservation Charges (US Dollars per Dth):

Pipeline	Tariff	Tariff Effective Date	Rate Schedule	Current Reservation Charge (\$/Dth)
TC-AB	Standard Tariff	April 1, 2000	FT-D	\$0.1086
TC-BC	Standard Tariff	April 1, 2000	FS-1	\$0.0489
PG&E GT NW	First Revised Volume No. 1-A	Jan. 1, 2001	FTS-1 MRRS/CES (as may be replaced by new expansion schedules)	\$0.3225
			Total Reservation Charges	\$0.4800

### Example Computation of Gas Transportation Reservation Charges:

Converted to US Dollars at current exchange rate of \$0.6450 Canadian dollars per US Dollar

### Conversion of Reservation Charges to \$/kW-mo for Capacity Charge:

Reservation Charge in \$/kW-mo:

$$= [\text{Total Pipeline Reservation Charges } (\$/\text{Dth}) * (\text{Contract Heat Rate}/1000) * 24 \text{ hours per day} * \text{Average number of days per month}]/1000$$

$$= [\$0.480 * (7200/1000) * 24 * (365/12)]/1000 = \$2.523/\text{kW-mo.}$$

EXHIBIT C – Monthly Fixed O&M Charge

The Monthly Fixed O&M Charge shall initially be \$1.750/kW-month.

The Monthly Fixed O&M Charge shall be revised as of July 1 each year commencing with July 1, 2002, by the percentage change in the Consumer Price Index, All Urban Consumers, All Cities, as published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI Index"). To determine the appropriate revision, the CPI Index for March 1 of each year (or nearest publication thereafter) shall be divided by the CPI Index for March 1, 2001 (or nearest publication thereafter). Such ratio shall then be multiplied by the initial Monthly Fixed O&M Charge, above, and rounded to the nearest \$0.001 per kW-month, to determine the Monthly Fixed O&M Charge for the relevant annual period (i.e., July 1 through June 30) period.

*For example, assuming a CPI Index for March 1, 2001 of 145.0, and a CPI Index for March 1, 2004 of 150.0, the applicable Monthly Fixed O&M Charge for the period July 1, 2004 through June 30, 2005 would be:*

$$(150.0/145.0) * \$1.750/\text{kW-month} = \$1.810/\text{kW-month}$$

## EXHIBIT D – Monthly Variable O&M Charge

The Monthly Variable O&M Charge shall initially be \$3.500/MWh.

The Monthly Variable O&M Charge shall be revised as of July 1 each year commencing with July 1, 2002, by the percentage change in the Bureau of Labor Statistics Index for Gas Turbine Generator Sets (Series ID Number PCU3511#131), as published by the Bureau of Labor Statistics of the United States Department of Labor (the "Gas Turbine Index"). To determine the appropriate revision, the Gas Turbine Index for March 1 of each year (or nearest publication thereafter) shall be divided by the Gas Turbine Index for March 1, 2001 (or nearest publication thereafter). Such ratio shall then be multiplied by the initial Monthly Variable O&M Charge, above, and rounded to the nearest \$0.001 per MWh, to determine the Monthly Variable O&M Charge for the relevant annual period (i.e., July 1 through June 30) period.

*For example, assuming a Gas Turbine Index for March 1, 2001 of 130.0, and a Gas Turbine Index for March 1, 2004 of 135.0, the applicable Monthly Variable O&M Charge for the period July 1, 2004 through June 30, 2005 would be:*

$$(135.0/130.0) * \$3.500/MWh = \$3.635/MWh.$$

## EXHIBIT E – Example Calculation of Monthly Fuel Charge for June 2, 2005

I. Assumptions:		
Monthly Firm Schedule for On Peak	= 200 MW (= 1,440 MMBtu/hr @ Contract Heat Rate)	
Monthly Firm Schedule for Off Peak	= 150 MW (= 1,080 MMBtu/hr @ Contract Heat Rate)	
On Peak Hours on June 2	=	16 hours
Off Peak Hours on June 2	=	8 hours
Delivered On Peak Schedule on June 2	=	300 MW (= 4,800 Mwh)
Delivered Off Peak Schedule on June 2	=	150 MW (= 1,200 Mwh)
Contract Heat Rate	=	7,200 Btu/kWh
Monthly Gas Index	=	\$C 6.000/GJ
Current Exchange Rate	=	\$US 0.6450/\$C
GJ/Dth Conversion	=	1.055056 GJ/Dth
Daily Gas Index	=	\$ 4.500 US/Dth
Heat Rate Surcharge for Delivered Off Peak Schedule (assumes the Delivered Off Peak Schedule requires full "1*1" Facility Operation)	=	500 Btu/Kwh
Cycling Cost for going down to "1*1" Facility Operation in Off Peak =	\$9,750	
Pipeline Loss Percentage	=	4.00%
Variable Pipeline Charges	=	\$US 0.02076/Dth
II. Conversion of Monthly Gas Index from \$C/GJ to \$US/Dth:		
=	\$C 6.000/GJ * \$US 0.6450/\$C * 1.055056 GJ/MMBtu	
=	\$US 4.083/MMBtu	
=	\$US 4.083/Dth	
III. Calculation of MMBtu's tied to Monthly Gas Index on June 2		
On Peak =	(1,440 MMBtu/hr * 16 Hours)	= 23,040 MMBtu
Off Peak =	(1,080 MMBtu/hr * 8 Hours)	= 8,640 MMBtu
	Total MMBtu @ Monthly Gas Index	= 31,680 MMBtu
IV. Calculation of MMBtu's tied to Daily Gas Index for June 2		
On Peak: Applicable Heat Rate	=	7,200 Btu/Kwh
Total MMBtu used in On Peak = 4,800Mwh @ 7,200	=	34,560 MMBtu
Less: MMBtu tied to Monthly Gas Index	=	23,040 MMBtu
MMBtu tied to Daily Gas Index	=	11,520 MMBtu
Off Peak: Applicable Heat Rate is 7,200 + 500	=	7,700 Btu/Kwh
Total MMBtu used in Off Peak = 1,200Mwh @ 7,700	=	9,240 MMBtu
Less: MMBtu tied to Monthly Gas Index	=	8,640 MMBtu
MMBtu tied to Daily Gas Index	=	600 MMBtu
Total MMBtu tied to Daily Gas Index (On and Off Peak)	=	12,120 MMBtu
V. Calculation of Monthly Fuel Charge for June 2 associated with Monthly Gas Index:		
=	31,680 * [(4.083 *(1.04)) + 0.02076]	= \$135,181
VI. Calculation of Monthly Fuel Charge for June 2 associated with Daily Gas Index:		
=	12,120 * [(4.500+.03) *(1.04)) + 0.02076]	= \$57,351
VII. Total Monthly Fuel Charge attributable to June 2, 2005	=	<u>\$192,532</u>

### NOTE:

While the above calculation is on a daily basis, to accommodate hourly schedules pursuant to Section 6.2.3, such same calculation may be required each hour (e.g. if an hourly change causes a Facility operations change with an associated heat rate surcharge). The effect of heat rate surcharges will be tied to the Daily Gas Index, as it is in the above example. In addition, a Cycling Cost of \$9,750 per cycle (in this example) would apply in full if it was determined that Power Purchaser's schedule required cycling the Facility. If it was determined that a cycling event was required by Power Purchaser's schedule as well as other schedules from the Facility, the cycling cost to Power Purchaser would be allocated on a pro-rata basis tied to all schedules causing the cycling.

EXHIBIT F – Pipeline Loss Percentage and Variable Pipeline Charges

Pipeline Loss Percentage (subject to Article 5.5):

TC-AB	0.00 %
TC-BC	1.00%
PG&E GT NW	<u>3.00%</u>
Total	4.00%

Variable Pipeline Charges (subject to Article 5.5):

Pipeline	Tariff	Tariff Effective Date	Rate Schedule	Variable Charges \$/Dth
TC-AB (Note 1)		April 1, 2000	FTD	\$0.00000
TC-BC (Note 3)		April 1, 2000	FS-1	\$0.0036
PG&E GT NW (Note 4)	First Revised Volume No. 1-A	Jan. 1, 2001	FTS-1	\$0.017162
			Total Variable Pipeline Charges	\$0.02076

Notes on Variable Pipeline Charges:

- No variable pipeline charges are currently assessed on TC-AB export volumes
- Converted to US Dollars at current exchange rate of \$0.6450 Canadian dollars per US Dollar.
- |  |   |                 |
|--|---|-----------------|
| Delivery Charge Alberta/British Columbia Border to Kingsgate | = | \$0.0035        |
| NEB (National Energy Board) Cost recovery                    | = | <u>\$0.0001</u> |
|  | = | \$0.0036        |
- |  |   |                 |
|--|---|-----------------|
| Delivery Charge to Malin @ \$0.000013/Dth-mile | = | \$0.007962      |
| GRI Delivery                                   | = | \$0.0070        |
| ACA  | = | <u>\$0.0022</u> |
| Total  | = | \$0.017162/Dth  |

EXHIBIT G - Operating Reserves Charge

Through September 30, 2003:

"Operating Reserve - Spinning Reserve Service" and  
"Operating Reserve - Supplemental Reserve Service"

\$8.27 per MWh applied to 7.0% of MWhs purchased by Power Purchaser under this Agreement.

After September 30, 2003:

As applicable and updated per Article 5.5.

EXHIBIT H - Transmission Loss Percentage Incurred by Seller on BPA's Southern Intertie

The reference transmission loss percentage is 3.0%.

**EXHIBIT I – Example of Monthly Invoice Calculation for December, 2002**

Art. 5.2	Energy Charge: \$70/Mwh times 143,400 Mwh (Note 1)	= \$10,038,000
Art. 6.3.1.3	Credit to Power Purchaser for prior Month (Note 2)	= N.A.
<b>Total Monthly Bill</b>		<b>= \$10,038,000</b>

Notes:

1. 143,400 MWhs are assumed delivered in December, 2002. There were 0 Mwh curtailed pursuant to Facility Outage and Maintenance Pool during the Month. There were 4,800 Mwh curtailed pursuant to the Supplemental Pool during the Month. 600 Mwhs were curtailed for Force Majeure.
2. Seller did not exceed the Facility Outage and Maintenance Pool in December, 2002.
3. Seller did not exceed the Supplemental Pool in December, 2002.

**Balance of Facility Outage and Maintenance Pool:**

Total Facility Outage and Maintenance Pool for Operating Year		210,240 Mwh
Amount used in December, 2002	0 Mwh	
Cumulative Amount used in Operating Year		<u>19,200 Mwh</u>
Amount Remaining in Pool for the Operating Year		191,040 Mwh

**Balance of Supplemental Pool:**

Total Supplemental Pool for Operating Year		52,560 Mwh
Amount used in December, 2002	4,800 Mwh	
Cumulative Amount used in Operating Year		<u>17,100 Mwh</u>
Amount Remaining in Pool for the Operating Year		35,460 Mwh

EXHIBIT J – Example of Monthly Invoice Calculation for June, 2005

Art. 5.3.1 Monthly Capacity Charge	
= \$15.00/kW-mo. * Contract Delivery Rate	
= \$15.00 * 300 MW * 1000	= \$4,500,000
Art. 5.3.2 Monthly Fixed O&M Charge	
= \$1.81/kW-mo. * Contract Delivery Rate	
= \$1.81 * 300 MW * 1000	= \$ 543,000
Art. 5.3.3 Monthly Variable O&M Charge	
= \$3.635/MWh * MWh Delivered in Month	
= \$3.635/MWh * 141,360 MWh (Note 2)	= \$ 513,844
Art. 5.3.4 Monthly Fuel Charge	
= Calculated pursuant to example in Exhibit E	= \$4,343,000
Art. 5.3.5 Transmission Losses Charge	
= 141,360 * 3.0% * \$100 per MWh (Notes 2, 3)	= \$ 424,080
Art. 5.3.6 Operating Reserves Charge	
= 141,360 MWh * 7% * \$8.27 per MWh (Note 4)	= \$ 81,833
Art. 5.4.2 Physical Hedge Associated with Monthly Fuel Charge (Note 5)	= N.A.
Art. 6.3.1.3 Credit to Power Purchaser for prior Operating Year (Note 6)	= N.A.
Art. 6.3.2 Credit to Monthly Capacity Charge and Monthly Fixed O&M Charge	= N.A.
<b>Total Monthly Bill</b>	<b>= \$10,405,757</b>

Notes:

1. 141,360 MWhs are assumed delivered in June, 2005. There were 7,440 Mwh curtailed pursuant to the Facility Outage and Maintenance Pool during the Month. There were 0 Mwh curtailed pursuant to the Supplemental Pool during the Month. No Mwhs were curtailed for Force Majeure.
2. Assumes that Seller is assessed 3.0% losses in its transmission agreement with BPA TBL; assumes that the energy price for losses is \$100 per MWh.
3. Calculated per Exhibit H.
4. Calculated per Exhibit G.
5. Assumes Power Purchaser has no hedge in place pursuant to Article 5.4.2.
6. Seller did not exceed the Facility Outage and Maintenance Pool for the Operating Year ended June 30, 2005.
7. Seller did not exceed the Supplemental Pool in June 2005. Note that the Supplemental Pool was available to Seller only for the first part of June.

EXHIBIT J – Example of Monthly Invoice Calculation for June, 2005  
(Continued)

Balance of Facility Outage and Maintenance Pool:

Total Facility Outage and Maintenance Pool for Operating Year	420,480 Mwh
Amount used in June, 2005	7,440 Mwh
Cumulative Amount used in Operating Year	<u>24,000</u> Mwh
Amount Remaining in Pool for the Operating Year 1	396,480 Mwh

Balance of Supplemental Pool:

Total Supplemental Pool for Operating Year	105,120 Mwh
Amount used in June, 2005	0 Mwh
Cumulative Amount used in Operating Year	<u>0</u> Mwh
Amount Remaining in Pool for the Operating Year	105,120 Mwh

EXHIBIT K – Example calculation of Contract Price for December, 2004.

		<u>\$/Kw-mo.</u>	<u>\$/Mwh</u>
Sec. 5.3.1.	Monthly Capacity Charge (Note 1)	\$15.00	\$21.86
Sec. 5.3.2.	Monthly Fixed O&M Charge ( Note 2)	\$ 1.86	\$ 2.71
Sec. 5.3.3.	Monthly Variable O&M Charge	n.a.	\$ 3.74
Sec. 5.3.4.	Monthly Fuel Charge (Note 3)	n.a.	\$25.66
Sec. 5.3.5.	Transmission Losses Charge (Note 4)	n.a.	\$ 2.10
Sec. 5.3.6.	Operating Reserves Charge	n.a.	<u>\$ 0.58</u>
	Contract Price	=	\$56.65

Note 1:  $(\$15.00/\text{kw-mo.} * 1000 \text{ Kw/Mw} / 730 \text{ h/mo.}) / 94\% \text{ assumed availability})$   
 = \$21.86

Note 2:  $(\$1.86/\text{kw-mo.} * 1000 \text{ Kw/Mw} / 730 \text{ h/mo.}) / 94\% \text{ assumed availability})$   
 = \$ 2.71

Note 3: Assuming: \$C 5.00/GJ is the forward market price for gas at the Monthly Gas Index point.  
 Current Exchange Rate of \$US 0.7450/\$C  
 4.00% Pipeline Loss Percentage  
 \$US 0.02076/Dth Variable Pipeline Charges

Monthly Fuel Charge in \$/Mwh =  
 $\$C 5.00/\text{GJ} * 1.055056 \text{ GJ/Dth} * \$US 0.6450/\$C = \$US 3.40/\text{Dth}$   
 $[(\$US 3.40/\text{Dth} * 1.04\%) + \$US 0.0276/\text{Dth}] * (7200/1000)$   
 = \$25.66/Mwh

Note 4: Assuming: \$70/Mwh forward market price for flat power at COB  
 3.0% Transmission Loss Factor

Transmission Losses Charge =  
 $\$70/\text{Mwh} * 3.0\% = \$2.10$

EXHIBIT L – Example of Publication Containing the On-Peak COB Market Index and the Off-Peak COB Market Index

**DOWJONES**

COMMENTS:

COB

Electricity Price Index

June 27, 2001

DATE	Firm On Peak	Volume MWHS	Firm Off Peak	Volume MWHS	Non Firm On Peak	Volume MWHS	Non Firm Off Peak	Volume MWHS	Sunday & NERC 24 HOUR	Volume MWHS
June 27, 2001	\$41.58	5,600	\$35.50	1,200						
June 26, 2001	\$40.97	5,300	\$34.00	400	\$47.50	0	\$35.00	250		
June 25, 2001	\$73.12	11,500	\$55.36	4,400	\$55.50	700	\$50.00	125		
June 24, 2001							\$70.00	100		
June 23, 2001	\$81.00	1,500	\$57.37	2,200	\$74.04	520	\$68.34	290	554.33	3,400
June 22, 2001	\$81.00	1,500	\$57.37	2,200	\$87.30	550	\$81.10	1,040		
June 21, 2001	\$87.36	8,400	\$53.73	2,200	\$91.35	2,298	\$54.50	0		
June 20, 2001	\$95.00	6,000	\$57.11	1,900	\$102.38	2,759	\$100.58	2,175		
June 19, 2001	\$108.71	3,400	\$63.00	1,400	\$116.75	3,534	\$110.25	600		
June 18, 2001	\$61.41	6,400	\$44.58	2,400	\$155.09	1,742	\$130.24	405		
June 17, 2001							\$84.31	2,390		
June 16, 2001	\$42.83	5,888	\$34.62	2,600	\$75.70	1,115	\$69.23	1,367	\$45.59	9,500
June 15, 2001	\$42.83	5,888	\$34.62	2,600	\$79.49	790	\$72.13	740		
June 14, 2001	\$55.58	4,800	\$42.46	3,744	\$62.25	840	\$60.00	145		
June 13, 2001	\$60.13	6,000	\$45.92	2,400	\$100.00	25	\$95.80	715		
June 12, 2001	\$50.76	10,000	\$37.59	1,800	\$77.14	210	\$35.00	290		
June 11, 2001	\$55.90	7,200	\$37.86	1,400	\$75.84	783	\$37.50	0		
June 10, 2001							\$101.56	1,250		
June 9, 2001	\$41.07	8,400	\$26.82	3,208	\$100.50	3,110	\$94.57	230	537.34	3,340
June 8, 2001	\$41.07	8,400	\$26.82	3,208	\$112.49	475	\$87.19	1,720		
June 7, 2001	\$54.61	5,600	\$30.36	3,208	\$86.68	2,743	\$61.89	1,875		
June 6, 2001	\$64.07	9,750	\$35.63	3,808	\$75.00	0	\$38.50	0		
June 5, 2001	\$101.83	4,800	\$49.32	3,208	\$70.22	230	\$25.00	75		
June 4, 2001	\$160.42	4,800	\$83.24	3,136	\$69.58	473	\$55.00	0		
June 3, 2001							\$71.25	200		
June 2, 2001	\$148.35	6,800	\$77.14	4,528	\$96.00	900	\$20.00	150	\$89.58	3,500
June 1, 2001	\$148.35	6,800	\$77.14	4,528	\$178.56	1,310	\$171.93	775		
May 31, 2001	\$164.80	2,000	\$86.07	2,800	\$225.96	1,185	\$191.27	955		
May 30, 2001	\$116.80	6,432	\$46.98	5,600	\$175.50	3,107	\$134.51	562		
May 29, 2001	\$162.54	4,400	\$82.20	4,200	\$180.01	473	\$38.75	210		
May 28, 2001							\$25.48	1,275	511.28	21,524

Explanatory Notes:

Index: Weighted average price of megawatt-hours sold at COB. The Index is quoted in \$/Mwh.

NUMBERS HIGHLIGHTED = REVISED      NUMBERS HIGHLIGHTED = SURVEYED      N/Q = NO QUOTE  
HIGHLIGHTED CELLS = ONE DAY LAG

For questions or comments please call Ernest Onukogu (609) 520-4663 or Antoine Eustache (609) 520-7058.

EXHIBIT M – Form of Unqualified Opinion of Legal Counsel

\_\_\_\_\_, 2001

PacifiCorp Power Marketing, Inc.  
830 NE Holladay, Suite 250  
Portland, Oregon 97232

Ladies and Gentlemen:

Re: Master Power Purchase and Sale Agreement between [Company] and the California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System

I have examined the Ten Year Power Purchase Agreement dated July \_\_, 2001 (the "Master Agreement") between PacifiCorp Power Marketing, Inc. (the "Company") and the California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("California Energy Resource Scheduler" or "CDWR-CERS") and such other documents and information as I have deemed necessary to render this opinion.

In my opinion:

1. CDWR-CERS has the requisite power and authority to execute and deliver the Master Agreement and to perform its obligations under the Master Agreement.
2. The Master Agreement has been duly authorized, executed and delivered by CDWR-CERS and constitutes a valid and binding obligation of CDWR-CERS enforceable in accordance with its terms except as enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforcement of creditors' rights generally or by general principles of equity, including the possible unavailability of specific performance or injunctive relief, regardless of whether such enforceability is considered in proceeding in equity or at law, or by principles of public policy.
3. Neither the execution and delivery of the Master Agreement by CDWR-CERS nor the performance of the transactions contemplated therein by CDWR-CERS will (a) result in the violation by CDWR-CERS of any provision of the California Constitution or any statute, rule or regulation (b) result in a default by CDWR-CERS under, or any breach by CDWR-CERS of, any indenture, mortgage, deed of trust, loan agreement or other evidence of indebtedness, agreement or instrument to which CDWR-CERS is a party or by which CDWR-CERS is bound or (c) result in the violation by CDWR-CERS of any judgment, order, writ, injunction or decree of any court or governmental agency or body binding upon CDWR-CERS or any of its properties.
4. No consent, approval, authorization or order of, or registration or qualification with, any governmental agency or body is required of CDWR-CERS in connection with the execution and delivery or the performance of the Master Agreement or the transactions contemplated therein.

Very truly yours,

Susan Weber, Chief Counsel  
California Department of Water Resources

EXHIBIT N - Power Purchaser's Instructions for Seller's Notification of Force Majeure  
or Forced Outages

EXHIBIT O - [Intentionally Reserved]

## Exhibit P -Cycling and Heat Rate Surcharges

### Cycling Charges

For each complete plant startup (i.e., both combustion turbine generators and the steam generator cycling off and on) up to 25 such start ups per Operating Year, the applicable costs shall be \$4,400 for short term fuel and auxiliary power. For each complete plant startup in excess of 25 such starts per Operating Year, the applicable costs shall include such \$4,400 charge, plus \$14,000 for long term impact on plant maintenance costs.

Each partial plant startup (i.e., only one of the combustion turbines cycling off and on) costs \$2,050 of short term fuel and auxiliary power, plus \$7,700 for long term impact on plant maintenance costs.

### Heat Rate Surcharges added to the Contract Heat Rate as applicable:

"2x1" operation at the applicable Minimum Generation Level: 700 Btu/Kwh

"1x1" operation at full output: 500 Btu/Kwh

"1x1" operation at the applicable Minimum Generation Level: 1,400 Btu/Kwh