

Ordinance No. 123276

Council Bill No. 116821

AN ORDINANCE relating to the City Light Department; authorizing the execution of additional agreements necessary or convenient to effectively manage the Department's existing transmission capacity rights in order to facilitate efficient and economical delivery of energy resources, including without limitation, amendments and extensions to existing point-to-point transmission service agreements.

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Bruce A. Hunsell

Councilmember

**Committee Action:**

4/7/10 Pass BH

4-12-10 Passed (Excused: Clark)

CF No. \_\_\_\_\_

|                              |   |   |
|------------------------------|---|---|
| Date Introduced:             | <u>3.22.10</u>  |   |
| Date 1st Referred:           | To: (committee)<br><u>Energy, Technology + Civil Rights</u> |   |
| Date Re - Referred:          | To: (committee)   |   |
| Date Re - Referred:          | To: (committee)   |   |
| Date of Final Passage:       | Full Council Vote:<br><u>8-0</u>                            |   |
| Date Presented to Mayor:     | Date Approved:<br><u>4.16.10</u>                            |   |
| Date Returned to City Clerk: | Date Published:   | T.O. <input checked="" type="checkbox"/><br>F.T. <input type="checkbox"/> |
| Date Vetoed by Mayor:        | Date Veto Published:  |   |
| Date Passed Over Veto:       | Veto Sustained:   |   |

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_ (initial/date)

LAW DEPARTMENT

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed

ORDINANCE 123276

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3 AN ORDINANCE relating to the City Light Department; authorizing the execution of additional  
4 agreements necessary or convenient to effectively manage the Department's existing  
5 transmission capacity rights in order to facilitate efficient and economical delivery of  
6 energy resources, including without limitation, amendments and extensions to existing  
7 point-to-point transmission service agreements.

8 WHEREAS, under terms generally consistent with the Federal Energy Regulatory Commission's  
9 ("FERC") pro forma Open Access Transmission Tariff ("OATT"), City Light has  
10 previously executed with several transmission service providers, including Bonneville  
11 Power Administration, PacifiCorp, Idaho Power Company and Avista Corporation (each  
12 an "OATT Transmission Service Provider"), point-to-point transmission service  
13 agreements ("PTP Agreements") to deliver power from City Light's owned and  
14 purchased energy resources; and

15 WHEREAS, each OATT Transmission Service Provider provides transmission service pursuant  
16 to an individual OATT, approved by FERC, which it updates from time to time to  
17 conform the terms of such OATT to FERC's revised pro forma OATT; and

18 WHEREAS, each of City Light's PTP Agreements includes various provisions, guided by its  
19 underlying OATT, that enable City Light to manage its transmission capacity rights under  
20 such PTP Agreement by entering into additional related agreements with the same OATT  
21 Transmission Service Provider to change or redirect the locations of power injections or  
22 withdrawals, participate in capacity assessment studies, secure ancillary services  
23 necessary to ensure safe and reliable system operation and exercise rollover (i.e.,  
24 extension) rights in order to maintain such rights as long as City Light needs them; and

25 WHEREAS, City Light may from time to time under its PTP Agreements have rights to  
26 transmission capacity or other transmission services that are surplus to its needs and may  
27 wish to assign or sell such rights as permitted under the related OATTs in order to fully  
28 utilize the benefits of such agreements; and

WHEREAS, an OATT may limit the period of time that the OATT Transmission Service  
Provider may offer such amendments, extensions and additional agreements to its  
transmission customer; and

WHEREAS, City Light may need to promptly execute amendments, extensions and additional  
agreements offered by its OATT Transmission Service Providers in order to ensure that  
City Light can meet its load service obligations and/or dispose of surplus power in the  
most efficient and economical manner; NOW, THEREFORE,



1  
2 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

3           Section 1. The Superintendent of the City Light Department, or his designee, is hereby  
4 authorized to execute for and on behalf of the City of Seattle additional agreements with its  
5 existing OATT Transmission Service Providers, other utilities, and transmission-related service  
6 providers that are necessary or convenient to effectively manage City Light's existing  
7 transmission capacity rights on terms and conditions that the Superintendent deems in the best  
8 interests of City Light, including without limitation amendments and extensions of City Light's  
9 existing PTP Agreements; provided that such amendments, extensions and additional agreements  
10 will not cause City Light to exceed its then current budget authority. Such amendments,  
11 extensions and additional agreements may pertain to, but are not limited to, changing or  
12 redirecting transmission service to new points of delivery and/or points of receipt, participation  
13 in system impact and facilities studies, securing ancillary services, rolling over firm transmission  
14 rights and reassigning or remarketing any surplus transmission services as may become available  
15 from time to time.  
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1 Section 2. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the 12<sup>th</sup> day of April, 2010, and  
5 signed by me in open session in authentication of its passage this  
6 12<sup>th</sup> day of April, 2010.

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10 President \_\_\_\_\_ of the City Council

11 Approved by me this 16 day of April, 2010.

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15 Michael McGinn, Mayor

16 Filed by me this 19<sup>th</sup> day of April, 2010.

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18   
19 City Clerk

20 (Seal)



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

| <b>Department:</b> | <b>Contact Person/Phone:</b> | <b>DOF Analyst/Phone:</b> |
|--------------------|------------------------------|---------------------------|
| City Light         | Robert Cromwell/684-3856     | Karl Stickel/684-8085     |

**Legislation Title:**

AN ORDINANCE relating to the City Light Department; authorizing the execution of additional agreements necessary or convenient to effectively manage the Department's existing transmission capacity rights in order to facilitate efficient and economical delivery of energy resources, including without limitation, amendments and extensions to existing point-to-point transmission service agreements.

• **Summary of the Legislation:**

The proposed ordinance will authorize City Light to execute additional transmission agreements necessary to effectively manage the Department's existing transmission capacity rights, which were previously acquired from several Open Access Transmission Tariff ("OATT") transmission service providers. It also authorizes City Light to reassign or remarket any surplus transmission services as may become available from time to time through its transmission agreements.

• **Background:**

City Light is a party to several point-to-point transmission service agreements ("PTP Agreements") with OATT transmission service providers, which are used to deliver power from City Light's owned and purchased energy resources to Seattle or to the purchasers of City Light's surplus energy or capacity. These OATT transmission service providers include Bonneville Power Administration, PacifiCorp, Idaho Power Company and Avista Corporation.

Each OATT transmission service provider provides transmission service pursuant to an individual OATT that is generally consistent with the terms and conditions of the Federal Energy Regulatory Commission's ("FERC") pro forma OATT and is approved by FERC. Since FERC transmission market policies are constantly evolving, FERC revises its pro forma OATT from time to time, which in turn requires that each transmission service provider's OATT be updated to conform to FERC's revised rules and pro forma OATT. Sometimes such changes also require transmission customers like City Light to enter into additional amendments, extensions or other related service agreements with its OATT transmission service providers in order to fully utilize the rights available under its PTP Agreements.

For example, each PTP Agreement includes various provisions, guided by its underlying OATT, that enable City Light to manage its transmission capacity rights under such PTP



Agreement by entering into additional related agreements to change or redirect the locations of power injections or withdrawals, participate in capacity assessment studies, secure ancillary services necessary to ensure safe and reliable system operation and exercise rollover (i.e., extension) rights in order to maintain such rights as long as City Light needs them.

An OATT may limit the period of time that the OATT transmission service provider can offer such amendments, extensions and additional agreements to its transmission customer. The proposed ordinance will provide the authority that City Light needs to promptly execute amendments, extensions and additional agreements offered by its transmission service providers in order to ensure that City Light can meet its load service obligations and/or dispose of surplus power in the most efficient and economical manner.

In addition, City Light may from time to time under its PTP Agreements have rights to transmission capacity or other transmission services that are surplus to its needs and may wish to assign or sell such rights as permitted under the related OATTs in order to fully utilize the benefits of such agreements. The proposed ordinance will provide explicit authority for City Light to sell such surplus transmission services in order to generate incremental revenue to help offset its purchased power costs.

- *Please check one of the following:*

**This legislation does not have any financial implications.**

**This legislation has financial implications.**

***Appropriations:***

| Fund Name and Number | Department | Budget Control Level* | 2009 Appropriation | 2010 Anticipated Appropriation |
|----------------------|------------|-----------------------|--------------------|--------------------------------|
|                      |            |                       |                    |                                |
| <b>TOTAL</b>         |            |                       |                    |                                |

*\*See budget book to obtain the appropriate Budget Control Level for your department.*

**Notes:** The additional agreements that will be signed as a result of this legislation will generally not increase City Light's transmission costs, but rather allow City Light to maximize efficient and economical use of the transmission rights provided under its PTP agreements. Thus, the proposed ordinance is not expected to increase City Light's budget requirements. Any actions taken by City Light in the future would be limited to those that will not cause City Light to exceed its budget authority.



**Anticipated Revenue/Reimbursement: Resulting From This Legislation:**

| Fund Name and Number | Department | Revenue Source | 2009 Revenue | 2010 Revenue |
|----------------------|------------|----------------|--------------|--------------|
|                      |            |                |              |              |
| <b>TOTAL</b>         |            |                |              |              |

*Notes:* Any transmission capacity or other services obtained under City Light's transmission agreements that are surplus to the amounts required to deliver energy resources to load in Seattle system will be remarketed by City Light or used to deliver surplus power to other parties; however, the resulting revenue will vary with market conditions and hydroelectric variability so it cannot be accurately predicted at this time.

**Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact:**

| Position Title and Department | Position # for Existing Positions | Fund Name & # | PT/FT | 2009 Positions | 2009 FTE | 2010 Positions* | 2010 FTE* |
|-------------------------------|-----------------------------------|---------------|-------|----------------|----------|-----------------|-----------|
|                               |                                   |               |       |                |          |                 |           |
|                               |                                   |               |       |                |          |                 |           |
|                               |                                   |               |       |                |          |                 |           |
| <b>TOTAL</b>                  |                                   |               |       |                |          |                 |           |

\* 2010 positions and FTE are total 2010 position changes resulting from this legislation, not incremental changes. Therefore, under 2010, please be sure to include any continuing positions from 2009.

*Notes:* None.

- **Do positions sunset in the future?**  
Not applicable.

**Spending/Cash Flow:**

| Fund Name & # | Department | Budget Control Level* | 2009 Expenditures | 2010 Anticipated Expenditures |
|---------------|------------|-----------------------|-------------------|-------------------------------|
|               |            |                       |                   |                               |
| <b>TOTAL</b>  |            |                       |                   |                               |

\* See budget book to obtain the appropriate Budget Control Level for your department.

*Notes:* Not applicable.

- **What is the financial cost of not implementing the legislation?**  
If the proposed Council Bill is not passed, City Light will be less effective in managing its transmission rights in order to efficiently and economically deliver energy resources, while



making the best use of surplus transmission rights.

- **Does this legislation affect any departments besides the originating department?**

No.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

City Light will need to execute additional agreements from time to time as necessary or convenient to effectively manage the Department's existing transmission capacity rights. Since the OATTs stipulate very short periods of time in which a contract can be offered (e.g., 15 days), it would be impractical for City Light to try to acquire contracting authority through an individual Council Bill at the time a contract is offered.

One alternative would be to develop legislation in advance of making a service request of an OATT Transmission Service Provider; however, the approach would increase City Light's risk of being trumped in time by a competing transmission request because FERC's nondiscriminatory transmission rules require that priority be granted to the first entity to make a comparable request.

- **Is the legislation subject to public hearing requirements:**

No.

- **Other Issues:**

None.

- **List attachments to the fiscal note below:**

None.





# City of Seattle

Michael McGinn, Mayor

## Office of the Mayor

March 9, 2010

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that would authorize the Superintendent of the City Light Department to enter into additional agreements needed to manage existing transmission capacity rights in order to deliver energy resources. Passage of this Council Bill would advance the City of Seattle's commitment to provide reliable, cost-effective and environmentally responsible electric power to the citizens of Seattle.

City Light is a party to several point-to-point transmission service agreements under Federal Energy Regulatory Commission ("FERC") approved Open Access Transmission Tariffs ("OATT") that enable City Light to transmit power from its owned and contracted energy resources to its customers. From time to time, revisions to such OATTs, driven by FERC's evolving transmission policies, require that City Light execute additional amendments or agreements in order to fully utilize its existing transmission capacity rights. The proposed Council Bill will enable City Light to take the steps that are necessary to effectively manage such rights in order to efficiently and economically deliver energy resources to Seattle and the power market.

Thank you for your consideration of this legislation. Should you have questions, please contact Robert Cromwell at (206) 684-3856.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McGinn".

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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253760  
CITY OF SEATTLE, CLERKS OFFICE

No. 123273,74,75,76,77,78 194

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

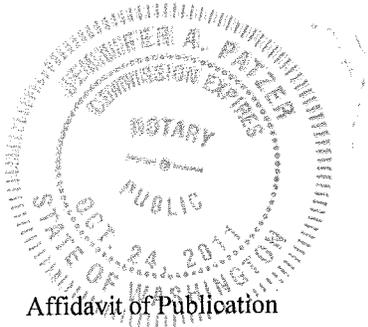
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

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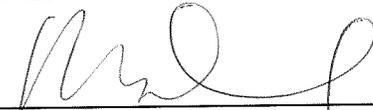
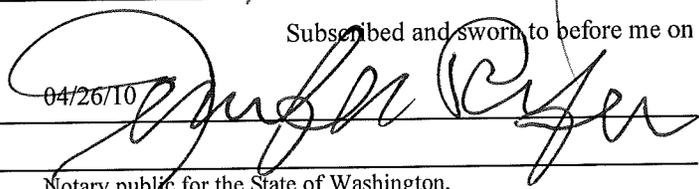
was published on

04/26/10

The amount of the fee charged for the foregoing publication is the sum of \$ 109.20, which amount has been paid in full.



Affidavit of Publication

  
\_\_\_\_\_  
Subscribed and sworn to before me on  
04/26/10   
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

## City of Seattle

### TITLE-ONLY PUBLICATION

The full text of the following legislation, passed by the City Council

on April 12, 2010, and published here by title only, will be mailed

upon request, or can be accessed at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

#### ORDINANCE NO. 123273

AN ORDINANCE relating to the Department of Parks and Recreation;

accepting deeds in green spaces (including Duwamish Head Greenbelt, West Duwamish Greenbelt, Arroyos Natural Area, and Wolf Creek Ravine), for parks (including Lake Union Park, Gas Works Park, Viretta Park, Oxbow Park, Watton donation), playfields (including Loyal Heights and High Point Playfields), p-patch (Hillman City P-Patch), and community center (Yesler Community Center), all for open space, park, and recreation purposes.

#### ORDINANCE NO. 123274

AN ORDINANCE accepting the deed for the Westbridge Building property, located at 4201 West Marginal Way Southwest, for general municipal purposes.

#### ORDINANCE NO. 123275

AN ORDINANCE relating to the Department of Parks and Recreation; accepting deeds for real property acquired during the Open Space and Trails Bond Program in St. Mark's Greenbelt, Harrison Ridge Greenbelt, Duwamish Head Greenbelt, West Duwamish Greenbelt, East Duwamish Greenbelt, Piper's Creek Natural Area, Thornton Creek Natural Area, Leschi Natural Area, Longfellow Creek Greenspace, Arroyos Natural Area, Maple School Ravine Natural Area, Llandover Woods Greenspace; and as

additions to Dearborn Park and Fairview Park; and for creation of Ernst Park and Hitt's Hill Park, all for open space, park and recreation purposes.

#### ORDINANCE NO. 123276

AN ORDINANCE relating to the City Light Department; authorizing the execution of additional agreements necessary or convenient to effectively manage the Department's existing transmission capacity rights in order to facilitate efficient and economical delivery of energy resources, including without limitation, amendments and extensions to existing point-to-point transmission service agreements.

#### ORDINANCE NO. 123277

AN ORDINANCE relating to the City Light Department; authorizing City Light to enter into multiyear agreements for transmission and/or integration and exchange service, including any other necessary or convenient related agreements, in order to continue delivering power and environmental attributes purchased from the State Line Wind Project to Seattle.

#### ORDINANCE NO. 123278

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

#### RESOLUTION NO. 31194

A RESOLUTION approving the proposed budget of the Skagit Environmental Endowment Commission for fiscal year 2010.

Date of publication in the Seattle Daily Journal of Commerce, April 26, 2010.

4/26(253760)

State

ing County

**MASTER TRANSMISSION RIGHTS ASSIGNMENT AGREEMENT**

THIS MASTER TRANSMISSION RIGHTS ASSIGNMENT AGREEMENT (this "Agreement") is made and entered into as of January 28, 2011 (the "Effective Date"), by and between The City of Seattle, by and through its City Light Department, a Washington municipal corporation ("First Party"), and Public Utility District No. 1 of Franklin County, a Washington public utility district ("Second Party"), (First Party and Second Party are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties").

WHEREAS, each Party holds certain rights to transmission service from the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("BPA"), under one or more Transmission Agreements (as hereinafter defined);

WHEREAS, each Party wishes from time to time to enter into transactions with the other Party pursuant to which one Party as Reseller (as hereinafter defined) would assign certain of its rights under a Transmission Agreement to the other Party as Assignee (as hereinafter defined); and

WHEREAS, the Parties desire to enter into this Agreement, as an enabling agreement for transmission assignment transactions between the Parties, to set forth their respective rights and obligations with respects to such transactions.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and conditions herein contained, the Parties hereby agree as follows:

1. Defined Terms.

1.1. Terms Defined in this Agreement. In this Agreement, the following capitalized terms will have the following meanings:

- (a) "AREF" has the meaning set forth in Section 4.2.
- (b) "Assignee" means the Party that is the Assignee (as defined in the BPA Tariff) under the applicable Transaction.
- (c) "Assignment Term" means, in the case of any Transaction, the Assignment Term as defined in the applicable Transaction.
- (d) "BPA" has the meaning set forth in the Recitals to this Agreement.
- (e) "BPA Tariff" means the BPA Open Access Transmission Tariff (or any successor thereto) as in effect at the relevant time during the Term.
- (f) "Business Day" means a day, other than a Saturday, Sunday, or Federal Reserve Bank holiday; and a Business Day will open at 8:00 a.m. and close at 5:00 p.m. PPT.

(g) "Calendar Month" means a calendar month during the Term commencing at 0000 hours PPT on the first day of the month and ending at 2400 hours PPT on the last day of the month.

(h) "Claiming Party" has the meaning set forth in Section 8.

(i) "Confirmation" means a written notice, substantially in the form of Exhibit A to this Agreement, confirming the specific terms of a Transaction.

(j) "Credit Rating" means, with respect to any public utility district or other municipal corporation, the underlying rating then assigned to its senior, unsubordinated electric system revenue bonds by S&P, Moody's or Fitch (not taking into account any third-party credit enhancement).

(k) "Defaulting Party" has the meaning set forth in Section 13.1.

(l) "Downgrade Event" means, in the case of any entity, that (i) the Credit Rating of such entity falls below "BBB-" from S&P or "Baa3" from Moody's or "BBB-" from Fitch, or (ii) such entity does not have a Credit Rating by at least one of S&P, Moody's and Fitch.

(m) "Effective Date" has the meaning set forth in the Preamble to this Agreement.

(n) "Event of Default" has the meaning set forth in Section 13.1.

(o) "Fed Funds Rate" means, the Federal Funds effective rate published in the N.Y. Federal Reserve Statistical Release H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System for that day. If such rate is not so published for any day which is a Local Business Day, the Federal Funds Rate for such day shall be the arithmetic mean of the rates for the last transaction in overnight Federal funds arranged by three leading brokers of Federal funds transactions in New York City selected by Secured Party in good faith on such day.

(p) "Fitch" means Fitch Ratings Ltd. or its successor.

(q) "Force Majeure" means an event that prevents the Claiming Party from performing any of its obligations under this Agreement, that is not within the reasonable control of the Claiming Party, and that by the exercise of due diligence the Claiming Party is unable to avoid, cause to be avoided, or overcome. "Force Majeure" specifically includes any "force majeure event" or "uncontrollable force" or similar term under the BPA Tariff.

(r) "Governmental Authority" means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law.

(s) "Interest Rate" means (i) two hundred basis points above the per annum rate of interest equal to the prime lending rate for such day as published in the *Wall Street Journal* under "Money Rates," or (ii) the maximum rate permitted by applicable law, whichever is less.

(t) "Letter of Credit" means an irrevocable, transferable, standby letter of credit, reasonably acceptable in form and substance to the beneficiary thereof, which letter of credit is issued by a Qualified Institution.

(u) "Moody's" means Moody's Investor Service, Inc. or its successor.

(v) "NAESB" means the North American Energy Standards Board or its successor.

(w) "NERC" means the North American Electric Reliability Corporation, or its successor.

(x) "NERC Holiday" means any day designated as a holiday by NERC.

(y) "Non-Defaulting Party" has the meaning set forth in Section 13.1(a).

(z) "Off-Peak Hours" means all hours other than On-Peak Hours.

(aa) "On-Peak Hours" means the hours from HE 0700 PPT through HE 2200 PPT, Monday through Saturday except NERC Holidays (as such hours may be amended or modified by NERC from time to time during the Term).

(bb) "Party" has the meaning set forth in the Preamble to this Agreement.

(cc) "Payment Due Date" has the meaning set forth in Section 14.2.

(dd) "Performance Assurance" means, with respect to First Party, collateral in the form of one or more Letter(s) of Credit, and with respect to Second Party, cash, Letter(s) of Credit, or other security mutually acceptable to the Parties.

(ee) "Point of Delivery" has the meaning set forth in the applicable Transaction.

(ff) "Point of Receipt" has the meaning set forth in the applicable Transaction.

(gg) "PPT," or "Pacific Prevailing Time," means the prevailing time (i.e., Standard Time or Daylight Savings Time) on any given day in the Pacific Time Zone.

(hh) "Preschedule," "Prescheduled" or "Prescheduling" means the acts of each Party or its designated representatives, if applicable, notifying, requesting and confirming the quantity of power to be delivered hourly during a given day at and from the Point of Receipt to the Point of Delivery on a day-ahead preschedule basis in accordance with the terms of this Agreement.

(ii) "Qualified Institution" means a major U.S. commercial bank or a U.S. branch office of a foreign bank having, in either case, (i) assets of at least USD \$10 billion and (ii) a Credit Rating from one or more of S&P, Moody's and Fitch, which Credit Rating is at least "A-" from S&P (in the event that such bank has a Credit Rating from S&P), "A3" from Moody's (in the event that such bank has a Credit Rating from Moody's) and "A-" from Fitch (in the event that such bank has a Credit Rating from Fitch).

(jj) "Reseller" means the Party that is the Reseller (as defined in the BPA Tariff) under the applicable Transaction.

(kk) "S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc. or its successor.

(ll) "Schedule," "Scheduled" or "Scheduling" means the acts of each Party (or its designated agents or representatives) notifying, requesting and confirming, on a Preschedule, hourly schedule or real-time schedule basis, the quantity of power to be delivered hourly on any given day or days during the Assignment Term at and from the Point of Receipt to the Point of Delivery.

(mm) "Term" has the meaning set forth in Section 2.

(nn) "Transaction" means a specific transmission rights assignment transaction agreed to by the Parties under and pursuant to this Agreement.

(oo) "Transaction Price" has the meaning set forth in Section 5.

(pp) "Transaction Quantity" means a Contract Demand Quantity of Transmission Rights, as set forth in the applicable Transaction.

(qq) "Transmission Agreement" means the transmission service agreement, between BPA and Reseller, that is specified in the applicable Transaction.

(rr) "Transmission Rights" has the meaning set forth in Section 4.1.

(ss) "TSR" means transmission service request.

(tt) "USD" means United States Dollars.

1.2. Incorporation of Definitions by Reference. Capitalized terms used but not defined in this Agreement will have the meaning set forth in the BPA Tariff or in the Transmission Agreement, as the case may be.

## 2. Term; Assignment Term.

2.1. Term. The term of this Agreement (the "Term") will commence on the Effective Date and, unless earlier terminated according to the terms of this Agreement, will continue until terminated by either Party upon 30 days' prior notice to the other Party; provided, however, that

no such termination will affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination; and provided, further, that this Agreement and any other documents executed and delivered hereunder will remain in effect with respect to any Transactions entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction, or such Transactions have been terminated under Section 13.2 of this Agreement.

2.2. Assignment Term. The Assignment Term for a Transaction will be as set forth in the applicable Transaction. No interruption or curtailment of transmission, whether due to Force Majeure or otherwise, will operate to extend any Assignment Term.

3. Assignment Terms and Conditions.

3.1. Transaction Procedures.

(a) Transactions. From time to time during the Term, either Party may notify the other Party that the notifying Party is interested in entering into a Transaction under this Agreement. A Transaction can be entered into only by agreement of the Parties. The Parties' execution and delivery of this Agreement does not commit or obligate either Party to enter into any Transaction. In entering into any Transactions, the Parties are relying upon the fact that all Transactions, together with this Agreement, will constitute a single integrated agreement, and that the Parties would not otherwise enter into any Transaction. This Agreement will govern all Transactions between the Parties from and after the Effective Date, unless otherwise expressly agreed to in writing by the Parties.

(b) Assignment Terms. The terms for each Transaction will, as appropriate, include the following terms:

(i) identification of the Party that is the Reseller and the Party that is the Assignee with respect to the Transaction;

(ii) the Assignment Term, with the dates of commencement and termination of the Transaction;

(iii) the Transaction Quantity, including hourly, daily, weekly and monthly minimums and maximums, as applicable;

(iv) the Transaction Price;

(v) the Point of Receipt and the Point of Delivery; and

(vi) any other specific terms agreed upon by the Parties.

(c) Confirmation Procedures. Reseller will confirm in writing any Transaction having an Assignment Term of seven or more days by forwarding a Confirmation to Assignee by facsimile or e-mail within three Business Days after the Transaction is entered into. If Assignee objects to any term(s) of such Confirmation, Assignee will provide notice of such objections to Reseller within two Business Days

after Assignee's receipt of such Confirmation, failing which Assignee will, absent manifest error, be deemed to have accepted the terms as sent by Reseller.

3.2. Integrated Agreement; Transaction Terms Govern. Each Transaction will be governed by the provisions of this Agreement and the provisions of the applicable Transaction. For each Transaction, this Agreement and the terms of the applicable Transaction will constitute a single integrated agreement governing the Transaction, and references to this "Agreement" will encompass each and all of the foregoing. In the event of any conflict between the terms of this Agreement and the terms of a Transaction, the terms of the Transaction will govern.

3.3. Recording. Each Party hereby consents to the creation of a tape or electronic recording of each telephone conversation between the Parties (or their authorized agents or representatives) unless, in the case of any telephone conversation, a Party expressly objects to such recording at the beginning of such conversation. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any required consent of such officers and employees. Each Party further agrees that any such recording will be secured from improper access, and that such Party will not contest or assert any defense (except a defense that the tape or other recording device has been tampered with) to the validity or enforceability of such telephonic communications (or to the submission of any such recording in evidence in any proceeding or action relating to this Agreement), on the basis of (a) the failure of any such communication to comply with the requirements of any law that agreements be in writing or signed by the Party to be thereby bound or (b) the lack of authority of any employee of such Party to make such communication. Any such recording, and the terms and conditions described therein, if admissible, will be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon execution in full (or deemed acceptance) of a Confirmation, such Confirmation will control in the event of any conflict between the terms of such Confirmation and the terms of any recording.

#### 4. Assignment of Transmission Rights.

4.1. Assignment Grant. On the terms and subject to the conditions of this Agreement, effective upon entering into any Transaction, Reseller hereby assigns to Assignee, and Assignee hereby accepts and assumes from Reseller, for the applicable Assignment Term, certain rights of Seller to Point-to-Point Transmission Service under the Transmission Agreement in a MW amount not exceeding the Transaction Quantity from the Point of Receipt to the Point of Delivery under and in accordance with the terms and conditions of the Transmission Agreement, and any associated Ancillary Services under the Transmission Agreement, in each case for Assignee's exclusive benefit, all as specified in the applicable Transaction (such rights, the "Transmission Rights"). Any Transaction will constitute an assignment of Scheduling rights, in the form of a resale TSR assigned to Assignee, associated with an original TSR granted by BPA to Reseller, and as such Assignee will have sole responsibility with respect to Scheduling of the Transaction Quantity, and Reseller will have no responsibility for Scheduling the Transaction Quantity, or any portion thereof, under any Transaction. Subject to the provisions of this Agreement, Assignee will be entitled, under the applicable Transaction, to use the Transmission Rights in any manner that is permitted under and pursuant to the Transmission Agreement, the BPA Tariff and BPA's business practices.

4.2. Obligation to Post Transaction on BPA OASIS. Reseller will have the obligation to post each Transaction on the BPA OASIS, in accordance with BPA's business practices. Reseller will promptly thereafter notify Assignee of the Assignment Reference number ("AREF") of the resale TSR and will note the AREF on any applicable Confirmation.

4.3. Right to Change Point of Receipt and Point of Delivery Pursuant to Assignment Redirect Rights; Redirect Contingent Transactions. Without in any way limiting the foregoing or any other provision of this Agreement, the Transmission Rights include the right on the part of Assignee to change the Point of Receipt and Point of Delivery under the Transmission Agreement pursuant to the redirect rights permitted to Assignees under the BPA Tariff and the BPA business practices. The Parties may, by so specifying in the applicable Confirmation, condition the effectiveness of a Transaction upon successful redirection of the applicable firm transmission reservation to the Point of Receipt and the Point of Delivery specified in such Confirmation. If the effectiveness of a Transaction is so conditioned, then promptly following execution and delivery of the applicable Confirmation, Reseller will make such redirect request to BPA, and (i) effective immediately upon BPA's acceptance of such redirect request, such condition will be deemed to have been satisfied and the Transaction will remain in full force and effect, or (ii) effective immediately upon BPA's refusal of such redirect request, such condition will be deemed to have failed and the Transaction will terminate automatically and be of no further force or effect.

4.4. Reseller Remains Transmission Customer Under Transmission Agreement. The Parties acknowledge and agree that Reseller will, notwithstanding any Transaction, be and remain the Transmission Customer under the Transmission Agreement during the entire Assignment Term and otherwise, and will remain responsible for payment to BPA of any Firm Point-to-Point Transmission Charges imposed by BPA under the Transmission Agreement.

5. Transaction Price. Assignee will, for and in consideration for each Transaction, pay to Reseller, for each Calendar Month or portion thereof during the Assignment Term, the charges set forth in the applicable Transaction (such charges, collectively, the "Transaction Price"). The Transaction Price is independent of any costs or charges for Scheduled power. Each Transaction is a take or pay transaction, and therefore Assignee will be obligated to pay the full amount of the Transaction Price for the full amount of the Transaction Quantity without regard to whether or to what extent Assignee Schedules or uses the Transaction Quantity or the Transmission Rights at any time during the Assignment Term.

6. Ancillary Services; Real Power Losses.

6.1. Ancillary Services. Each Party will be responsible for payment of any and all Ancillary Services costs and charges that are imposed on such Party (as Reseller or Assignee, as the case may be, under any Transaction) under the BPA Tariff and BPA's business practices.

6.2. Real Power Losses. Assignee will be responsible for returning (or arranging for the return of), or for payment of the charges for, any and all Real Power Losses associated with, resulting from or arising out of Assignee's use of any Transmission Rights during the Assignment Term, in accordance with applicable BPA requirements (including the requirements of the BPA Tariff, BPA's business practices and the Transmission Agreement).

7. Assignee Responsible for Scheduling Transaction Quantity.

7.1. Assignee Scheduling Responsibilities. Assignee will be responsible for Scheduling the Transaction Quantity, and will have the sole and exclusive right during the Assignment Term to Schedule with BPA under the Transmission Rights.

7.2. Compliance with Applicable Requirements. Each Party covenants and agrees that, in exercising its rights and performing its responsibilities with respect to any Scheduling under or in connection with this Agreement, such Party will comply with all requirements of applicable law and regulation and each and all of the applicable BPA requirements (including the requirements of the BPA Tariff, BPA's Transmission and Ancillary Service Rate Schedules, BPA's reservation and scheduling procedures and other business practices (including Resale of Transmission Service, V5 or its successor, and NAESB OASIS Standards (including WEQ-001-11.1 RIGHTS CONVEYED, or its successor), and the Transmission Agreement.

7.3. Disclaimer of Liability by Reseller with Respect to Scheduling. Reseller will have no responsibility or liability whatsoever for or as a result of any loss, damage or liability suffered by Assignee resulting from or arising out of any act or failure to act by BPA, including any rejection by BPA of any Schedules submitted on behalf of Assignee, or any interruption or curtailment by BPA of any transmission Schedules or transmission service.

8. Force Majeure. If any Party is rendered unable by an event of Force Majeure to carry out, in whole or in part, its obligations under this Agreement, such Party (the "Claiming Party") will, as soon as practicable after the occurrence of the event, give the other Party notice thereof, including full details of the Force Majeure event, the date of its commencement, the anticipated duration if ascertainable, the performance of the Claiming Party prevented by the Force Majeure, and the actions being taken to mitigate the effects of the Force Majeure. During the pendency of the Force Majeure but for no longer period, the Claiming Party will be excused, to the extent provided for in this Agreement, from the obligations of the Claiming Party under this Agreement that are prevented by the Force Majeure. The Claiming Party will use commercially reasonable efforts to remedy the Force Majeure with all reasonable dispatch. Notwithstanding any other provision of this Agreement, in no event will a Force Majeure excuse any obligation to make payments then due or becoming due under this Agreement for performance rendered prior to the occurrence of the Force Majeure. Without limiting the foregoing, during a Force Majeure, the non-Claiming Party will not be required to perform or resume performance of its obligations under this Agreement that correspond to the obligations of the Claiming Party that are excused by the Force Majeure.

9. Limitation on Liability. **THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE**

OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND ON THE MEASURE OF DAMAGES SHALL APPLY WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

10. Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of any other Party's performance or non-performance of this Agreement; provided, however, that nothing in this Agreement will be construed to require a Party to settle any strike or labor dispute in which it may be involved.

11. Representations and Warranties; Additional Covenants.

11.1. Representations and Warranties of the Parties. Each Party represents and warrants to the other Party as follows:

(a) The execution, delivery and performance of this Agreement do not violate or conflict with such Party's partnership or membership agreement, articles or certificate of incorporation, by-laws or comparable constitutive or governing documents, any law or regulation applicable to it, any order or judgment of any Governmental Authority applicable to it, or any agreement to which it is a party or by which it is bound.

(b) This Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally, and with regard to equitable remedies, to equitable defenses and the discretion of the court before which proceedings to obtain such remedies may be pending.

11.2. Additional Representations and Warranties and Covenants of Reseller.

(a) Reseller represents and warrants that it is the Transmission Customer under the Transmission Agreement, and that it has the right and power to assign the

Transmission Rights to Assignee on the terms and subject to the conditions set forth in this Agreement.

(b) Reseller represents and warrants that it will, during the entire Assignment Term and otherwise, remain responsible for payment to BPA of any Firm Point-to-Point Transmission Charges imposed by BPA under the Transmission Agreement.

(c) Reseller covenants and agrees that it will at all times during the Assignment Term be and remain an Eligible Customer under the BPA Tariff.

(d) Reseller covenants and agrees that in exercising its rights and performing its obligations under this Agreement, it will comply with all applicable BPA requirements (including the requirements of the BPA Tariff, the Transmission Agreement, and BPA's business practices).

(e) Reseller covenants and agrees that it will take no action during the Term that would impair the Transmission Rights or prevent or limit the right and ability of Assignee to use the Transmission Rights for its own account and benefit on the terms and subject to the conditions of this Agreement. Reseller further covenants and agrees that it will take such actions as are reasonably necessary and appropriate to protect and defend Assignee's rights under any Transaction on the terms and subject to the conditions of this Agreement.

**11.3. Additional Representations and Warranties and Covenants of Assignee.**

(a) Assignee represents and warrants that it is capable of Scheduling power and energy under any Transaction in accordance with the requirements of the BPA Tariff, BPA's business practices and any other applicable business practices and standards, including any applicable NAESB, NERC and WECC practices and standards.

(b) Assignee covenants and agrees that it will at all times during the Assignment Term be and remain an Eligible Customer under the BPA Tariff.

(c) Assignee covenants and agrees that in exercising its rights and performing its obligations under this Agreement, it will, except as and to the extent otherwise provided in this Agreement, comply with all applicable BPA requirements (including the requirements of the BPA Tariff, the Transmission Agreement, and BPA's business practices), and Assignee expressly acknowledges and agrees that any Transaction, and any assignment of Transmission Rights to Assignee, are subject to Assignee's compliance with such terms and conditions.

**11.4. Disclaimer of Other Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL AND EXPRESS OR IMPLIED.**

**12. Notices. All notices, requests, statements or payments will be made to the addresses and persons specified in Exhibit B hereto. All notices, requests, statements or payments will be made**

in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as the sender of such e-mail receives e-mail confirmation of opening of such e-mail). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when the sender of such e-mail receives e-mail confirmation of opening of such e-mail. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

### 13. Event of Default.

13.1. Events Constituting Events of Default. An "Event of Default" means, with respect to a Party (the "Defaulting Party"):

(a) the failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two Business Days after notice of such failure is given to the Defaulting Party by the Party to which the applicable payment is due (the "Non-Defaulting Party");

(b) the failure by the Defaulting Party to provide or maintain Performance Assurance in accordance with the requirements of Section 16;

(c) the material breach of any other of the material covenants, terms or conditions of this Agreement, where such breach is not remedied within 10 Business Days of notice of such breach by the Non-Defaulting Party; or

(d) the institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights, or the presentation or institution of a petition for the winding-up or liquidation of the Defaulting Party.

13.2. Rights Upon Event of Default: Termination Payment. If an Event of Default occurs, the Non-Defaulting Party will have the right to terminate all then outstanding Transactions under this Agreement effective immediately upon notice to the Defaulting Party. If Reseller is the Defaulting Party, Reseller will pay to Assignee (in addition to any other amounts which may be due from Reseller to Assignee) within 10 Business Days after the date of termination of this Agreement, as a termination payment with respect to each Transaction, (a) the amount, if any, by which (i) the price that Assignee, acting in a commercially reasonable manner, pays or, using its commercially reasonable efforts, would have paid to replace the Transmission Rights for the period between the Assignment Term termination date and the end of the Assignment Term, exceeds (ii) the Transaction Price that Assignee would have paid in

respect of the same such period if the Event of Default had not occurred (prorated for any partial Calendar Month on the basis of the number of days in such Calendar Month). If Assignee is the Defaulting Party, Assignee will pay to Reseller (in addition to any other amounts which may be due from Assignee to Reseller) within 10 Business Days after the date of termination of this Agreement, as a termination payment with respect to each Transaction, an amount equal to the positive difference, if any, obtained by subtracting (xx) the price that Reseller obtains or, using its commercially reasonable efforts, could have obtained for the Transmission Rights for the period between the Assignment Term termination date and the end of the Assignment Term from (yy) the Transaction Price for each Calendar Month (or portion thereof) during that same period (prorated for any partial Calendar Month on the basis of the number of days in such Calendar Month).

13.3. Survival of Liability. In no event will termination of this Agreement for any reason relieve any Party of any liability for any amounts due or payable to the other Party with respect to any period prior to such termination.

#### 14. Billing and Payments.

14.1. Invoices. As soon as practicable after end of each Calendar Month during the Assignment Term, Reseller will invoice Assignee detailing the amounts payable by Assignee to Reseller under this Agreement for or with respect to such Calendar Month (or portion thereof).

14.2. Payments. Payment of any invoice under this Agreement will be due from Assignee not later than 10 days after receipt of the applicable invoice or the twentieth day of the Calendar Month in which the invoice is sent, whichever is later (the "Payment Due Date").

14.3. Late Payment. All payments under this Agreement will be made by electronic transfer of immediately available funds pursuant to the instructions provided by the receiving Party. If a Party fails to pay an amount when due, such Party will pay the payee Party interest on the unpaid balance at the Interest Rate from the Payment Due Date until payment in full.

14.4. Netting. If Assignee, on the one hand, and Reseller, on the other hand, are each required to pay an amount in the same month under this Agreement or any other agreement between the Parties, then, upon written mutual agreement by the Parties, such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the payee Party the difference between the amounts owed. Each Party reserves to itself all rights, set-offs, counterclaims and other remedies or defenses to which it is or may be entitled, arising out of or in connection with this Agreement.

14.5. Disputed Payments. If any portion of any invoice is in dispute, the entire amount will nevertheless be paid when due. Within 30 days after the payment of a disputed invoice, the Party disputing payment will provide the other Party notice of the amount in dispute and a detailed description of the specific basis of the dispute. Upon the determination of the correct amount due, any amount to be refunded will be paid within 10 days of the resolution of the dispute, together with interest calculated at the Interest Rate from the date of payment to the date the refund payment is transmitted; provided, however, that in the event that any such refunded

amount is received by way of refund from BPA, then, in accordance with the provisions of Section 14.6, the only amount of interest due on such amount will be the amount of interest received thereon by the payor from BPA.

14.6. Refunds from BPA. In the event that Reseller receives any refund from BPA of amounts paid by Assignee under this Agreement, then Reseller will, within 10 days after receipt thereof, forward payment of any such amounts to Assignee. In no event will Reseller have any obligation to pay any interest on any such refund amounts except as and to the extent that BPA has paid interest thereon to Reseller.

14.7. Audit Rights. Each Party will, at reasonable intervals and upon reasonable advance notice to the other Party, be entitled, during such other Party's normal business hours, to audit, at one or more places of business of such other Party designated by such other Party, such other Party's records applicable to this Agreement as reasonably necessary and appropriate to ensure payment by such other Party of each and all of the amounts due from such other Party under this Agreement.

15. Operating Representatives. Reseller and Assignee will each by notice to the other, promptly after the commencement of the Term, appoint an operating representative to facilitate the implementation of this Agreement. Such operating representatives will have no authority to amend this Agreement.

16. Performance Assurance.

16.1. Reseller Performance Assurance Obligations. Upon the occurrence and continuation of any Downgrade Event with respect to Reseller at any time during the Assignment Term, Reseller will, within three Business Days after any request by Assignee, provide to Assignee, at Reseller's sole cost and expense, Performance Assurance, in an amount determined by Assignee in a commercially reasonable manner, as security for the full, prompt and complete payment and performance by Reseller of its obligations under this Agreement. Any failure by Reseller to provide such Performance Assurance within such three Business Day period, or to maintain such Performance Assurance in full force and effect for so long as such Downgrade Event is continuing, will constitute an Event of Default with respect to Reseller under this Agreement.

16.2. Assignee Performance Assurance Obligations. Upon the occurrence and continuation of any Downgrade Event with respect to Assignee at any time during the Assignment Term, Assignee will, within three Business Days after any request by Reseller, provide to Reseller, at Assignee's sole cost and expense, Performance Assurance, in an amount determined by Reseller in a commercially reasonable manner, as security for the full, prompt and complete payment and performance by Assignee of its obligations under this Agreement. Any failure by Assignee to provide such Performance Assurance within such three Business Day period, or to maintain such Performance Assurance in full force and effect for so long as such Downgrade Event is continuing, will constitute an Event of Default with respect to Assignee under this Agreement.

17. Miscellaneous.

17.1. Entire Agreement; Amendments. This Agreement (including the exhibits, schedules and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties, and all Transactions and Confirmations) constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any other or additional collateral, credit support or margin agreement or similar arrangement between the Parties will, upon written designation executed by both Parties, be deemed part of this Agreement and will be incorporated herein by reference. Each Party acknowledges that it has entered into this Agreement based solely upon the express representations and warranties set forth in this Agreement, and that there are no prior or contemporaneous agreements or representations affecting the subject matter of this Agreement other than those expressly set forth in this Agreement. Except as otherwise expressly provided in this Agreement, any amendment, modification or change to this Agreement, or to any Confirmation which has been executed by both Parties, will be void unless reduced to writing and executed by both Parties.

17.2. Order of Precedence. In the event of any conflict between the terms of any Transaction, this Agreement, the Transmission Agreement, or the BPA Tariff, precedence will be given first to the applicable Transaction, then this Agreement, then to the Transmission Agreement, and then to the BPA Tariff.

17.3. Time of Essence. Time is of the essence of this Agreement.

17.4. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Washington, without regard to conflict of laws principles to the contrary. Each Party waives its right to a jury trial in any proceeding arising under or in connection with this Agreement.

17.5. Assignment. No Party may assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon, enforceable by, and inure to the benefit of the Parties and their respective successors and assigns.

17.6. Parties' Rights to Designate Authorized Agents. Notwithstanding the provisions of Section 17.5, either Party may, by notice to the other Party, designate one or more persons to act as authorized agent on behalf of the notifying Party with respect to some or all of the rights and obligations of such Party (including Scheduling rights and obligations) under and in connection with this Agreement. In the event of any such designation, the act of such agent within the scope of such agent's authority (as designated in such notice) will be deemed for purposes of this Agreement to be the act of the Party on behalf of which such agent or representative is acting.

17.7. Nonwaiver. No waiver by any Party of any provision of this Agreement, in any one or more instances, will be deemed to be or construed as a waiver of the same or any other provision on any future occasion. The failure of any Party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment to any extent of such

Party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance; rather, the same will be and remain in full force and effect.

17.8. Independent Contractors. Neither Party will, by virtue of this Agreement, be deemed to be an agent, partner or franchisee of the other Party, and the relationship between Reseller and Assignee will only be that of independent contractors. Neither Party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of the other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

17.9. No Third-Party Beneficiaries. This Agreement is for the benefit of, and will be enforceable by, the Parties only. This Agreement is not intended to confer any right or benefit on any third party (including BPA). No action may be commenced or prosecuted against a Party by any third party claiming as a third-party beneficiary of this Agreement or any of the transactions contemplated by this Agreement.

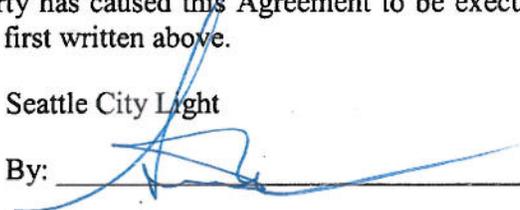
17.10. Headings; Construction. The section and paragraph headings of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of any section or paragraph. Any rule or principle of contractual construction that would otherwise require any aspect of this Agreement to be interpreted against the party primarily responsible for its drafting will not be employed in the interpretation of this Agreement.

17.11. Survival. Effective as of the expiration or termination of this Agreement for any reason, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this Agreement prior to expiration or termination of this Agreement and not discharged, (b) that the provisions of Sections 14 and 17 will survive for a period of two years following the expiration or termination for any reason of this Agreement.

17.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Executed counterparts may be exchanged by fax as evidence of execution and delivery.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its duly authorized representative as of the date first written above.

Seattle City Light

By:  \_\_\_\_\_

Name: Steven D. Kern

Title: Power Supply & Environmental Affairs  
Officer

Public Utility District No. 1 of Franklin County

By:  \_\_\_\_\_

Name: Steve Palmer

Title: General Counsel & Acting Manager

**EXHIBIT A**

**Form of Transaction Confirmation**

**TRANSACTION CONFIRMATION**

Date: [REDACTED]

Transaction No: [REDACTED]

To: [REDACTED]

Attn: [REDACTED]

This Confirmation confirms the transaction (the "Transaction") agreed to on [REDACTED] between [REDACTED] ("Reseller"), and [REDACTED] ("Assignee") (Reseller and Assignee are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties"). This Confirmation is being provided under and in accordance with, and constitutes part of and is governed by and subject to the terms and conditions of, the Master Transmission Rights Assignment Agreement dated as of [REDACTED] by and between Reseller and Assignee (the "Master Agreement"). Defined terms used but not defined in this Confirmation will, unless otherwise indicated, have the respective meanings set forth in the Master Agreement, the BPA Tariff or the Transmission Agreement, as the case may be.

The terms and conditions of the Transaction are as follows:

|  |  |         |                      |
|--|--|---------|----------------------|
| <u>Reseller:</u>                       | [REDACTED]   | NERC ID | BPA Contract Number: |
| <u>Assignee:</u>                       | [REDACTED]   | NERC ID | BPA Contract Number: |
| <u>Transmission Agreement:</u>         | Service Agreement for Point-to-Point Transmission between BPA and Reseller, BPA Contract No. [REDACTED] [, as amended]   |         |                      |
| <u>Transaction:</u>                    | This Transaction consists of the limited resale and assignment, by Reseller to Assignee for the Assignment Term described below, of the Transaction Quantity purchased from BPA by Reseller under the Transmission Agreement.                                      |         |                      |
| <u>Assignment Term:</u>                | The Assignment Term will commence at 0000 hours PPT on [REDACTED] and, unless earlier terminated in accordance with the terms and conditions of this Confirmation or extended by written agreement of the Parties, will terminate at 2400 hours PPT on [REDACTED]. |         |                      |
| <u>Transaction Quantity (MWh/hr.):</u> | Contract Demand Quantity: [REDACTED] MW<br>Flat MWh: [REDACTED] MWh<br>On-Peak MWh: [REDACTED] MWh<br>Off-Peak MWh: [REDACTED] MWh   |         |                      |
| <u>Transaction Price (\$):</u>         | [REDACTED]   |         |                      |
| <u>Redirect Contingency:</u>           | [REDACTED]   |         |                      |
| <u>Bid Price</u>                       | [REDACTED]   |         |                      |

|                                |  |
|--------------------------------|--|
| <u>(\$/MWh):</u>               |  |
| <u>Point of Receipt:</u>       | [REDACTED]   |
| <u>Point of Delivery:</u>      | [REDACTED]   |
| <u>OASIS Reference (AREF):</u> | [REDACTED]   |
| <u>Real Power Losses:</u>      | In accordance with the terms and conditions of the Master Agreement. |
| <u>Ancillary Services:</u>     | In accordance with the terms and conditions of the Master Agreement. |
| <u>Scheduling:</u>             | In accordance with the terms and conditions of the Master Agreement. |

Please confirm that the foregoing correctly sets forth the terms of our agreement with respect to this Transaction by signing this Confirmation in the space provided below and immediately returning a copy of the executed Confirmation to the undersigned representative of Reseller at the fax number set forth below.

[REDACTED]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_

AGREED TO AND ACCEPTED:

[REDACTED]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_

**EXHIBIT B**

**NOTICES**

**First Party: Seattle City Light**

**Second Party: Public Utility District No. 1  
of Franklin County**

**All Notices:**

Courier: 700 5th Ave., Suite 3200  
Seattle, WA 98104

Mail: P.O. Box 34023, Suite 3200  
Seattle, WA 98124-4023

Attn: Kurt J. Conger

Phone: (206) 386-4516

Facsimile: (206) 386-4555

Email: kurt.conger@seattle.gov

Duns: 009483629

Federal Tax ID Number: 91-6001275

OASIS Code: SCLM

**All Notices:**

Courier: 1411 W. Clark St.,  
Pasco, WA 99301-5469

Mail: PO Box 2407,  
Pasco, WA 99302-2407

Attn: Linda Esparza

Phone: (509) 542-5910

Facsimile: (509) 547-4116

Email: lesparza@franklinpud.com

Duns: 078194701

Federal Tax ID Number: 91-6001030

OASIS Code: FCPD

**Copy to:**

The Energy Authority, Inc.  
301 W. Bay Street, Suite 2600  
Jacksonville, FL 32202

Attn: Contracts Supervisor

Phone: (904) 360-1354

Facsimile: (904) 665-0353

Email: gshomper@teainc.org

Duns: 01-595-4860

Federal Tax ID Number: 59-3447271

**Invoices/Payments:**

Attn: James Louie

Phone: 206-684-3539

Facsimile: 206-233-2766

Email:

SCLPowerSTGenAcct@seattle.gov

**Invoices/Payments:**

Attn: Tim Nies or Gail Funk

Phone: (509) 546-5955 or (509) 546-  
5959

Facsimile: (509) 546-5966

Email: gfunk@franklinpud.com

**Forward Term Assignments:**

Attn: Kurt J. Conger  
Phone: 206-386-4516  
Facsimile: (206) 386-4555  
Email: kurt.conger@seattle.gov

**Prompt/Balance Month Assignments:****Preschedule**

Attn: Preschedule/Balance Month  
Phone: 206-615-0971  
Facsimile: 206-615-0969

**Real-Time**

Attn: Real-Time Desk  
Phone: 206-615-0966  
Facsimile: 206-615-0969

**Settlements:**

Attn: Connie Huynh  
Phone: 206-615-0964  
Facsimile: 206-287-5240  
Email: Settlements@seattle.gov

**Wire Transfer:**

Make payments to: City of Seattle  
Light Department  
Tax ID #91-6001275  
BNK: Wells Fargo Bank  
ABA: 121000248  
ACCT: 4758359921

**Credit and Confirmations:**

Attn: Mike Yaley, Credit Risk  
Advisor  
Phone: 206-233-2756  
Facsimile: 206-287-5120

Attn: Nhung Mach, Confirmations  
Phone: 206-684-3535  
Facsimile: 206-287-5033

**With additional Notices of an Event of Default to:**

Attn: Kurt J. Conger  
Phone: 206-386-4516  
Facsimile: 206-386-4555

**Scheduling:****Preschedule**

Attn: Dmitry Batishchev  
Phone: 425-460-1121  
Facsimile: 425-468-1792

**Real-Time**

Attn: RT Desk  
Phone: 425-460-1125  
Facsimile: 425-468-1792

**Payments: (See above.)**

Attn:  
Phone:  
Facsimile:

**Wire Transfer/ACH:**

BNK: Bank of the West  
ABA: 121100782

ACCT: 216002733

**Credit Risk:**

Attn: Malinda Prudencio, VP Risk  
Control & CRO  
Phone: 904-360-1303  
Facsimile: 904-665-0291

**With additional Notices of an Event of Default to:**

The Energy Authority, Inc.  
Attn: Mark Kinevan  
Phone: (904) 360-1315  
Facsimile: (904) 665-0316

ORDINANCE 123276

AN ORDINANCE relating to the City Light Department; authorizing the execution of additional agreements necessary or convenient to effectively manage the Department's existing transmission capacity rights in order to facilitate efficient and economical delivery of energy resources, including without limitation, amendments and extensions to existing point-to-point transmission service agreements.

WHEREAS, under terms generally consistent with the Federal Energy Regulatory Commission's ("FERC") pro forma Open Access Transmission Tariff ("OATT"), City Light has previously executed with several transmission service providers, including Bonneville Power Administration, PacifiCorp, Idaho Power Company and Avista Corporation (each an "OATT Transmission Service Provider"), point-to-point transmission service agreements ("PTP Agreements") to deliver power from City Light's owned and purchased energy resources; and

WHEREAS, each OATT Transmission Service Provider provides transmission service pursuant to an individual OATT, approved by FERC, which it updates from time to time to conform the terms of such OATT to FERC's revised pro forma OATT; and

WHEREAS, each of City Light's PTP Agreements includes various provisions, guided by its underlying OATT, that enable City Light to manage its transmission capacity rights under such PTP Agreement by entering into additional related agreements with the same OATT Transmission Service Provider to change or redirect the locations of power injections or withdrawals, participate in capacity assessment studies, secure ancillary services necessary to ensure safe and reliable system operation and exercise rollover (i.e., extension) rights in order to maintain such rights as long as City Light needs them; and

WHEREAS, City Light may from time to time under its PTP Agreements have rights to transmission capacity or other transmission services that are surplus to its needs and may wish to assign or sell such rights as permitted under the related OATTs in order to fully utilize the benefits of such agreements; and

WHEREAS, an OATT may limit the period of time that the OATT Transmission Service Provider may offer such amendments, extensions and additional agreements to its transmission customer; and

WHEREAS, City Light may need to promptly execute amendments, extensions and additional agreements offered by its OATT Transmission Service Providers in order to ensure that City Light can meet its load service obligations and/or dispose of surplus power in the most efficient and economical manner; NOW, THEREFORE,



1  
2 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

3           Section 1. The Superintendent of the City Light Department, or his designee, is hereby  
4 authorized to execute for and on behalf of the City of Seattle additional agreements with its  
5 existing OATT Transmission Service Providers, other utilities, and transmission-related service  
6 providers that are necessary or convenient to effectively manage City Light's existing  
7 transmission capacity rights on terms and conditions that the Superintendent deems in the best  
8 interests of City Light, including without limitation amendments and extensions of City Light's  
9 existing PTP Agreements; provided that such amendments, extensions and additional agreements  
10 will not cause City Light to exceed its then current budget authority. Such amendments,  
11 extensions and additional agreements may pertain to, but are not limited to, changing or  
12 redirecting transmission service to new points of delivery and/or points of receipt, participation  
13 in system impact and facilities studies, securing ancillary services, rolling over firm transmission  
14 rights and reassigning or remarketing any surplus transmission services as may become available  
15 from time to time.  
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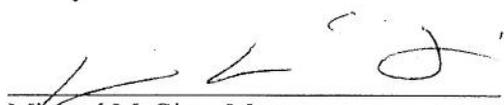


1 Section 2. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

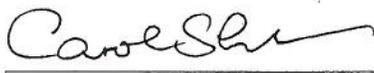
4 Passed by the City Council the 12<sup>th</sup> day of April, 2010, and  
5 signed by me in open session in authentication of its passage this  
6 12<sup>th</sup> day of April, 2010.

7  
8  
9   
10 President \_\_\_\_\_ of the City Council

11 Approved by me this 16 day of April, 2010.

12  
13  
14   
15 Michael McGinn, Mayor

16 Filed by me this 19<sup>th</sup> day of April, 2010.

17  
18   
19 City Clerk

20 (Seal)

