#22
CB 117342

ORDINANCE _____

AN ORDINANCE relating to the City Light Department; authorizing the execution of two confirmation agreements with Power County Wind Park North, LLC and Power County Wind Park South, LLC for the purchase of environmental attributes in the form of renewable energy certificates that are necessary or convenient for meeting the requirements of the Washington State Energy Independence Act; and further authorizing the execution of other necessary and convenient agreements for the receipt, tracking, transferring, management, and sale of the environmental attributes.

WHEREAS, the Revised Code of Washington ("RCW") Chapter 19.285 (the "Washington State Energy Independence Act") requires the City Light Department ("City Light") to acquire renewable resources and/or environmental attributes; and

WHEREAS, Power County Wind Park North, LLC and Power County Wind Park South, LLC have the marketing rights to the environmental attributes of the Power County Wind Park North and Power County Wind Park South wind generation developments, respectively; and

WHEREAS, the environmental attributes generated at Power County Wind Park North and Power County Wind Park South meet the requirements of RCW Chapter 19.285; and

WHEREAS, Power County Wind Park North, LLC and Power County Wind Park South, LLC wish to sell and City Light wishes to purchase such environmental attributes created by the Power County Wind Park North and Power County Wind Park South developments; and

WHEREAS, Ordinance 123499 authorized City Light's use of a Master Renewable Energy Certificate Purchase and Sale Agreement; and

WHEREAS, Power County Wind Park North, LLC and Power County Wind Park South, LLC have each executed a Master Renewable Energy Certification Purchase and Sale Agreements; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of the City Light Department ('City Light"), or his designee, is hereby authorized to execute for and on behalf of the City, two transaction-specific

Confirmation Agreements, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively. The agreements with Power County Wind Park North, LLC and Power County Wind Park South, LLC set forth the terms under which these companies will deliver environmental attributes in the form of renewable energy certificates ("RECs") to City Light from the Power County Wind Park North and Power County Wind Park South developments.

Section 2. The Superintendent of City Light, or his designee is hereby further authorized to execute for and on behalf of the City additional agreements necessary and convenient for the use of the Western Renewable Energy Generation Information System or any other system for tracking and transferring the RECs to City Light and other necessary and convenient agreements to enable City Light to use the RECs purchased hereunder to meet its regulatory requirements.

Section 3. Upon determining the availability of surplus environmental attributes within City Light's portfolio, and in order to minimize the cost to City Light's customers of compliance with the Washington State Energy Independence Act when the Superintendent believes it is cost-effective to acquire RECs in advance of need, the Superintendent, or his designee, is further authorized to execute for and on behalf of the City agreements for the sale of all or a portion of the environmental attributes purchased under the Master Renewable Energy Certificate Purchase and Sale Agreements with Power County Wind Park North, LLC and Power County Wind Park South, LLC, on terms and conditions that the Superintendent deems in the best interests of City Light provided, however, that no such sale shall jeopardize City Light's compliance with the Washington State Energy Independence Act.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this _____ day of _____, 2011.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Exhibit A: Confirmation Agreement – Renewable Energy Certificates – Power County Wind Park North, LLC

Exhibit B: Confirmation Agreement – Renewable Energy Certificates – Power County Wind Park South, LLC

EXHIBIT A

CONFIRMATION AGREEMENT

RENEWABLE ENERGY CERTIFICATES

POWER COUNTY WIND PARK NORTH, LLC

Seller: Power County Wind Park North, LLC	**Buyer: The City of Seattle, City Light Department (dba "Seattle City Light")**
Contract ID:	Contract ID:
Deal Maker:	Deal Maker:
Phone:	Phone
E-mail:	E-mail:
Fax:	Fax:

This Confirmation Agreement ("**Confirmation**") dated as of _____ ("**Trade Date**") is entered into by and between Power County Wind Park North, LLC, a Delaware limited liability company ("**Seller**") and The City of Seattle, a Washington municipal corporation, by and through its City Light Department ("**Buyer**"). Each of Seller and Buyer is sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

The following describes a Transaction between Buyer and Seller for the sale, purchase and delivery of Product pursuant to the terms of the Master Renewable Energy Certificate Purchase and Sale Agreement by and between the Parties dated _____ ("**Master Agreement**"). The Master Agreement and this Confirmation, including the Special Terms & Exceptions described in Section 8 of the Confirmation, shall be collectively referred to herein as the "**Agreement**".

---

1. **Product**: Environmental Attributes, including all Renewable Energy Credits ("**RECs**"), arising as a result of the generation of electricity from the Seller's Unit Specific Renewable Energy Facility. As of the Trade Date, Seller's Renewable Energy Facility and associated RECs meet the requirements of the Renewable Portfolio Standard of Washington State ("**RPS**"), and the definition of a Renewable Resource under Revised Code of Washington ("**RCW**") 19.285.030 (18). The Seller's Unit Specific Renewable Energy Facility is eligible to produce RECs for certification under Section II of the Green-e Energy National Standard for Renewable Electricity Products, National Standard Version 2.1 ("**Green-e Standard**"); provided, however, that the Seller's Unit Specific Renewable Facility is not required to be eligible for the Green-e Standard in year 2025 or any subsequent year. The Seller's Product is

created by a facility that meets the requirements of a Certified Renewable Energy Facility. Buyer shall have the right to disaggregate, retain or separately sell the RECs or Environmental Attributes purchased under this Agreement.

2. **Term**: The Term of this Confirmation and Agreement (Transaction) shall commence on January 1, 2024 and shall continue through December 31, 2031 (which is the Termination Date under the Power Purchase Agreement between the Seller and PacifiCorp in respect of Seller's Renewable Resource) and any additional time required until all of the obligations of the Parties under this Agreement have been satisfied.

   This Confirmation is conditional upon and shall not take effect or be enforceable against either Party unless and until all of the following have occurred:

   a. The Confirmation has been executed and delivered by Seller to Buyer and the Confirmation is executed by a properly authorized representative of Seller;

   b. The Confirmation has been executed and delivered by Buyer to Seller and the Confirmation is executed by a properly authorized representative of Buyer, and

   c. The Seller's Renewable Energy Facility has achieved the actual Commercial Operations Date under the Power Purchase Agreement by and between the Seller and PacifiCorp.

3. **Unit Specific Certified Renewable Energy Facility Information:**

   a. Name of Facility: Power County Wind Park North

   b. Location of Facility: American Falls, Idaho 83211

   c. Facility ID Number: North – QF10-350-000 ☐ EIA or ☒ QF? (check one)

   d. Fuel Type: Wind

   e. Initial Operating Date: Commercial operation date scheduled for 12/31/2011

   f. Nameplate Capacity (MW): 22.5 MW

4. **Quantity**: 100% of the Environmental Attributes (as more particularly described in Section 7 of this Confirmation) generated by the Seller's Renewable Resource during the Term of this Confirmation (Transaction).

   a. Estimated Capacity Factor: 28.7% (P50)

   b. Estimated REC Quantity: The Seller's estimated delivery of RECs to Buyer hereunder, based on the Seller's Renewable Resource having an estimated P99 capacity factor of 21%, over a period of three (3) consecutive Contract Years during the Term of this Confirmation (Transaction) is a total of 124,173 RECs

for such 3-year period ("**Seller's Guaranteed 3-Year Minimum Volume**"). If, for any reason, the Seller's Renewable Energy Facility substation transformer (the "**Transformer**") fails or the Seller's Renewable Energy Facility otherwise experiences a Force Majeure event under the Agreement or Confirmation, then the number of available hours in the calculation in this Section 4 and in determining the Seller's Guaranteed 3-Year Minimum Volume as set forth in Attachment 2 of this Confirmation will both be reduced by the total number of hours that the Transformer is not working and the total time period that the Seller's Renewable Energy Facility experiences a Force Majeure event. A failed Transformer shall be repaired or replaced as soon as reasonably practicable so that the Facility may resume, in a timely manner, its annual net capacity factor operations that was in effect prior to the Transformer failure .

5. **Purchase Price:** $12.00 per REC during the entire Term of this Confirmation (Transaction) and the Agreement.

6. **WREGIS Generator Information:**

   a. Generating Unit Identification Number: NA

   b. Generating Unit Name:

   c. Primary Facility Name: Power County Wind Park North

   d. Facility Owner Name: Power County Wind Park North, LLC (Seller)

   A completed Generator Attestation in the form of Attachment 1 to this Confirmation will be provided as soon as reasonably practicable.

7. **Delivery Requirements**: Delivery of RECs under this Confirmation shall occur via the WREGIS REC electronic tracking and transfer system. Seller shall comply with all laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of its WREGIS Certificates to Buyer during the Term of this Confirmation and Buyer shall be given sole title to all such WREGIS Certificates. Within ten (10) Business Days after receipt by Seller of RECs from WREGIS, Seller shall initiate transfer of such RECs to Buyer's WREGIS account [tbd]. Buyer shall accept each of Seller's transfers of its RECs in WREGIS within ten (10) Business Days after Seller has initiated each such transfer. After such delivery of Seller's RECs to Buyer's WREGIS account, Seller shall invoice Buyer for such RECs in accordance with Section 2.3 of the Master Agreement. Seller must deliver to Buyer WREGIS-registered RECs as provided in this Confirmation, provided, however that in the event that WREGIS ceases to operate, Seller shall be obligated to deliver to Buyer RECs that have been registered with the successor organization to WREGIS, or any other verification, registration and certification entity mutually agreed upon in writing by Buyer and Seller that can deliver tradable environmental certificates.

8. Special Terms & Exceptions:

8.1 Miscellaneous

Where the terms of this Confirmation conflict with the Master Agreement, the Confirmation shall control.

The Parties are subject to all WREGIS Operating Rules dated June 4, 2007, as may be amended, supplemented or replaced (in whole or in part) from time to time.

Verification of the Seller's RECs may be requested in writing by Buyer. If Buyer makes such a written request for such verification, or the Certification Authority requires documentation from Buyer that is in the possession of Seller or that Seller may reasonably attain, Seller shall provide such documentation and information to Buyer. Seller shall also use reasonable efforts to help Buyer comply with the documentation requirements of the Certification Authority.

8.2 Confirmation Agreement

a. **Seller's Guaranteed 3-Year Minimum Volume** as set forth in Attachment 2 of this Confirmation

i. Beginning in the fourth Contract Year of the Confirmation and continuing every Contract Year thereafter through the Term of the Confirmation, within thirty (30) days following the Delivery of the WREGIS Certificates from the prior December, Buyer shall calculate the number of RECs Delivered to the Buyer by Seller through WREGIS for each of the three prior Contract Years of the Confirmation.

ii. If the amount of RECs Delivered by Seller to Buyer in the three prior Contract Years is less than the Seller's Guaranteed 3-Year Minimum Volume as set forth in Attachment 2 of this Confirmation, then Buyer shall immediately provide a written notice of deficiency ("**Notice of Deficiency**") to Seller showing Buyer's computation of the number of Replacement RECs due to Buyer from Seller. Seller shall have seven (7) days after Seller's receipt of the Notice of Deficiency from Buyer to verify Buyer's calculation thereunder. No later than ninety (90) days following receipt by Seller of a Notice of Deficiency ("**90-Day Replacement REC Period**"), Seller shall provide Replacement RECs to Buyer in accordance with such Notice of Deficiency and this Section. The vintage of the Replacement RECs must be no older than the Contract Year immediately preceding the current Contract Year. If the Seller is unable to provide Replacement RECs to the Buyer within the 90-Day Replacement REC Period, then Seller will pay Buyer an amount equal to the administrative penalty pursuant to RCW 19.285.060 (or any successor statute) less the Contract Price under this Confirmation or, if

Buyer is able to obtain the Replacement RECs at a cost that is less than the applicable administrative penalty, Buyer shall use commercially reasonable efforts to obtain such Replacement RECs at least cost and Seller shall reimburse Buyer for the cost of such Replacement RECs less the Contract Price.

iii. Buyer will use the Excel spreadsheet shown as Attachment 2 to this Confirmation to determine the Seller's Guaranteed 3-Year Minimum Volume as set forth in Attachment 2 of this Confirmation.

8.3 Changes to Article 1 of the Master Agreement – "Definitions"

a. Section 1.19 "Credit Support" is replaced as follows:

1.19 "Credit Support" means,

(a) when the Seller is experiencing a Downgrade Event, that the Seller must provide an acceptable bond, letter of credit, guarantee or other reasonable and commercially priced security in a form and from a source approved by the Party seeking performance assurance under Section 4.2 of the Master Agreement (which approval by the Party shall not be unreasonably withheld, conditioned or delayed), and

(b) when the Buyer is experiencing a Downgrade Event, that the Buyer must provide credit assurances as described in Section 4.2(d) of the Master Agreement.

b. Section 1.23 "Downgrade Event" is replaced as follows:

1.23 "Downgrade Event" means (a) for the Seller, the Seller's Renewable Energy Facility has not produced any RECs for two (2) consecutive months during the Term of this Confirmation provided that such downtime was not the result of a Transformer failure or a Force Majeure event incident to the Seller's Renewable Resource, and (b) for the Buyer, means that the Buyer's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or becomes no longer rated by either S&P or Moody's.

8.4 Changes to Section 2.6 of the Master Agreement – "Taxes and Fees"

Section 2.6 is amended and restated in its entirety as follows:

Seller will be responsible for any Taxes imposed on the creation, ownership, or transfer of Product under this Master Agreement up to, and including, the Delivery. Buyer will be responsible for any Taxes imposed on the receipt or ownership of Product after Delivery. Each Party will be responsible for the payment of any fees, including attorney and brokers' fees, incurred by it in

connection with any Transactions hereunder, unless otherwise agreed by the Parties in the Confirmation.

8.5 Changes to Section 4.2 of the Master Agreement – "Credit Assurances"

a. Subparagraphs (a), (b), and (e) through (g) of Section 4.2 of the Master Agreement are applicable to both Parties.

b. Subparagraph (c) of Section 4.2 of the Master Agreement is applicable to Seller.

c. Section 4.2(c) of the Master Agreement is replaced as follows:

In the case of a Downgrade Event being experienced by Seller, Seller's Credit Support shall be $70,000, which Credit Support shall remain in effect until Seller demonstrates for any 12 consecutive month period after the Downgrade Event occurs, that it achieved a Capacity Factor of 21% or greater for such 12 consecutive month period.

d. Subparagraph (d) of Section 4.2 of the Master Agreement is applicable to Buyer.

8.6 Changes to Article 5 of the Master Agreement – "Events of Default, Remedies"

The following language shall be added to the end of Section 5.1(b) of the Master Agreement:

Provided, however, that Buyer's failure to Deliver Product (RECs) when due shall not be an Event of Default under this Section 5.1(b) of the Master Agreement if such non-delivery is either (i) for a period of time that is less than twelve (12) consecutive months; (ii) is the result of a Transformer failure as set forth in Section 4(b) of the Confirmation; or (iii) is the result of a Force Majeure event as set forth in Article 6 of the Master Agreement.

Section 5.1(h) of the Master Agreement is replaced with the following:

Failure by Seller to provide Replacement RECs in accordance with Attachment 2 to the Confirmation will constitute an Event of Default under this Article 5, of the Master Agreement provided that the cure period for supplying Replacement RECs under the Confirmation and the Agreement shall be ninety (90) days from the date of Seller's receipt of written notice from the Buyer of any applicable Replacement REC deficiency (Notice of Deficiency) in a respective Contract Year under the Agreement and this Confirmation.

8.7 Changes to Article 6 of the Master Agreement – "Force Majeure"

Insert the following after the second sentence: "At the conclusion of a Force Majeure event, operation of the Facility will resume as soon as reasonably practicable."

8.8 Environmental Information

Seller will provide Buyer with a copy of all completed environmental evaluation and permits for Seller's Renewable Resource related to air, land, water, wildlife, archaeological/cultural, and recreation resources, including plans for any studies not yet completed, with an estimated timeline for completion and submission.

8.9 Marketing and Media Rights

Seller shall provide to Buyer marketing and media rights including the ability to obtain, document and publish non-confidential project information and photos.

8.10 Effective Date

Notwithstanding contrary language in the Master Agreement, the Effective Date shall be the commercial operation date of Power County Wind Park North.

Buyer's Marketing Contact:

Name:
Phone
Fax:
Email:

Mailing Address:
Seattle City Light
Attn:
PO Box 34023
Seattle, WA 98124-4023

Overnight Mail:
Seattle City Light
Attn:
701 Fifth Avenue, Suite 3200
Seattle, WA 98104

Seller's Marketing Contact:

Name:
Phone:
Fax:
E-mail:

Mailing Address:
Power County Wind Park North, LLC
Attn:
Address
City, State, Zip

Overnight Mail:
Power County Wind Park North, LLC
Attn:
Address
City, State, Zip

The Parties hereby agree to the Confirmation (Transaction) that is set forth herein.

Seller: Power County Wind Park North, LLC	**Buyer: The City of Seattle, City Light Department (dba "Seattle City Light")**
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

ATTACHMENT 1 TO CONFIRMATION AGREEMENT
ATTESTATION FROM GENERATOR PARTICIPATING IN WREGIS

This Attachment 1 to the Confirmation governs generation at the Facility during the Term. Any changes shall be provided to the Buyer as soon as reasonably practicable by providing a revised Attachment 1 to the Confirmation.

1. Renewable Energy Facility Owner Information

a. Name of Owner:

b. Address of Owner:

c. Contact person: _____ Title: _____

d. Telephone: _____ Fax: _____ Email: _____

2. Renewable Energy Facility and WREGIS Registration Information

a. Name of Facility:

b. Location/Address of Facility:

c. Facility ID Number: _____ ☐ EIA or ☐ QF? (check one)

d. Fuel Type:

e. Initial Operating Date:

f. Nameplate Capacity (MW):

3. WREGIS Information

a. Generating Unit Identification Number:

b. Generating Unit Name:

c. Primary Facility Name:

4. Other

a. Is the Facility owner reporting its direct greenhouse gas emissions in a legally binding cap and trade program for the time period of generation listed on this form?

☐ Yes; list the cap and trade program: _____

☐ No

b. If Seller is providing only RECs to Purchaser and selling the associated electricity to a utility or load-serving entity, please write the name of the utility or load-serving entity here: PacifiCorp

c. If Facility has been registered in WREGIS by an entity other than Owner, complete items 1 – 3 immediately below and have an agent of the company or individual designated in WREGIS to manage Facility's account in WREGIS complete and sign this form. For the purposes of this form, such a company or individual is referred to as an "Account Manager".

(i) Name of Account Manager as appears in WREGIS:

(ii) Date that account management rights assigned to Account Manager expire:

(iii) ☐ Account Manager has attached documentation authorizing Account Manager to register Facility in WREGIS.

5. Declaration

I, (print name and title) _____("Signatory"), authorized agent of ☐ Owner / ☐ Account Manager (check one) declare that I have sufficient knowledge and authority to make the following attestation for the Effective Period of this document. I also declare the following regarding Facility's participation in WREGIS and regarding Renewable Attributes (also called "Certificates", "Renewable Energy Certificates" or "RECs") generating by Facility and tracked in Tracking System:

a. all renewable and environmental attributes associated with the production of electricity from Facility, including any and all CO2 benefits, emissions offsets, reductions or claims, are transferred to purchasers within the WREGIS Tracking System;

b. for Transactions made within WREGIS only fully aggregated Environmental Attributes are traded:

c. the Environmental Attributes of a particular MWh are sold, retired or reserved only once;

d. to the best of my knowledge, the Environmental Attributes or the electricity that is generated with the Environmental Attributes are not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by any entity other than the party on whose behalf the Environmental Attributes are retired;

e. the electricity that was generated with the attributes is not separately sold, separately marketed or otherwise separately represented as renewable energy attributable to Facility by Seller, or, to the best of my knowledge, any other entity other than Buyer.

6. Signature

As an authorized agent of Owner or Account Manager, Signatory declares that they have the knowledge and authority to attest that the statements on this form are true and correct. By signing this form, Signatory is attesting that the statements and declarations herein will remain true for the Effective Period.

If any conditions change related to the information on this form prior to Expiration Date, Signatory agrees to inform the Buyer in writing as far in advance of the change as commercially practicable.

_____ _____

Signature Date

_____

Title

_____

Organization

_____

Place of Execution

ATTACHMENT 2 TO CONFIRMATION AGREEMENT
SELLER'S GUARANTEED 3-YEAR MINIMUM VOLUME CALCULATOR

Capacity (MW)	**22.5**
Minimum Capacity Factor	**21.0%**
Three Year Guaranteed (MWh)	124,173

Example:

Contract Year	Actual Capacity Factor	Actual RECs delivered by Seller to Buyer hereunder for the current Year	Actual RECs delivered by Seller to Buyer hereunder for the last three Years	Additional RECs	Total RECs delivered by Seller to Buyer hereunder for the last three years
2024	**21%**	41,391	NA	NA	NA
2025	**21%**	41,391	NA	NA	NA
2026	**21%**	41,391	124,173	0	124,173
2027	**21%**	41,391	124,173	0	124,173
2028	**21%**	41,391	124,173	0	124,173
2029	**21%**	41,391	124,173	0	124,173
2030	**21%**	41,391	124,173	0	124,173
2031	**21%**	41,391	124,173	0	124,173

Change numbers with blue fonts to simulate the numbers

Actual CF=Actual capacity factor each year
Additional= the amount of REC shortage settled after the fact
Actual RECs delivered by Seller to Buyer hereunder for the last three years = actual three years generation of RECs plus additional RECs if they were provided by Seller
Total RECs delivered by Seller to Buyer for last three years = has to be greater than or equal to Three Year Guaranteed Minimum amount of RECs

EXHIBIT B

CONFIRMATION AGREEMENT

RENEWABLE ENERGY CERTIFICATES

POWER COUNTY WIND PARK SOUTH, LLC

Seller: Power County Wind Park South, LLC	**Buyer: The City of Seattle, City Light Department (dba "Seattle City Light")**
Contract ID:	Contract ID:
Deal Maker:	Deal Maker:
Phone:	Phone
E-mail:	E-mail:
Fax:	Fax:

This Confirmation Agreement ("**Confirmation**") dated as of _____ ("**Trade Date**") is entered into by and between Power County Wind Park South, LLC, a Delaware limited liability company ("**Seller**") and The City of Seattle, a Washington municipal corporation, by and through its City Light Department ("**Buyer**"). Each of Seller and Buyer is sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

The following describes a Transaction between Buyer and Seller for the sale, purchase and delivery of Product pursuant to the terms of the Master Renewable Energy Certificate Purchase and Sale Agreement by and between the Parties dated _____ ("**Master Agreement**"). The Master Agreement and this Confirmation, including the Special Terms & Exceptions described in Section 8 of the Confirmation, shall be collectively referred to herein as the "**Agreement**".

---

1. **Product**: Environmental Attributes, including all Renewable Energy Credits ("**RECs**"), arising as a result of the generation of electricity from the Seller's Unit Specific Renewable Energy Facility. As of the Trade Date, Seller's Renewable Energy Facility and associated RECs meet the requirements of the Renewable Portfolio Standard of Washington State ("**RPS**"), and the definition of a Renewable Resource under Revised Code of Washington ("**RCW**") 19.285.030 (18). The Seller's Unit Specific Renewable Energy Facility is eligible to produce RECs for certification under Section II of the Green-e Energy National Standard for Renewable Electricity Products, National Standard Version 2.1 ("**Green-e Standard**"); provided, however, that the Seller's Unit Specific Renewable Facility is not required to be eligible for the Green-e Standard in year 2025 or any subsequent year. The Seller's Product is

created by a facility that meets the requirements of a Certified Renewable Energy Facility. Buyer shall have the right to disaggregate, retain or separately sell the RECs or Environmental Attributes purchased under this Agreement.

2. **Term**: The Term of this Confirmation and Agreement (Transaction) shall commence on January 1, 2024 and shall continue through December 31, 2031 (which is the Termination Date under the Power Purchase Agreement between the Seller and PacifiCorp in respect of Seller's Renewable Resource) and any additional time required until all of the obligations of the Parties under this Agreement have been satisfied.

   This Confirmation is conditional upon and shall not take effect or be enforceable against either Party unless and until all of the following have occurred:

   a. The Confirmation has been executed and delivered by Seller to Buyer and the Confirmation is executed by a properly authorized representative of Seller;

   b. The Confirmation has been executed and delivered by Buyer to Seller and the Confirmation is executed by a properly authorized representative of Buyer, and

   c. The Seller's Renewable Energy Facility has achieved the actual Commercial Operations Date under the Power Purchase Agreement by and between the Seller and PacifiCorp.

3. **Unit Specific Certified Renewable Energy Facility Information:**

   a. Name of Facility: Power County Wind Park South

   b. Location of Facility: American Falls, Idaho 83211

   c. Facility ID Number: South – QF10-349-000 ☐ EIA or ☒ QF? (check one)

   d. Fuel Type: Wind

   e. Initial Operating Date: commercial operation date scheduled for 12/31/2011

   f. Nameplate Capacity (MW): 22.5 MW

4. **Quantity**: 100% of the Environmental Attributes (as more particularly described in Section 7 of this Confirmation) generated by the Seller's Renewable Resource during the Term of this Confirmation (Transaction).

   a. Estimated Capacity Factor: 28.7% (P50)

   b. Estimated REC Quantity: The Seller's estimated delivery of RECs to Buyer hereunder, based on the Seller's Renewable Resource having an estimated P99 capacity factor of 21%, over a period of three (3) consecutive Contract Years during the Term of this Confirmation (Transaction) is a total of 124,173 RECs

for such 3-year period ("**Seller's Guaranteed 3-Year Minimum Volume**"). If, for any reason, the Seller's Renewable Energy Facility substation transformer (the "**Transformer**") fails or the Seller's Renewable Energy Facility otherwise experiences a Force Majeure event under the Agreement or Confirmation, then the number of available hours in the calculation in this Section 4 and in determining the Seller's Guaranteed 3-Year Minimum Volume as set forth in Attachment 2 of this Confirmation will both be reduced by the total number of hours that the Transformer is not working and the total time period that the Seller's Renewable Energy Facility experiences a Force Majeure event. A failed Transformer shall be repaired or replaced as soon as reasonably practicable so that the Facility may resume, in a timely manner, its annual net capacity factor operations that was in effect prior to the Transformer failure .

5. **Purchase Price:** $12.00 per REC during the entire Term of this Confirmation (Transaction) and the Agreement.

6. **WREGIS Generator Information:**

   a. Generating Unit Identification Number: NA

   b. Generating Unit Name:

   c. Primary Facility Name: Power County Wind Park South

   d. Facility Owner Name: Power County Wind Park South, LLC (Seller)

   A completed Generator Attestation in the form of Attachment 1 to this Confirmation will be provided as soon as reasonably practicable.

7. **Delivery Requirements**: Delivery of RECs under this Confirmation shall occur via the WREGIS REC electronic tracking and transfer system. Seller shall comply with all laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of its WREGIS Certificates to Buyer during the Term of this Confirmation and Buyer shall be given sole title to all such WREGIS Certificates. Within ten (10) Business Days after receipt by Seller of RECs from WREGIS, Seller shall initiate transfer of such RECs to Buyer's WREGIS account [tbd]. Buyer shall accept each of Seller's transfers of its RECs in WREGIS within ten (10) Business Days after Seller has initiated each such transfer. After such delivery of Seller's RECs to Buyer's WREGIS account, Seller shall invoice Buyer for such RECs in accordance with Section 2.3 of the Master Agreement. Seller must deliver to Buyer WREGIS-registered RECs as provided in this Confirmation, provided, however that in the event that WREGIS ceases to operate, Seller shall be obligated to deliver to Buyer RECs that have been registered with the successor organization to WREGIS, or any other verification, registration and certification entity mutually agreed upon in writing by Buyer and Seller that can deliver tradable environmental certificates.

8. Special Terms & Exceptions:

8.1 Miscellaneous

Where the terms of this Confirmation conflict with the Master Agreement, the Confirmation shall control.

The Parties are subject to all WREGIS Operating Rules dated June 4, 2007, as may be amended, supplemented or replaced (in whole or in part) from time to time.

Verification of the Seller's RECs may be requested in writing by Buyer. If Buyer makes such a written request for such verification, or the Certification Authority requires documentation from Buyer that is in the possession of Seller or that Seller may reasonably attain, Seller shall provide such documentation and information to Buyer. Seller shall also use reasonable efforts to help Buyer comply with the documentation requirements of the Certification Authority.

8.2 Confirmation Agreement

a. **Seller's Guaranteed 3-Year Minimum Volume** as set forth in Attachment 2 of this Confirmation

i. Beginning in the fourth Contract Year of the Confirmation and continuing every Contract Year thereafter through the Term of the Confirmation, within thirty (30) days following the Delivery of the WREGIS Certificates from the prior December, Buyer shall calculate the number of RECs Delivered to the Buyer by Seller through WREGIS for each of the three prior Contract Years of the Confirmation.

ii. If the amount of RECs Delivered by Seller to Buyer in the three prior Contract Years is less than the Seller's Guaranteed 3-Year Minimum Volume as set forth in Attachment 2 of this Confirmation, then Buyer shall immediately provide a written notice of deficiency ("**Notice of Deficiency**") to Seller showing Buyer's computation of the number of Replacement RECs due to Buyer from Seller. Seller shall have seven (7) days after Seller's receipt of the Notice of Deficiency from Buyer to verify Buyer's calculation thereunder. No later than ninety (90) days following receipt by Seller of a Notice of Deficiency ("**90-Day Replacement REC Period**"), Seller shall provide Replacement RECs to Buyer in accordance with such Notice of Deficiency and this Section. The vintage of the Replacement RECs must be no older than the Contract Year immediately preceding the current Contract Year. If the Seller is unable to provide Replacement RECs to the Buyer within the 90-Day Replacement REC Period, then Seller will pay Buyer an amount equal to the administrative penalty pursuant to RCW 19.285.060 (or any successor statute) less the Contract Price under this Confirmation or, if

Buyer is able to obtain the Replacement RECs at a cost that is less than the applicable administrative penalty, Buyer shall use commercially reasonable efforts to obtain such Replacement RECs at least cost and Seller shall reimburse Buyer for the cost of such Replacement RECs less the Contract Price.

iii. Buyer will use the Excel spreadsheet shown as Attachment 2 to this Confirmation to determine the Seller's Guaranteed 3-Year Minimum Volume as set forth in Attachment 2 of this Confirmation.

8.3 Changes to Article 1 of the Master Agreement – "Definitions"

a. Section 1.19 "Credit Support" is replaced as follows:

1.19 "Credit Support" means,

(a) when the Seller is experiencing a Downgrade Event, that the Seller must provide an acceptable bond, letter of credit, guarantee or other reasonable and commercially priced security in a form and from a source approved by the Party seeking performance assurance under Section 4.2 of the Master Agreement (which approval by the Party shall not be unreasonably withheld, conditioned or delayed), and

(b) when the Buyer is experiencing a Downgrade Event, that the Buyer must provide credit assurances as described in Section 4.2(d) of the Master Agreement.

b. Section 1.23 "Downgrade Event" is replaced as follows:

1.23 "Downgrade Event" means (a) for the Seller, the Seller's Renewable Energy Facility has not produced any RECs for two (2) consecutive months during the Term of this Confirmation provided that such downtime was not the result of a Transformer failure or a Force Majeure event incident to the Seller's Renewable Resource, and (b) for the Buyer, means that the Buyer's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or becomes no longer rated by either S&P or Moody's.

8.4 Changes to Section 2.6 of the Master Agreement – "Taxes and Fees"

Section 2.6 is amended and restated in its entirety as follows:

Seller will be responsible for any Taxes imposed on the creation, ownership, or transfer of Product under this Master Agreement up to, and including, the Delivery. Buyer will be responsible for any Taxes imposed on the receipt or ownership of Product after Delivery. Each Party will be responsible for the payment of any fees, including attorney and brokers' fees, incurred by it in

connection with any Transactions hereunder, unless otherwise agreed by the Parties in the Confirmation.

8.5 Changes to Section 4.2 of the Master Agreement – "Credit Assurances"

a. Subparagraphs (a), (b), and (e) through (g) of Section 4.2 of the Master Agreement are applicable to both Parties.

b. Subparagraph (c) of Section 4.2 of the Master Agreement is applicable to Seller.

c. Section 4.2(c) of the Master Agreement is replaced as follows:

In the case of a Downgrade Event being experienced by Seller, Seller's Credit Support shall be $70,000, which Credit Support shall remain in effect until Seller demonstrates for any 12 consecutive month period after the Downgrade Event occurs, that it achieved a Capacity Factor of 21% or greater for such 12 consecutive month period.

d. Subparagraph (d) of Section 4.2 of the Master Agreement is applicable to Buyer.

8.6 Changes to Article 5 of the Master Agreement – "Events of Default, Remedies"

The following language shall be added to the end of Section 5.1(b) of the Master Agreement:

Provided, however, that Buyer's failure to Deliver Product (RECs) when due shall not be an Event of Default under this Section 5.1(b) of the Master Agreement if such non-delivery is either (i) for a period of time that is less than twelve (12) consecutive months; (ii) is the result of a Transformer failure as set forth in Section 4(b) of the Confirmation; or (iii) is the result of a Force Majeure event as set forth in Article 6 of the Master Agreement.

Section 5.1(h) of the Master Agreement is replaced with the following:

Failure by Seller to provide Replacement RECs in accordance with Attachment 2 to the Confirmation will constitute an Event of Default under this Article 5, of the Master Agreement provided that the cure period for supplying Replacement RECs under the Confirmation and the Agreement shall be ninety (90) days from the date of Seller's receipt of written notice from the Buyer of any applicable Replacement REC deficiency (Notice of Deficiency) in a respective Contract Year under the Agreement and this Confirmation.

8.7 Changes to Article 6 of the Master Agreement – "Force Majeure"

Insert the following after the second sentence: "At the conclusion of a Force Majeure event, operation of the Facility will resume as soon as reasonably practicable."

8.8 Environmental Information

Seller will provide Buyer with a copy of all completed environmental evaluation and permits for Seller's Renewable Resource related to air, land, water, wildlife, archaeological/cultural, and recreation resources, including plans for any studies not yet completed, with an estimated timeline for completion and submission.

8.9 Marketing and Media Rights

Seller shall provide to Buyer marketing and media rights including the ability to obtain, document and publish non-confidential project information and photos.

8.10 Effective Date

Notwithstanding contrary language in the Master Agreement, the Effective Date shall be the commercial operation date of Power County Wind Park South.

Buyer's Marketing Contact:	Seller's Marketing Contact:
Name:	Name:
Phone	Phone:
Fax:	Fax:
Email:	E-mail:
Mailing Address: Seattle City Light Attn: PO Box 34023 Seattle, WA 98124-4023	*Mailing Address:* Power County Wind Park South, LLC Attn: Address City, State, Zip
Overnight Mail: Seattle City Light Attn: 701 Fifth Avenue, Suite 3200 Seattle, WA 98104	*Overnight Mail:* Power County Wind Park South, LLC Attn: Address City, State, Zip

The Parties hereby agree to the Confirmation (Transaction) that is set forth herein.

Seller: Power County Wind Park South, LLC	**Buyer: The City of Seattle, City Light Department (dba "Seattle City Light")**
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

ATTACHMENT 1 TO CONFIRMATION AGREEMENT
ATTESTATION FROM GENERATOR PARTICIPATING IN WREGIS

This Attachment 1 to the Confirmation governs generation at the Facility during the Term. Any changes shall be provided to the Buyer as soon as reasonably practicable by providing a revised Attachment 1 to the Confirmation.

1. Renewable Energy Facility Owner Information

a. Name of Owner:

b. Address of Owner:

c. Contact person: _____ Title: _____

d. Telephone: _____ Fax: _____ Email: _____

2. Renewable Energy Facility and WREGIS Registration Information

a. Name of Facility:

b. Location/Address of Facility:

c. Facility ID Number: South – QF10-349-000 ☐ EIA or ☐ QF? (check one)

d. Fuel Type:

e. Initial Operating Date:

f. Nameplate Capacity (MW):

3. WREGIS Information

a. Generating Unit Identification Number:

b. Generating Unit Name:

c. Primary Facility Name:

4. Other

a. Is the Facility owner reporting its direct greenhouse gas emissions in a legally binding cap and trade program for the time period of generation listed on this form?

☐ Yes; list the cap and trade program: _____

☐ No

b. If Seller is providing only RECs to Purchaser and selling the associated electricity to a utility or load-serving entity, please write the name of the utility or load-serving entity here: PacifiCorp

c. If Facility has been registered in WREGIS by an entity other than Owner, complete items 1 – 3 immediately below and have an agent of the company or individual designated in WREGIS to manage Facility's account in WREGIS complete and sign this form. For the purposes of this form, such a company or individual is referred to as an "Account Manager".

(i) Name of Account Manager as appears in WREGIS:

(ii) Date that account management rights assigned to Account Manager expire:

(iii) ☐ Account Manager has attached documentation authorizing Account Manager to register Facility in WREGIS.

5. Declaration

I, Moshe Bonder (the Seller) ("Signatory"), authorized agent of ☒ Owner / ☐ Account Manager (check one) declare that I have sufficient knowledge and authority to make the following attestation for the Effective Period of this document. I also declare the following regarding Facility's participation in WREGIS and regarding Renewable Attributes (also called "Certificates", "Renewable Energy Certificates" or "RECs") generating by Facility and tracked in Tracking System:

a. all renewable and environmental attributes associated with the production of electricity from Facility, including any and all CO2 benefits, emissions offsets, reductions or claims, are transferred to purchasers within the WREGIS Tracking System;

b. for Transactions made within WREGIS only fully aggregated Environmental Attributes are traded:

c. the Environmental Attributes of a particular MWh are sold, retired or reserved only once;

d. to the best of my knowledge, the Environmental Attributes or the electricity that is generated with the Environmental Attributes are not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by any entity other than the party on whose behalf the Environmental Attributes are retired;

e. the electricity that was generated with the attributes is not separately sold, separately marketed or otherwise separately represented as renewable energy attributable to Facility by Seller, or, to the best of my knowledge, any other entity other than Buyer.

6. Signature

As an authorized agent of Owner or Account Manager, Signatory declares that they have the knowledge and authority to attest that the statements on this form are true and correct. By signing this form, Signatory is attesting that the statements and declarations herein will remain true for the Effective Period.

If any conditions change related to the information on this form prior to Expiration Date, Signatory agrees to inform the Buyer in writing as far in advance of the change as commercially practicable.

_____ _____

Signature Date

Secretary

Title

_____

Organization

_____

Place of Execution

ATTACHMENT 2 TO CONFIRMATION AGREEMENT
SELLER'S GUARANTEED 3-YEAR MINIMUM VOLUME CALCULATOR

Capacity (MW)	**22.5**
Minimum Capacity Factor	**21.0%**
Three Year Guaranteed (MWh)	124,173

Example:

Contract Year	Actual Capacity Factor	Actual RECs delivered by Seller to Buyer hereunder for the current Year	Actual RECs delivered by Seller to Buyer hereunder for the last three Years	Additional RECs	Total RECs delivered by Seller to Buyer hereunder for the last three years
2024	**21%**	41,391	NA	NA	NA
2025	**21%**	41,391	NA	NA	NA
2026	**21%**	41,391	124,173	0	124,173
2027	**21%**	41,391	124,173	0	124,173
2028	**21%**	41,391	124,173	0	124,173
2029	**21%**	41,391	124,173	0	124,173
2030	**21%**	41,391	124,173	0	124,173
2031	**21%**	41,391	124,173	0	124,173

Change numbers with blue fonts to simulate the numbers

Actual CF=Actual capacity factor each year
Additional= the amount of REC shortage settled after the fact
Actual RECs delivered by Seller to Buyer hereunder for the last three years = actual three years generation of RECs plus additional RECs if they were provided by Seller
Total RECs delivered by Seller to Buyer for last three years = has to be greater than or equal to Three Year Guaranteed Minimum amount of RECs

Form revised: July 12, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Light	Robert W. Cromwell, Jr./684-3856	Calvin Chow/206-684-4652

Legislation Title:

AN ORDINANCE relating to the City Light Department; authorizing the execution of two confirmation agreements with Power County Wind Park North, LLC and Power County Wind Park South, LLC for the purchase of environmental attributes in the form of renewable energy certificates that are necessary or convenient for meeting the requirements of the Washington State Energy Independence Act; and further authorizing the execution of other necessary and convenient agreements for the receipt, tracking, transferring, management, and sale of the environmental attributes.

Summary of the Legislation:

This legislation approves the confirmation agreement for the eight-year purchase of renewable energy certificates ("RECs") to allow the City Light Department ("City Light") to comply with the Washington State Energy Independence Act also known as Initiative 937 or I-937. Under these agreements, City Light would pay $12 per REC from 2024 through 2031 for approximately 110,000 RECs per year.

Background:

This legislation approves the confirmation agreements for the purchase of RECs from Power County Wind Park North, LLC and Power County Wind Park South, LLC, new wind farms located in American Falls, Idaho. These resources are expected to produce about 110,000 RECs annually. City Light will receive 100 percent of the RECs associated with the renewable resource starting in 2024 for an eight-year term. The RECs will be delivered to City Light through the Western Renewable Energy Generation Information System. City Light intends to use the RECs to partially meet its regulatory requirement under the Energy Independence Act.

__X__ This legislation has financial implications.

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2011 Appropriation	2012 Anticipated Appropriation
TOTAL				

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

Appropriations Notes: Although this legislation does have fiscal implications, these impacts will not be realized until 2024. There are no appropriation impacts in 2011 and 2012.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?** Yes. Starting in 2024, the expected annual cost for the eight-year term is $1.32 million.

b) **What is the financial cost of not implementing the legislation?** The financial cost of not implementing this legislation would be to purchase RECs or resources that are more expensive or pay the costs related to the penalty in I-937 for not having sufficient RECs. The penalty cost (for not having obtained sufficient RECs and renewable resources to meet the requirements of I-937) is approximately four times greater than the acquisition cost of the RECs proposed in this legislation.

c) **Does this legislation affect any departments besides the originating department?** No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** Alternatives include purchasing RECs from other renewable resources and/or energy plus RECs from new renewable resources. City Light is acquiring and will continue to acquire both to meet its regulatory obligation and its retail customer load requirements. Renewable resources that include energy, RECs, and delivery cost approximately six times more than this REC purchase.

e) **Is a public hearing required for this legislation?** No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** Not applicable.

g) **Does this legislation affect a piece of property?** No.

h) **Other Issues:**

List attachments to the fiscal note below: None.

City of Seattle
Office of the Mayor

November 8, 2011

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that authorizes the City Light Department to execute two confirmation agreements with Power County Wind Park North, LLC and Power County Wind Park South, LLC for the purchase of environmental attributes in the form of renewable energy certificates from two new wind developments in southern Idaho. City Light is required to purchase renewable resources and/or environmental attributes under Chapter 19.285.030 (18) of the Revised Code of Washington. These agreements will facilitate meeting this requirement.

By acquiring the "renewable energy certificates" from Power County Wind Park North and Power County Wind Park South, we are not only taking a meaningful step to assure City Light's compliance with "I-937" for a number of years in the future, we are helping to support and promote the development of new, renewable electric generating resources in the Northwest. This agreement is fully consistent with our shared goal of promoting a sustainable community, doing so in a very cost-effective manner.

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

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

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