

NON-FIRM POWER PURCHASE AGREEMENT  
BETWEEN  
TESORO REFINING AND MARKETING COMPANY  
AND  
PACIFICORP

THIS AGREEMENT, entered into this 08 day of October 2008, is by and between Tesoro Refining and Marketing Company ("**Seller**") and PacifiCorp (individually, a "**Party**" and collectively, the "**Parties**").

RECITALS

A. Seller owns, operates, and maintains a natural gas-fired cogeneration facility for the generation of electric power located in Salt Lake City, Salt Lake County, Utah with a Nameplate Capacity Rating of 25.0-megawatts ("**MW**") ("**Facility**"); and

B. Seller intends to operate the Facility as a Qualifying Facility (as such term is defined in Section 3.2.6 below), commencing delivery under this Agreement on January 1, 2009 ("**Initial Delivery Date**"); and

C. Seller estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is 190,000 megawatt-hours (MWh) subject to any limitations created pursuant to any maintenance schedules in **Exhibit D** hereto; and

D. Seller shall sell and PacifiCorp shall purchase the Net Output from the Facility in accordance with the terms and conditions of this Agreement; and

E. The Agreement constitutes a "New QF Contract" under the PacifiCorp Interjurisdictional Cost Allocation Protocol ("**Protocol**"), previously filed with the Commission pursuant to a stipulation in Docket No. 02-035-04.

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

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

1.1 "**Billing Period**" means the time period between PacifiCorp's readings of its power purchase billing meters at the Facility in the normal course of PacifiCorp's business.

Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.2 “**Commission**” means the Public Service Commission of Utah.

1.3 “**Contract Year**” means a twelve (12) month period commencing hour ending 1AM Mountain Prevailing Time (“**MPT**”) on January 1 and ending midnight MPT on December 31 of the calendar year.

1.4 “**Facility**” means Seller's natural gas-fired cogeneration facility as described in the Recitals and **Exhibit A** of this Agreement.

1.5 “**Generation Interconnection Agreement**” means the generation interconnection facilities and operation and maintenance agreements entered into separately between Seller and PacifiCorp’s transmission department, providing for the construction and operation of the interconnection facilities as described in **Exhibit C**.

1.6 “**Initial Delivery Date**” means the earliest date Seller may deliver Net Output under this Agreement, as set forth in Recital B.

1.7 “**Master Electric Service Agreement**” means the MASTER ELECTRIC SERVICE AGREEMENT entered into on the 18<sup>th</sup> day of December 2007, by and between PacifiCorp and Seller.

1.8 “**Nameplate Capacity Rating**” means the maximum capacity of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

1.9 “**Net Dependable Capacity**” means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations and reduced by the capacity required for station service or auxiliaries. For purposes of this Agreement, Net Dependable Capacity shall be the Nameplate Capacity Rating less the capacity required for station service or auxiliaries.

1.10 “**Net Output**” means all energy produced by the Facility, less station use and less transformation and transmission losses and other adjustments, if any.

1.11 “**On-Peak**” means those hours between HE0800 and HE2300 MPT (between 7:00 am and 11:00 pm MPT) Monday through Saturday excluding North American Reliability Corporation (“**NERC**”) and Western Electricity Coordinating Council (“**WECC**”) designated holidays.

1.12 “**Off-Peak**” means those hours that are not On-Peak hours.

1.13 "**Point of Delivery**" means the high side of the generation step-up transformer(s) located at the Point of Interconnection between the Facility and PacifiCorp's transmission system, as defined and specified in the Generation Interconnection Agreement and in Exhibit B.

1.14 "**Prime Rate**" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.15 "**Prudent Electrical Practices**" means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.16 "**Scheduled Maintenance Periods**" means those times, as reflected in **Exhibit D**, during which the Facility is anticipated to be shut down for routine maintenance with the advance notice to PacifiCorp as provided in Section 6.2.

## SECTION 2: TERM

2.1 This Agreement shall become effective after execution by both Parties and after approval by the Commission ("**Effective Date**"); *provided, however*, this Agreement shall not become effective until the Commission has determined that the prices to be paid for energy and capacity sold to PacifiCorp, as stated herein, are just and reasonable, and in the public interest; *and provided, further*, that energy delivery under this Agreement shall not commence prior to the Initial Delivery Date. For purposes of inter-jurisdictional cost allocation, this Agreement constitute a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Protocol and, as such, the costs of those QF provisions are allocated as a system resource unless any portion of those costs exceed the cost PacifiCorp would have otherwise incurred acquiring comparable resources. In that event, the Revised Protocol assigns those excess costs on a *situs* basis to the State of Utah. The rates, terms and conditions in this Agreement are in accordance with the rates, terms and conditions approved by the Commission in Docket No. 03-035-14 for purchases from qualifying facilities. In addition, for the purposes of inter-jurisdictional cost allocation, PacifiCorp represents that the costs of this Agreement do not exceed the costs PacifiCorp would have otherwise incurred acquiring resources in the market that are defined as "Comparable Resources" in Appendix A to the Inter-Jurisdictional Cost Allocation Revised Protocol. In the event that the Commission order

approving this Agreement contains any condition, that is materially adverse to either Party, the Party adversely impacted by the condition may terminate this Agreement by providing the other Party notice within ninety (90) days of the entry of the Commission's order.

2.2. Unless terminated sooner as provided herein, this Agreement shall terminate on December 31, 2009

### SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 Subject to Commission approval, the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

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

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a Delaware corporation having a place of business within the State of Utah, in and about the town of Salt Lake City, Utah and located within the County of Salt Lake.

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Seller's directors and officers/other management have taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 Subject to Commission approval, the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

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

3.2.6 The Facility is and shall for the term of this Agreement continue to be a "**Qualifying Facility**" ("**QF**") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("**FERC**") self-certification to PacifiCorp prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may, at its sole expense, require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing in the state of Utah stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

#### SECTION 4: DELIVERY OF POWER

4.1 Commencing on the Initial Delivery Date and continuing through the term of this Agreement, Seller shall sell and make available to PacifiCorp any and all Net Output from the Facility at the Point of Delivery as more particularly described in Section 4.2 hereto.

4.2 Seller shall provide and deliver Net Output at a maximum rate (on an averaged hour basis) equal to the Nameplate Capacity Rating. PacifiCorp may accept energy delivered at a rate exceeding the Nameplate Capacity Rating, but shall not pay for it. Seller shall have no minimum delivery obligation, however Seller shall not sell Net Output to any other party prior to the termination date specified in Section 2.2, *supra* (December 31, 2009).

4.3 Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output at a rate exceeding the Nameplate Capacity Rating through any means including, but not limited to, replacement of, modification of, or addition of existing equipment, except with the written consent of

PacifiCorp. To the extent not otherwise provided in the Generation Interconnection Agreement, all costs associated with the modifications to PacifiCorp's interconnection facilities or electric system occasioned by or related to the interconnection of the Facility with PacifiCorp's system, or any increase in generating capability of the Facility, or any increase of delivery of Net Dependable Capacity from the Facility, shall be borne by Seller.

#### SECTION 5: PURCHASE PRICE

5.1 PacifiCorp shall pay to Seller the Total Monthly Payment for the Net Output, calculated as follows:

Total Payment per Billing Period (\$) =  $\Sigma$  Total On-Peak Payment and Total Off-Peak Payment.

Where:

Total On-Peak Payment =  $\$95.85 * \text{Net Output during On-Peak periods in each Billing Period} * 1.0293$

and

Total Off-Peak Payment =  $\$42.34 * \text{Net Output during Off-Peak periods in each Billing Period} * 1.0293$

The 1.0293 adjustment factor accounts for avoided line losses.

5.2 The amount of Net Output purchased by PacifiCorp in any Billing Period will be calculated as follows:

Net Output (MWh) =  $(M1 + M2) - M3$

Where:

M1 = the meter reading for meter No. 77611 for the Billing Period

M2 = the meter reading for meter No. 77612 for the Billing Period

M3 = the meter reading for meter No. 77613 for the Billing Period

#### SECTION 6: OPERATION AND CONTROL

6.1 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or

in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement.

6.2 Seller may cease operation of the entire Facility or individual units, if applicable, for Scheduled Maintenance Periods not to exceed sixty (60) days each Contract Year at such times as are provided in the monthly maintenance schedule set forth as Exhibit D.

6.3 If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PacifiCorp of the necessity of such unscheduled maintenance, the time when such shutdown has occurred or will occur and the anticipated duration of such shutdown. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during non-peak hours.

6.4 Net Output shall be provided per Seller's schedule. Seller shall provide Buyer its estimated delivery pattern from the Seller's Qualifying Facility on the first business day of the month or as soon thereafter as practicable, for the following calendar month. Seller shall provide such schedules and schedule changes to PacifiCorp's scheduling personnel per Section 22 using the best information available, but it is understood that the delivery pattern is only an estimate and, therefore, shall not be binding on Seller.

6.5 Seller offers no guarantee of unit availability; however, Seller agrees to notify PacifiCorp of unplanned unit outage and will use reasonable commercial efforts to keep the Facility operating at highest availability for providing Net Output to PacifiCorp.

#### SECTION 7: FUEL/MOTIVE FORCE

7.1 PacifiCorp shall have no obligation to procure or pay for any fuel that might be used in the operation of the Facility.

7.2 Seller shall procure and pay for gas in the natural gas marketplace and/or use gas generated by Seller and have it delivered to the Facility by a pipeline serving the Facility or, in the case of gas generated by Seller, by Seller's pipeline. The only pipeline currently available for marketplace gas is Questar Gas Company but would include any subsequently constructed and operational pipeline capable of serving the Facility.

#### SECTION 8: [INTENTIONALLY LEFT BLANK]

#### SECTION 9: METERING

9.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, and section 5.2 of this Agreement.

9.2 Metering shall be performed at the location and in the manner specified in the Generation Interconnection Agreement, and section 5.2 of this Agreement.

9.3 The metering equipment will be inspected, tested, repaired and replaced as provided in the Generation Interconnection Agreement. If any of the inspections or tests discloses Inaccurate Metering as defined in the Generation Interconnection Agreement, a correction will be made as provided in those agreements. Any correction in billings or payments resulting from a correction in the meter records shall be settled and netted in accordance with Section 10.2.

9.4 To the extent not otherwise provided in the Generation Interconnection Agreement, all PacifiCorp's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

#### SECTION 10: BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp shall offset any amounts then due to it under the Master Electric Service Agreement and may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties or otherwise.

10.2 In the event that a portion of the bill or adjustment arising hereunder is disputed, payment of the portion not in dispute shall be made when due. Seller and PacifiCorp shall seek to make a determination on any disputed amount within sixty (60) days after issuance of Seller's notice of dispute. Nothing herein shall be construed to preclude a Party from resorting to any remedy available at law or in equity.

10.3 Any amounts from PacifiCorp to Seller owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 11: DEFAULT AND REMEDIES

11.1 The following events shall constitute defaults under this Agreement:

11.1.1 Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure to make a payment when due or) or breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within thirty (30) days following written notice;

11.1.2 Filing of a petition in bankruptcy by or against a Party if such petition is not withdrawn or dismissed within sixty (60) days after it is filed;

11.1.3 Seller's failure to cure any default under the Generation Interconnection Agreement within the time allowed for a cure under such agreement.

11.2 In the event of any default hereunder that is not cured in the manner provided for in the Agreement, the non-defaulting Party may terminate this agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

11.3 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the contract prices, until December 31, 2009.

11.4 Upon an event of default or termination event under this Agreement, in addition to and not in limitation of any other right or remedy under contract or applicable law (including any right to set-off, counterclaim, or otherwise withhold payment), the non-defaulting Party may at its option set-off, against any amounts owed to the defaulting Party, any amounts owed by the defaulting Party under any contract or agreement between the Parties. The obligations of the Parties shall be deemed satisfied and discharged to the extent of any such set-off. The non-defaulting Party shall give the defaulting Party written notice of any set-off, but failure to give such notice shall not affect the validity of the set-off.

## SECTION 12: INDEMNIFICATION, LIABILITY AND INSURANCE

12.1 Seller and PacifiCorp shall release, indemnify, protect and hold harmless each other as follows:

12.1.1 Seller shall release, indemnify, protect, and hold harmless PacifiCorp, its directors, officers, agents, representatives, successors, and assigns from and against any and all loss, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with, the energy delivered by Seller hereunder to and at the Point of Delivery, and facilities on Seller's side of the Point of Delivery, or Seller's operation and/or maintenance of the Facility, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others.

12.1.2 PacifiCorp shall release, indemnify, protect, and hold harmless Seller, its directors, officers, agents, representatives, successors, and assigns from and against any

and all loss, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with the energy delivered by Seller hereunder after the Point of Delivery, and facilities on PacifiCorp's side of the Point of Delivery, or PacifiCorp's operation and/or maintenance of such facilities, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others.

12.2 Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

12.4 Without limiting any liabilities or any other obligations of either Party, each Party shall comply with all applicable worker's compensation and employer's liability acts and shall furnish a certificate of insurance, in a form reasonably satisfactory to the other Party, prior to connection of the Facility to PacifiCorp's electric system.

12.5 Maintenance of Insurance Coverage. Without limiting any liabilities or any other obligations of Seller or PacifiCorp, each Party shall, prior to connection of the Facility to PacifiCorp's electric system, secure and continuously carry with insurers acceptable to PacifiCorp (which will not be unreasonably withheld), or self insure, the following insurance coverage:

12.5.1 Sellers shall provide all Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk policy will be maintained in accordance with terms available in the insurance market for similar facilities.

12.5.2 Workers' Compensation (Statutory limit) and Employers' Liability insurance with a minimum limit of \$ 1,000,000.

12.5.3 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement except as provided under Excess Umbrella Liability below.

12.5.4 Excess Umbrella Liability insurance with a single limit of at least \$10,000,000 per occurrence in excess of the limits of insurance provided above required to bring the sum of Commercial General Liability and Excess Umbrella Liability to \$11,000,000.

12.5.5 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming the other Party, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

12.5.6 All liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of the other Party and that any other insurance maintained by the other Party is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to the other Party if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to the other Party if canceled for any other reason. A certificate in a form satisfactory to the other Party certifying to the issuance of such insurance, shall be furnished to the other Party. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. Insurance coverage provided on a "claims-made" basis shall be maintained by each Party for a minimum period of five (5) years after the completion of this Agreement.

12.5.7 Each Party, at its option, may self-insure for any or all of the coverage described above. In the event and to the extent a party so elects, that Party shall advise the other party in writing. For all such self-insurance maintained by a Party, that Party agrees to provide the other Party all the benefits that would otherwise be available and provided under an insurance policy in accordance with the requirements set forth above in this Section 12.5, including but not limited to defense of claims.

### SECTION 13: FORCE MAJEURE

13.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which is in each case (i) beyond the reasonable control of such Party, (ii) by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and (iii) by the exercise of due diligence, such Party shall be unable to prevent or overcome. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered

wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

13.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

13.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

13.1.3 the non-performing Party uses its reasonable commercial efforts to remedy its inability to perform.

13.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

13.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

13.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to a Force Majeure event, within six months after the occurrence of the event.

#### SECTION 14: REGULATORY TERMINATION

PacifiCorp may terminate this Agreement if Seller (i) suspends operations at the Facility for more than 30 days as the result of a regulatory or legal action by either the State of Utah or the United States Environmental Protection Agency which has become final without further appeal or (ii) loses its QF certification.

#### SECTION 15: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### SECTION 16: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Utah, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

## SECTION 17: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

## SECTION 18: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

## SECTION 19: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. PacifiCorp's compliance with the terms of this Agreement is conditioned on Seller's submission to PacifiCorp prior to the Initial Delivery Date and maintaining thereafter copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility.

## SECTION 20: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

## SECTION 21: ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output

from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

SECTION 22: NOTICES

22.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested

To PacifiCorp:

**All Notices:**

Street: 825 NE Multnomah Street  
City: Portland, OR 97232  
Attn: Contract Administration, Suite 600  
Phone: (503) 813 - 5952  
Facsimile: (503) 813 - 6291  
Duns: 00-790-9013  
Federal Tax ID Number: 93-0246090

**Invoices:**

Attn: Back Office, Suite 700  
Phone: (503) 813 - 5578  
Facsimile: (503) 813 - 5580

**Scheduling:**

Attn: Resource Planning, Suite 600  
Phone: (503) 813 - 6090  
Facsimile: (503) 813 - 6265

**Payments:**

Attn: Back Office, Suite 700  
Phone: (503) 813 - 5578  
Facsimile: (503) 813 - 5580

**Wire Transfer:**

BNK: To be provided by PacifiCorp to Tesoro in separate letter

**Credit and Collections:**

Attn: Credit Manager, Suite 1900  
Phone: (503) 813 - 5684  
Facsimile: (503) 813 - 5609

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

Attn: PacifiCorp General Counsel.  
Phone: (503) 813-5029  
Facsimile: (503) 813-7252

To Tesoro:

**All Notices:**

Tesoro Refining and Marketing Company  
Attn: Technical Manager  
Raymond Lahti  
474 West 900 North  
Salt Lake City, UT 84103  
Telephone Number: (801) 521-4871  
Facsimile Number: (801) 521-4925

**With a copy to:**

Tesoro Refining and Marketing Company  
Attn: Legal Department  
300 Concord Plaza Drive  
San Antonio, TX 78216-6903  
Telephone Number: (210) 283-2280  
Facsimile Number: (210) 745-4659

**And to:**

Tesoro Refining and Marketing Company  
Attn: Procurement/Strategic Sourcing  
David Barge  
300 Concord Plaza Drive  
San Antonio, TX 78216-6903  
Fax: 210-745-4453

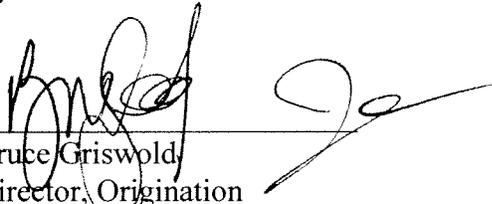
**Wire Transfer:**

BNK.: To be provided by Tesoro to PacifiCorp  
in separate letter

22.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PACIFICORP

By:   
Name: Bruce Griswold  
Title: Director, Origination

TESORO REFINING AND MARKETING COMPANY

By:   
Name: Bonnie Hitschel  
Title: Manager, Natural Gas, Power & LPGs

EXHIBIT A  
DESCRIPTION OF SELLER'S FACILITY

Seller's Facility consists of two (2) gas fired generators manufactured by Solar Turbines with a total combined Nameplate Capacity Rating of 25,000kW. More specifically, the Facilities Description is Appendix D of the Generation Interconnection Facilities Agreement between PacifiCorp and Tesoro Refining and Marketing Company dated March 17, 2004.

Location of the Facility: The Facility is located in the vicinity of the Tesoro Refinery in Salt Lake County, Utah. The location is more particularly described as follows:

Beginning at a point North 24°22'53" West 27.45 feet from the Northeast Corner of Lot 32, Block 11, Lake View Subdivision: thence North 24°22'53" West 428.4 feet; thence Southwesterly along a curve to the left 226.39 feet ;thence South 0°01'01" West 16.5 feet; thence North 89°59'37" West 27 feet; South 24°22'53" East 210.7 feet: thence South 89°59'34" East 3.3 Feet; thence South 0°01'01" East 25 feet; thence North 89°59'34" West 28.15 feet; thence South 24°22'53" East 118 feet; thence South 89°59'34" East 170 feet; thence North 24°22'52" West 118 feet; Thence South 89°59'34" East 133.784 feet to the point of Beginning.

EXHIBIT B  
POINT OF DELIVERY / PARTIES' INTERCONNECTION FACILITIES

Point of Delivery is generally described in the Generation Interconnection Agreement dated March 17, 2004 as the "Point of Interconnection", including a one line drawing and description of Generating Station, Generation Interconnection Facilities, and PacifiCorp Interconnection Facilities.

EXHIBIT C  
GENERATION INTERCONNECTION AGREEMENT

GENERATION INTERCONNECTION FACILITIES AGREEMENT between PACIFICORP  
and TESORO REFINING AND MARKETING COMPANY dated March 17, 2004

GENERATION INTERCONNECTION OPERATION AND MAINTENANCE AGREEMENT  
between PACIFICORP and TESORO REFINING AND MARKETING COMPANY dated July  
23, 2004

EXHIBIT D  
MONTHLY MAINTENANCE SCHEDULES

Scheduled Maintenance Periods during the Term are tentatively scheduled for:

Planned 5-day outage in April 2009

Planned 5-day outage in October 2009

These schedules are tentative and may be adjusted by Seller with thirty (30) day written notice to PacifiCorp.