



RESOLUTION NO. U-11228

1 A RESOLUTION authorizing the execution of a power service agreement
2 between Tacoma Power and Puget Sound Energy.

3 WHEREAS the City of Tacoma, Department of Public Utilities, Light
4 Division (d.b.a. "Tacoma Power"), supplies electric service to its industrial
5 customers pursuant the requirements of State law, the Tacoma Municipal Code
6 and Board and City Council approved policies, and

7 WHEREAS proposed new industrial service for Puget Sound Energy,
8 Inc. ("PSE") requires a contract for service, and

9 WHEREAS Tacoma Power recommends a 10 year Power Service
10 Agreement with PSE, effective January 1, 2021, to support commercial
11 operations of its liquefied natural gas operations in the Port of Tacoma, and

12 WHEREAS, on December 14, 2016, and May 10, 2017, the Board
13 considered and adopted Resolutions U-10898 and U-10928, which approved
14 the execution of reimbursement contracts with PSE to build the facilities
15 necessary to interconnect PSE's new large electric load to Tacoma Power's
16 system, and

17 WHEREAS the proposed power service agreement provides, in part:

18 (1) PSE will receive service under a New Large Load construct as
19 directed by Section IV.B.2.c.3.b of the Tacoma Power Electric Rate and
20 Financial Policy and TMC 12.06.265 as of April 1, 2021, which requires
21 that any customer demand that grows by more than 8 MW in a rolling 12
22 month period be served per this construct, and



(2) pursuant to reimbursement contracts between Tacoma Power and PSE, PSE paid for construction of a substation needed to serve PSE's anticipated 14 MW load; further, PSE is required to pay for the potential decommissioning and remediation at the end of service; therefore a substation decommissioning agreement has been negotiated and attached to the proposed Power Services Agreement.

Now, Therefore;

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That Tacoma Power's request to execute a Power Service Agreement, which includes a substation decommissioning agreement, with Puget Sound Energy, Inc., as described in the backup materials on file with the Clerk of the Board, is hereby approved, and the proper officers of the City are authorized to execute said agreement, substantially in the form on file with the Clerk of the Board and as approved by the City Attorney.

Approved as to form:

/s/
Chief Deputy City Attorney

Chair

Secretary

Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Rick Applegate, Senior Power Analyst
MEETING DATE: December 9, 2020
DATE: November 20, 2020

SUMMARY: Tacoma Power requests authority to execute a Power Service Agreement with Puget Sound Energy, Inc. (PSE).

BACKGROUND: PSE has requested a Power Service Agreement with Tacoma Power to support commercial operations of its liquefied natural gas operations in the Port of Tacoma. Tacoma Power and PSE have developed a proposed agreement that is largely consistent with arrangements between Tacoma Power and its other large industrial customers under Schedule CP, but the proposed agreement with PSE differs in two significant respects.

First, PSE will receive service under a New Large Load (NLL) rate construct. Section IV.B.2.c.3.b. of the Tacoma Power Electric Rate and Financial Policy requires that any customer demand which grows by more than 8 MW in a rolling 12 month period to be served under this construct. It provides that the charges under Schedule CP shall be increased by a marginal cost adder of 15 percent for a period of 10 consecutive years.

Second, Tacoma Power will own and operate the substation used to interconnect the PSE facility into Tacoma Power's transmission system. Because PSE does not own the substation, it was required to fund construction of the substation and enter into an agreement to pay for the substation's decommissioning and remediation at the end of its service. Accordingly, a substation decommissioning agreement has been attached to the proposed Power Service Agreement with PSE.

Tacoma Power proposes that the Public Utility Board consider the proposed Power Service Agreement with PSE at the upcoming December 9th meeting. If accepted, service to PSE under the agreement would commence on January 1, 2021.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes.

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.

While anticipated revenues from customers are budgeted, actual customer revenue is a function of actual customer demand.

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? Yes.

ATTACHMENTS: Proposed Power Service Agreement with attachments and exhibits.

CONTACT: Contact and Presenter: Rick Applegate, Senior Power Analyst, (253) 502-8012.
Supervisor: Clay Norris, Power Manager, (253) 320-0786.

POWER SERVICE AGREEMENT

THIS AGREEMENT, made, entered into, and executed in duplicate, this _____ day of _____, by and between the City of Tacoma, Department of Public Utilities, Light Division, doing business as and hereinafter called "**Tacoma Power**", and **Puget Sound Energy, Inc.**, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the "Company". Tacoma Power and the Company are collectively referred to as the "Parties" and each individually as a "Party".

RECITALS

WHEREAS, the Company requires electric energy for its liquefied natural gas facility ("Facility");

WHEREAS, the Port of Tacoma has granted an easement ("Easement") to Tacoma Power for electrical system facilities including an electrical substation needed to provide electrical power to the Facility;

WHEREAS, the Port of Tacoma was only willing to provide an easement for a substation and related facilities ("Substation") on the condition that the easement would be terminated and all improvements built on the easement removed when the Company no longer needed electrical service for the Facility;

WHEREAS, Tacoma Power was only willing to build and operate the Substation on land to which it only held a terminable easement right if Tacoma Power would bear no costs for decommissioning and demolishing the Substation;

WHEREAS, the Company has agreed to pay all said Substation decommissioning, demolition, and related costs pursuant to the Substation Decommissioning Cost Reimbursement/Payment Agreement attached as Attachment No. 2 to this Agreement;

WHEREAS, the Parties now desire to enter into this Power Service Agreement for the purchase and sale of electrical energy to be supplied to the Facility and to specify the terms and conditions associated with the Company's payment of decommissioning costs upon the termination of the Easement.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants set forth in this Agreement, the Parties hereto mutually agree as follows:

Article 1. TERM OF CONTRACT. This Agreement shall be effective at the beginning of the Hour Ending (HE) 01 Pacific Prevailing Time (PPT) on January 1, 2021 and shall continue in effect until HE 24 PPT on last day of the month ten years following, (a) except that this Agreement may be shortened in term or terminated in its entirety in the sole discretion of Tacoma Power if such shortening or termination is necessary to maintain or obtain the exclusion from gross income for federal income tax purposes of the interest on bonds issued by Tacoma Power for electric utility purposes, and (b) except that this Agreement may be terminated in its entirety in the sole discretion of Tacoma Power if the existence of this Agreement causes Tacoma Power's issuance of such bonds to be unreasonably burdensome or costly. In the event of such termination, the Superintendent of Tacoma Power may continue to serve Company based on the same terms and conditions set forth herein until such time as the Parties agree to an acceptable replacement contract.

A "Contract Year" shall be defined as at the beginning of the HE 01 PPT of January 1 of each year within the term of the contract and concluding at HE 24 PPT of December 31 of the next succeeding year.

Article 2. AGREEMENT TO SELL AND PURCHASE. Tacoma Power will deliver or make available at the point of delivery hereinafter specified and will sell to the Company, and the Company will purchase and pay for according to applicable Exhibits and Schedule CP as set forth in Tacoma Municipal Code Section 12.06.260 and as hereafter amended, all electric energy and delivery services used for its operations thereat except as herein provided. The following conditions shall apply:

(a) Point of delivery - Company's Facility located on Alexander Avenue, in the Port of Tacoma.

(b) Character of Service - Commitment under this Agreement is limited to a firm power requirement for 60 hertz, 3-phase alternating current made available or delivered at a nominal primary voltage of 12,470 volts

(c) Contract Demand and Contract Energy - As defined in Exhibit A.

(d) Resale of Power - The Company shall use all power delivered by Tacoma Power hereunder solely at said Facility and none shall be delivered or sold to third parties, or used by Company at another Facility. Use by affiliates or subsidiaries at least 50% owned by the Company (or Company's parent company) at the Facility or abutting thereon shall not be deemed a resale.

(e) Applicable Rates – The term "Applicable Rates" shall mean the Schedule CP rate and includes that one time marginal cost adder of 15 percent to Energy, Demand, Delivery, and Customer Charges as specified in Section IV.B.2.c.3.b. of the Tacoma Power Electric Rate and Financial Policy. In the event the City of Tacoma adopts Tacoma Municipal Code ("TMC") section 12.06.265, "New large load service – Schedule NLL," a rate schedule implementing Section IV.B.2.c.3.b. of the Tacoma Power Electric Rate and Financial Policy, the Parties agree that as of the effective date of TMC 12.06.265, "New large load service – Schedule NLL," the "Applicable Rates" for this Agreement, will be the rates set forth in TMC 12.06.265 "New large load service – Schedule NLL."

Article 3. INCORPORATION OF TERMS AND CONDITIONS. The General Terms and Conditions, Attachment No. 1, dated _____ are hereby incorporated herein by this reference and made a part of this Agreement. The Substation Decommissioning Cost Reimbursement/Payment Agreement, Attachment No. 2, dated _____ is hereby incorporated herein by this reference and made a part of this Agreement.

Article 4. EXHIBITS. Any and all Exhibits that may be referred to in the Agreement are, by such reference, incorporated herein and made part hereof for all purposes. Authority to execute Exhibits remains with Tacoma Power's Superintendent, except as otherwise provided herein. Original Exhibits of this Agreement include Exhibit A - Contract Demand and Contract Energy.

Article 5. ASSIGNMENT. This Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the Parties hereto. Provided however

that neither this Agreement nor any interest therein shall be transferred or assigned by either Party without prior written consent of the other Party, which consent shall not be unreasonably withheld.

Article 6. NOTICES. Any notice, except notices under Section 11(b) of the General Terms and Conditions, or demand required by this Agreement shall be deemed given when received by fax, electronic mail (with fax and electronic mail being followed with registered or certified original), registered or certified mail and with postage prepaid thereon, addressed as follows:

To Tacoma Power:
Superintendent
Tacoma Power
3628 South 35th Street
Tacoma, WA 98409-3115
Fax No.: (253) 502-8378

To the Company:
[Contact]

Either Party, by notice to the other, may hereafter designate a change in its address and addressee.

Notices pursuant to Section 11(b) in the General Terms and Conditions are deemed given when received by fax, electronic mail, or telephone (with fax or written notice confirmation immediately following), excluding voice mail.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate, each by the signatures and attest of its duly authorized officers, as of the day and date first above written.

Tacoma Power

Puget Sound Energy, Inc.

Chris Robinson, Superintendent

[Person, Role]

Approved:

Andrew Cherullo, Finance Director

Approved as to form:

Deputy City Attorney

GENERAL TERMS AND CONDITIONS

Attachment No. 1

[Date]

Power Service Agreement between Tacoma Power and Puget Sound Energy, Inc.

Section 1. FIRM POWER DEFINED. "Firm Power" is electric power which Tacoma Power will make available continuously except when the operation of Tacoma Power's facilities is suspended, interrupted, interfered with or curtailed due to causes beyond its control and as further explained in Section 11 herein.

Section 2. CONTRACT DEMAND AND CONTRACT ENERGY. The term "Contract Energy" shall mean the amount of Firm Power that Tacoma Power shall make available for the Company's use on a daily basis under the terms and conditions stated in the Agreement. The term "Contract Demand" shall mean the contractual maximum 30-minute integrated demand at which Tacoma Power shall deliver electric energy to the Company under the terms and conditions stated in the Agreement.

Tacoma Power will deliver or make available to the Company that number of kilowatts of Firm Power as required by the Company, up to but not exceeding the Contract Energy and Contract Demand defined in Exhibit A. The Contract Energy and Contract Demand may be revised according to the following:

(a) Increases in Contract Energy and/or Contract Demand. Except as otherwise provided in subsection 2(c) below, the Company's Contract Energy and/or Contract Demand may be increased, if approved by the Public Utility Board by either a motion or a resolution, only under the following circumstances: (1) in the event the delivery of Firm Power exceeds the established Contract Energy and/or Contract Demand specified in Exhibit A, upon thirty (30) days' written notice to the Company, provided that an increase in Contract Energy and/or Contract Demand will not be required for an inadvertent overrun of Contract Energy and/or Contract Demand, or (2) upon receipt of a written request from the Company, by the amount requested, if such written request to Tacoma Power is made at least six (6) months prior to the start of the next succeeding Contract Year or earlier upon mutual written agreement prior to the effective date of such change, or as otherwise approved by the Public Utility Board.

Pricing for increased Contract Energy and/or Contract Demand, shall be established, at Tacoma Power's sole discretion, according to either (1) the rates defined in Article 2(e) "Applicable Rates" of the Agreement, or (2) a negotiated rate, which may be based on market prices, and is subject to approval by the Public Utility Board and the Tacoma City Council. Increased Contract Energy and/or Contract Demand at a negotiated rate will be served on a date that is mutually agreed upon. Any increased Contract Energy and/or Contract Demand shall only be served in accordance with Tacoma Power's contract(s) with applicable power supplier(s).

(b) Decreases in Contract Energy and/or Contract Demand. In the event the Company determines that it is necessary to reduce its Contract Energy and/or Contract Demand it shall give Tacoma Power written notice of such intention at least six (6) months prior to the start of the next succeeding Contract Year or earlier if mutually agreeable. On the effective date of such change, the Contract Energy and/or Contract Demand shall be reduced to the amount specified in the notice, conditioned upon the Company compensating Tacoma Power for all

costs, losses, and damages incurred by Tacoma Power by reducing Contract Demand and/or Contract Energy as further set forth in Section 17.

(c) Certain Company Requested Changes in Contract Energy. In addition to and/or in lieu of changes in Contract Energy or Contract Demand set forth in subsections (a) and (b) of this Section 2, the Company may obtain change(s) to its Contract Energy within a range of +4 aMW to -3 aMW of the values appearing in Exhibit A each calendar month during the term of the Agreement. Each change notice shall be in writing and provided to Tacoma Power a minimum of seven (7) calendar days prior to the start of the calendar month in which the revised Contract Energy value shall apply. Each such notice (provided to Tacoma Power by email at dayahead@cityoftacoma.org or by facsimile at (253) 383-7109) shall be accompanied by the Company's revised monthly Contract Energy values for the twelve (12) month period following the calendar month in which the revised Contract Energy value is to become effective. Revisions to Contract Energy values pursuant to this subsection (c) shall not result in a total daily Contract Energy value of more than a maximum of 20 aMW for any given month during the term of this Agreement. Any notice(s) exceeding said maximum shall require prior approval by the Public Utility Board. All Contract Energy served pursuant to this subsection (c) shall be at the rates defined in Article 2(e) "Applicable Rates" of the Agreement and/or as otherwise specified in this Agreement.

(d) In the event that the term Contract Energy is deleted from Schedule CP or other Applicable Rate, Contract Energy shall no longer have meaning for purposes of this Agreement and Company shall notify Tacoma Power of planned changes in electrical energy usage of more than ten (10) MW by email at least ninety (90) minutes prior to the change. The email message must include the date and hour in which the change is planned to occur as well an indication of whether consumption will increase or decrease by more than ten (10) MW. The email message does not need to define a specific amount of change or total consumption and a single email may provide notice of multiple changes within a 48-hour period. Tacoma Power shall provide the Company with the address (or addresses) to which the email is to be sent and may from time to time modify that address (or addresses) with notice to the Company. While the Parties acknowledge that changes in usage of more than ten (10) MW can have a potentially adverse impact on Tacoma Power operations, no default or charges shall occur as the result of Company's failure to notify Tacoma Power of a change.

Section 3. OVERRUN OF CONTRACT DEMAND OR CONTRACT ENERGY. Any delivery of power in excess of the effective Contract Demand or Contract Energy shall be considered a Contract Demand Overrun or Contract Energy Overrun. Tacoma Power shall not be obligated to continue to deliver power in excess of the Contract Demand. The charges for such Contract Demand Overrun and Contract Energy Overrun shall be in accordance with provisions of the Applicable Rates.

Section 4. INCORPORATION OF CUSTOMER SERVICE POLICIES. The Tacoma Power Customer Service Policies, as may be modified by Tacoma Power, are incorporated by reference into this Agreement. Delivery of electrical energy to the Company is subject to the requirements and limitations provided by the Customer Service Policies.

Section 5. DISPUTE RESOLUTION. All disputes arising under or in connection with this Agreement must be resolved as provided in this Section 5 as the exclusive method or procedure resolving disputes hereunder. Except as set forth herein, no suit at law or in equity based on such dispute may be instituted by any Party except to enforce, modify or vacate an arbitrator's award consistent with this Agreement and R.C.W. Chapter 7.04A *et seq.*

(a) Mediation. The Parties must first mediate any claim, dispute, or controversy (collectively, a "dispute" herein), with a mutually selected mediator, whose efforts will be to assist the Parties to resolve disputed issues through a mediated process of discussion and evaluation of alternative resolutions. The mediation must be scheduled within thirty (30) days of notice and request by either Party, and the mediation will be non-binding and confidential.

(b) Binding Arbitration. If the Parties are unable to resolve any disputed issues through mediation, either Party may initiate binding arbitration, to be held in Tacoma, Washington, for the purpose of resolving a dispute under this Agreement within ninety (90) days after the mediation terminates (as evidenced by notice by any Party to the others that the mediation is terminated). The Parties should attempt to select an arbitrator from Judicial Arbitration and Mediation Services, Inc., American Arbitration Association or any other reputable firm offering similar services, and if no agreement can be reached, the Presiding Judge of Pierce County Superior Court shall select the arbitrator. Discovery shall be allowed to the same extent and manner permitted by the Washington State Superior Court Civil Rules. The arbitrator has authority to decide any and all issues in dispute, provided that all issues of law shall be subject to review and vacation by application to Superior Court within 30 days of the arbitrator's decision, unless Chapter 7.04A RCW prohibits such review and vacation. It is further provided that either Party shall be entitled to seek injunctive relief prior to and pending arbitration. Except as expressly set forth herein, Chapter 7.04A RCW is applicable to the arbitration.

(c) Costs. If a Party is found to have brought any arbitration or litigation proceeding which is determined to be frivolous or without significant merit, or if an arbitration award or (court) judgment is rendered against a Party on substantially all grounds, the opposing Party shall be entitled to recover its reasonable attorneys' fees and all other costs incurred in that action or proceeding as well as any lawsuit instituted to enforce an arbitrator's award, in addition to any other relief to which it may be entitled, to include without limitation its share of the arbitrator's fee (and mediator's fees), and any other amounts incurred in connection therewith. Costs of any successful mediation will be borne by the Parties to such mediation equally. Costs of any unsuccessful mediation will be added to the costs of arbitration and treated as set forth in this Section.

(d) Litigation. Notwithstanding the provisions of Section 5(b), for disputes where one Party's liquidated claim aggregates at \$600,000 or greater, either party may choose to terminate participation in arbitration, and/or proceed directly into Pierce County Superior or Federal Court, provided that termination of the arbitration and filing of such legal action in Pierce County Superior or Federal Court must be accomplished within ten business days of receiving notice of the (at least) \$600,000 liquidated amount in the arbitration proceeding pleadings.

(e) Statute of Limitations. No demand for arbitration may be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the otherwise applicable statute of limitations.

(f) Equitable Remedies for Breach. Each Party to this Agreement will have the remedies which are available to it for the violation of any of the terms of this Agreement or resolution of any other dispute, which is the subject of arbitration under this Section, including, but not limited to, the equitable remedies of specific performance and/or injunction, which remedies may be awarded by the arbitrator.

(g) Questions of Arbitrability. All questions relating to the arbitrability of any dispute must be decided by arbitration in the same manner and with the same effect as all other controversies that may arise hereunder.

Section 6. BILLING. Billing for power made available or delivered under the Agreement shall be rendered monthly by Tacoma Power on or before the tenth day of the succeeding calendar month and at the prescribed rates and under conditions as set forth in the applicable Exhibits to this Agreement.

Should Tacoma Power's metering equipment fail, the amount of power delivered or made available will be determined based on the best information available. Said determination shall for billing purposes have the same force and effect as an exact meter reading.

If any billing amount is disputed, the Company will provide written explanation specifying in detail the basis for the dispute and shall pay the portion of the invoice which is not disputed, no later than the tenth day from the date of the bill. If the disputed billing amount is determined to be correct, or if a different billing amount is determined to be correct, such outstanding billing amount shall be paid within ten (10) calendar days of the determination, with accrued interest, at the lower of 1% per month or the maximum allowed by Washington State law, from the original due date to the date of payment.

Section 7. PAYMENT FOR POWER. All bills shall be payable at the City Treasurer's office within (10) days from the date of the bill; the tenth day shall be the due date, provided however, that if the tenth day be a Saturday, Sunday, or holiday, the following business day shall then be the due date. Failure to receive a bill shall not release the Company from liability for payment. A late payment charge as established by City ordinance shall also be applicable to Company.

Undisputed payments that are in arrears greater than thirty-five days from the date of invoice may result in a written Disconnection Notice. Subsequent failure to satisfy overdue undisputed payment obligations may result in an Event of Default as defined in Section 8.

Section 8. EVENTS OF DEFAULT. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not remedied with five (5) Business Days after written Disconnection Notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) Company makes an assignment for the benefit of creditors or institutes any proceeding under the Bankruptcy Act (and amendments thereto);
- (d) the failure of the Company to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 10 hereof;
- (e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or

transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(f) failure to operate under or follow the terms of this Agreement.

Section 9. REMEDIES UPON AN EVENT OF DEFAULT. If an Event of Default occurs as described in Section 8, the non-defaulting Party shall serve written notice of the default to the Defaulting Party. The Defaulting Party shall have five (5) business days to cure the default, and if the default is not cured within that time period, the non-defaulting Party may either suspend performance or terminate the Agreement. Suspension of service and termination of this Agreement does not release the Defaulting Party from its liability to the other for any loss, damage, claim, cost, charge or expense arising from the Event of Default, provided such failure is not excused by the non-defaulting Party in writing. No waiver by either Party hereto of any one or more defaults by the other in the performance of any provision of the Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

Section 10. CREDIT REQUIREMENTS. Should the Company's creditworthiness, financial responsibility, or performance viability become unsatisfactory to Tacoma Power because Company fails to maintain at least a BBB- rating, or equivalent with at least one of the following credit ratings agencies: S&P, Moody's, and Fitch, and upon Tacoma Power providing documentation of such condition, then Tacoma Power may require the Company to provide Performance Assurance (as specified below). Tacoma Power will provide the Company with written notice requesting Performance Assurance in an amount limited to three-months worth of the last 6 months average payments, if the Company were to fail to perform its obligations. Upon receipt of such notice the Company shall have thirty (30) Business Days to remedy the situation by providing such Performance Assurance to Tacoma Power. Performance Assurance shall, at Tacoma Power's sole discretion, consist of, (1) the posting of a Letter of Credit, (2) the posting of other acceptable collateral or security by the Company, or (3) a Guarantee Agreement executed by a creditworthy entity. In the event that the Company fails to provide such Performance Assurance to Tacoma Power within thirty (30) Business Days of receipt of notice, then an Event of Default under Section 8 will be deemed to have occurred and Tacoma Power will be entitled to the remedies set forth in Section 9 of this Agreement.

Section 11. INTERRUPTION OF SERVICE.

(a) In the event that the Company is unable to use wholly or in part, Firm Power because of circumstances reasonably beyond the control of the Company (including acts of war, natural disasters, strikes, lockouts or unavailability of electric or water service), but excluding business conditions, Tacoma Power, upon request of the Company, shall determine the applicable monthly billing determinants requiring adjustments. Tacoma Power shall adjust the applicable billing determinants and the Company shall pay according to the applicable rate schedules.

(b) Electric service is inherently subject to interruption, suspension, curtailment, failure and fluctuation. Tacoma Power shall have no liability to the Company for any interruption, suspension, curtailment, failure, or fluctuation in service or for any loss or damage caused thereby if such interruption, suspension, curtailment, failure or fluctuation is caused in whole or in part by a force beyond the control of Tacoma Power including but not limited acts of war, natural disasters, strikes, lockouts, droughts, etc. ("Uncontrollable Force"). Such interruption, suspension, curtailment, failure, or fluctuation in service shall not be held to constitute a breach

of contract on the part of Tacoma Power, or in any way affect any liability for payment for power made available or for money due on or before the date on which such failure or interference occurred.

Should Tacoma Power's electrical service be subject to an Uncontrollable Force, or should there be a general power shortage throughout the Pacific Northwest so that in the opinion of Tacoma Power, it will be extremely difficult, if not impossible, for Tacoma Power to maintain its power supply for essential domestic and public service without curtailing Contract Energy and/or Contract Demand, upon Tacoma Power Superintendent's notification, pursuant to Article 6 of the Agreement, the Company shall reduce its Contract Energy and/or Contract Demand to the extent and for such a period as set forth in the notification. Such notice for curtailment shall define the emergency or condition within the notice and may be the result of any of the following: (1) extraordinary weather conditions impacting system supply, deliver and demand; (2) insufficient resources due to physical or extraordinary market circumstances; or (3) the existence of any conditions that may lead to declaration of a North American Electric Reliability Council (NERC) Energy Emergency Alert. Tacoma Power shall use best efforts to provide the Company with advance notice of the Contract Energy and/or Contract Demand curtailment emergency or condition. No allowance will be made by Tacoma Power for loss of production or of sales by the Company. "Essential domestic and public service" includes but is not limited to necessary service for residential customers, hospitals and other health care facilities, nursing homes, schools, fire, law enforcement stations, utility services and other necessary public services requested for public safety.

(c) Each Party shall notify the other in advance for predetermined suspensions, interruptions or interferences, and as soon as possible in the case of unforeseen difficulties.

(d) Should the events described in subsections (b) and (c) occur, neither Party, including its respective officers, agents or employees shall be liable to the other for damages or for breach of contract, and/or for acts or for omissions resulting in personal or property damage to the other. Interruptions of service totaling less than two (2) hours and occurring within any single 24-hour period of time shall not be considered as a basis for adjusting monthly billings under this section.

Section 12. ADJUSTMENT OF RATES. For the Applicable Rates, rate review dates will be the same as for all other customers within this class. Tacoma Power shall provide Company with reasonable (regular or electronic mail or telefax) notice and information pertaining to proposed rate proceedings including Utility Board or City Council study sessions on such matters.

Section 13. SELF-GENERATION. In the event the Company hereafter elects to generate all or a part of its power requirements, it shall give written notice of such intention to Tacoma Power at least twelve (12) months prior to the start of the next succeeding Contract Year. Within the said notice period the Public Utility Board will determine the effect thereof, based on investigation of the facts and finding, and the application of a termination or reduction charge, if any, as provided in Section 17. The Company may, upon compliance with the Public Utility Board requirements based on facts and findings, payment of a termination or reduction charge, compliance with Tacoma Power's generation interconnection standards and requirements, and a mutually agreed to on-line date, then generate and use its own power and the Contract Demand shall be appropriately amended or the contract cancelled at the expiration of the above said notice period.

Section 14. LIABILITY.

(a) Prior to maintaining or working with any electrical equipment at or near the substation, Company is responsible for obtaining from Tacoma Power (and verifying) all appropriate clearances and tagging which indicates that the electrical facilities are not energized. The Company hereby agrees to defend, indemnify and hold harmless Tacoma Power, its officers and employees, agents, contractors and guests from any and all costs and expenses including reasonable attorneys' fees arising from any injuries or alleged injuries, including death, to any person including Company employees, contractors and agents, or damage to or destructions of property which may result from Company's negligence in using the electric power provided pursuant to this Agreement or that occurs at and are due to the Company's negligence in installing or maintaining the Company-owned electrical facilities located on the Company's premises.

(b) Tacoma Power is responsible for providing and maintaining equipment it owns. Tacoma Power hereby agrees to defend, indemnify and hold harmless the Company, its officers and employees, agents, contractors and guests from any and all costs and expenses, including reasonable attorneys' fees, arising from any injuries or alleged injuries, including death, to any person, including Tacoma Power employees, Tacoma Power contractors or agents, or damage to or destruction of property which may result from the negligence of Tacoma Power in delivery of power or in failing to properly install or maintain Tacoma Power-owned facilities. In this regard, it is understood that the Parties may be waiving Title 51 RCW, Industrial Insurance immunity, and this provision has been mutually negotiated. Provided, however, this Agreement is intended to apply only to the Company and Tacoma Power, and it shall not be interpreted to allow an employee to sue his/her employer.

(c) The obligations of the Parties under the Agreement are obligations of the Parties only, and no recourse shall be available against any officer, director, shareholder, member, employee or partner of any Party or any affiliate of a Party.

(d) The Parties agree to comply with all laws that regulate hazardous or toxic substances, as the same are or may be in the future defined by law. In this regard Tacoma Power acknowledges that it will, if legally responsible, clean up hazardous or toxic materials that Tacoma Power causes to be spilled or contaminate Company's premises.

Section 15. REGULATORY CHANGES. Any provision herein declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. If the Parties are unable to reform this Agreement to mutual satisfaction, the Agreement may be terminated under the provisions of Section 17, Early Termination.

Section 16. GOVERNING LAW. Parties agree and stipulate that in the event any arbitration or litigation should occur concerning or arising out of this Agreement, the sole venue of any arbitration of legal action shall be in Pierce County in the State of Washington and the interpretation of the terms of this Agreement shall be governed by the laws of the State of Washington.

Section 17. EARLY TERMINATION OR REDUCTION. This Agreement may be cancelled by the Company for any reason by providing Tacoma Power with at least six (6) months written notice prior to the effective date of termination and conditioned upon Company compensating Tacoma Power for all costs and damages Tacoma Power may incur resulting from, but not limited to, Tacoma Power's commitments made to serve the Company's Contract Energy and/or Contract Demand, and investments made by Tacoma Power for Company's benefit. The anticipated actual costs and damages that Tacoma Power may incur resulting from Company's early termination are identified below.

In the event of an early termination or a reduction, the Company shall be obligated to: (1) pay all billings and accrued obligations to said effective date of cancellation and actual termination or reduction, (2) pay a termination charge equal to the actual damages amount that Tacoma Power will incur and is charged and liable to its other contractual power supplier(s) for reduction in Contract Energy and/or Contract Demand due to lack of timely notice or other power supply contractual obligation Tacoma Power will incur due to early termination or reduction by Company, and (3) reimburse and pay for all other actual damages that Tacoma Power will incur as a result of Company's early termination or reduction. Tacoma Power shall make best efforts to mitigate associated charges with the early termination or reduction; however such efforts shall not release the Company of its obligation to pay the termination or reduction charge.

Section 18. PUBLIC RECORDS AND CONFIDENTIALITY. The Parties shall not disclose any information received from the other Party that has been clearly identified "Confidential" except as is reasonably required in the performance of the obligations hereunder or as is otherwise required by law, court order or administrative order.

Notwithstanding the above, any documents provided to Tacoma Power marked "Confidential" are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Tacoma Power may be required, upon request, to disclose any documents marked "Confidential" unless an exemption under the Public Records Act or other laws applies. In the event Tacoma Power receives a request for such disclosure and determines in its legal judgment that no applicable exemption to disclosure applies, then Tacoma Power shall provide the Company ten (10) business days' written notice of impending release. Should legal action thereafter be initiated by the Company to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by the Company, including any damages, attorneys' fees or costs awarded by reason of having opposed disclosure. Tacoma Power shall not be liable for any release where notice was provided and Company took no action to oppose the release of information.

Further notwithstanding the above, Tacoma Power may disclose to the Bonneville Power Administration (BPA) without any notice to the Company information pertaining to Company, including this Agreement, its attachments, Company's usage and demand data, and any other information Tacoma Power deems necessary to satisfy the terms of agreements that Tacoma Power may have with BPA.

Section 19. LIMITATION OF LIABILITY. Except as otherwise set forth in Sections 11, 14, and 17, neither Party shall be liable to the other, based on tort (including negligence and strict liability), contract or otherwise arising out of or related to the Agreement, for any indirect, special, or consequential damage, or exemplary loss or damage, costs of capital or expenses thereof, loss of profits or revenues or the loss of use thereof, and each Party hereby releases

the others from any liability for all such losses and damages. All limitations on each Party's liability contained in the Agreement shall survive the termination of the Agreement.

SUBSTATION DECOMMISSIONING COST AGREEMENT

Attachment No.2

[Date]

This Substation Decommissioning Cost Agreement ("Decommissioning Agreement") specifies the terms of the agreement under which Puget Sound Energy Inc. ("PSE") shall reimburse and pay for the costs incurred by the City of Tacoma, Department of Public Utilities, Light Division d.b.a. Tacoma Power ("Tacoma Power") for decommissioning the Taylor Substation, removing associated Utility Facilities, and restoring the real property on which the substation and related utility facilities are located.

RECITALS

A. PSE intends to construct a liquefied natural gas facility (the "LNG Facility") on property PSE has leased from the Port of Tacoma. The leased property is located within the City of Tacoma at and adjacent to 3313 E. 11th Street.

B. The LNG Facility is located within Tacoma Power's service territory. However, certain modifications and improvements are to be made to Tacoma Power's existing electrical system, including the construction of a new substation (designated the "Taylor Substation") and associated utility facilities, in order to meet the anticipated load increase from the LNG Facility.

C. To accommodate these improvements, the Port of Tacoma leased to PSE real property designated for the Substation Easement Area and the Access and Utility Easement Area. The Port of Tacoma has since granted to Tacoma Power easements, "City of Tacoma, Department of Public Utilities Easement no. 13461" (Auditor File Number 2017 08180447, recorded August 18, 2017) encumbering these same designated areas. Specifically, the Port of Tacoma granted Tacoma Power: (a) a Substation Easement for an electrical substation including appurtenant and necessary equipment, facilities, and fixtures ("Utility Facilities") and (b) an Access and Utility Easement located adjacent to the Substation Easement Area to allow Tacoma Power access to construct, maintain, rebuild or remove the Taylor Substation and appurtenant Utility Facilities (the easements are collectively referred to as "the Easements"). The Easements were granted for the sole purpose of providing electrical service to the LNG Facility.

D. Further, the lease provides that upon its expiration or termination, the Port of Tacoma may require PSE to restore the Premises to the condition existing prior to the Lease which includes removing improvements from the Premises including the Taylor Substation and Utility Facilities unless otherwise agreed to by the Port and PSE.

E. Similarly, the Port of Tacoma, was only willing to grant the Easements on the condition that the Easements could be terminated, and improvements removed, when PSE no longer needed electrical services for the LNG Facility. The Easements therefore allow the Port of Tacoma to terminate them at the end of its Lease with PSE and, upon request and notification by the Port of Tacoma, Tacoma Power must reconfigure or remove all improvements to the easement areas, including removal of the Taylor Substation and Utility Facilities.

F. Finally, in conjunction with the construction of the LNG Facility, PSE and Tacoma Power executed two Utility Installation and Funding Agreements detailing the utility installation work required for the LNG Facility including the Taylor Substation and specified Utility Facilities.

G. In consideration for Tacoma Power extending its electric system to the LNG Facility and Tacoma Power's agreement to remove the Taylor Substation and Utility Facilities when directed by the Port of Tacoma, PSE agrees to pay all costs for Taylor Substation decommissioning, including demolition and removal costs, and all costs to remove the Utility Facilities as required by the Port of Tacoma and as specified in the Easements.

H. PSE and Tacoma Power now desire to execute this Decommissioning Agreement to specify the terms associated with PSE's payment of costs upon the discontinuation of the electrical service and the termination of the Easements.

NOW THEREFORE, in consideration of the mutual promises and obligations specified below and in consideration of Tacoma Power agreement to provide electrical service, extend its electrical facilities, and to remove said facilities as required by the Port of Tacoma, the parties agree as follows.

1. Incorporation. The above recitals are hereby incorporated into and made a part of this Decommissioning Agreement.

2. Removal and/or Reconfiguration Work. PSE acknowledges and agrees that upon expiration of the Lease with the Port of Tacoma, the Port of Tacoma may terminate the Easements and direct Tacoma Power to remove and/or reconfigure the Taylor Substation and appurtenant Utility Facilities ("Removal and/or Reconfiguration Work"). Further, PSE acknowledges and agrees that the Removal and/or Reconfiguration Work shall be performed pursuant either to an agreement between the Port of Tacoma and Tacoma Power or in accordance with the Port of Tacoma's termination notice. PSE further acknowledges and agrees that the Removal and/or Reconfiguration Work includes all activities and costs related to removal and/or reconfiguration of the Taylor Substation and appurtenant Utility Facilities.

3. PSE Payment of Tacoma Power's Costs. In the event the Port of Tacoma exercises its termination rights pursuant to the Easements and the Lease, PSE shall be liable for and shall pay Tacoma Power for all of Tacoma Power's costs associated with the Removal and/or Reconfiguration Work, including, but not limited to the following areas:

A. Substation Removal Costs. PSE shall pay all of Tacoma Power's costs associated with and arising from the following Substation Removal work:

1. Equipment salvage including salvage of transformers, breakers, switches, current and potential transformers, metering equipment, protective relays, SCADA and communications equipment, security system, battery system, bus work, insulators, control wiring and panels.

2. Civil Works removal by Tacoma Power contractors including removal of fencing, structures, foundations, the control building, grounding, conduits, vaults, cable trenches, and storm drains.

3. Site restoration by Tacoma Power contractors including subgrade preparation, backfill and compaction, and temporary and permanent erosion control.

B. Transmission System Restoration. PSE shall pay all of Tacoma Power's costs associated with and arising from the following Transmission System Restoration work:

1. Protection and controls and communications engineering, procurement and installation of modifications of transmission line protection and control schemes, hardware, software, operating procedures, circuit maps, drawings, SCADA displays and databases specifically require to remove the Taylor Substation from Tacoma Power's system.

2. Transmission line engineering, easements, procurement and rerouting of communication lines, poles and conductors to enable removal of communication, distribution and transmission conductors and poles from Port property.

3. Outage coordination, regulatory compliance system modeling and reporting, testing and commissioning the modifications to the transmission system required to remove Taylor Substation.

Transmission System Restoration work does not include costs associated with redirecting service or providing alternative service to other properties as a result of substation removal.

C. Project Management. PSE shall pay all Tacoma Power's costs associated with Project Management including but not limited to:

1. Project Management Plan development including scope, schedule, budget, and project accounting
2. Cost estimating and resourcing
3. Contract and construction management
4. Project coordination with PSE and contractors during decommissioning and demolition
5. Monitor and control progress, project reporting and project closeout.

4. Payment. Tacoma Power shall provide a preliminary cost estimate of the total costs it will incur to perform its obligations ("Preliminary Cost Estimate") in advance of performing any Removal and/or Reconfiguration Work and shall provide an invoice for the total anticipated costs.

The parties expressly agree that should the total actual costs incurred by Tacoma Power exceed the Preliminary Cost Estimate, PSE shall promptly reimburse Tacoma Power for said excess amount when invoiced. The parties further expressly agree that should PSE and Tacoma Power mutually determine that the total actual costs incurred by Tacoma Power are less than the Preliminary Cost Estimate, PSE shall only be obligated to pay such actual costs.

All invoices shall be due within thirty (30) days of the date indicated on the invoice. If any payment due hereunder is not paid when due or is not received by Tacoma Power or postmarked within thirty (30) days after the date due, said late payment shall incur a late charge of one percent (1%) per month until paid.

5. Assignment. PSE may not transfer or assign this Decommissioning Agreement without Tacoma Power's prior written approval. Tacoma Power's approval of said transfer or assignment may be conditioned upon the transferee, assignee, or tenant executing a decommissioning agreement that imposes cost payment or reimbursement requirements as required by this Decommissioning Agreement. PSE's payment obligations detailed herein shall be binding upon PSE's successors and assigns including then current tenant of the Port of Tacoma for the LNG Facility property notwithstanding PSE's failure to seek or obtain Tacoma Power's prior approval.

6. Dispute Resolution. If a dispute arises, representatives of the Parties shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within ten (10) business days the dispute may be referred to mediation as mutually agreed to by the Parties, or the Parties may exercise whatever other rights they may have at law or in equity. Venue for any alternative dispute proceedings and/or legal action shall be in Pierce County, Washington.

7. Assurance of Payment. Should PSE's financial responsibility or performance viability become unsatisfactory because PSE fails to maintain at least a BBB- rating, or equivalent with at least one of the following credit ratings agencies: S&P, Moody's, and Fitch, Tacoma Power may require assurance of payment from PSE. Assurance of payment shall be at PSE's option, but subject to Tacoma Power's acceptance based upon reasonably exercised discretion, either, a deposit, letter of credit, or guaranty agreement executed by a creditworthy entity. Upon receipt of notice of such requirement, PSE shall have thirty (30) days to provide the deposit, letter of credit, or guaranty agreement.

8. Survival. Notwithstanding the termination or assignment of the Power Sale Agreement, this Decommissioning Agreement and its terms and conditions shall survive such termination or assignment and shall remain in full effect and force until all of its obligations are fulfilled to the satisfaction of Tacoma Power. This Decommissioning Agreement shall be attached to and form a part of any subsequent Power Sale Agreements between the parties, and their successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate, each by the signatures and attest of its duly authorized officers, as of the day and date first above written.

Tacoma Power

Puget Sound Energy, Inc.

Chris Robinson, Superintendent

Approved:

Andy Cherullo, Finance Director

Approved as to Form:

Deputy City Attorney