

**AGREEMENT FOR PERFORMANCE
OF CERTAIN ACTIVITIES REQUIRED UNDER
ELECTRIC RELIABILITY STANDARDS**

executed by the

BONNEVILLE POWER ADMINISTRATION

and

Public Utility District No. 1 of Benton County

This AGREEMENT FOR PERFORMANCE OF CERTAIN ACTIVITIES REQUIRED UNDER ELECTRIC RELIABILITY STANDARDS ("Delegation Agreement") is entered into by and between Public Utility District No. 1 of Benton County ("Utility") and the UNITED STATES OF AMERICA, Department of Energy, by and through the Bonneville Power Administration ("Bonneville"), a federal power marketing agency who are sometimes referred to individually as "Party", and collectively as "Parties" as the context suggests below.

WITNESSETH

WHEREAS the Energy Policy Act of 2005 ("Act") authorized the Federal Energy Regulatory Commission ("FERC") to approve Electric Reliability Standards with which users, owners and operators of the bulk power system are required to comply ("Electric Reliability Standards");

WHEREAS FERC has approved certain Electric Reliability Standards and associated Requirements proposed by the Electric Reliability Organization ("ERO") authorized by the Act to develop such Standards;

WHEREAS the ERO holds entities responsible for compliance with particular Electric Reliability Standards and Requirements based on the function those entities perform with respect to the operation of the bulk power system;

WHEREAS the ERO maintains a list of entities that are registered ("Registered Entities") and subject to the Electric Reliability Standards, which also lists the functions for which the entities are responsible;

WHEREAS the ERO has delegated certain enforcement and other authorities to the Regional Reliability Organization (RRO);

WHEREAS Utility, a customer of Bonneville, is an electric utility that is a Registered Entity, registered as a Purchasing-Selling Entity (PSE), Load Serving Entity (LSE), Distribution Provider (DP), Generator Operator (GOP), and Generator Owner (GO);

WHEREAS Bonneville has been performing for Utility certain activities that are now subject to the Electric Reliability Standards, and Bonneville agrees to be retained by Utility to continue to perform and report on those activities in accordance with the Electric Reliability Standards, and to perform such other activities required of Utility by the Electric Reliability Standards and agreed to by Bonneville and Utility, all as more fully set forth herein;

NOW THEREFORE, in order to define the roles and responsibilities for complying with the Electric Reliability Standards and in consideration of the mutual covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, Bonneville and Utility agree as follows:

1. **Definitions.** When used in this Delegation Agreement, the following terms have the meaning shown below:
 - a. "Day" means a business day as recognized by Utility.
 - b. "Electric Reliability Organization" and "ERO" refer to the North American Electric Reliability Corporation or its successor approved by FERC under its authority pursuant to the Energy Policy Act of 2005.
 - c. "Electric Reliability Standard and Requirement" ("Standard and Requirement") means a reliability standard or its component requirements as approved by FERC under its authority pursuant to the Energy Policy Act of 2005.
 - d. "Incremental Costs" means those costs that Bonneville incurs (i) to perform its obligations under this Delegation Agreement that are materially increased due to changes to Standards or Requirements occurring after the effective date of this Delegation Agreement or (ii) to perform obligations related to new Standards or Requirements that Bonneville did not perform prior to June 18, 2007, but which Bonneville agrees to perform pursuant to Section 5.3 of this Delegation Agreement.
 - e. "Regional Reliability Organization" and "RRO" refer to the Western Electricity Coordinating Council or its successor to which the ERO has delegated authority under the Energy Policy Act of 2005.
2. **Effective Date.** This Delegation Agreement shall be effective at 12:00 AM in the time zone applicable to the address of Utility on the day after Utility actually receives from Bonneville an original copy executed by both Parties ("Effective Date"), notwithstanding anything to the contrary in Section 15.

3. Term and Termination.

- a. This Delegation Agreement shall continue in effect for ten (10) years from the Effective Date, unless otherwise extended by written agreement of the Parties or terminated in accordance with the provisions of this Delegation Agreement.
- b. The Parties may terminate this Delegation Agreement only by written mutual agreement. From the time that the Parties agree to terminate until the time termination becomes effective, the Parties shall continue to abide by and perform their obligations in accordance with the terms of this Delegation Agreement.

4. Amendment of Delegation Agreement. Except as expressly stated otherwise in Sections 5(b) and 15 of this Delegation Agreement, the Parties may amend or revise this Delegation Agreement only by a signed written mutual agreement. New or revised exhibits to this Delegation Agreement shall be deemed to be part of this Delegation Agreement and shall be effective on the date specified therein.

5. Exhibits.

- a. Exhibits A (“Bonneville Responsibilities”) and B (“Utility Responsibilities”) are hereby incorporated as part of this Delegation Agreement.
- b. Unilateral Revisions
 - (1) Bonneville may unilaterally revise Exhibit A to incorporate FERC-approved changes to Standards and Requirements set forth in Exhibit A. Such changes shall be effective on the date Utility receives written notice of such changes by Bonneville.
 - (2) Bonneville may unilaterally revise Exhibit A to incorporate additional Standards and Requirements. Such revision shall be effective seven (7) days after Utility receives written notice of such revision from Bonneville unless Utility provides objection by telephone to Bonneville within such period followed by delivery of written notice of such objection within five (5) days, in which case such revision shall be deemed ineffective.
- c. Negotiated Revisions. Pursuant to Section 4 of this Delegation Agreement, Utility may request that Bonneville assume responsibility for compliance with additional Standards and Requirements not set forth in Exhibit A or with changes to Standards and Requirements set forth in Exhibit A, and Bonneville may in its discretion agree to assume responsibility under terms acceptable to Bonneville and Utility, which may include Utility’s agreement to reimburse Bonneville for the Incremental Cost associated with its assumption of responsibility for such additional or changed Standards and Requirements.

- d. The Parties shall make a good faith effort to negotiate by December 31, 2007, an Exhibit C to this Delegation Agreement to specify each Party's operational and other technical obligations to enable and facilitate the Parties' compliance with the Standards and Requirements. In the absence of an Exhibit C, an arbitrator may make findings regarding a Party's reasonable operational or other technical responsibilities in determining comparative fault under Section 7.

6. Performance Obligations.

a. Bonneville's Performance Obligations

- (1) Bonneville shall undertake the operations, maintenance, reporting, documentation and such other responsibilities required by the Standards and Requirements specified in Exhibit A for Utility to maintain compliance with such Standards and Requirements.
- (2) Bonneville shall accept and be bound by the relevant interpretations and final orders of FERC, the ERO, and the RRO regarding the actions that are required to be taken by Bonneville in order to fulfill its obligations under Exhibit A. Bonneville may comply with such interpretations without the consent of Utility.
- (3) If performance of Bonneville's obligations hereunder requires access by Bonneville personnel to property or facilities of the Utility, Bonneville shall comply with all applicable Utility access procedures and safety regulations and take any necessary safety instruction that may be required by Utility.

b. Utility's Performance Obligations

- (1) Utility, and not Bonneville, shall be responsible for compliance with the Standards and Requirements listed in Exhibit B and all other activities required to comply with the Standards and Requirements, including documentation requirements, that apply to Utility and that are not listed in Exhibit A.
- (2) Utility shall accept and be bound by the relevant interpretations and final orders of FERC, the ERO, and the RRO regarding the actions that are required to be taken by Bonneville in order to fulfill its obligations under Exhibit A.
- (3) Utility shall timely add, maintain, repair, and replace equipment and software on its system necessary for Bonneville to comply with the Standards and Requirements in Exhibit A. If requested by either Party, the Parties shall meet to discuss the necessity of such additions, maintenance, repair or replacement of equipment and software on Utility's system. Utility's failure to respond to a request by Bonneville to add, maintain, repair, or replace equipment or

software shall be considered in any determination of comparative fault by an arbitrator under Section 7(d).

- (4) If Bonneville needs access to Utility's facilities to perform its obligations under this Delegation Agreement, Utility shall grant Bonneville and its authorized contractors timely access to Utility's facilities to perform those obligations, subject to Bonneville's compliance with Section 6a(3) of this Delegation Agreement.
- (5) As the Registered Entity, Utility shall fully inform Bonneville of any non-monetary sanctions or other non-monetary directives proposed to be assessed on or directed to Utility by the RRO, ERO or FERC with respect to Bonneville's obligations under this Delegation Agreement.

7. Liability for Monetary Penalties.

- a. As a Registered Entity, Utility shall be responsible for paying to the RRO, ERO or FERC any monetary penalty imposed by the RRO, ERO or FERC for violation of any Standard and Requirement applicable to Utility or Utility's system or for failure to comply with other obligations of a Registered Entity regardless of whether a dispute exists between the Parties under Sections 7(c) and 7(d) below.
- b. Bonneville shall reimburse Utility for any monetary penalty imposed on Utility as the Registered Entity for violations of Standards and Requirements for which Bonneville is responsible under Section 6a. Bonneville shall reimburse Utility for any such monetary penalties within thirty (30) days of Bonneville's receipt of an invoice from Utility or within thirty (30) days of, and consistent with, the final resolution of any dispute under Section 7d. Bonneville shall recover the costs of any monetary penalty reimbursement through generally applicable rates and charges, and not through any direct charge, surcharge or penalty that assesses such monetary penalty against Utility. If Utility's acts or omissions are responsible in whole or in part for Bonneville's failure to comply with such Standards and Requirements, Utility shall bear a share of the monetary penalty based on its comparative fault.
- c. In determining whether and to what extent Utility is responsible for any part of monetary penalties imposed with respect to Bonneville's violation of its obligations pursuant to this Delegation Agreement, the Parties shall use good faith efforts to reach agreement on the proper amount, if any, of the monetary penalty that should be assumed by Utility.
- d. If such dispute is not resolved after good faith efforts of the Parties to reach a resolution, the dispute shall be finally resolved by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, unless the Parties agree in writing upon another method for resolving the dispute. Each Party shall have discovery rights as set out in the Federal Rules of Civil Procedure. Judgment upon any award rendered by an arbitrator may be entered in any court or administrative body having

appropriate jurisdiction. In order to keep Utility whole, the award shall include interest on the amount of such monetary penalty for which Bonneville is determined to be responsible. The Parties shall equally share the costs of any arbitration process, including the cost of the arbitrator, court reporter and room rental. Each party shall be responsible for the costs of presenting its own case, including, without limitation, witnesses, attorneys, and consultants.

8. Challenges to Penalties, Sanctions and Other Non-Monetary Directives.

- a. If Bonneville elects to challenge a monetary penalty, non-monetary sanction or other non-monetary directive noticed by the RRO, ERO or FERC for performance or non-performance of activities for which Bonneville has assumed responsibility under this Delegation Agreement, then Bonneville shall notify Utility in writing of its decision to challenge and shall consult with Utility regarding the potential risks, costs and liabilities resulting from the challenge before filing any such challenge. Utility shall cooperate with Bonneville in initiating and pursuing such challenge, and the Parties shall assume their own costs of initiating and pursuing such challenge.
- b. If Bonneville does not elect to challenge a monetary penalty, non-monetary sanction or other non-monetary directive noticed by the RRO, ERO or FERC for the performance or non-performance of activities for which Bonneville has assumed responsibility under this Delegation Agreement, but Utility desires to challenge such monetary penalty, non-monetary sanction or other non-monetary directive, then Utility shall notify Bonneville in writing of its decision to challenge and consult with Bonneville regarding the potential risks, costs and liabilities resulting from the challenge before filing such challenge. Bonneville shall cooperate with Utility in initiating and pursuing such challenge, and the Parties shall assume their own costs of initiating and pursuing such challenge.

9. Reporting Responsibilities and Information Exchange.

- a. Each Party shall provide in a timely manner to the other any information that is reasonably required and requested by the other Party in writing, and which is needed to perform its obligations under this Delegation Agreement, including without limitation information required by FERC, the ERO, the RRO to determine compliance with the Standards and Requirements for which Bonneville has assumed responsibility under this Delegation Agreement. Such information shall be provided in a timely manner.
- b. If Bonneville determines that it is not in compliance with one or more of the Standards or Requirements set forth in Exhibit A, it shall prepare a report of such violations pursuant to the requirements of the RRO and submit such report to Utility as soon as practicable. Utility shall submit such report to the RRO and inform Bonneville of the date of such submission. Bonneville may submit its report directly to the RRO if Utility has not submitted such report to the RRO within five (5) days of its receipt from Bonneville. As soon

as practicable after the report is submitted to Utility, Bonneville shall prepare a mitigation plan to correct the violation and shall submit such plan to Utility in the proper format which shall then submit such plan to the RRO and inform Bonneville of the date of such submission. Bonneville may submit its mitigation plan directly to the RRO if Utility has not submitted such plan to the RRO within five (5) days of its receipt from Bonneville.

- c. As soon as practicable but not more than two (2) days after learning of an investigation by the RRO, ERO or FERC of a possible violation of the Standards and Requirements set forth in Exhibit A, Utility shall provide telephonic and telefax notice of such investigation to Bonneville and mail a copy of such notice to Bonneville by first class mail.
- d. As soon as practicable but not more than five (5) days after learning of an upcoming compliance audit of Utility by FERC, the ERO or the RRO, Utility shall provide written notice to Bonneville describing the date, time, and location of such audit. Upon receiving such written notice, Bonneville shall deliver as soon as practicable, but no later than two (2) days prior to the scheduled audit, all documents, correspondence, and materials related to the performance of its responsibilities under this Delegation Agreement that are determined by FERC, the ERO or the RRO to be required for such audit. Bonneville shall deliver materials to the location listed in Utility's notice. In the event that the audit will be performed on site, Bonneville shall have a representative in attendance to explain all documentation provided by Bonneville under the terms of this Delegation Agreement.
- e. Where a Party provides information to the other Party under this Delegation Agreement and marks such information as privileged commercial and financial information or critical infrastructure information submitted to a public body in confidence or as trade secret information for purposes of the Freedom of Information Act or similar law of the State of Washington, the other Party shall treat such information as confidential and protected from disclosure to the extent permitted by such law. The Party possessing such information shall notify in writing the providing Party of any request to release such information. The Parties agree to use such information only for purposes of performing the Party's obligations under this Delegation Agreement.

If Bonneville receives a request to disclose such information provided to it by Utility, it shall promptly notify Utility in writing of such request and shall not disclose such information without obtaining the consent of Utility, consistent with Bonneville's obligations under the Freedom of Information Act. If Utility receives a request to disclose such information provided to it by Bonneville, Utility shall promptly notify Bonneville in writing of such request and shall not disclose such information without Bonneville's consent, consistent with Utility's obligations under state law. In the event legal proceedings are initiated to require Utility to release such information, it shall be the responsibility of Bonneville to take any and all actions necessary to protect the confidentiality of such information, and Utility shall not be in

breach of its obligations hereunder if Utility does not take legal or other action to resist the disclosure of such information.

- f. The Parties shall also timely provide each other with any information that is reasonably required, and requested by either Party in writing, to allow the requesting Party to comply with the Standards and Requirements, regardless of whether the requesting Party has assumed responsibility for such Standards or Requirements under this Agreement.

10. Liability and Indemnification.

- a. To the extent allowed by the Federal Tort Claims Act, 62 Stat. 982, as amended, Bonneville agrees to indemnify and hold harmless Utility, its board of directors, officers, employees, agents and representatives against and from any and all loss, claims, actions or suits for or on account of injury, bodily or otherwise, to or death of persons or for damages to or destruction of property belonging to Utility or others, resulting from Bonneville's negligent acts or omissions or intentional misconduct in connection with the performance of this Agreement, excepting that any liability attaching to Bonneville shall be reduced by any proportion that such harm or damage is caused by negligence or intentional misconduct of Utility, its board of directors, officers, employees, agents or representatives.
- b. In no event shall Bonneville be liable to Utility, its board of directors, officers, employees, agents or representatives for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement.

- 11. Relationship of the Parties.** The Parties agree that Bonneville is an independent contractor to Utility in the performance of its obligations under Section 6a of this Agreement. Neither Party is the agent or principal of the other, nor are they partners or joint venturers. Each Party agrees that it will not represent that, in performing its obligations hereunder, it acts in the capacity of agent or principal of the other Party, nor that it is a partner or joint venturer with the other Party with respect to the subject matter of this Agreement.

- 12. Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with Federal law; provided, however, that the capacity, power and authority of Utility to enter into this Agreement and any issue relating to the interpretation of Utility's enabling statutes or its obligations under local or state information access and disclosure laws and regulations shall be governed by and construed in accordance with the constitution and laws of the State of Washington.

13. **Assignment.** Neither this Agreement nor any rights or responsibilities under this Agreement may be assigned by either Party to a third party without the written consent of the other Party, and such consent shall not be unreasonably delayed, conditioned or withheld.
14. **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a direct or indirect legal beneficiary of or have any direct or indirect cause of action or claim in connection with this Agreement or of any duty, obligation, or undertaking established herein.
15. **Notices.** Where this Agreement requires the determination of the date of receipt or delivery of any written notice, request, demand or other communication, it shall be deemed to occur on the earlier of: (i) the date when telefaxed with confirmed transmission, (ii) four (4) days after being deposited into the United States mail; or (iii) the day after being placed into overnight delivery. Any notice, request, demand or other communication under this Agreement shall be directed to the Parties' respective contacts as shown below. Either Party may change or supplement its respective contact information by giving the other Party written notice of such change.

If to the Utility:

Public Utility District No. 1 of
Benton County
2721 West Tenth Avenue
Kennewick, WA 99336-0270
Title: Director of Power
Management
Phone: (509) 582-1236
Fax: (509) 586-6876

If to Bonneville:

Attention: Transmission Account Executive
for Public Utility District No. 1 of Benton
County – TSE/TPP-2
Phone: (360) 619-6003
Fax: (360) 619-6940

If by First Class Mail:

Bonneville Power Administration
P.O. Box 61409
Vancouver, WA 98666-1409

If by Overnight Delivery Service:

Bonneville Power Administration – TSE/TPP-2
7500 NE 41st Street, Suite 130
Vancouver, WA 98662-7905

16. **Waivers.** Any waiver at any time by either Party of its rights under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent assertion of that right or matter arising in connection with this Agreement. Any delay short of the statutory period of limitations in asserting or enforcing any right under this Agreement shall not constitute or be deemed a waiver of such right.

- 17. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding Bonneville's duty to perform on Utility's behalf activities that are otherwise Utility's responsibility under the Standards and Requirements.
- 18. **Signature Clause.** The Parties' representatives signing below represent that they have been properly authorized to enter into this Agreement on behalf of the Party for whom they sign.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as shown below.

PUBLIC UTILITY DISTRICT NO. 1 OF BENTON COUNTY UNITED STATES OF AMERICA
 Department of Energy
 Bonneville Power Administration

By: _____

By: _____

Name: _____
 (Print/Type)

Name: Brian D. Altman
 (Print/Type)

Title: _____

Title: Transmission Account Executive

Date: _____

Date: _____

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