

OPERATION AND MAINTENANCE AGREEMENT

executed by the

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

CUSTOMER NAME

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**Overarching issues:**

**Existing contract rights:** With respect to this effort, BPA does not intend to alter existing contract rights addressing issues other than O&M. Where appropriate though, BPA does wish to relocate O&M obligations into consolidated customer O&M contracts to update the obligations to clarify reliability responsibilities.

The current status is unmanageable as O&M obligations are spread throughout many types of contracts and multiple contracts.

**Mutual agreement:** BPA intends to collaborate with impacted parties but continues to believe that a unilateral right to amend the contract is important for certain changes.

**Cost tables:**

**BPA RESPONSE:** The cost tables get updated in a separate process periodically. BPA will consider publically posting the process and information.

This OPERATION AND MAINTENANCE AGREEMENT (Agreement) is entered into by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (Bonneville), and **CUSTOMER NAME** (Customer), hereinafter individually referred to as “Party” and collectively as “Parties”.

**Public Power Council:** Thank you for the opportunity to provide comments on the first draft of the proposed Operations and Maintenance (O&M) Agreement template presented to customers on July 28th, 2011. As this is the first draft and as we expect others to provide more detailed comments, we limit our comments to general matters.

The concept that BPA and its interconnected utilities with existing shared or agreed-upon operation or maintenance obligations should acknowledge and catalogue those obligations is a good one. Making certain that each party knows the full set of its rights and obligations will help avoid miscommunication and compliance lapses. We also appreciate BPA’s commitment to helping with compliance filings by providing a letter of attestation, a copy of BPA’s operations and maintenance program, and maintenance and testing records to its utilities with shared operations and maintenance obligations.

The agreement by each utility to sign a new O&M agreement with BPA, however, is voluntary. BPA does not have a right to abrogate or amend existing contracts without the agreement of the other party. Existing agreements are often customized to a particular situation or facility, and it may not be possible to standardize agreements between BPA and all of its customers. Given this, we believe that BPA should hold a series of workshops on the draft O&M Agreement Template to work through the drafting issues. BPA should be prepared to potentially receive several rounds of comments on its Operations and Agreement Template, and BPA should be flexible in its effort to standardize agreements.

Also, BPA should make it a stated objective that the new agreements will not alter existing rights or obligations. While BPA hopes to simplify O&M obligations between its customers with shared obligations, BPA should focus on identifying rights and obligations in other contracts and not restate rights and obligations unless necessary. We suggest that the parties catalogue existing agreements and refer to those agreements within each customer’s contract exhibits. Focusing on cataloguing, and not restating rights and obligations, should avoid confusion and future disputes over interpretation.

We thank you for this opportunity to comment and we look forward to the opportunity to work with BPA going forward on this issue.

**BPA RESPONSE:** *The key goal is to relocate the O&M obligations from non-O&M agreements, and to update them to address reliability responsibilities; another key goal is simplicity and transparency. BPA does not intend to alter existing rights that do not address O&M.*

*The status quo is unmanageable as O & M obligations are spread throughout many types of contracts and multiple contracts.*

*BPA is willing to host additional workshops.*

**WPAG:** These comments are submitted by the preference utilities that comprise the Western Public Agencies Group (“WPAG”) on the first draft of the proposed Operations and Maintenance (O&M) Agreement (“Template”) presented to customers on July 28th, 2011. Many of the WPAG utilities currently have O&M agreements with BPA, and as a consequence appreciate this opportunity to provide comments on this important document. These comments are initial observations for which specific suggested contract language will be provided at the appropriate point in this process. The WPAG utilities look forward to engaging with BPA on future iterations of this document. The idea that BPA’s O&M agreements should be regularized is conceptually a good one. However, as BPA has recognized, given the number and diversity of the existing arrangements, this will be a time consuming task on the part of both BPA and its customers. Further, the range of existing O&M agreements raises the question of whether a “one size fits all” approach is realistically feasible. The answer to this question will become more apparent as BPA and customers delve into the details of existing agreements.

In its July 28, 2011 presentation, BPA stated as its guiding principle for this effort that the facility owner is the asset owner who is also the O&M provider, and is financially responsible for providing O&M service. BPA also stated that it intends that the O&M obligations will be captured in purpose specific O&M agreements based on the new templates.

The WPAG utilities do not object to this principle, but would suggest that another consideration be taken into account. As BPA itself has acknowledged, the current O&M agreements have been developed and put in place over an extended period, and most if not all address issues in addition to those contained in the Template. These current contractual arrangements cannot simply be ignored. As a consequence, the WPAG utilities suggest that BPA add a second guiding principle to this effort – that contractual arrangements contained in current O&M agreements that BPA thinks are outside its definition of O&M will be addressed in either the Template or in another agreement executed with at the same time.

Unless BPA adopts as a guiding principle the need to address such issues, preference customers will be reluctant to sign the new templates. This practical consideration leads to a second point. Many if not all of the current O&M agreements do not contain a unilateral termination right in favor of BPA. This means that replacing the current O&M agreements will require the mutual agreement of both BPA and the utility. Such agreement will not likely be forthcoming if doing so requires the customer to sacrifice current arrangements that they find beneficial. The better approach is to acknowledge the importance of these arrangements and make specific provision for them. Doing so will help insure the success of this effort.

### **Comments on Specific Template Provisions**

#### **Term and Termination**

The Template permits either party to terminate the Template on 30 days notice with no cause being required. So far as we have been able to determine, current O&M agreements contain no such provision. Such a unilateral termination right imposes much risk and much uncertainty on utilities depending on BPA to provide O&M for their facilities. BPA has gotten along without such unilateral termination rights for some time, and no reason has been offered to justify this right. As a starting point, termination should be by mutual agreement. If BPA believes for some reason that it needs a unilateral termination right, then such right should only accrue for specific causes stated in the

Template.

**Unilateral Revision of Exhibit A**

In the Template, BPA reserves to itself the right to unilaterally revise Exhibit A to include additional Electric Reliability Standards that apply to the facilities being maintained. While the need to do so is understandable, it is quite possible that there could be differing opinions on whether an Electric Reliability Standard applies. The Template should provide a means by which a utility can make its view on such matters known, and a process to resolve differences of opinion on whether a revision to Exhibit A is warranted.

**BPA RESPONSE:** BPA understands that one contract template won't fit all needs, BPA will create additional templates with the key goal of establishing and maintaining consistency. Exhibit A tables may be customized to meet customer needs.

Changes to Exhibit A: BPA wants to develop mutually beneficial and acceptable agreements but believes the unilateral revisions listed in Section 3(a) are important.

BPA will extend the termination notice period to meet customers business and process needs.

**PacifiCorp:** PacifiCorp appreciates the opportunity to comment on the draft Operations and Maintenance ("O&M") Agreement templates circulated by BPA (or "Bonneville" herein) for review. The Company looks forward to further discussion with BPA and other stakeholders on the issues for consideration below. PacifiCorp maintains concerns about the manner in which these templates will operate, in light of numerous existing O&M obligations between BPA and PacifiCorp and prevailing Federal Energy Regulatory Commission ("FERC") filing requirements. Please note that, to the extent it is not explicit, any comments about provisions in one template are generally intended to apply to the analogous provision in the other template.

**BPA RESPONSE:** *BPA will coordinate with customers independently.*

**PNGC:** Thank you for providing Pacific Northwest Generating Cooperative (PNGC) the opportunity to comment on the draft Operation and Maintenance Agreement ("O&M Agreement") templates. PNGC offers initial comments and suggested edits in the attached documents, and we look forward to continuing to work with Bonneville Power Administration (BPA) in workshops and ongoing discussions to further refine these templates prior to BPA and individual customers customizing them for execution.

In general, PNGC supports the concept of acknowledging and cataloguing operation and maintenance obligation agreements between BPA and its customers within the context of mandatory reliability standards. We also support the idea of a template contract that would replace various and varying existing operations and maintenance agreements and update old agreements to acknowledge the role of reliability standards. The O&M templates that BPA has provided are a good step in this process. However, PNGC has concerns about certain aspects of the O&M Agreement templates, as detailed in the attached documents.

Again, we look forward to continuing to work with BPA on refining the templates.

**BPA RESPONSE:** *BPA looks forward to the opportunity to collaboratively develop the templates.*

**PGE:** According to the Key Milestones document included in the meeting notes from the July 28, 2011 Customer Meeting, we have been asked to provide comments by August 26, 2011 on the O&M contract templates.

This notice is to inform you that PGE needs additional time to review and comment on BPA's proposed Operation and Maintenance Agreements.

It is my understanding from the meeting on August 23, that both PGE and Pac will provide written comments but will also continue to work with BPA on the development of the template language. And that BPA will conduct at least one customer workshop (tentatively scheduled for November) to review comments.

**BPA RESPONSE:** *BPA looks forward to the opportunity to collaboratively develop the templates.*

**BPA Notes from July Customer Meeting:** Are the new O&M Agreements intended to replace any delegation agreements?

**BPA RESPONSE:** No but a careful review of delegation agreements will be required to insure no conflicts.

**BPA Notes from July Customer Meeting:** Will reporting responsibility always follow ownership? Need a mechanism to resolve disputes.

**BPA RESPONSE:** Reporting responsibility aka Responsible entity follows:

1. Majority Ownership
2. Equal ownership - the entity who performs the maintenance will be the responsible entity. This will be collaboratively discussed and documented in Exhibit A prior to execution.

**BPA Notes from July Customer Meeting:** In regards to percent of ownership etc, would like to see more specifics per customer and not a boiler plate contract

**BPA RESPONSE:** Exhibit A will be modified on a case by case basis to address joint ownership situations.

## RECITALS

WHEREAS, the Parties desire to enter into an agreement providing for the operation and maintenance of facilities as detailed in this Agreement, and the Parties desire to provide herein for payment for the operation and maintenance of such facilities;

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

WHEREAS, Customer is the Registered Entity with compliance responsibility for the Electric Reliability Standards applicable to the facilities described herein;

WHEREAS, Bonneville is authorized pursuant to law to operate and maintain transmission facilities and to enter into agreements to carry out such authority.

In consideration of the promises and mutual covenants and agreements herein contained, the Parties agree as follows:

### 1. TERM OF AGREEMENT

This Agreement shall become effective at 0000 hours on the date that the Agreement has been signed by both Parties (Effective Date) and shall continue in effect for no longer than 30 years after the Effective Date unless otherwise terminated by the Parties.

#### **PacifiCorp:**

- Effective Date – PacifiCorp recommends the incorporation of language that the Effective Date is the latter of the FERC acceptance date, if filed at FERC, or last date of execution by a party. The procedure for transitioning existing agreements to agreements with these or other analogous O&M provisions needs to account for the potential applicability of the FERC filing and termination timing and deadlines.

**BPA RESPONSE:** BPA will address this issue directly with PacifiCorp.

**PNGC:** Would this create a few hours of liability that day that might not be appropriate?

**BPA RESPONSE:** The template could incorporate language to make the contract effective the day after the last signature.

This Agreement may be terminated by X (days/months/years) prior written notice by either Party.

In the event that the Agreement is terminated, all liabilities incurred hereunder are hereby preserved until satisfied.

*The following sentence is used if this O&M Agreement is replacing an existing Agreement(s).*

This Agreement terminates and replaces in its entirety, prior Agreement No.(s) ##TX-#####. All obligations incurred under Prior Agreement(s) shall be preserved until fully satisfied.

**PacifiCorp:**

- The last sentence in this section states that, for instances in which the O&M agreement replaces another agreement in its entirety, “This agreement terminates and replaces in its entirety, prior Agreement No.(s)...”. PacifiCorp recommends further discussion on this and that language be developed to address the instances the agreement *does not* replace an entire Agreement. This section introduces a broader issue of concern to PacifiCorp. PacifiCorp considers at least two scenarios concerning existing agreements: (1) O&M umbrella agreements that are broader than this template; and (2) agreements covering numerous obligations/responsibilities, which include embedded O&M provisions that may differ from the template. To the extent that the O&M templates are intended by BPA to replace those existing agreements, in whole or in part, it should consider these scenarios as it reviews these and other comments.

**BPA RESPONSE:** BPA does not intend to alter existing contract rights addressing issues other than O&M; BPA does wish, however, to relocate O & M obligations into a single contract and to update the obligations to clarify reliability responsibilities..

**PNGC:** This sentence should allow for the possibility of this contract replacing only certain provisions of prior agreements.

**BPA RESPONSE:** This sentence will have to be uniquely modified to address existing customer contractual arrangements.

**2. EXHIBITS**

The following Exhibits are hereby incorporated into and made part of this Agreement:

- (a) Exhibit A Facilities and Equipment Operated and Maintained by Bonneville

**BPA Notes from July Customer Meeting:** In some cases, the customer owns and maintains protective relays installed in a BPA substation as part of a scheme that benefits both BPA and the customer. Should BPA pay for some or all of the relay maintenance?

**BPA RESPONSE:** Review on a case-by-case basis. Look for opportunities to acquire equipment where it makes sense to both entities.

- (b) Exhibit B One-Line Diagram
- (c) Exhibit C Plan and Profile Diagram
- (d) Exhibit D Notices

### 3. REVISION OF EXHIBITS

- (a) Bonneville may unilaterally revise Exhibit A pursuant to the notice requirements in Exhibit D to:
  - (1) incorporate FERC-approved changes to Electric Reliability Standards set forth in Exhibit A;
  - (2) document replacement or removal of facilities or equipment undertaken pursuant to Section 6; and
  - (3) incorporate revisions to charges described in Exhibit A.
- (b) Bonneville may unilaterally revise Exhibit A to incorporate additional Electric Reliability Standards applicable to the equipment and facilities described in Exhibit A. Such revisions shall be effective seven (7) days after Customer receives written notice of such revision from Bonneville unless Customer provides objection by telephone to Bonneville within such period followed by written notice of such objection within five (5) days, in which case such revision shall be ineffective.

**PNGC:** PNGC would prefer to have Exhibit A revisions made by mutual agreement of the parties. BPA response: Customer has the right to veto BPA's incorporation of additional NERC Standards in Section 3(b). BPA believes the unilateral revisions listed in Section 3(a) are important.

We (PNGC) are particularly concerned about BPA's ability to unilaterally determine costs under the contract. A customer's only recourse if costs got too high would be to withdraw from the agreement altogether.

**BPA RESPONSE:** BPA understands the customer concerns. BPA strives to recover costs while keeping them as low as possible. BPA has separate efforts to establish its cost-recovery mechanisms, rates and other applicable fees. BPA will continue its coordination efforts with customers to keep these efforts as

transparent as possible.

**BPA Notes from July Customer Meeting:** The timelines for this particular process do not need to be as short as in the draft. The (7) and (5) could be changed to (14) and (10). Many companies will only have a single staff to manage the contract and if this staff is away for an extended period it would be difficult to meet the current timelines.

**BPA RESPONSE:** BPA will accept this suggestion.

**Grant PUD:** Can the word "unilateral" be removed from the template agreements, Section 3, with reference to revision of exhibits? Can a subparagraph be added that addresses joint consideration and mutual agreement to revise?

**BPA RESPONSE:** BPA believes the unilateral revisions listed in Section 3(a) are important.”

**PacifiCorp:**

- The first sentence currently states, “Customer [or BPA] may unilaterally revise Exhibit A pursuant to the notice requirements in Exhibit D to incorporate FERC-approved changes to Electric Reliability Standards.” PacifiCorp suggests a revision to the language as follows: “The *parties may mutually agree* to revise Exhibit A...” PacifiCorp believes that the changes to the agreement, while potentially uncontroversial in that they track changes to versions of existing standards or new applicable standards, still warrant that both parties should nonetheless agree to the applicability of that new standard prior to inclusion in the agreement as well as the record retention requirements under each version. PacifiCorp suggests the registered entity under the agreement should have the responsibility to maintain all current references to the standards.
- Subsection (a) (1) reads, “incorporate FERC-approved changes to Electric Reliability Standards set forth...” PacifiCorp proposes that the term “Electric Reliability Standards” be clarified to include only NERC Reliability Standards and WECC Regional Reliability Standards.
- Subsection (b) states, “Customer may unilaterally revise Exhibit A to incorporate additional Electric Reliability Standards applicable to the equipment and facilities described in Exhibit A. Such revisions shall be effective seven (7) days after Bonneville receives written notice of such revision from Customer unless Bonneville provides objection by telephone to Customer within such period followed by written notice of such objection within five (5) days, in which case such revision shall be ineffective.” PacifiCorp recommends deleting this entire provision to the extent it is redundant to subsection 3(a), as proposed to be revised above.

**BPA RESPONSE:** BPA believes that the party that is contractually responsible for implementing the NERC Reliability Standards and must annually certify compliance to the other party must have the right to incorporate FERC-approved revisions to the standards implementation. BPA has removed the unilateral right to incorporate additional standards in Subsection 3(b).

BPA believes the term Electric Reliability Standards is adequately clarified in the second recital: “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)”

#### 4. BILLING AND PAYMENT

(a) **Billing**

Bonneville shall bill Customer monthly for all products and services provided during the preceding month(s). Bonneville may send Customer an estimated bill followed by a final bill. The Issue Date is the date Bonneville electronically sends the bill to Customer. If electronic transmittal of the entire bill is not practical, Bonneville shall transmit a summary electronically, and send the entire bill by United States mail.

**PacifiCorp:**

- The template does not discuss O&M budgets. PacifiCorp suggests the incorporation of a budget requirements subsection, which includes language concerning the parties' agreement on budgeted amounts prior to the performance of work under the contract and invoicing.
- Subsection (a), "Billing," states, "Customer [or BPA] shall bill Bonneville [or Customer] monthly for all products and services provided during the preceding month(s). Customer may send Bonneville an estimated bill followed by a final bill." PacifiCorp recommends that the provision be revised to read as follows: "Customer [or BPA] shall bill Bonneville [or Customer] monthly for all products and services provided during the preceding month(s). Customer [or BPA] may send Bonneville [or Customer] an estimated bill followed by a final bill with payments submitted based on the final bill."
- Subsection (b), "Payment," makes several references to payment received by the 20<sup>th</sup> day of each month. PacifiCorp proposes that the provision be revised to require that bills be received by the 30<sup>th</sup> day of the month instead
- Subsection (e), "Disputed Bills," bullet (1) states, "If Bonneville [Customer] disputes any portion of a charge or credit on Bonneville's [Customer's] estimated or final bills, Bonneville [Customer] shall provide written notice to Customer [Bonneville] with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Bonneville [Customer] shall pay the entire bill by the Due Date." PacifiCorp recommends deleting the last sentence. PacifiCorp should not be required to pay a disputed charge and then negotiate the charge afterwards. Conversely, PacifiCorp would prefer to not require Bonneville to pay a disputed charge and then negotiate afterwards
- Subsection (e), "Disputed Bills," bullet (2) states, "Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute Customer's [Bonneville's] agreement that a valid claim under contract law has been state." PacifiCorp does not agree that a late payment charge is appropriate nor would it require a late payment charge of Bonneville. As such, PacifiCorp recommends deletion of this provision.

**BPA RESPONSE:** PacifiCorp:

- Bullet #1: BPA is reluctant to agree to budgets but is willing to further explore the issue with PAC
- Bullet #2 *[billing needs to answer]*
- Bullet #3. *[billing needs to answer]*
- Bullet #4 *[billing needs to answer]*

- *Bullet #5 [billing needs to answer]*

**WPAG: No Pricing Information** The Template contains an unconditional obligation on the part of the utility to pay for maintenance services provided, backed up by a BPA termination right for non-payment. While this provision protects BPA's financial interests, the Template is silent on how O&M charges will be determined, how notice of such charges will be provided, and what voice the utility has in setting those charges. If the customers are to accept an unconditional obligation to pay O&M charges once they are set, then simple due diligence requires that they have notice and an opportunity to be heard on the level of O&M charges for which they are accepting this unconditional payment obligation.

**BPA RESPONSE:** BPA acknowledges that this has been, and continues to be an existing issue. BPA is willing to further discuss a process for customer input on changes to O&M costs.

(b) **Payment**

Customer shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20<sup>th</sup> day after the Issue Date of the bill (Due Date). If the 20<sup>th</sup> day is a Saturday, Sunday, or federal holiday, the Due Date is the next Business Day.

If Customer has made payment on an estimated bill then:

- (1) if the amount of the final bill exceeds the amount of the estimated bill, Customer shall pay Bonneville the difference between the estimated bill and final bill by the final bill's Due Date; or
- (2) if the amount of the final bill is less than the amount of the estimated bill, Bonneville shall pay Customer the difference between the estimated bill and final bill by the 20<sup>th</sup> day after the final bill's Issue Date.

If the 20<sup>th</sup> day is a Saturday, Sunday, or federal holiday, the difference shall be paid by the next Business Day.

(c) **Late Payments**

After the Due Date, a late payment charge equal to the higher of:

- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication, in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

(d) **Termination**

If Customer has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment, including any late payment charge, in full. If, thereafter, Customer does not provide payment within three Business Days after receipt of an additional written notice from Bonneville, and Bonneville determines in its sole discretion that Customer is unable to make the payments owed, then Bonneville may terminate this Agreement consistent with Section 1. Written notices sent under this section 4(d) must comply with Exhibit D.

**Grant PUD:** There needs to be criteria for BPA to make a “sole discretion” decision. If BPA staff were to make an arbitrary or capricious decision a customer could be unduly harmed and BPA could have some liability if the decision was shown to be arbitrary and capricious.

**BPA RESPONSE:** This is standard BPA billing language.

(e) **Disputed Bills**

- (1) If Customer disputes any portion of a charge or credit on Customer’s estimated or final bills, Customer shall provide written notice to Bonneville with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Customer shall pay the entire bill by the Due Date.
- (2) Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute Bonneville’s agreement that a valid claim under contract law has been stated.
- (3) If the Parties agree that Customer is entitled to a refund of any portion of the disputed amount, then Bonneville shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

**5. OWNERSHIP OF FACILITIES AND EQUIPMENT**

- (a) Unless joint ownership is indicated in Exhibit A, Customer is the sole owner and holds title to all facilities and equipment listed in Exhibit A. When joint ownership is indicated, all jointly owned equipment, facilities, and capital spare parts will be identified as such with co-ownership tags and signs.

- (b) Costs of operation, maintenance, replacement and removal, and the proceeds from the disposal, of jointly owned facilities will be allocated consistent with the ownership share percentages specified in Exhibit A.

**PacifiCorp:**

- Subsection (a) states, “Unless joint ownership is indicated in Exhibit A, Bonneville [Customer] is the sole owner and hold the title to all facilities and equipment listed in Exhibit A. When joint ownership is indicated, all jointly owned equipment, facilities, and capital spare parts will be identified as such with co-ownership tags and signs.” PacifiCorp recommends adding the following language to the last sentence, “or as otherwise agreed upon by the joint ownership parties.”
- PacifiCorp recommends revising subsection (b) as follows: “Costs of operation, maintenance, replacement and removal, and the proceeds from the disposal, of jointly owned facilities will be allocated consistent with the ownership share or maintenance share percentages specified in Exhibit A as applicable.”

**BPA RESPONSE:**

- Bullet #1: Through negotiation, BPA and the impacted entity will agree upon and document the responsible entity in exhibit A prior to execution.
- Bullet #2: BPA will address this issue with the very few impacted customers.

**6. OPERATION, MAINTENANCE AND REMOVAL OF CUSTOMER OWNED FACILITIES AND EQUIPMENT BY BONNEVILLE**

**WPAG: No Notice Provision**

Since the maintenance of utility facilities by BPA personnel will normally require the BPA personnel to access utility property, it is generally accepted practice that the utility be given prior notice when BPA personnel will do so. It appears the Template is silent on this matter. The same holds true for outages that must be taken to perform maintenance activities. A requirement for prior notice need not unduly burden the maintenance process, nor should it eliminate the timing flexibility that is helpful in providing the maintenance service. However, the utility has both a need and a right as the facility owner to know when BPA personnel are accessing their property.

**BPA RESPONSE:** Needs further discussion.

Outage issue: BPA will continue to utilizing existing outage and real time process and procedures. Additional discussion at the workshop may be necessary.

**PacifiCorp:**

- Subsection (a) (2) reads Customer shall, “operate and maintain Customer’s power system control facilities (e.g.: Supervisory Control and Data Acquisition {SCADA}) which are necessary to integrate the Bonneville owned facilities and equipment described in Exhibit A with Customer’s control system and, from time to time when Customer determines it is necessary, modify or replace such Customer power system control facilities.” PacifiCorp recommends a revision to this provision in order to clarify that it only applies to system control facilities that are jointly owned.
- PacifiCorp recommends a revision to subsection (e) as follows: “Bonneville agrees to share the cost of modifying or replacing any of the *jointly-owned* power system control equipment associated with the facilities specified in Exhibit A if and when Customer notifies Bonneville that such action is necessary to make the operation of such facilities compatible with the operation of Customer’s facilities.” PacifiCorp also seeks clarification of the term “programmed project.”

**BPA RESPONSE:**

- SCADA and other power system control facilities require periodic updates and replacements. To the extent that another entity’s equipment is integrated with the power system control facilities, cooperation and shared expense is expected when modifications are required. Such equipment replacements are beyond the scope of the O&M Agreement. Mutually acceptable terms and conditions will be negotiated between BPA and the customer at the time of need and incorporated in a separate reimbursable construction agreement.
- **Bullet #1:** Through negotiation, BPA and the impacted entity will agree upon and document the responsible entity in exhibit A prior to execution.

(a) Bonneville shall:

- (1) operate and maintain the Customer owned facilities and equipment described in Exhibit A in the same manner in which Bonneville operates and maintains similar facilities and equipment owned by Bonneville, and in accordance with the Electric Reliability Standards listed in Exhibit A, as applicable to such facilities and equipment, including replacements necessary for compliance with such standards, and;
- (2) operate and maintain Bonneville's power system control facilities (e.g.: Supervisory Control and Data Acquisition {SCADA}) which are necessary to integrate the Customer owned facilities and equipment described in Exhibit A with Bonneville’s control system and, from time to time when Bonneville determines it is necessary, modify or replace such Bonneville power system control facilities.

**PNGC:** Add, at beginning of this section, "as applicable, "

**BPA RESPONSE:** Please discuss during round table

- (b) Customer shall reimburse Bonneville for all costs, including replacement parts and labor, that Bonneville incurs for providing such operation and maintenance specified in section 6(a)(1) above and for modifying or replacing Bonneville power system control facilities described in section 6(a)(2) above.
- (c) Customer shall grant Bonneville and its authorized contractors timely access to its facilities to perform its obligations hereunder.

**PNGC:** Add, at beginning of this section, "Subject to applicable security requirements, "

**BPA RESPONSE:** O & M team ok with the suggestion - template has been changed.

- (d) In the event of a major failure or obsolescence that renders any of the facilities and equipment described in Exhibit A unfit for service according to the principles of Good Utility Practice, the Parties shall use every reasonable effort in good faith to negotiate and execute a mutually acceptable agreement providing for the replacement, repair, or removal of such facilities and equipment with the expenses to be shared by the Parties in accordance with the ownership percentages specified in Exhibit A.
- (e) Customer agrees to share the cost of modifying or replacing any of the power system control equipment associated with the jointly-owned facilities specified in Exhibit A if and when Bonneville notifies Customer that such action is necessary to make the operation of such facilities compatible with the operation of Bonneville's facilities. Such costs will be shared in accordance with the ownership percentages specified in Exhibit A. Bonneville shall provide reasonable written notice to Customer consistent with the availability of facilities and budgetary planning. Any such modification or replacement of power system control equipment will be required only: (1) when Bonneville, in keeping with prudent utility practice, replaces or modifies similar equipment owned by Bonneville at the same location; (2) as a part of a programmed project involving a significant portion of Bonneville's system; or (3) by mutual agreement of the Parties.

**PNGC:** Add at end of this section, ", or (4) for compliance with Electric Reliability Standards pursuant to Section 6(a)(1), above.

**BPA RESPONSE:** BPA is ok with this suggested change.

- (f) If requested by Customer or if Bonneville determines it is necessary, in carrying out its responsibilities under Section 6(a)(1) above, Bonneville shall, at Customer's expense, remove and return to Customer the salvable facilities and equipment which are owned by Customer as described in Exhibit A. After such removal, Bonneville may, at Customer's expense, return the Bonneville facilities altered under the installation contract described in Exhibit A, to the configuration (1) existing before such contract was executed, or (2) as mutually agreed by the Parties.

## 7. LIABILITY

- (a) If Bonneville's acts or omissions are responsible in whole or in part for Customer's failure to comply with Electrical Reliability Standards specified in Exhibit A as applicable to the facilities and equipment listed in Exhibit A, Bonneville shall bear a share of any monetary penalty based on its comparative fault determined pursuant to Section 9(g).
- (b) Except as specifically provided in Section 7(a) of this Agreement, in no event shall Bonneville be liable to Customer, its board of directors, officers, employees, agents or representatives for any lost or prospective profits or for any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement.

**WPAG:** At the July 28, 2011 meeting BPA indicated a willingness to accept responsibility for penalties arising from its maintenance activities of utility facilities, but that it had run into difficulties at DOE regarding this approach since it involved one federal agency assessing a penalty against another federal agency. It would seem that the Template could be structured so that the utility retained initial responsibility for the payment of such penalties, but grants it a contractual right to reimbursement from BPA. Such an approach would avoid the "federal to federal" issue BPA ran into initially. And at the end of the day, it does seem sensible for the party doing the O&M to bear ultimate financial responsibility for penalties caused by that activity.

If the foregoing approach is not achievable due to federal agency requirements, then the Template needs to contain provisions for determining who, as between BPA and the utility, should bear financial responsibility for any penalties assessed for non-compliance associated with the maintained facilities. The language currently in the Template takes an "agree to agree" approach under which the parties can agree who is responsible for the penalty, and in the absence of agreement on who should pay, as an alternative the parties can agree to binding arbitration on the issue of financial responsibility. However, if BPA and the utility fail to agree on who should pay, and BPA declines to enter into binding arbitration, the utility will be stuck with paying the penalty with no clear path to obtain reimbursement from BPA. This is not a satisfactory approach.

BPA and the customers need to work together to forge an approach that treats the interests of both BPA and the utility fairly, and has an end result that is binding on both sides. Otherwise, one party or the other will be tempted to avoid responsibility that is rightfully theirs by the mere expedient of declining to agree. Finding a solution to this issue is consonant with the underlying objective of clarifying in the Template regulatory compliance responsibilities.

**BPA RESPONSE:** The template was drafted on the assumption that the registered entity would be assessed and would pay the penalty but would have a contractual right to reimbursement from the party providing the O&M

services based on its comparative fault. BPA is not willing to agree to binding arbitration of these disputes. As with many other BPA contracts, resolution of disputes that cannot be resolved is in the courts.

## 8. ADDITIONAL COMMITMENTS

### **PacifiCorp:**

1. PacifiCorp considers of critical importance its compliance with the NERC and WECC reliability standards and so it will want to continue to work closely with BPA on the development of these provisions, which impact the ability of each registered entity to demonstrate compliance with those standards when the other party is responsible for O&M for particular equipment and assets.
2. PacifiCorp supports the provision in Subsection 8(a) which provides that each registered entity will receive from the other party an annual letter certifying compliance with applicable standards and all programmatic documentation required by standards. Subsection 8(a)(3) provides for the exchange of the “copy of records required by the standards listed in Exhibit A.” PacifiCorp respectfully requests to work with Bonneville on the language and associated requirements of this section. The provision should further permit the parties to determine which documents evidencing compliance should be provided for particular requirements on an annual basis. PacifiCorp will work with Bonneville toward consistency in the collection of the data records and the report for consistency between both parties.
3. Subsection 8(b) states that at Bonneville’s [Customer’s] request, the Customer [Bonneville] will provide the documents referred to in 8(a) “on an as-needed basis pursuant to requested deadline.” PacifiCorp recommends the inclusion of a time parameter by which the other party should respond to the request of the registered entity. The registered entity may be asked for particular compliance documentation by NERC or WECC by a certain time period, or be notified of an impending spot check, and so it may require the information on an accelerated basis.
4. Subsection 8(c) states, “At Bonneville’s [or Customer’s] request, Customer shall provide any additional documentation as required by the standards listed in Exhibit A or as required by WECC of NERC.” WECC may request additional documents that could be due in an accelerated timeframe, such as within 30 days, PacifiCorp suggests that the template agreement permits the parties to coordinate a reasonable response time period to allow both the requesting party (*i.e.*, the registered entity under the agreement) and the responding party to comply.

### **BPA RESPONSE:**

1. *BPA will discuss and make notes during the workshop.*

- (a) Bonneville agrees to annually provide to Customer during each Calendar Year (Quarter 4):
  - (1) Letter certifying Bonneville’s compliance with standards listed in Exhibit A with respect to the facilities and equipment listed in Exhibit A.

**PNGC:** Strike "s" after "Bonneville" and add "has operated and maintained equipment listed in Exhibit A at levels sufficient for". This change is needed to ensure that it clear that the customer, not Bonneville, remains responsible

for compliance with reliability standards.

**BPA RESPONSE:** BPA team to take under advisement.

- (2) Copy of programmatic documentation required by the standards listed in Exhibit A.
- (3) Copy of records required by the standards listed in Exhibit A.
- (b) At Customer's request, Bonneville shall provide all items listed in (a) pursuant to Customer's requested deadlines.
- (c) At the Customer's request, Bonneville shall provide any additional documentation as required by the standards listed in Exhibit A or as required by FERC, NERC or WECC.

**PNGC:** Add "or FERC."

**BPA RESPONSE:** *noted and accepted*

## 9. FAILURE TO PERFORM

**BPA Notes from July Customer Meeting:** In Section 9 of the template agreements, could an exception to the self-report requirement be that the other entity was performing maintenance in a back-up capacity?

**BPA RESPONSE:** Taken under advisement.

- (a) If Bonneville determines that it is not in compliance with one or more of the requirements in Section 6(a)(1) it shall notify Customer within 1 business day of such determination.

**PNGC:** Further discussion is necessary as to whether one business day is sufficient time to accomplish this.

**BPA RESPONSE:** To be discussed at the Nov 22 meeting.

- (b) If Customer determines that any Electric Reliability Standards listed in Exhibit A have been violated with respect to facilities and/or equipment listed in Exhibit A, Customer will self report the violation(s) pursuant to WECC's Compliance Monitoring and Enforcement Program (CMEP).

- (c) Customer will coordinate with Bonneville to create the required Mitigation Plan as provided in WECC's CMEP. Customer will submit the mitigation plan and all related, required documentation to WECC.

**PNGC:** In this section, strike "the required" after "any." Strike "as provided in" after "Plan," and replace with "required by".

**BPA RESPONSE:** Need to modify this language to directly reflect what is actually required versus what is requested in the CMEP. BPA to discuss at the customer workshop.

- (d) Customer will notify Bonneville within ten (10) business days when a Notice of Alleged Violation is issued pursuant to the CMEP and indicate the proposed penalty amount.
- (e) Customer will not oppose any attempts by Bonneville to intervene in CMEP proceedings conducted by WECC, NERC, or FERC.

**PNGC:** Strike "the" after "intervene in".

**BPA RESPONSE:** Ok to remove

- (f) Customer shall have the sole discretion to decide whether to proceed through the Settlement Process or the Hearing Process under the CMEP.
- (g) In determining whether and to what extent Bonneville is responsible for any part of monetary penalties imposed with respect to Customer's failure to comply with Electrical Reliability Standards specified in Exhibit A as applicable to the facilities and equipment listed in Exhibit A:

**PNGC:** PNGC understands this section to be subject to further revision.

**BPA RESPONSE:** To be discussed at the Nov 22 meeting.

- (1) 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 Bonneville due to Bonneville's comparative fault.

**Grant PUD:** We suggest adding the following sentence to the end of this section "If the violation is part of a settlement, BPA's allocation shall be the proportion of that violation to the sum of all unsettled violations multiplied by the settlement amount."

**BPA RESPONSE:** BPA does not understand the comment.

- (2) If the determination of the amount of monetary penalties to be assumed by Customer and Bonneville is not resolved after good faith efforts of the Parties to reach a resolution, the dispute may be submitted, upon mutual agreement of Customer and Bonneville, to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration rules. If Customer and Bonneville agree to submit the dispute to binding arbitration, 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 Customer whole, the award shall include interest, from the date of payment by Customer, on the amount of such monetary penalty for which Bonneville is determined to be responsible. Interest shall be calculated as stated in Section 4(e)(3). The Parties shall equally share the cost of any arbitration process, including the cost of the arbitrator, court reporter, and room rental. Each Party shall be responsible for the cost of presenting its own case, including, without limitation, witnesses, attorneys, and consultants.

**PacifiCorp:**

- PacifiCorp has concerns with several sections in Section 9 as currently drafted. In Section 9(a), if the Customer or Bonneville (whichever party will be performing the O&M) determines that “it is not in compliance,” it will notify the other party within 1 business day. PacifiCorp does not necessarily support the notice of one business day and would like to discuss further. In addition, PacifiCorp believes that the other party, the registered entity in this instance, should know whether or not the other party is evaluating whether it has failed to comply with any of the requirements in the agreement before it has made a conclusive determination of whether a violation has occurred. Therefore, PacifiCorp recommends a revision to provide that, once a Customer or BPA determines “that it may not be in compliance,” it will notify the other party.
- Sections 9(b) and (c) presuppose that mitigation plans to WECC are required, which is not the case, and the provisions should be revised accordingly. Section 9(b) provides that if the registered entity determines that any NERC/WEC standards have been violated it “*will self report* the violation(s) pursuant to WECC’s [CMEP].” Section 9(c) provides that the registered entity will coordinate with the other “to create the *required* Mitigation Plan” and “*will submit* the Mitigation Plan and all related, required documentation to WECC.” Self-reports and mitigation plans are NOT required under the NERC or WECC CMEP, and thus PacifiCorp does not agree that any party should be bound to self-report any violations under the terms of these O&M agreements. As such, each registered entity should be able to maintain their ability to elect whether to self-report for any identified violation.
- PacifiCorp does support Sections 9(e) and (f) which provide for both parties’ participation in any hearing but the ultimate and sole discretion of the registered entity to determine whether it will enter into a settlement or proceed to a hearing.
- PacifiCorp supports the need for a mechanism by which parties shall bear a share of any monetary penalty based on comparative fault (Section 7(a)). However, PacifiCorp recommends the addition of a “Dispute Resolution” section to further outline this process.

**BPA RESPONSE:** For further discussion at workshop.

**10. STANDARD PROVISIONS**

**WPAG:** Utility Safety Regulations The utility facilities that are maintained by BPA under current agreements are areas of high risk that are subject to stringent utility safety requirements that are imposed on all personnel entering these areas. The Template does not address these matters. It is well understood that BPA has and follows stringent safety protocols and requirements, which in some cases may be more extensive than specific utilities. That said, BPA personnel are entering into another entities property for which that entity is liable. Therefore, at a minimum, the Template should affirmatively require BPA personnel to be aware of and abide by all utility safety regulations and procedures while on utility property to provide maintenance services. Further, it should also accommodate the need for a safety escort provided by the utility when and if the utility regulations call for it. BPA is not being singled out as this is a common practice when utilities are using outside contractors to work on their facilities. These are both a safety as well as a liability issue.

**BPA RESPONSE:** BPA is willing to consider the suggestion and would like to discuss the appropriate location of where Safety language could be inserted.

**WPAG:** No Special Provisions Exhibit As stated earlier, many current O&M agreements contain provisions that address matter that while only tangentially related to the provision of O&M services, they nonetheless remain

important to the utility. One method of dealing with these matters would be a separate agreement addressing them that is signed concurrently with the O&M agreement. A second way would be to include in the Template a “special provisions exhibit” which would contain these utility specific matters. This approach has been used for some time in the BPA power sales contracts with success. It provides a means to address extraneous issues without the need to prepare and execute an entirely separate agreement.

**BPA RESPONSE:** BPA is willing to consider this and other suggestions for maintaining provisions that are unrelated or tangentially related to the provision of O&M services.

- (a) **Relationship of the Parties**  
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.
- (b) **Amendments**  
Except where this Agreement explicitly allows one Party to unilaterally amend a provision or exhibit, no amendment of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.
- (c) **Assignment**  
This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld.
- (d) **Entire Agreement**  
This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.
- (e) **No Third Party Beneficiaries**  
This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.
- (f) **Section Headings**  
Section headings and subheadings appearing in this Agreement are inserted for convenience only and are not be construed as interpretations of text.
- (g) **Several Obligations**

Except where specifically stated in this Agreement, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective.

(h) **Uncontrollable Forces**

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force.

“Uncontrollable Force” means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party’s reasonable care, diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (1) strikes or work stoppage;
- (2) floods, earthquakes, or other natural disasters; terrorist acts; and
- (3) final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with Exhibit D, Notices.

(i) **Waivers**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

- (j) **Freedom of Information Act (FOIA)**  
 Bonneville may release information provided by Customer to comply with FOIA or if required by any other federal law or court order. For information that Customer designates in writing as proprietary, Bonneville will limit the use and dissemination of that information within Bonneville to employees who need the information for purposes of this Agreement.
  
- (k) **Governing Law**  
 This Agreement shall be interpreted, construed and enforced in accordance with Federal law.

**PacifiCorp: New Section Proposed - Definitions**

The template agreement shows capitalized terms; however, the terms are not defined within the agreement. PacifiCorp proposes a new section to define terms, including “Joint Ownership”, “Due Date,” “Electric Reliability Standards” (see below), “Good Utility Practice,” “Business Sensitive,” “Settlement Process,” and “Hearing Process,” All defined terms should be consistent with the pro forma OATT where practicable. Also, references to “days,” should specify calendar or business days.

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**BPA RESPONSE:** BPA is not convinced that all of these terms require definition but is willing to consider adding some definitions to the template.

**11. SIGNATURES**

The Parties have caused this Agreement to be executed as of the date both Parties have signed this Agreement.

**CUSTOMER NAME**

UNITED STATES OF AMERICA  
 Department of Energy  
 Bonneville Power Administration

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

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

Name: \_\_\_\_\_  
*(Print/Type)*

Name: **AE Name** \_\_\_\_\_  
*(Print/Type)*

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

Title: **(Senior) Transmission Account Executive** \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**EXHIBIT A**  
**FACILITIES AND EQUIPMENT OPERATED AND MAINTAINED BY BONNEVILLE**

**PacifiCorp:** PacifiCorp believes that certain portions of Exhibit A will require annual revision, including the annual charge column and the footnote indicating the fiscal years from which such annual charges were derived. As such, PacifiCorp suggests that the reference to annual charge may be more appropriate to reference as “estimated annual charge.” In addition, the ownership/billing percentage for each identified equipment/asset should be included herein. Also, please see the comment above concerning Section 3(a) about the removal of the reference of a party being able to unilaterally revise Exhibit A.

**BPA RESPONSE:** *To be addressed at a further date.*

**BPA Notes from July Customer Meeting:** Can BPA provide specific direction (link) from the equipment description to the applicable portion of BPA’s TVMP and TMIP?

**BPA RESPONSE:** BPA does not have adequate resources to provide this level of customization, at least not in 2011. BPA does commit to having SMEs on call while customers undergo audits.

**Comment:** 50/50 shared ownership situations need special consideration and definition.

**BPA Notes from July Customer Meeting:** Can BPA enforce a notification requirement to minimize the risk of equipment configuration changes that have adverse impacts on BPA and/or customer utilities (e.g. Lane Electric Blue River system impacted by CT ratio change at hydro plant)?

**BPA RESPONSE:** Taken under advisement

**BPA Notes from July Customer Meeting:** Will the non-maintaining party be given the opportunity to witness?

**BPA RESPONSE:** BPA currently offers opportunity to witness revenue meter testing. BPA does not offer witness opportunities for other activities to avoid impacts to outage schedules and crew availability.

**Bonneville Implementation Responsibilities for Customer Compliance**

Customer is responsible for compliance with all Electric Reliability Standards applicable to Customer. Bonneville is responsible for implementing Bonneville’s Operation and Maintenance program to achieve compliance with the standards listed below as applicable to the equipment listed below.

Customer may request an addition or change to the facilities and equipment to be operated and maintained by Bonneville, and Bonneville may, at its discretion, agree to such addition or change. Any revision must specify the facilities and equipment to be operated and maintained, location of the facilities and equipment, ownership of facilities and equipment, and sharing of maintenance and operation costs between the Parties.

If Bonneville determines that the charges specified in this Exhibit must be adjusted to conform to Bonneville’s current costs of operating and maintaining like facilities and equipment, Bonneville may unilaterally revise such charges upon ninety days written notice to Customer.

Equipment No.	Facility / Equipment Description	Electric Reliability Standard No. and Requirement	Installed under Contract No.	Annual Charge \$ <sup>1</sup>

Insert file path

<p><b>BPA Notes from July Customer Meeting:</b> Can a column be added in the tables of Exhibit A, to include the Customer number associated with the particular piece of equipment?</p>
<p><b>BPA RESPONSE:</b> Yes</p>

<sup>1</sup> This amount is based on Bonneville’s Annual O&M Tables dated [insert date], based on average O&M expenses from fiscal years yyyy, yyyy, yyyy.

**EXHIBIT B  
ONE-LINE DIAGRAM**

*Substation facilities and equipment are described here.*

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DRAFT

**EXHIBIT C  
PLAN AND PROFILE DIAGRAM**

*Transmission lines are described here.*

Insert file path

DRAFT

**EXHIBIT D  
NOTICES**

**1. NOTICES RELATING TO PROVISIONS OF THE AGREEMENT**

Any notice required under this Agreement shall be in writing and shall be delivered in person or with proof of receipt by a nationally recognized delivery service or by United States Certified Mail. Notices are effective when received. Either Party may change the name or address for receipt of notice by providing notice of such change. The Parties shall deliver notices to the following person and address:

**If to the Customer:**

Customer Name  
Customer Address  
Customer City, State, Zip  
Attention: Customer Contact  
Title: Customer Title  
Phone:  
Fax:  
E-mail:

**If to Bonneville:**

Attention: Transmission Account Executive  
for Customer Name – TSE/TPP-2  
Phone: (360) 619-6016  
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 41<sup>st</sup> Street, Suite 130  
Vancouver, WA 98662-7905

**2. FOR REPORTING OF COMPLIANCE DOCUMENTATION**

**If to the Customer:**

Customer Name  
Customer Address  
Customer City, State, Zip  
Attention: Customer Contact  
Title:  
Phone:  
Fax:  
E-mail:

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## BPA response to comments for O & M template – 11/02/11

### Parking lot:

- Joint ownership agreements –
  - Maybe into Interconnection agreements

### TOPIC:

- 

*Comment: Existing agreements are often customized to a particular situation or facility, and it may not be possible to standardize agreements between BPA and all of its customers. Given this, we believe that BPA should hold a series of workshops on the draft O&M Agreement Template to work through the drafting issues. BPA should be prepared to potentially receive several rounds of comments on its Operations and Agreement Template, and BPA should be flexible in its effort to standardize agreements.*

### BPA Response:

BPA is holding our first O & M template round table discussion Nov 22<sup>nd</sup>. As the project progresses BPA will collaborate with our customers to determine if additional larger round table workshops would be mutually beneficial or if customer specific discussions would more effective.

BPA understands the complexity of each O & M obligation and the terms of the contract. BPA understands that every O & M obligation is unique in nature, it is BPA's intent to collaboratively work with each customer to either replace or modify existing contracts to everyone's mutual benefit and to support reliability.

BPA needs all O & M obligations in one stand alone document for each customer to reduce the regulatory and compliance risk for both BPA and the customer.

BPA does not intend for this effort to modify existing rights and obligations not directly related to O&M. BPA intends a clear and explicit identification of the O & M obligations down to the equipment level and the appropriate applicable standard.