

ATTACHMENT Y

AGREEMENT LIMITING LIABILITY AMONG RTO WEST PARTICIPANTS

This Agreement (the “RTO West Liability Agreement” or “Agreement”) is made and entered into as of the ____ day of _____, 2001 by and between certain parties executing this RTO West Liability Agreement hereinafter referred to individually as “Party” and collectively as “Parties” who are participants in a regional transmission organization (“RTO West”) formed pursuant to an order of the Federal Energy Regulatory Commission in Docket No. RM99-2-000 and commonly referred to as Order No. 2000.

WHEREAS, the Federal Energy Regulatory Commission (“FERC”) has directed transmission owners to take certain actions with respect to forming and participating in a regional transmission organization with other transmission owners across wide geographic areas throughout all parts of the United States, both as among FERC jurisdictional and non-jurisdictional transmission owners; and

WHEREAS, the generation owners, distribution owners, and transmission owners of the Electric Systems who are participants in RTO West will be entering into various agreements with RTO West to implement a regional transmission organization pursuant to Order No. 2000; and

WHEREAS, some or all of the Parties are members of regional power pool organizations which have developed electric utility practices which may or may not be consistent between and among the various regional power pools; and

WHEREAS, there exist between and among the generation owners, distribution owners, and transmission owners various other agreements concerning electric disturbances and loss or damage to Electric Systems; and

WHEREAS, a portion of the collective assets that presently constitute the Electric Systems of the geographic area to be served by RTO West will be placed under the control of RTO West, and a portion of those same assets will remain under the control of generation owners, distribution owners, and transmission owners; and

WHEREAS, the Parties wish to provide for an agreement concerning liability between and among the interconnected Parties for certain events arising from their electric operations which addresses existing agreements covering assets not subject to the control of RTO West and new agreements formed to implement RTO West;

NOW THEREFORE, in consideration of the mutual benefits to the Parties and the benefits set forth in the recitals above, the Parties agree as follows:

1. Definitions.

For purposes of this Agreement, capitalized terms not defined elsewhere in this Agreement shall have the definitions specified in Attachment 1 to this Agreement.

2. Term.

2.1 Those Parties which are subject to FERC jurisdiction shall cause this Agreement to be promptly filed with FERC. If FERC accepts this Agreement for filing, this Agreement shall become effective upon its acceptance for filing or approval by FERC, without change unacceptable to a Party. If FERC's acceptance for filing or approval of this Agreement is, as a result of rehearing or judicial review thereof, subsequently revised or modified in a manner unacceptable to a Party, this Agreement shall be deemed void *ab initio* as to such Party. Any such revision or modification of this Agreement shall be deemed unacceptable to a Party only if that Party provides notice to the other Parties within thirty (30) days of issuance of the applicable FERC action or judicial order that such action or order is unacceptable. If FERC, by exercise of the rule of reason elects not to accept this Agreement for filing, this Agreement shall become effective upon receipt of notice from FERC to such effect.

2.2 No Party may terminate its participation in this Agreement unless it has exercised its right to terminate each Transmission Operating Agreement, Generation

Integration Agreement, or Load Integration Agreement to which it is a party with RTO West. Such Party may terminate this Agreement by giving RTO West written notice that it has terminated any and all such agreement(s). Termination of this Agreement shall be effective upon satisfaction of the conditions above, and RTO West shall notify other Parties to this Agreement of such termination. Such termination shall be effective whether or not RTO West fulfills its obligation to notify all other Parties. Such termination shall be effective as to events which occur on or after the date of termination, and all rights and obligations of a terminating Party as to events occurring prior to the effective date of termination shall be preserved until satisfied. RTO West shall remain a Party to this Agreement so long as one or more other Parties continue their participation.

3. Responsibility - Interconnected System Design and Operation.

3.1 Each Party shall design, construct, operate, maintain and use its Electric System in conformance with Good Utility Practice:

3.1.1 To minimize electric disturbances, such as, but not limited to, the abnormal flow of power, which may damage or interfere with the Electric System of any other Party or any Electric System connected with such other Party's Electric System, and

3.1.2 To minimize the effect on its Electric System, and on its customers, of electric disturbances originating on its own or another Electric System.

3.2 Nothing in this Agreement shall be construed to create any duty or any liability to any person not a Party. RTO West shall file continuity of service tariff(s) substantially as follows:

“(1) Electric transmission service is inherently subject to interruption, suspension, curtailment, and fluctuation. RTO West shall have no liability to its customers or any other persons for any interruption, suspension, curtailment or fluctuation in service or for any loss or damage caused thereby if such interruption, suspension, curtailment or fluctuation results from any of the following:

(a) Causes beyond RTO West's reasonable control, including, but not limited to fire, flood, drought, winds, acts of the elements, court orders, insurrections or riots, transmission failures, lack of sufficient generating capacity, breakdown of or damage to facilities of RTO West or of third parties, acts of God or public enemy, strikes or other labor disputes, civil, military or governmental authority, electrical disturbances originating on or transmitted through Electric Systems with which RTO West's transmission system is interconnected, and acts or omissions of third parties;

(b) Repair, maintenance, improvement, renewal or replacement work on RTO West's electrical transmission system, which work, in the sole judgment of RTO West is necessary or prudent; to the extent practicable, work shall be done at such time as will minimize inconvenience to customer, and whenever practicable, customer shall be given reasonable notice of such work;

(c) Actions taken to conserve energy at times of anticipated deficiency of resources; and

(d) Actions taken by RTO West, which in its sole judgment are necessary or prudent to protect the performance, integrity, reliability or stability of RTO West's electrical transmission system or any Electric System with which it is interconnected, which actions may occur automatically or manually. Automatic actions would occur through the operation of automatic protective equipment installed on RTO West's electric transmission system, including, without limitation, such equipment as automatic relays, generator controls, circuit breakers, and switches. This equipment is present to operate under certain prescribed conditions, which, in the sole judgment of RTO West, threaten system performance, integrity, reliability or stability. Manual actions occur when switches, circuit breakers, relays, voltage regulators or other equipment are manually operated or when RTO West directs a customer to curtail its load. If manual actions are undertaken, then to the extent permitted by the

operation characteristics of the Electric System, RTO West will perform such manual actions so that interruption, suspension, curtailment, or fluctuation of service to customers will be accomplished in such sequences as necessary in the sole judgment of RTO West to protect system performance, integrity, reliability or stability.

(2) In the event of disruption of transmission service, RTO West shall make reasonable efforts to re-establish transmission service with a minimum of delay and without any liability to any customer or any other person or entity for any loss or damage from causes beyond its control.

(3) In no event shall RTO West (or generation Owner, distribution Owner or transmission Owner as defined in the Agreement Limiting Liability Among RTO West Participants) be liable for other than Property Damage which is defined as damage to or destruction of tangible property, real or personal, but does not include damages for any indirect, exemplary, punitive, incidental or consequential loss or damage whatsoever, including, but not limited to, loss of profits or revenue on work not performed; for loss of use of or under-utilization of facilities; or loss of use of profits or revenue.”

3.3 Should differences arise between Parties regarding the implementation of subsection 3.1, they will seek an equitable solution and will perform necessary technical studies which will not be unreasonably delayed. In the event agreement cannot be reached, and if in the judgment of any Party to the disagreement that the necessary technical studies have not been performed, such Party may demand the matter be arbitrated. “Differences” as used herein shall not include differences of opinion on any subject which is in controversy between regional power pools, and this provision shall not be used to resolve any such differences.

3.4 For the purposes of Section 3.3, the Party demanding arbitration shall give notice in writing of such demand to all other Parties. The Parties desiring to participate shall meet within ten (10) days thereafter to select an arbitrator by mutual agreement. The arbitrator shall be an individual of national reputation having demonstrated expertise

in the field of the matter or item to be arbitrated. In the event such Parties cannot agree upon an arbitrator, the Chief Judge of the United States Court of Appeals, Ninth Circuit, or such tribunal as may at the time be the successor of such Court may, upon request of a party, appoint the arbitrator. If pending any arbitration under this Agreement, the arbitrator, or successor or substitute arbitrator, shall die or for any reason be unable or unwilling to act, his successor shall be appointed as he was appointed, and such successor or substitute arbitrator as to all matters then pending, shall act the same as if he had been originally appointed as an arbitrator. The award of the arbitrator so chosen shall be final as to the Parties to this Agreement. Each Party to the arbitration shall bear the expense of preparing and presenting its own case, and the expense of the arbitrator, including the expense of any technical studies required by the arbitrator, shall be equitably apportioned among parties to the arbitration by the arbitrator. Arbitration shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect.

3.5 The mutual covenants of Section 6 are independent of and divisible from the covenants of subsection 3.1 and are not affected by non-performance under subsection 3.1. It is the intent of this Agreement that the obligations of subsection 3.1 shall be enforceable only indirectly by the risk of liability for loss or damage resulting from failure to comply with an arbitration award as provided in subsection 6.5. Accordingly, the obligation to arbitrate may be enforced by appropriate judicial action, and loss or damage resulting from failure to comply with an arbitration award may be recovered as, and to the extent provided in subsection 6.6, but otherwise no action or suit shall be brought to enforce the obligations of subsection 3.1.

4. Claims Arising From Contact With Electric Systems.

4.1 This Section 4 shall be applicable to Contact Claims.

4.2 Except as provided in subsection 4.3, each Party maintaining or operating any portion of an Electric System shall save, defend and hold harmless each other Party from all Contact Claims for Bodily Injury or Property Damage arising from physical contact with such portion of an Electric System. In the event two or more Parties are operating or maintaining a portion or portions of the Electric System, and the Contact Claim arises from the negligence of more than one Party, the Parties whose negligence caused the loss shall bear all costs and expenses of defending and paying any judgment or settlement of the Contact Claim in proportion to their negligence.

4.3 To the extent permitted by law, RTO West shall assume liability for Contact Claims arising from the system design or condition of any Electric System facilities which it operates pursuant to a Transmission Operating Agreement, or to which it interconnects pursuant to a Generation Integration Agreement or Load Integration Agreement; provided however, that with respect to interconnection with the generating facilities of a Party or distribution facilities of a Party, such assumption of a Contact Claim shall not apply unless contact with an Electric System occurs at a point other than on the generating Party's own generation system or a distributing Party's own distribution system. As limited by this subsection 4.3, RTO West shall save, defend and hold harmless each other Party from Contact Claims based upon the design or the condition of the transmission facilities as of the date RTO West assumes responsibility for operation of such facilities and which allege Bodily Injury or Property Damage arising from physical contact of persons or property with the Electric System of a Party; provided, however, that RTO West shall have voluntarily accepted the design and operational responsibility for transmission facilities pursuant to a Transmission Operating Agreement, or shall have voluntarily agreed to interconnection with a generation owners pursuant to a Generation Integration Agreement or a load pursuant to a Load Integration Agreement.

4.4 Notwithstanding any other provision of this Agreement, RTO West shall save, defend and hold harmless each other Party from: (i) Contact Claims based upon alleged inadequacy of interconnection standards or operating standards, including those required pursuant to Sections 4.2 and 5.6 of the Transmission Operating Agreement [add references to Generation Integration Agreement and Load Integration Agreement when completed] which a Party can establish it would not otherwise have followed, and (ii) Contact Claims arising from contact with transmission lines while such lines are operated at thermal ratings required by RTO West over a Party's objections, even if RTO West shall have prevailed in an arbitration concerning such ratings pursuant to Section 18 of the Transmission Operating Agreement.

4.5 In the event of contact with any portion of the Electric System reasonably believed to have resulted in Bodily Injury or Property Damage, the Parties will perform as required in subsection 5.4 herein.

5. Claims From End Use Customers.

5.1 This Section shall apply to any claims of end use customers or the general public arising from electric disturbances other than those claims provided for in Section 4 and Section 6.

5.2 To promote cooperation between the Parties, to avoid duplication of costs, and to carry out the purposes of this Agreement, the Parties agree to the following provisions for limited liability, insurance, and indemnification:

5.2.1 Unless otherwise specifically provided herein, the Owner shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to RTO West or any other party for any damages whatsoever, including without limitation, special, indirect, incidental, consequential, punitive, exemplary or direct damages resulting from any act or omission in any way associated with this Agreement, the Transmission Operating Agreement, Generation Integration Agreement, or Load Integration Agreement, except to the extent the Owner is found liable for gross negligence or intentional misconduct, in which case the Owner shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages.

5.2.2 OWNER SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, THE COST OF SUBSTITUTE POWER OR THE COST OF CAPITAL, EVEN IF SUCH DAMAGES ARE FORESEEABLE OR THE DAMAGED PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY SUCH DAMAGES ARE DEEMED TO RESULT FROM THE FAILURE OR INADEQUACY OF ANY EXCLUSIVE OR OTHER REMEDY.

5.3 A Party shall be solely responsible for and shall bear all of the costs of claims by its own employees, contractors, or agents arising under and covered by, any workers' compensation law. A Party shall furnish, upon request, at its sole expense, such

insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Agreement.

5.4 In the event third-party claims are made against another Party to this Agreement arising out of this Agreement, the Transmission Operating Agreement, Generation Integration Agreement or Load Integration Agreement or their performance, or with the occurrence of an event from which it is reasonably anticipated that claims may be made, the Parties agree that:

5.4.1 In the event of any such claim or event from which third party claim(s) are anticipated, a Party shall take such immediate efforts as necessary to preserve evidence and/or protect against default judgment; and shall provide immediate notice to RTO West's General Counsel at the address designated for such purpose with a copy to the broker of record with respect to the insurance policy described in subsection 9.2. RTO West's General Counsel shall provide notice to all other Owners, and assure that notice as necessary is given to insurance carrier(s).

5.4.2 The Parties anticipate that the RTO West's General Counsel shall have responsibility to review any such claims; take action as necessary to properly investigate, evaluate, and defend such claims; and make recommendations regarding payment, rejection, or compromise of such claims.

5.4.3 In the event of legal action resulting from the denial of any such claim, the Parties anticipate that RTO West's General Counsel shall recommend to the Board suitably qualified legal counsel to defend such claims. Each Party against whom a claim is made and denied shall be allowed to defend itself against such claims to the extent it deems necessary and appropriate.

5.4.4 To the extent permitted by law, including but not limited to the provisions of Section 16.7 herein, the Parties agree, except where there is an irreconcilable conflict of interest, (a) to consent to joint representation in defense of such legal action and (b) to make good faith efforts to enter into a mutually acceptable joint representation agreement to facilitate cooperation, information-

sharing, and protection of attorney-client privilege and work product in connection with the joint defense.

6. Claims for Damage to Electric Systems.

6.1 This Section shall apply to claims for damage to an Electric System of a Party made against another Party.

6.2 Except as provided in subsection 6.8, no Party (First Party), its directors, officers or employees, shall be liable to any other Party (Second Party) for any loss or damage to the Electric System of any Second Party whether or not resulting from the negligent, grossly negligent, or wrongful act or omission of any Party, its directors, officers or employees, whether its or their own or imputed, in the design, construction, operation, maintenance, use or ownership of First Party's Electric System, or the performance or non-performance of the obligations of any Party under Section 3 of this Agreement. Each Second Party waives rights to subrogation and releases each other First Party, its directors, officers, and employees, from any such liability.

6.3 Each Party represents to the other Parties that the provisions of subsection 6.2 is not inconsistent with any insurance policy that such Party now holds, and each Party agrees that any insurance contract that it may hereafter enter into shall not be knowingly inconsistent with the provisions of said subsection 6.2.

6.4 The provisions of subsection 6.2 do not apply to loss or damage resulting from Willful Action. The term "Willful Action" as used herein is defined as an action taken or not taken by a Party which action is knowingly or intentionally taken or failed to be taken with intent that injury or damage would result therefrom or which action is wantonly reckless. Willful Action does not include any act or failure to act which is involuntary, accidental, negligent or grossly negligent.

6.5 The provisions of subsection 6.2 do not apply to loss or damage resulting from action taken or not taken by a Party which action or non-action has previously been determined by arbitration award to be a default under subsection 3.4 of this Agreement or Section 14 of this Agreement, and which occurs or continues beyond the time specified in such arbitration award for curing such default or, if no time to cure is specified, which,

after the date of the award, occurs or continues beyond a reasonable time to cure such default. Such Party agrees to pay for such loss or damage which occurs while such Party is a Party to this Agreement.

6.6 An action or non-action under subsection 6.5 is one taken by a director or officer, or any employee who has management or administrative responsibility affecting the Party's performance under this Agreement, namely an employee who is responsible for one or more of the functions of planning, organizing, coordinating, directing or supervising the Party's performance under this Agreement.

6.7 The words "loss or damage" as used in this Section 6 include direct or indirect loss or damage and loss or damage resulting from making property inoperative; and loss or damage consequential to such loss or damage.

6.8 Unless otherwise expressly agreed by RTO West and a Party, in the limited instance where RTO West has not issued an operating instruction to a Second Party (as defined in subsection 6.2), and if as a result of the negligence of RTO West, one or more Second Parties incurs Property Damage to its Electric System, RTO West shall be legally liable, subject to defenses of comparative fault, for reimbursing the Property Damage of such Second Parties, but such liability shall not exceed the greater of \$2,000,000 or the amount of its self-insured retention under its general liability insurance program for the total aggregate of all such claims resulting from any one occurrence. Written notice of claim asserted under this section must be made within sixty (60) days, and must be fully presented and documented for payment within one hundred eighty (180) days of such event.

7. Claims for Consequential, Exemplary or Punitive Damages.

7.1 THIS SECTION SHALL BE APPLICABLE TO ANY CLAIM FOR CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES BETWEEN ANY PARTIES ARISING FROM THE FACT THAT THE PARTIES' ELECTRIC SYSTEMS ARE DIRECTLY OR INDIRECTLY INTERCONNECTED OR FROM ANY AGREEMENT OR TARIFF WHICH ANY PARTY ENTERS INTO WITH RTO WEST, OR FROM RTO WEST'S OWN TARIFFS OR ANY PARTY'S ELECTRIC TARIFFS FILED WITH FERC.

7.2 EXCEPT AS PROVIDED IN SECTION 8 BELOW, AND NOTWITHSTANDING ANY RIGHT WHICH A PARTY MAY POSSESS UNDER ANY AGREEMENT REFERRED TO IN SUBSECTION 7.1 ABOVE, NO PARTY SHALL SEEK TO RECOVER ANY CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES FROM ANY OTHER PARTY AS A RESULT OF PARTICIPATION IN RTO WEST, OR PERFORMANCE OR FAILURE TO PERFORM ANY OF THE AGREEMENTS REFERRED TO IN SUBSECTION 7.1.

8. Claims Against RTO West for Wrongful Dispatch Orders.

8.1 This section shall apply to claims by a Party against RTO West for damages arising from a Wrongful Dispatch Order issued by RTO West. Nothing in this Section nor in this Agreement is intended to apply to agreements between RTO West and a Party for compensation for valid dispatch orders.

8.2 In the event RTO West issues a Wrongful Dispatch Order to a Party or a scheduling coordinator, then in such event:

8.2.1 No provision of this Agreement shall be construed as requiring any Party to follow such operating instruction; and

8.2.2 If a Party complies, or attempts to comply, with such a Wrongful Dispatch Order and such Party incurs loss or damage as a result, then in such a case such Party shall be entitled to recover from RTO West:

8.2.2.1 where a sale has been interrupted by RTO West and the damaged Party is a purchaser purchasing for its own load, the amount by which the Replacement Power Cost (actually purchased or for which liquidated damages are paid) exceeds the price at which the purchase transactions would have occurred absent the Wrongful Dispatch Order, less any liquidated damages paid to the damaged Party by a third person;
or

8.2.2.2 where a generator specific sale has been interrupted by RTO West and the damaged Party is selling power into the market, the amount by which Replacement Power Cost exceeds the fuel and variable operation, and maintenance cost and a reasonable allocation of the overhead, depreciation and fixed costs allocable to the generation of electric energy of such generator, plus any liquidated damages that the damaged Party is legally obligated to pay as a result of the schedule interruption less any liquidated damages paid to the damaged Party by a third person; or

8.2.2.3 where a sale is interrupted by RTO West and the damaged Party is a purchaser that has resold the purchased generation at wholesale, the amount by which Replacement Power Cost exceeds the interrupted original purchase cost, plus any liquidated damages that the damaged Party is legally obligated to pay as a result of the schedule interruption less any liquidated damages paid to the damaged Party by a third person; or

8.2.2.4 where a sale has not been interrupted by RTO West, but the damaged Party is a generating Party selling its own generation which Party was prevented from making a sale as a direct result of a Wrongful Dispatch Order, the amount for the electric energy that would have been sold priced at 125% of the applicable Mid-Columbia Dow Jones daily on-peak or off-peak index price (until such time as a published hourly Northwest power price index is established and available), less the fuel and variable operation, maintenance cost and a reasonable allocation of overhead, depreciation and fixed costs allocable to the generation of electric energy which would have been incurred had the sale occurred.

8.2.3 With respect to claims under subsection 8.2.1 or 8.2.2, a Party shall provide reasonable justification to support its claim.

8.3 The Parties agree that the amounts recoverable under subsection 8.2 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy against RTO West for a Wrongful Dispatch Order.

9. Insurance.

9.1 This Section shall apply to insurance requirements for RTO West.

9.2 Throughout the term of this Agreement, RTO West shall maintain insurance coverage consistent with prudent industry practice and that at a minimum:

9.2.1 provides general liability coverage limits of not less than \$150 million and separate errors and omissions coverage limits of not less than \$150 million;

9.2.2 provides for per-occurrence self-insured retention of not more than \$2 million;

9.2.3 provides an agreement or endorsement under which the insurance cannot be terminated, canceled, allowed to expire, non-renewed, or materially altered without ninety (90) days' prior written notice to RTO West and provides that such policy is primary over any other insurance;

9.2.4 provides that RTO West's insurer shall be bound by any waivers of the insurer's rights of subrogation granted by RTO West; and

9.2.5 names the Parties to this Agreement as additional insured(s) under such insurance.

9.3 Insurance requirements shall be reviewed by the RTO West Board on an annual basis for consistency with prudent industry practice, but shall be no less than the above referenced specific coverage and limits. Alternative risk financing arrangements sufficient to cover these responsibilities will require written approval of a two-thirds majority of Owners executing Agreements with RTO West.

9.4 RTO West may not consent to or allow the insurance required under subsection 9.2 above to be terminated, canceled, allowed to expire, or materially altered without written approval of a two-thirds majority of Owners executing Agreements with

RTO West. Non-renewal of insurance shall also not occur without providing at least sixty (60) days' advance notice to Parties to this Agreement.

10. Relationship to Existing Agreements.

10.1 As between Parties, both of whom are Parties to the Agreement Limiting Liability Among Western Interconnected Systems (the "WIS Agreement"), in the event of conflict between this Agreement and the WIS Agreement, the WIS Agreement shall control.

11. Relationship to Other Tariffs.

Each Party to this Agreement agrees that it will not propose any tariff or rate schedule with any state or federal regulatory agency which seeks to impose, by contract, as a condition of service, any liability which is released or limited by this Agreement, unless the Party losing the protection of this Agreement consents in writing to the proposed tariff or rate schedule. Failure of a Party to intervene or protest shall not constitute consent. Notwithstanding Section 3.5 of this Agreement, the Parties to this Agreement agree that RTO West may propose and file a tariff or rate schedule provision which contains reasonable penalties or incentives for timely performance of maintenance of transmission facilities.

12. Governing Law.

12.1 With respect to claims between a Party and a federal agency pursuant to this Agreement, federal law shall apply.

12.2 With respect to claims between or among any two or more Parties whose principal offices are all located within a single state, the law of that state shall apply.

12.3 With respect to claims between or among two or more Parties whose principal offices are located in more than one state, the laws of the State of Washington shall apply.

12.4 With respect to claims between or among two or more Parties, one of whom is a Canadian Party, the law applicable to the Canadian equivalent of the Transmission Operating Agreement, Generation Integration Agreement or Load Integration Agreement, as applicable, shall apply.

13. Assignment.

Any rights or obligations under this Agreement may only be assigned in connection with a transfer of the assets to which they relate. In such event, the assignee shall be bound by such rights and obligations as if such assignee had originally been a party to this agreement.

14. Dispute Resolution.

14.1 Any disputes arising under this Agreement shall be resolved using the dispute resolution procedure set forth in Attachment 2; provided however, subsection 3.4 of this Agreement shall apply to disputes arising under Section 3.1 of this Agreement.

15. Execution and Delivery.

15.1 This Agreement may be executed in any number of counterparts, in which case all such counterparts shall be deemed to constitute a single document with the same force and effect as if all Parties hereto having signed a counterpart had signed all the other counterparts.

15.2 An executed copy of this Agreement shall be deposited by each Party with the Office of General Counsel of RTO West.

15.3 Any person that operates an Electric System within the RTO West geographic area is eligible to sign this Agreement as a Party.

16. Miscellaneous.

16.1 Any undertaking by a Party under this Agreement shall not constitute the dedication of the system or any portion thereof of any Party to the public or to any Party.

16.2 Nothing in this Agreement shall require a generator under the Generation Integration Agreement or any other Party to take any action:

16.2.1 that is not within the physical capabilities of the Party's Electric System (or any part of another Party's Electric System that the applicable Party has the legal right to cause to comply with this Agreement);

16.2.2 that it believes in good faith will create serious and immediate risks to human health or safety; *provided, however,* that interruption of transmission service shall not in itself necessarily be deemed to create serious and immediate risks to human health or safety;

16.2.3 that it believes in good faith will create an immediate risk of serious damage to facilities or equipment within its Electric System or will cause it to operate any part of its Electric System in an unsafe manner;

16.2.4 that would violate any provision of the reliability criteria, standards, guidelines and operating procedures of NERC or the WSCC, any FERC or state regulatory agency licenses with which it is obligated to comply, any applicable Nuclear Regulatory Commission licenses or requirements, the terms of any applicable permits issued by a governmental authority, or any applicable governmental laws or regulations;

16.2.5 that conflict with any non-power requirements with which the Party is obligated to comply (including without limitation any obligations under environmental laws, regulations, court and administrative orders, or biological opinions); or

16.2.6 to comply with an operating instruction issued by the RTO West where such operating instruction is not within the RTO West's authority under the RTO West tariff.

16.3 Any notice, demand, or request in accordance with this Agreement, unless otherwise provided in this Agreement, shall be in writing and shall be deemed properly

served, given, or made to the address of the receiving Party set forth below: (1) upon delivery if delivered in person; (2) upon execution of the return receipt, if sent by registered United States or Canadian mail, postage prepaid, return receipt requested; or (3) upon delivery if delivered by prepaid commercial courier service.

16.3.1 The address of RTO West shall be:

Attn: _____

The address of the Executing Transmission Owner shall be:

Attn: _____

16.3.2 Either Party may at any time, by notice to the other Party, change the designation, address or telecopy number of the person specified to receive notice on its behalf.

16.3.3 Any notice of a routine character in connection with service under this Agreement or in connection with the operation of facilities shall be given in such a manner as the Parties may determine from time to time, unless otherwise provided in this Agreement.

16.4 In executing this Agreement, each Party reserves any and all defenses it is entitled to assert under applicable law. This Agreement shall not be interpreted to waive any such defenses.

16.5 Nothing contained in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or to impose a trust or partnership covenant, obligation, or liability on or with regard to either of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. All rights of the Parties are several, not joint. Except as expressly

provided in this Agreement, neither Party shall have a right or power to bind the other Party without such Party's express written consent.

16.6 Nothing in this Agreement shall be construed to prevent the pass-through of third-party claims to a federal power marketing agency by RTO West under circumstances where the federal power marketing agency directs actions of RTO West pursuant to RTO West enabling agreements to the extent such agreements provide for the payment of damage claims by such federal power marketing agency.

16.7 Nothing in this Agreement shall be construed to require the United States Department of Justice to defend any Parties to this Agreement except the Bonneville Power Administration.

16.8 Any claims which arise from events which occur during the term of this Agreement shall be governed by the terms of this Agreement, and should this Agreement be terminated the terms of this Agreement shall survive with respect to such claims.

16.9 Any use of the singular in this Agreement also includes the plural and any use of the plural also includes the singular, and references to "or" shall be deemed to be disjunctive but not necessarily exclusive.

ATTACHMENT 1
DEFINITIONS

“Bodily Injury” means bodily injury, death, mental anguish, mental illness, emotional upset, sickness or disease caused to any person.

“Contact Claim” means claims by employees of a Party, employees of a Contractor or Subcontractor, or by the general public for Bodily Injury or Property Damage caused by physical contact between any portion of an Electrical System and persons or property.

“Electric System” means a single integrated electric power grid usually characterized by ownership, rental, lease, control or operation by a single person or entity. An “Electric System” consists of electric distribution facilities or generating facilities or transmission facilities, or any combination of the three, and includes transmission lines, distribution lines, substations, switching stations, generating plants and all associated equipment for generating, transmitting, distributing or controlling flow of power. The term “Electric System” shall include any devices or equipment by which information is originated on an electric system or by the person operating such system, by which such information is transmitted, and by which such information is received either for information or for operation of the system, whether by the originating system or by another system.

“FERC” means the Federal Energy Regulatory Commission, or any successor thereto.

“Generation Integration Agreement” means the RTO West form of agreement (including the Canadian equivalent form) governing operation of electric generating facilities within the RTO West geographic area.

“Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with

good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others.

“Load Integration Agreement” means the RTO West form of agreement (including the Canadian equivalent form) governing operation of an electric distribution system within the RTO West geographic area.

“NERC” means the North American Electric Reliability Council or its successor organization.

“Owner” means a party that has executed a Generation Integration Agreement, Transmission Operating Agreement or a Load Integration Agreement.

“Party” means any person, firm or association, or any non-profit, private or municipal cooperation, or any governmental agency and which has executed a counterpart of this Agreement.

“Property Damage” means damage to or destruction of tangible property, real or personal, but unless specifically approved for in this Agreement, does not include damages for any indirect, exemplary, punitive, incidental or consequential loss or damage whatsoever, including, but not limited to, loss of profits or revenue on work not performed; for loss of use of or under-utilization of the other Party’s facilities; or loss of use of profits or revenue.

“Replacement Power Cost” means the price at which a Party, acting in a commercially reasonable manner, effects a purchase of comparable electric energy and capacity at the delivery point in place of the electric energy and capacity not delivered. If the Replacement Power Cost cannot be determined, it shall be deemed to be 125% of the applicable Mid-Columbia Dow Jones daily on-peak and off-peak price index, until such time as a published hourly Northwest power price index is established and available.

“RTO West” means the regional transmission organization formed pursuant to FERC Order No. 2000 under the laws of the State of Washington for independent operation of electric transmission facilities in the Western United States.

“Transmission Operating Agreement” means the RTO West form of agreement (including the Canadian equivalent form) governing the operation of transmission facilities within the RTO West geographic area.

“Wrongful Dispatch Order” means an operating instruction which, under the applicable RTO West tariffs and agreements, RTO West was not authorized to communicate to a Party or a scheduling coordinator.

“WSCC” means the Western Systems Coordinating Council or its successor organization.

ATTACHMENT 2

ALTERNATIVE DISPUTE RESOLUTION PROCESS

1. Definitions. The capitalized terms in this Attachment 2 are defined in the RTO West bylaws, the following additional terms used in this Attachment 2 have the meaning specified below:

“Agreement” means the Agreement Limiting Liability Among RTO West Participants.

“Canadian Regulatory Authority” means the agency or agencies established under the laws of Canada or the applicable Provinces of Canada and having jurisdiction over facilities, interconnections, transmission rates, charges, terms and conditions of service of a Canadian Transmission Provider or other Person.

2. Dispute Resolution.

2.1 Preconditions to Arbitration.

2.1.1 Informal Settlement. The parties shall make all reasonable efforts to settle all disputes governed by this attachment. In the event any such dispute is not settled, either party may request in writing that the manager of WRTA appoint an impartial facilitator to aid the parties in reaching a mutually acceptable resolution to the dispute; such appointment shall be made within 10 days of receipt of the request. The facilitator and representatives of the parties with authority to settle the dispute shall meet within 21 days after the facilitator has been appointed to attempt to negotiate a resolution of the dispute. Settlement offers shall not be admissible in any subsequent dispute resolution process. With the consent of all parties, resolution may include referring the matter to a technical body for resolution or for an advisory opinion.

2.1.2 Impasse. If the parties have not succeeded in negotiating a resolution of the dispute within 30 days after first meeting with the facilitator or if the facilitator is not appointed within 10 days pursuant to Section 2.1.1 of this attachment, unless otherwise agreed, the parties shall be deemed to be at an impasse and any such disputing party may commence the arbitration process provided hereunder by notice to the other party. The parties shall request RTO West to post on the RTO West Website notice of the commencement of such dispute resolution.

2.1.3 Statements of Dispute. Within 14 days of a party's request that the arbitration process be commenced, each party shall submit a statement in writing to the other party, which statement shall set forth in reasonable detail the nature of the dispute, the issues to be arbitrated, and the proposed arbitrator's award sought through such arbitration proceedings. To the extent parties do not agree on the terms of a required contract provision, each submittal shall include proposed contract language for those issues in dispute.

2.1.4 Selection of an Arbitrator. Within 10 days following the submission of their statements, the parties shall select an arbitrator familiar with and knowledgeable about the policies and criteria used in the parties' Control Areas, transmission systems, and regulatory requirements. If the parties cannot agree upon an arbitrator, the parties shall take turns striking names from a list of 10 qualified individuals supplied by the WRTA arbitration committee from the list maintained by the WRTA board, with a party chosen by lot first striking a name. The last-remaining name not stricken shall be designated as the arbitrator. If that individual is unable or unwilling to serve, the individual last stricken from the list shall be designated and the process repeated until an individual is selected who is able and willing to serve. Absent the express written consent of all parties as to any particular individual, no person shall be eligible for selection as an arbitrator who is a past or present officer, member of the governing body, employee of or consultant to any of the parties, or of an entity related to or affiliated with any of the parties, or whose interests are otherwise affected by the matter to be arbitrated. Any individual designated as an arbitrator shall make known to the parties any such

disqualifying relationship and a new arbitrator shall be designated in accordance with the provisions of this Section 2.1.4.

2.1.5 Party Option to Obtain Three Arbitrator Panel. As an alternative to selecting one arbitrator under Section 2.1.4, either party may elect to constitute a three-member arbitration panel, and the other party shall cooperate in the selection of such panel.

2.1.5.1 The party so electing shall be responsible for the costs of two-thirds of the costs of the arbitration (but not including the disputing parties' costs associated with attorney and witness fees and expenses), regardless of the outcome of the arbitration, unless the disputing parties agree to an alternate method of allocating costs. The remaining one-third of the costs shall be allocated pursuant to the method established under Section 2.3.1.

2.1.5.2 Each arbitrator shall meet the independence requirements in Section 2.1.4.

2.1.5.3 Unless otherwise agreed by the parties, the three arbitrators shall be selected in the following manner: (i) the WRTA arbitration committee shall provide to the parties a list of fifteen (15) qualified individuals from the list maintained by the WRTA board; (ii) the parties shall take turns striking names from the list, with a party chosen by lot first striking a name; and (iii) the three remaining names not stricken shall constitute the arbitration panel.

2.1.5.4 The arbitration panel shall decide all matters by majority vote.

2.1.5.5 All other procedures, rights and obligations set out in this attachment shall apply to the arbitration, and all references to the "arbitrator" also shall be deemed a reference to the three-member arbitration panel so chosen.

2.1.6 Procedural Rules. The arbitrator shall determine discovery procedures, intervention rights, how evidence shall be taken, what written submittals may be made, and other such procedural matters, taking into account the complexity of the issues involved, the extent to which factual matters are disputed and the extent to which the credibility of witnesses is relevant to a resolution of the dispute. Intervenors shall have the same procedural rights as parties to the dispute. Each party to the dispute shall produce all evidence determined by the arbitrator to be relevant to the issues presented. To the extent such evidence involves commercially sensitive or confidential information, the arbitrator shall issue an appropriate protective order which shall be complied with by all parties to the dispute. The arbitrator may elect to resolve the arbitration matter solely on the basis of written evidence and arguments.

2.1.7 Intervention. The arbitrator shall admit as intervenors in the dispute resolution process any Person that requests intervention and demonstrates to the arbitrator good cause for intervention. Absent the agreement to the contrary of all parties, no Person shall be permitted to intervene unless, as a condition of its intervention, it agrees to be bound by the provisions of this attachment in regard to the arbitration, including the provisions related to deference on appeal to the FERC set forth in Section 2.4 of this attachment and to deference on appeal to a Canadian Regulatory Authority set forth in Section 2.5 of this attachment.

2.1.8 Evidence. The arbitrator shall take evidence submitted by the disputing parties in accordance with procedures established by the arbitrator and may request additional information, including the opinion of recognized technical bodies. All disputing parties shall be afforded a reasonable opportunity to rebut any such additional information. Other affected entities may request in writing that the arbitrator consider additional information, and the arbitrator may consider such additional information, subject to a right of the parties to have a reasonable opportunity to rebut such additional information.

2.2 Substantive Standards and Decision. As soon as practicable but in no event later than 115 days of his or her selection as arbitrator, the arbitrator shall select, by written notice to the parties, the proposed award of a party or intervenor which best meets the terms and intent of this Agreement; provided, however, if the arbitrator concludes that no proposed award is consistent with the applicable considerations or that no proposed award addresses all issues in dispute, the arbitrator shall specify how each proposed award is deficient and request that the disputing parties submit new proposed awards that cure the deficiency perceived by the arbitrator. A written decision, including specific findings of fact, explaining the basis for the award shall be provided by the arbitrator with the written notice to the parties. Awards shall be based only on the evidence on the record before the arbitrator. No award that is not appealed shall be deemed to be precedential in any other arbitration related to a different dispute.

2.3 Compliance and Costs.

2.3.1 Compliance With the Arbitrator's Award. Immediately upon the decision by the arbitrator, except during the period of appeal as provided for in Sections 2.4 or 2.5 of this attachment, the parties shall commence to take, and thereafter diligently prosecute to completion, whatever action is required to comply with the selected award to the extent the selected award does not require regulatory action. To the extent the award requires local, state, federal, provincial or tribal approval or regulatory action, FERC review of an award involving a federal power marketing agency, or a FERC filing by a transmission provider subject to Sections 205 or 206 of the Federal Power Act, 16 USC §§ 824 d. and e.), or a Canadian Regulatory Authority filing by a Canadian party, the affected party or intervenor shall promptly submit and support that portion of the award with the appropriate authority except as provided in Section 2.4 or Section 2.5 of this attachment. Any and all costs associated with the arbitration (but not including the parties' costs associated with attorney and witness fees) shall be borne by the party or parties whose proposed award was not selected, unless the parties agree to an alternate method of allocating costs, or unless the arbitrator determines it would be appropriate to allocate all or a portion of such costs to one or more intervenors.

2.4 FERC Appeal.

2.4.1 Grounds for Appeal. Within 30 days of the issuance of any arbitration award, any party to an arbitration may apply to the FERC to hear an appeal of such award with respect to matters to which the FERC has jurisdiction, but only upon the grounds that the award is contrary to or beyond the scope of this Agreement or is unjust, unreasonable, unduly discriminatory or preferential or otherwise inconsistent with the FPA or the FERC's then applicable standards or policies. Any appeal to the FERC shall be based solely upon the record assembled by the arbitrator; provided, however, that any order by an arbitrator excluding material from the arbitration record or any ruling which is alleged to violate due process may be explicitly appealed to the FERC by a party as a part of an appeal under this Section 2.4. Parties to arbitrations intend that: (i) the FERC should afford substantial deference to the factual findings of the arbitrator; (ii) the portion, if any, of the award relating to issues not of first impression (i.e., matters previously decided by the FERC or a court of competent jurisdiction in cases involving comparable facts and circumstances) should be afforded appropriate deference by the FERC; and (iii) the portion, if any, of the award relating to issues of first impression should be afforded no deference by the FERC. Implementation of the award shall be stayed pending an appeal to the FERC unless and until, at the request of a disputing party, the FERC issues an order shortening or extending the stay.

2.4.2 No Expansion of Factual Record. No party to an arbitration shall seek to expand the factual record before the FERC beyond that offered to the arbitrator, except that any party to an arbitration may submit such additional evidence or argument as may be needed to respond to new evidence or arguments raised by intervenors before the FERC who were not parties to the arbitration.

2.5 Canadian Review of Arbitration Awards.

2.5.1 Canadian Facilities. In a dispute involving transmission facilities within Canada or interconnection with transmission facilities within Canada or transmission service provided through such facilities, a party may elect to utilize the procedures of this Section 2.5.

2.5.2 Canadian Appeal. Any party to an arbitration involving transmission facilities within Canada may apply to the appropriate Canadian Regulatory Authority or, where no Canadian Regulatory Authority has jurisdiction, to the appropriate Canadian court, to hear an appeal of any award with respect to such facilities only upon the grounds that the award is contrary to or beyond the scope of these bylaws or is unjust, unreasonable, unduly discriminatory or preferential or otherwise inconsistent with applicable Canadian laws or with then-applicable standards or policies of the appropriate Canadian Regulatory Authority.

2.5.3 Canadian Appeal Record. Any appeal to a Canadian Regulatory Authority (or Canadian court, as the case may be) by a party to an arbitration involving transmission facilities within Canada shall be based solely upon the record assembled by the arbitrator; provided, however, that any order by an arbitrator including material from the arbitration record or which is alleged to violate due process may be explicitly appealed to the Canadian Regulatory Authority by a party as part of an appeal under this Section 2.5. Parties to arbitrations intend that: (i) the Canadian Regulatory Authority (or Canadian court, as the case may be) should afford substantial deference to the factual findings of the arbitrator; (ii) the portion, if any, of the award relating to issues not of first impression (i.e., matters previously decided by the Canadian Regulatory Authority, or Canadian court, as the case may be, or a court of competent jurisdiction in cases involving comparable facts and circumstances) should be afforded appropriate deference by the Canadian Regulatory Authority (or Canadian court, as the case may be), and (iii) the portion, if any, of the award relating to issues of first impressions should be afforded no deference by the Canadian Regulatory Authority (or Canadian court, as the case may

be); provided, however, that nothing in this provision is intended to limit the ability of a Canadian Regulatory Authority (or Canadian court, as the case may be) on its own initiative to review an award, should it determine that the award affects a matter within its jurisdiction.

2.5.4 Canadian Appeal Proceeding. If any party to an arbitration involving transmission facilities within Canada desires to appeal an award, it shall provide written notice to that effect to all other parties and to the arbitrator within 14 days following the date of the award. If such notice of appeal is timely provided:

(a) Within 14 days of the date of such first notice of appeal, the party providing such notice shall file its statement of position regarding the appeal with the Canadian Regulatory Authority (or Canadian court, as the case may be), together with the complete evidentiary record of the arbitration and a copy of the award.

(b) Within 30 days of the date of such first notice of appeal, any other party that was a party to the arbitration may file its statement of position regarding the appeal with the Canadian Regulatory Authority (or Canadian court, as the case may be).

(c) Copies of all materials filed with the Canadian Regulatory Authority (or Canadian court, as the case may be) by a party during the course of an appeal shall be delivered to all other parties.

(d) Implementation of the award shall be deemed stayed pending an appeal unless and until, at the request of a disputing party, the Canadian Regulatory Authority (or Canadian court, as the case may be) issues an order shortening or extending such stay.

(e) The parties intend that Canadian Regulatory Authority (or Canadian court, as the case may be) orders resulting from appeals shall be subject to judicial review pursuant to applicable Canadian laws.

2.5.5 Review on Initiative of Canadian Regulatory Authority. An award involving transmission facilities within Canada shall be filed with the appropriate Canadian Regulatory Authority within 10 days after its issuance. The Canadian Regulatory Authority may thereafter determine whether to review the award on its own initiative, take such other action as it may deem appropriate, or take no action with respect to the award. Should the Canadian Regulatory Authority take no action regarding the award within such 30-day period, the parties to the arbitration are entitled to assume that the Canadian Regulatory Authority intends to take no action on its own initiative to review the award. Should the Canadian Regulatory Authority issue an order under this Section 2.5.5 initiating a review of the award within such 30-day period, the effectiveness of the award shall be stayed pending a final order of the Canadian Regulatory Authority regarding the award.

2.6 Judicial Review. Subject to the right of any party to appeal to, and exhaustion of remedies at, the FERC or a Canadian Regulatory Authority (or Canadian court, as the case may be), as provided in Sections 2.4 and 2.5 of this attachment, any party shall be entitled to seek enforcement of the Award in any court of competent jurisdiction. Except for appeals of any decision by the FERC or by a Canadian Regulatory Authority, judicial challenges to an award under this attachment shall be limited to the grounds specified in the Federal Arbitration Act, 9 USC § 1, et seq., as amended.