

RTO WEST JOINT DEFENSE AGREEMENT

THIS AGREEMENT is made as of October 15, 2002, among the undersigned parties (the "Parties").

RECITALS

A. The Parties to this Agreement are RTO West and each of the filing utilities in the RTO West proceeding at the Federal Energy Regulatory Commission ("FERC"), Docket No. RT01-35-001, et al. (the "FERC Proceeding").

B. Since January 2000, the Parties have been cooperating in developing the RTO West proposal and in making filings in the FERC Proceeding and related FERC dockets affecting the development or operation of RTO West. The Parties anticipate their cooperative efforts in connection with the FERC Proceedings will continue. Included as a related FERC docket is FERC's Notice of Proposed Rulemaking on Standard Electricity Market Design, Docket No. RM01-12 (the "SMD NOPR").

C. The Parties have a common interest in developing RTO West and therefore will be jointly developing some filings for use in FERC, state utility commission or provincial proceedings in connection with the formation of RTO West and, in pursuit of a common interest, will be communicating regarding the SMD NOPR insofar as it relates to issues regarding the development and approval of RTO West (all such activities hereinafter referred to as the "Regulatory Proceedings"). Communication between the Parties and their counsel has been and will be reasonably necessary to accomplish the purposes for which the Parties have retained or consulted with their respective counsel. While this Agreement is intended to facilitate communications in pursuit of a common interest with respect to the Regulatory Proceedings, nothing in this Agreement binds any Party to participating in joint comments or a joint filing in any of the Regulatory Proceedings.

D. The Parties have previously participated in a joint common and cooperative effort in the FERC Proceeding and the related FERC dockets in order to aid and promote adequate representation and to achieve efficiencies and cost reductions, and with the understanding that communications among them did not waive the attorney-client privilege, protection of Attorney Work Product (as defined below) or any other privilege or exemption protecting certain information from discovery, disclosure or misuse for any business or competitive purposes. The Parties wish to formalize this arrangement, and to join in and participate in a joint common and cooperative effort in the Regulatory Proceedings.

E. The Parties wish to set forth the terms and conditions under which the Parties have had and will continue to have access to such documents, materials, and information, which may include attorney-client privileged communications, and Attorney Work Product, in a manner that preserves the confidentiality and protected status, as the case may be, of the documents, materials, and information.

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pursuant to section 11.d*

AGREEMENT

In consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is individually acknowledged by each of the Parties, each Party does hereby covenant and agree as follows:

1. Definition of “Attorney Work Product”; Limitation on Use and Disclosure of Attorney Work Product.
 - a. To preserve the attorney-client privilege and the attorney work product doctrine, each Party agrees to receive and hold in strictest confidence any Attorney Work Product, to use the Attorney Work Product solely for the purpose of representing the recipient Party in the Regulatory Proceedings, and to take all steps necessary to maintain the confidentiality of the Attorney Work Product. Attorney Work Product shall consist of drafts of pleadings, testimony and related workpapers; comments on, revisions to and discussions of such draft pleadings, testimony and workpapers; and legal analyses including, but not limited to, analysis of the extent to which federal or state approvals are required and discussions of, comments on and revisions to such legal analyses. For purposes of this Agreement, independent cost-benefit analyses are not included in the definition of Attorney Work Product. Information shall be deemed Attorney Work Product whether it is disclosed between the Parties or between the Parties and their counsel.
 - b. The recipient Party of Attorney Work Product shall disclose Attorney Work Product only to: (i) its counsel, as identified pursuant to Paragraph 1(d); (ii) those of the Parties’ employees (including employees of a Party’s parent company or wholly owned subsidiary that has executed an Acknowledgment of Parent Company or Subsidiary of RTO West Joint Defense Agreement attached hereto as Exhibit B) or employees of its counsel’s law firm who have a need to know such information in order to assist in the representation of the recipient Parties in the Regulatory Proceedings; or (iii) Authorized Recipients as defined in Paragraph 5(c).
 - c. The Parties agree that the use and disclosure of Attorney Work Product is limited solely for the purpose of participation in the Regulatory Proceedings.
 - d. Each Party will be responsible for any violations of this Agreement by (i) any persons or entities identified in Paragraph 1(b)(i) and (ii), and (ii) any of its consultants who are Authorized Recipients. This Agreement is understood to apply to all Parties, their employees, agents, successors, assigns, and counsel. The Parties have identified their counsel, for the purposes of this Agreement, on Exhibit A; such counsel shall be considered an extension of the Party. Each Party retains the right to add or substitute its counsel identified on Exhibit A at its sole discretion.

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2. Information Not Subject to Agreement. The provisions of Paragraph 1 shall not apply: (a) to information that is now, or hereafter becomes, public information without violation of this Agreement; (b) to information that was independently developed and never shared pursuant to this Agreement; (c) when prior written consent to disclose such information has been obtained from the Party or its counsel (or in the case of joint preparation of Attorney Work Product, consent from each Party participating in the preparation); (d) when a Party or an Authorized Recipient (as defined in Paragraph 5(c)) is required by a final order of a court or agency proceeding to reveal or disclose such information; or (e) to the disclosure of Attorney Work Product to a judge or agency for the limited purpose of an *in camera* review to determine whether or not the Attorney Work Product can be disclosed.
3. Identification of Attorney Work Product. All written Attorney Work Product created after the date of this Agreement, including, without limitation, e-mails and other electronically transmitted information, should identify the Party or Authorized Recipient providing the information and also be clearly labeled with a cautionary legend such as “Attorney Work Product (or Solicitor’s Brief) Material Pursuant to RTO West Joint Defense Agreement.” The legend may indicate that “Attorney Work Product may be included” in the material and such legend shall satisfy the obligation to place a cautionary legend on Attorney Work Product. Each Party and Authorized Recipient shall make a good-faith effort to label documents (as provided above) that are Attorney Work Product as defined in Paragraph 1(a) of this Agreement. Nothing in this Agreement is intended to waive any protection for Attorney Work Product created before the date of this Agreement.
4. Addition of Parties to Agreement. In addition to the original Parties to this Agreement, additional entities or persons may become Parties to this Agreement, subject to a unanimous vote of the existing Parties. Any such additional Party shall be required to execute this Agreement and identify counsel on Exhibit A.
5. Disclosure of Information.
 - a. Request for or Discovery of Disclosure. If any person who is not a Party to this Agreement, by any discovery request or other formal or informal process, requests or demands any Attorney Work Product from any Party, or if any Party learns of any actual disclosure of Attorney Work Product, the Party or counsel receiving such request or demand, or learning of such actual disclosure, shall immediately notify all other Parties to this Agreement in writing in accordance with Paragraph 19. Both the Party that originally disclosed the Attorney Work Product and the recipient of the demand or request agree to undertake the necessary steps to assert all applicable privileges and rights to protect the confidentiality of the Attorney Work Product, unless the Parties mutually agree to disclose the Attorney Work Product. This Paragraph shall not apply to exchanges of Attorney Work Product between Parties and an Authorized Recipient in the ordinary course of work to develop RTO West.

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- b. Involuntary Disclosure Pursuant to Law. If any person or entity other than one of the Parties requests or demands, by subpoena or otherwise, Attorney Work Product that has been exchanged pursuant to this Agreement, the attorney representing the Party from whom such Attorney Work Product is requested or demanded (whether counsel or an employee of a Party) will assert all applicable rights and privileges with regard to said Attorney Work Product, and immediately notify all signatories to the Agreement. This Paragraph shall not apply to exchanges of Attorney Work Product between the Parties and an Authorized Recipient in the ordinary course of work to develop RTO West.
- c. Voluntary Disclosure of Information to a Non-Party “Authorized Recipient.” If at any time a Party intends to disclose any Attorney Work Product to a non-Party or engage a non-Party to assist in the development of any Attorney Work Product (including, without limitation, a non-Party who is an outside consultant, expert, witness or other agent), the non-Party must be informed of the existence of this Agreement, and each individual to whom Attorney Work Product is to be disclosed or who assists in the development of Attorney Work Product shall execute an Acknowledgment of RTO West Joint Defense Agreement (“Acknowledgment”), attached hereto as Exhibit C, making this non-Party an “Authorized Recipient.” Each Party shall identify those persons it intends to designate as Authorized Recipients on Exhibit E and provide an updated Exhibit E to the Parties each time it intends to designate new Authorized Recipients. Any Party wishing to challenge an Authorized Recipient must make such challenge in writing to all Parties within ten (10) days after Exhibit E is circulated. Upon such a challenge, the challenging Party shall arrange for a vote within two (2) days by the Parties to this Agreement as to whether the challenged Authorized Recipient may be allowed access to Attorney Work Product. The vote shall be taken by e-mail. Parties shall cast their votes within two (2) business days from the date of the e-mail. A Party’s failure to respond will be construed as a vote against the challenge. Exclusion of any challenged Authorized Recipient shall be based on a simple majority vote. If there is no such challenge within ten (10) days after Acknowledgment is circulated, Attorney Work Product may be disclosed to the Authorized Recipient. Nothing in this Paragraph restricts any Party from disclosing its own documents and information to anyone, including consultants and experts, provided that such disclosure does not include Attorney Work Product produced by another Party and protected by this Agreement. A list of Authorized Recipients is attached as Exhibit E. Exhibit E shall be amended as necessary to include any new Authorized Recipients.
6. No Requirement of Disclosure. No Party to this Agreement is required to disclose any Attorney Work Product to any other Party or Authorized Recipient. Nor is any Party required to disclose Attorney Work Product to any or all other Parties or Authorized Recipients.

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Nothing in this Agreement prohibits any Party from disclosing Attorney Work Product to any or all other Parties or Authorized Recipients without disclosing it to all Parties.

7. No Limitation on Party's Disclosure of Its Own Information. Nothing in this Agreement shall limit the right of any Party to use, or to disclose to anyone, any of its own documents or information, or any documents or information obtained independently and not pursuant to this Agreement.
8. Nonwaiver of Privilege. The disclosure of Attorney Work Product among any of the Parties and Authorized Recipients pursuant to this Agreement shall not be deemed to be: (a) a "subject matter" waiver of any attorney-client, work product or other privilege or protection otherwise applicable to any such Attorney Work Product; or (b) any waiver of any attorney-client privilege, work product doctrine or other privilege as to any person whether or not they are a Party to this Agreement at the time of such disclosure.
9. Withdrawal and Continuing Duties.
 - a. Any Party may withdraw from this Agreement upon five (5) days' written notice to the other Parties in accordance with Paragraph 19.
 - b. All Parties and their counsel shall continue to be obligated to maintain at all times the privileged and confidential nature of all information obtained from another Party or an Authorized Recipient pursuant to this Agreement despite any withdrawal from or termination of this Agreement by any Party or any resolution of the Regulatory Proceedings. Such obligation shall terminate upon the earlier to occur of (i) eight (8) years after the Transmission Service Commencement Date (as that term is defined in the RTO West Transmission Operating Agreement), or (ii) January 1, 2015.
10. Conflict of Interest, Disqualification and Limitation of Duties.
 - a. Nothing in this Agreement shall create a conflict of interest so as to require the disqualification of any counsel from the representation of the Party it represents in any matter, including, without limitation, the Regulatory Proceedings, and the Parties hereby waive any such conflict of interest. It is agreed that no counsel who has entered into this Agreement shall be disqualified from examining or cross-examining any Party who testifies at any proceeding, merely because of such counsel's participation in this Agreement or withdrawal from this Agreement. The Parties understand and acknowledge that they have the right to retain separate counsel to advise them on conflict-of-interest and disqualification issues relating to this Agreement.
 - b. The Parties understand that they are represented only by their own attorneys in this matter and that while attorneys representing the other Parties have a duty to preserve the confidences disclosed to them pursuant to this Agreement, each attorney will be

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acting only as the attorney for his or her respective client and will owe a duty of loyalty only to his or her own client. Nothing in this Agreement is intended to (i) conflict with any Party's interest in receiving independent, vigorous and separate representation or (ii) create an attorney-client relationship between any Party and any counsel retained by any other Party.

11. Confidentiality of Agreement. This Agreement itself shall be maintained in confidence unless:
(a) its production is required by legal process or applicable laws; (b) its disclosure is needed to support a claim of privilege arising from this Agreement; (c) its disclosure is necessary to enforce this Agreement; or (d) the Parties unanimously agree that it can be disclosed to another entity.
12. Waiver of Consequential Damages/Injunctive Relief.
 - a. **No Party (including a parent company or wholly owned subsidiary referred to in Paragraph 1(b)), its counsel or Authorized Recipient shall be liable to any Party hereto for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages under this Agreement.**
 - b. The Parties acknowledge that disclosure of any materials or information in violation of this Agreement will cause the Parties hereto to suffer irreparable harm for which there is no adequate legal remedy. Each Party hereto acknowledges that immediate injunctive relief is an appropriate and necessary remedy for any violation or threatened violation of this Agreement.
13. Inadvertent Disclosure. If a Party, its counsel or an Authorized Recipient inadvertently discloses Attorney Work Product through oral testimony or discovery, such Party will use its best efforts to retrieve and protect such Attorney Work Product as privileged and confidential subject to this Agreement. Disclosure of documents not labeled as described in Paragraph 3 shall be deemed inadvertent. **Notwithstanding Paragraph 12, no Party, counsel or Authorized Recipient shall be liable to any other Party for damages under any theory of liability, including contract or tort, for any inadvertent disclosure of Attorney Work Product, provided that the disclosing Party complies with the requirements of this Paragraph.**
14. Specific Waiver. Any waiver in any particular instance of the rights and limitations contained herein shall not be deemed, and is not intended to be, a general waiver of any rights or limitations contained herein and shall not operate as a waiver beyond the particular instance.
15. No Admissions. No part of this Agreement shall constitute or be interpreted or construed as an admission by the Parties of any liability under any federal, state, provincial or local law or that any of the Parties is in violation of, or has ever violated, any federal, state or local laws, rules or regulations.

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16. No Agency or Partnership. This Agreement shall not create any agency, partnership, joint venture or similar relationship among the Parties. No Party shall have any authority to waive any applicable privilege or doctrine on behalf of any other Party. Nor shall any waiver of any applicable privilege or doctrine by the consent of any Party be construed to apply to any other Party.
17. Warranty of Signatories' Authority. Each person whose signature appears below warrants and guarantees that he or she has been duly authorized and has full authority to execute this Agreement on behalf of the entity or entities that he or she represents.
18. Execution of Agreement. This Agreement may be executed in counterparts and constitutes the complete Agreement between the Parties, and may not be amended, waived or modified except upon the written consent of all Parties who are then Parties to this Agreement.
19. Notice. In any provision of this Agreement requiring notice to the Parties, such notice shall be given in the manner stated in this Paragraph. Notice to each Party shall be given to the persons, addresses and facsimile numbers identified in Exhibit D to this Agreement. Notice shall be given in writing via facsimile or electronic transmission. Notice shall be deemed given on the day of transmission and electronic confirmation of successful transmission. The Parties may amend the notice provisions of this Paragraph in writing.
20. Entire Agreement. This Agreement, including all exhibits incorporated as part of this Agreement, constitutes the entire agreement among the Parties with respect to Attorney Work Product communicated among the Parties and Authorized Recipients after the date of this Agreement. It supersedes all previous communications, representations or contracts, either written or oral, that purport to describe or embody the subject matter of this Agreement.
21. Severability. If any term of this Agreement is found to be invalid by a court of competent jurisdiction, then such term shall remain in force to the maximum extent permitted by law. All other terms shall remain in force unless that term is determined not to be severable from all other provisions of this Agreement by such court.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names.

RTO WEST

October 16, 2002
(Date)

By: /s/ Cindy A.Crane

AVISTA CORPORATION

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October 16, 2002
(Date)

By: /s/ Randall O. Cloward

BONNEVILLE POWER ADMINISTRATION

October 15, 2002
(Date)

By: /s/ Peggy A. Olds (for Mark Maher)

BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY

October 15, 2002
(Date)

By: /s/ Yakout Mansour

IDAHO POWER COMPANY

October 15, 2002
(Date)

By: /s/ James L. Baggs

NORTHWESTERN ENERGY, LLC

October 15, 2002
(Date)

By: /s/ Michael P. Manion

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PACIFICORP

October 15, 2002
(Date)

By: /s/ John D.Carr

PORTLAND GENERAL ELECTRIC

October 15, 2002
(Date)

By: /s/ Doug Nichols

PUGET SOUND ENERGY, INC.

October 15, 2002
(Date)

By: /s/ Wayman Robinett

NEVADA POWER COMPANY and
SIERRA PACIFIC POWER COMPANY

October 14, 2002
(Date)

By: /s/ Carolyn J. Cowan

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Exhibit A

Identification of Counsel
[to be designated pursuant to Paragraph 1(d)]

Party:

Counsel:

RTO WEST

AVISTA CORPORATION

BONNEVILLE POWER ADMINISTRATION

BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY

IDAHO POWER COMPANY

NORTHWESTERN ENERGY, LLC

PACIFICORP

PORTLAND GENERAL ELECTRIC

PUGET SOUND ENERGY, INC.

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NEVADA POWER COMPANY and
SIERRA PACIFIC POWER COMPANY

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Exhibit B

Acknowledgment of Parent Company or Subsidiary of RTO West Joint Defense Agreement
[to be signed pursuant to Paragraph 1(b)]

_____ (name of corporation) understands that in the course of depositions, discovery, consultation or other involvement in connection with the formation of RTO West, _____ (name of corporation) may be questioned about or shown documents or other information that one or more of the Parties may have designated as “Confidential” or otherwise deemed Attorney Work Product subject to the RTO West Joint Defense Agreement (the “Agreement”). _____ (name of corporation) hereby acknowledges that it has been informed of the existence of the Agreement (a copy of which is attached hereto), that it has been given a copy of the Agreement, and that it agrees to be bound by all of the provisions of said Agreement.

_____ (name of corporation) will treat any Attorney Work Product disclosed to it as strictly confidential. _____ (name of corporation) and its employees shall not disclose any such information except in compliance with the Agreement, and shall use any such Attorney Work Product solely for the purposes of its role, and that of its employees, in assisting the representation in the Regulatory Proceedings of the Party disclosing the Attorney Work Product to it, and not for any business or other purpose whatsoever.

(Name of Corporation)

(Date)

By: _____

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Exhibit C

Acknowledgment of RTO West Joint Defense Agreement
[to be signed pursuant to Paragraph 5(c)]

I, _____, (print or type name) understand that, in the course of my deposition, discovery, consultation or other involvement in connection with the formation of RTO West, I may be questioned about or shown documents or other information that one or more of the Parties may have designated as “Confidential” or otherwise deemed Attorney Work Product subject to the RTO West Joint Defense Agreement (the “Agreement”). I hereby acknowledge that I have been informed of the existence of the Agreement (a copy of which is attached hereto), that I have been given a copy of the Agreement, that I have read and understand the terms and conditions of said Agreement, and that I agree that I am bound by all of the provisions of said Agreement.

I hereby swear that I will treat any Attorney Work Product as strictly confidential, that I shall not disclose any such information except in compliance with the Agreement, and that I shall use any such Attorney Work Product solely for the purposes of my role in the Regulatory Proceedings, and not for any business or other purpose whatsoever.

In addition to the provisions relating to waiver of consequential and other specified types of damages in Paragraph 12 of the Agreement and to inadvertent disclosure in Paragraph 13 of the Agreement, my agreement to be bound by all of the provisions of the Agreement is subject to the following absolute cap on any and all claims for damages resulting from breach of the Agreement (whether based on tort, contract, or any other theory of liability). The liability of _____ [partnership, corporation or individual] [if a partnership or corporation, “together with the liability of all individual employees or partners”] for any breach of the Agreement may not exceed the greater of either (i) \$100,000 (\$US) or (ii) total fees received by that entity or persons during the six (6) months immediately preceding the date of the breach for work directly related to the Regulatory Proceedings.

(Date)

By: _____

Exhibit C

Acknowledgment of RTO West Joint Defense Agreement
[to be signed pursuant to Paragraph 5(c)]

I, _____, (print or type name) understand that, in the course of my deposition, discovery, consultation or other involvement in connection with the formation of RTO West, I may be questioned about or shown documents or other information that one or more of the Parties may have designated as “Confidential” or otherwise deemed Attorney Work Product subject to the RTO West Joint Defense Agreement (the “Agreement”). I hereby acknowledge that I have been informed of the existence of the Agreement (a copy of which is attached hereto), that I have been given a copy of the Agreement, that I have read and understand the terms and conditions of said Agreement, and that I agree that I am bound by all of the provisions of said Agreement.

I hereby swear that I will treat any Attorney Work Product as strictly confidential, that I shall not disclose any such information except in compliance with the Agreement (including without limitation this Exhibit C), and that I shall use any such Attorney Work Product solely for the purposes of my role in the Regulatory Proceedings, and not for any business or other purpose whatsoever.

With respect to the provisions of Subparagraphs 5.a. and 5.b of the Agreement, my obligations on behalf of RTO West in connection with any discovery request or other formal or informal process (as described in Subparagraph 5.a) or any request or demand, by subpoena or otherwise (as described in Subparagraph 5.b) (each of the foregoing, a “Disclosure Demand”) seeking disclosure of Attorney Work Product will be limited exclusively to the following:

1. I will immediately notify RTO West by fax or email with a copy by regular mail to all Parties to the Agreement that I have received the Disclosure Demand (including any deadline by which a response or disclosure is demanded, if specified).

2. Unless paragraph 3.a or 3.b below applies, I will not disclose Attorney Work Product without permission of all Parties to the Agreement.

3.a. If, following notification of a Disclosure Demand by subpoena or order of a competent jurisdiction having the force of law, any Party notifies me before the deadline for response or disclosure (or, if the Disclosure Demand specified no deadline, within 18 days following the date of mailing of the regular mail notification from me) that the Party intends to assert all applicable privileges and rights to protect the confidentiality of the Attorney Work Product, I will cooperate with all participating Parties in their efforts to protect the confidentiality of the Attorney Work Product,

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provided, however, that I will have no obligation to pay any fees (legal or otherwise) or to independently initiate, pursue, contribute funds to, or provide legal representation for any action to protect the confidentiality of the Attorney Work Product.

3.b. If, following notification of the Disclosure Demand by subpoena or order of a competent jurisdiction having the force of law, no Party notifies me before the deadline for response or disclosure (or, if the Disclosure Demand specified no deadline, within 18 days following the date of mailing of the regular mail notification from me) that the Party intends to assert all applicable privileges and rights to protect the confidentiality of the Attorney Work Product (or all Parties to the Agreement notify me that they have elected not to take any action to protect the confidentiality of the Attorney Work Product), I will be excused from any conflicting obligation under the Agreement to protect the confidentiality of the Attorney Work Product that has been sought through the Disclosure Demand, and may, without any breach of or liability under the Agreement, disclose the Attorney Work Product in accordance with the Disclosure Demand.

In addition to the provisions relating to waiver of consequential and other specified types of damages in Paragraph 12 of the Agreement and to inadvertent disclosure in Paragraph 13 of the Agreement, my agreement to be bound by all of the provisions of the Agreement is subject to the following absolute cap on any and all claims for damages resulting from breach of the Agreement (whether based on tort, contract, or any other theory of liability). The liability of _____ [partnership, corporation or individual] [if a partnership or corporation, “together with the liability of all individual employees or partners”] for any breach of the Agreement may not exceed the greater of either (i) \$100,000 (\$US) or (ii) total fees received by that entity or persons during the six (6) months immediately preceding the date of the breach for work directly related to the Regulatory Proceedings.

This Exhibit C to the Agreement supersedes in its entirety any Exhibit C to the Agreement that has been executed as of an earlier date.

(Date)

By: _____

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Exhibit D

Notice Information for Parties to RTO West Joint Defense Agreement

Party: Names, Mail and E-mail Addresses,
Telephone and Facsimile Numbers:

RTO WEST

AVISTA CORPORATION

BONNEVILLE POWER ADMINISTRATION

BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY

IDAHO POWER COMPANY

NORTHWESTERN ENERGY, LLC

PACIFICORP

PORTLAND GENERAL ELECTRIC

PUGET SOUND ENERGY, INC.

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NEVADA POWER COMPANY and
SIERRA PACIFIC POWER COMPANY

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Exhibit E

Authorized Recipients

[Names, Mail and E-mail Addresses, Telephone and Facsimile Numbers]