

March 11, 2019

**Via email:**

[techforum@bpa.gov](mailto:techforum@bpa.gov)

U.S. Department of Energy  
Bonneville Power Administration  
Transmission Services

**Re: Comments of Avangrid Renewables, LLC, Idaho Power Company, PacifiCorp, and Portland General Electric Company Regarding BPA's Draft Billing Dispute Procedures Business Practice and Draft Escrow Agreement**

Avangrid Renewables, LLC, Idaho Power Company, PacifiCorp, and Portland General Electric Company (“Commenting Parties,” and individually, “Commenting Party”) submit the following comments on the draft Billing Dispute Procedures of the Bonneville Power Administration (“Bonneville” or “Agency”).<sup>1</sup> Commenting Parties appreciate Bonneville’s receptiveness to comments and feedback from customers, as ultimately, when disputes arise, all parties want “resolution on an informal basis as promptly as practicable.”<sup>2</sup> To that end, these comments, and the requested edits to the Billing Dispute Procedures and Draft Escrow Agreement included as Attachments 1 and 2, reiterate three key concerns shared by Commenting Parties: ensuring the Customer’s unilateral ability to dispute a bill from a transmission provider, protecting the Customer against inadvertent waiver of important rights, and fairness in resolving disputes.

In addition, pursuant to Section 4.5.2 of the Business Practice Process, Commenting Parties request additional discussion of these comments, the requested edits, and whether Bonneville’s draft Billing Dispute Procedures significantly affect terms and conditions of service.

**1. Initial Comments on Bonneville’s Implementation of the Newly-Adopted Business Practice Process**

Notwithstanding the Administrator’s recent adoption of the TC-20 Settlement Agreement,<sup>3</sup> Commenting Parties appreciate Bonneville’s early commitment to follow the new

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<sup>1</sup> The comments provided here are intended to summarize and explain the intent behind—and not to replace—the requested redline edits provided in Attachments 1 and 2. Accordingly, the absence of explanation in these comments for any particular Attachment 1 or Attachment 2 edit should not be construed as an indication that such edit is not supported by Commenting Parties. A clean version of Attachment 1 is provided as Attachment 3 to these Comments.

<sup>2</sup> Bonneville Current Tariff Section 12.1, Settlement Tariff Section 12.1. References in these comments to “Bonneville’s Tariff” are intended to refer to both Bonneville’s Current and Settlement Tariff, unless otherwise stated.

<sup>3</sup> Bonneville Power Admin., TC-20 Settlement Record of Decision (March 1, 2019) (adopting the TC-20 Settlement Agreement).

Business Practice Process (“BP Process”) incorporated as Attachment 4 of that agreement.<sup>4</sup> Commenting Parties also recognize that the draft Billing Dispute Procedures Business Practice is a “test run” of this new BP Process. Accordingly, and in advance of the March 19, 2019 settlement implementation meeting,<sup>5</sup> Commenting Parties provide the following initial feedback intended to assist Bonneville in its implementation of the BP Process:

- In the Tech Forum Notice published for each Proposed Business Practice, Bonneville should include the information set out in both Sections 4.1 and 4.2 of the BP Process.
- Section 4.1 describes certain administrative information that must be included before a Proposed Business Practice is considered complete, such as the reason for the proposal or impacts and benefits of the proposal, to the extent known.
- Commenting Parties observe that certain Section 4.1 information, such as 4.1(b) and 4.1(c), was not provided in writing to stakeholders in the Tech Forum Notice or elsewhere in connection with this proposed business practice. Although the Section 4.1 information is administrative in nature, including such information in the Tech Forum Notice for each Proposed Business Practice is nonetheless important to stakeholders going forward, as it would put them on notice of the potential impact of proposed actions at issue. Moreover, such information would advance the intent behind the BP Process,<sup>6</sup> and Bonneville’s general commitment to transparency, collaboration, and responsiveness.<sup>7</sup>

## 2. Summary of Comments and Context of Concerns

The comments provided here, and associated requested edits, are influenced in part by Commenting Parties’ own experience as long-time Bonneville customers and, for some Parties, as fellow regional transmission providers. As demonstrated in the below comparison, due to Bonneville’s status as a federal power marketing administration, certain deviations from the *pro forma* OATT render key customer-protection provisions vulnerable due to their significant reliance on Bonneville’s dispute resolution procedures.

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<sup>4</sup> Tech Forum Notice (Feb. 1, 2019) (“Although the TC-20 proceeding has not yet concluded, Bonneville will follow the Business Practice Process proposed in the TC-20 proceeding to adopt the Billing Dispute Procedures business practice.”).

<sup>5</sup> Tech Forum Notice (March 5, 2019) (announcing a meeting on March 19, 2019, in which Bonneville will discuss various TC-20 Settlement topics, including the business practice process)

<sup>6</sup> Bonneville Power Admin., Bonneville Business Practice Process, Sec. 1 (“The intent of this Business Practice Process is to facilitate the exchange of ideas and information regarding maintenance and modifications to Bonneville’s business practices associated with its open access transmission tariff (Tariff) in as transparent a way as possible so that Bonneville can make decisions in consideration of stakeholder comments, including the effect of proposed changes on stakeholders.”).

<sup>7</sup> See, e.g. Bonneville Power Admin., BPA 2018-2023 Strategic Plan at 45 (noting Bonneville’s Strategic Goal 4 “meet transmission customer needs efficiently and responsively”); Bonneville Power Admin, Mission Vision Values, <https://www.bpa.gov/news/AboutUs/Pages/Mission-Vision-Values.aspx> (noting Bonneville’s intent for, among other things, collaborative relationships).

### 7.3. Customer Default:<sup>8</sup>

In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of a default, the Transmission Provider may ~~initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request~~ notify the Transmission Customer that it plans to terminate services in sixty (60) days. The Transmission Customer may use the dispute resolution procedures to contest such termination. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, ~~in accordance with Commission Policy.~~

### 12.1 Internal Dispute Resolution Procedures

Any dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff (excluding ~~applications for rate changes or other changes to the Tariff, or to any Service Agreement entered into under the Tariff, which shall be presented directly to the Commission for resolution~~ rate changes) shall be referred to a designated senior representative of the Transmission Provider and a senior representative of the Transmission Customer for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days [or such other period as the Parties may agree upon] ~~by mutual agreement~~, such dispute may be submitted to a court or agency of competent jurisdiction or, by mutual agreement, arbitration and resolved in accordance with the arbitration procedures set forth below.

In reviewing the above redline comparison in the context of the draft Billing Dispute Procedures, three observations arise. First, and as discussed in the next section, conspicuously absent from the FERC *pro forma* Tariff, Bonneville's current Tariff, and the Settlement Tariff is any requirement that the Transmission Provider must "formally recognize" a billing dispute before the dispute resolution process can initiate. Rather, as clearly stated in Section 12.1, "[a]ny dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff (excluding rate changes) shall be referred to a designated senior

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<sup>8</sup> See also, Bonneville Power Administration, *Administrator's Final Record of Decision, Appendix D: Transmission, Ancillary, and Control Area Service Rate Schedules and General Rate Schedule Provisions*, (BP-18-A-04-AP04) at 75-76 (setting out similar customer default provisions).

representative of the Transmission Provider and a senior representative of the Transmission Customer for resolution on an informal basis as promptly as practicable.” Simply put, by the terms of Bonneville’s own Tariff, the Customer does not need permission or “formal recognition” to dispute a bill.

Second, a critical deviation of Bonneville’s Tariff from the *pro forma* Tariff is the requirement in Section 7.3 to obtain FERC permission before terminating a customer’s service in the event of default. Rather, even assuming away other legal impediments to service termination (or other action) in the event of customer default, Bonneville’s primary obstacle should not be a dispute resolution process that it can decline to initiate by withholding its “formal recognition.” For at least PacifiCorp, this is not simply a hypothetical, but a distinct concern in light of recent experience.<sup>9</sup>

Finally, the Customer’s ability to meaningfully exercise its right in Tariff Section 12.1 to challenge Bonneville’s resolution is premised on such dispute resolution process having begun in the first place. Again, there should be no “formal recognition” prerequisite as a barrier to the Customer disputing its own bill and ensuring its right to continued service during the dispute under Section 7.3 and its ability to ultimately challenge the dispute’s resolution under Section 12.1.

Commenting Parties emphasize that these comments and requested edits do not seek to protect Customers at the expense of Bonneville. These comments and requested edits are intended to provide a framework for promptly resolving disputes while taking Bonneville’s stated concerns into account to the extent possible and consistent with Customers’ existing rights. Ultimately, having clear, fair, and reliable billing dispute procedures will better protect Bonneville’s Customers, the Agency itself, and also further Bonneville’s commitments to open access transmission service and customer engagement.<sup>10</sup>

### **3. Comments on the Billing Dispute Procedures**

At the outset, Commenting Parties request prefatory language at the beginning of the Billing Dispute Procedures that reinforce that the Billing Dispute Procedures are subject to applicable law, such as Bonneville’s Tariff itself, executed service agreements, and the Agency’s statutory framework. In addition, Commenting Parties recommend language to clarify that

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<sup>9</sup> See, *TC-20 Comments of PacifiCorp on Certain of BPA’s Proposed Tariff Changes and Related Matters from April 23, 2018 TC-20 Meeting* (May 30, 2018) at 2-3, available at [https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/TC-20%20Comments/PacifiCorp%20Comments%20on%20BPA%20Proposed%20TC-20%20Tariff%20Changes%20\(5.30.18\).pdf](https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/TC-20%20Comments/PacifiCorp%20Comments%20on%20BPA%20Proposed%20TC-20%20Tariff%20Changes%20(5.30.18).pdf) (describing a previous billing dispute raised by PacifiCorp that Bonneville declined to “recognize” absent information about, and documentation to support, the merits of the dispute and the “relief sought”).

<sup>10</sup> See, e.g. Bonneville Settlement Tariff Section 9(a)(1) (“Subject to applicable law, Bonneville commits to open access transmission service.”); Bonneville Strategic Plan 2018-2023 (Jan. 2018) at 50, available at <https://www.bpa.gov/StrategicPlan/StrategicPlan/2018-Strategic-Plan.pdf> (stating, as part of Bonneville’s strategic plan to meet transmission customer needs efficiently and responsively, that Bonneville’s intent to “[o]ffer more standardized products and services by better aligning BPA’s Open Access Transmission Tariff with pro forma and industry best practices”).

Bonneville and a disputing Customer remain free to resolve their dispute outside of the Billing Dispute Procedures, such as through settlement. The remaining edits proposed by Commenting Parties underscore the group's concerns with: ensuring the Customer's unilateral ability to dispute a bill from a transmission provider, protecting the Customer against inadvertent waiver of important rights, and fairness in resolving disputes.

### **A. Initiating a Dispute**

As noted previously, there is no express requirement in Bonneville's current Tariff, Settlement Tariff, or the FERC *pro forma* Tariff that the Transmission Provider must "formally recognize" a Customer's dispute before initiating the dispute resolution process. In addition, requiring certain additional information as a prerequisite to such initiation could become burdensome and unreasonable, especially because dispute initiation triggers important rights under Sections 7.3 and 12.1, which may need to be exercised on a time-sensitive basis.

Accordingly, requested edits to Sections A.1 and B.1, as shown in Attachment 1 ensure that the Customer may unilaterally initiate a dispute to its own transmission bill, which is what the Tariff clearly contemplates, what is *status quo* in the industry, and what is most just and reasonable for Bonneville's Customers.

Among the revisions shown in Attachment 1, Commenting Parties request that subsection (a) under A.1 and B.1 be revised to state that the Customer should indicate in writing that it is disputing a bill and provide certain initial information to the extent then known by the Customer. Customers may not have all the data or other information necessary to resolve a dispute or, on some occasions, to even to understand the extent of a dispute. For example, a Customer may need meter readings from Bonneville or certain maps or diagrams that are solely in Bonneville's possession and not publicly available. Rather, the extent to which either the transmission provider or Customer need additional information from each other should pertain only to the resolution of the dispute, not to whether such a dispute exists in the first place. Furthermore, suggested edits to Sections A.3 and B.3 would allow both Bonneville and the Customer ample opportunity to reasonably seek additional information from each other as necessary for the dispute to be resolved.

Commenting Parties further request that "detailed" be deleted from item (ii), as that immediately raises the question of whether a dispute is sufficiently "detailed" to initiate the billing dispute process, which is not an explicit requirement in the Tariff. In addition, Commenting Parties request that item (iii) be replaced with "a statement of information the customer requests from Bonneville that may be relevant to resolving the dispute." Customers would likely be providing any then-available supporting documentation as part of their explanation in item (ii). With regard to Section A.1.a.iv.1 and Section b.1.a.iv.1, Commenting interpret those sections solely as a reference to what other requirements may exist for Customers to comply with outside of the Billing Dispute Process, and not an additional limitation on the Customer to initiate a dispute.

Finally, and critically, in subsection (b) in Sections A.1 and B.1, Commenting Parties request that Bonneville replace the "formal recognition" requirement with an obligation by the

Transmission Account Executive to confirm Bonneville’s receipt of the Customer’s dispute-related communication within three business days. Removal of the “formal recognition” requirement re-emphasizes that Customer retains sole control of initiating a dispute of its own bill, which is consistent with Bonneville’s Tariff and standard industry practice.

## **B. Treatment of Funds in Dispute**

Commenting Parties request that Bonneville delete the sentence “Bonneville will continue to retain funds in dispute,” from Section A.2.a, as that sentence creates ambiguity over what Bonneville’s obligations are with regard to the funds in dispute, and it moreover conflicts with the final sentence in that subsection, “Bonneville will continue to retain the funds pending dispute resolution.”

Commenting Parties’ requested edits to Section B.2 complement the requested edits to Sections A.1 and B.1, and are intended to remove barriers to initiating a dispute under Section B, thereby ensuring consistent treatment between Customers and preserving each Customer’s rights under Section 7.3 (right to continued service during dispute) and Section 12.1 (right to appeal dispute resolution). In addition, these edits avoid the timing conflict apparent in original Section B.2, wherein Bonneville’s “formal recognition” of the dispute would be based partly on the Customer executing the escrow agreement and funding the escrow account—steps that cannot be taken without the active involvement and counter signatures of Bonneville and the Escrow Agent.<sup>11</sup>

Accordingly, and as shown in Attachment 1, Commenting Parties request the removal of current Section B.2.c, as it would be inconsistent with Bonneville’s Tariff and unreasonable to hinge the Customer’s dispute initiation, and the critical rights attendant thereto, on a process that the Customer cannot complete on its own and would be burdensome in any event simply to initiate a dispute.

Recognizing the importance of diligently resolving the dispute, however, Commenting Parties suggest incorporating language that would obligate the Customer to use reasonable efforts to negotiate any unfilled terms in the Escrow Agreement and execute the agreement with Bonneville and the Escrow Agent as promptly as possible, with full funding of the account by the Customer following within five business days thereafter.

Commenting Parties also request that “by the billing due date” be struck from Section B.2.a.i and replaced with “in accordance with Section B.2.b” to be consistent with other edits made in Section B and out of recognition that the originally-drafted timeline for execution may be unworkable for Bonneville, the Customer, and the Escrow Agent. Finally, as a matter of clarification, Commenting Parties request that Bonneville insert the word “not” in Section B.2.a.i. Specifically, Commenting Parties request that that subsection be changed to: “Disputed charges

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<sup>11</sup> See, e.g. Draft Escrow Agreement Recitals (noting that the dispute must be summarized); Draft Escrow Agreement Section 3 (“**Deposit of Escrow Funds.** Within five (5) business days of the execution and delivery of this Escrow Agreement. Depositor [customer] will transfer the Escrow Funds in the amount \$\_\_\_\_ by wire transfer immediately available funds, to an account designated by Escrow Agent.”).

not paid to BPA or not deposited into escrow by the billing due date will be subject to applicable collection procedures and timelines.” This addition will prevent conflicts with the Escrow Agreement.

### **C. Dispute Evaluation and Determination by BPA**

Commenting Parties request that Bonneville incorporate various edits in Sections A.3 and B.3. First, Commenting Parties request insertion of a cross-reference to Bonneville Tariff Section 12.1, which clarifies the primacy of the Tariff and guarantees that once a dispute is initiated by a Customer, it must be referred to designated senior representatives of both Bonneville and the Customer. The obligation in Tariff Section 12.1 to refer a dispute to senior representatives by the parties also informs the edits to Sections A.3.b and B.3.b.

Second, Commenting Parties suggest language that would ensure full opportunity for the Customer and Bonneville—once the Customer initiates the dispute—to reasonably request additional information for purposes of resolving the dispute. From the Customer call on February 8, 2019, it appeared that most of Bonneville’s concerns behind the enumerated items in Sections A.1 and B.1 were to ensure sufficient information was gathered at the outset. As noted previously, however, Bonneville’s current and Settlement Tariffs do not obligate the Customer to provide “detailed” information to initiate the dispute, and to impose such a requirement, or any other impediment to the Customer’s unilateral right to dispute a bill, would be inconsistent with Bonneville’s Tariff and would invite transmission provider discretion that is neither appropriate nor reasonable at the dispute initiation stage.

Nonetheless, it may be necessary for the Customer to provide additional information before Bonneville can fully resolve the dispute in accordance with Sections A.3 and B.3 and the Tariff. Similarly, as reflected in revised Sections A.1.a.iii and B.1.a.iii, the Customer may also need additional information from Bonneville. As such, the added language would ensure that both parties could obtain the information that they need to resolve the dispute.

Finally, Commenting Parties suggest adding language in Sections A.3.c and B.3.c that would prompt Bonneville to explain its Final Decision, to the extent Bonneville deems such explanation is necessary or appropriate. This proposed language will help set Customer expectations as to the form and substance of Bonneville’s final decision and may also forestall an appeal by the Customer under Sections A.4 and B.4. Ultimately, however, Bonneville would remain in control of the level of detail it provides Customers at this stage.

### **D. Disbursement of Funds (Formerly Appeal Procedures and Disbursement of Funds)**

As reflected in Attachment 1, Commenting Parties request various edits to Section A.4 and B.4, which are primarily intended to reaffirm that Customers are not waiving any rights retained under the Tariff, statute, or contract, as a result of these dispute procedures. Accordingly, from both a Tariff compliance and practical standpoint, Commenting Parties are concerned with the original 15-day timing requirement in which a Customer must provide notice of its intent to pursue alternative dispute resolution or legal action before a court or agency following Bonneville’s notice of final decision. First, under Bonneville’s Tariff Section 12.1,

customers are entitled to submit their dispute to a court, agency, or to arbitration in the event that the dispute cannot be resolved within thirty days (or such other period that the Parties may agree on). As such, Commenting Parties have revised Section B.4.b to obligate the customer to notify Bonneville that the Customer has already, or intends, to pursue the options set out in Tariff Section 12.1.

Second, the 15-day timing requirement also conflicts with how the Escrow Agreement defines “Escrow Period.” In relevant part, “Escrow Period” is defined as the period in which the Escrow Agreement is in effect, and it runs from the date of execution by the parties until 90 days following Bonneville’s final resolution of the dispute, unless earlier terminated by mutual agreement or if a claim challenging Bonneville’s final resolution is “actively pending” in a court or agency of competent jurisdiction. As the current draft Billing Dispute Procedures read, a Customer would have 15 days to signal its intent to contest Bonneville’s final decision, when, under the Escrow Agreement, the Customer would have up to 90 days to make that decision before the funds could be distributed. Moreover, it raises the added complication of what happens if, by day 16, the Customer then decides to dispute the decision. On the February 8, 2019 call, Bonneville staff acknowledged that this could be a problematic outcome. Again, the Customer retains its right to seek relief from a court, agency, or through arbitration in accordance with Bonneville’s Tariff, but the 15-day timing requirement presents additional textual interpretation hurdles when compared to the Escrow Agreement.

Third, practically speaking, it may take longer than 15 days for the Customer to assess Bonneville’s final decision, evaluate the merits of pursuing alternative dispute resolution or legal action in a court or agency, and obtain the internal approvals necessary. Insisting on a limited 15-day window within which to signal this next critical step may invite unnecessary litigation and tension when a longer time frame could both allow the Customer more time to evaluate its options, while ensuring that Bonneville has sufficient leeway before, as the Agency claims, it must consider sending a Customer’s outstanding bill to the U.S. Treasury Department. To that end, Commenting Parties request an extension out to 60 days for the Customer to give notice that they have either exercised, or intend to exercise, the rights afforded them under Tariff Section 12.1.

Finally, both Sections A.4 and B.4 clarify that Bonneville will disburse the funds in dispute in accordance with Bonneville’s final decision (in the absence of a final determination of a court or agency of competent jurisdiction) or the final determination of a court or agency of competent jurisdiction. Additional requested edits in Section B.4.b would clarify the procedure by which a Customer can further state its intentions following Bonneville’s final decision.

#### **4. New Section C: Billing Dispute Procedures Shall be Consistent with OATT Section 12.1 and the Customer’s Reservation of Rights**

Commenting Parties request that Bonneville insert the edits presented in new Section C of Attachment 1. These edits are consistent with Section 9 of Bonneville’s Tariff, Section 7 of the Business Practice Development Process, and consistent with other edits described in these Comments: that Customers are not waiving, modifying, or amending any rights, remedies, or obligations that are guaranteed to them by applicable law or under Contract. In particular, and as

the Commenting Parties expressly point out in Section C.1, Tariff Section 12.1 preserves the Customer's right to submit its dispute to a court or agency of competent jurisdiction or, by mutual agreement with Bonneville, to arbitration.

## **5. Comments on the Draft Escrow Agreement**

As shown in Attachment 2 and explained below, Commenting Parties also have several suggested edits to the draft Escrow Agreement, recognizing that this is a draft template subject to further review by Bonneville, a disputing Customer, and the Escrow Agent as needed and on a case-by-case basis:

- **Recitals:** Commenting Parties recommend inserting the right of the Customer, as provided in Bonneville Tariff Section 7.3, to continue receiving transmission service provided that certain conditions are met. This is consistent with Bonneville's Tariff and ensures that expectations and rights are understood.
- **Section 1 (Definition of "Escrow Period"):** Commenting Parties recommend striking "actively" from the term "actively pending" in reference to when there is a claim challenging Bonneville's final resolution before a court, agency, or submitted to arbitration. "Actively" paired with "pending" creates ambiguity, as those terms could indicate when a matter is under consideration by a decision-maker, awaiting briefing, in motion practice, or stayed pending settlement discussions by the Parties or mandatory mediation (in the case of the Ninth Circuit Court of Appeals).
- **Section 1 (Definition of "Escrow Period"):** Commenting Parties recommend language to incorporate the possibility of arbitration being a proceeding that could delay release of the escrow funds in a similar fashion as challenges to Bonneville's final resolution before a court or agency. Including arbitration in this way is also consistent with Bonneville's Tariff.
- **Section 1 ("Joint Written Direction"):** The suggested edits here are to ensure that the escrow funds can be disbursed subject to written direction by both the Customer and Bonneville, which would be standard practice and is consistent with past Bonneville escrow agreements.
- **Section 7 ("Resignation or Removal of Escrow Agent"):** The suggested edits here are to enable the Customer and Bonneville to determine a different escrow agent, if needed. This is consistent with past escrow agreements executed between Bonneville and its Customers.
- **Section 12(b) (Representations and Warranties):** The suggested edits here are to clarify that the same representatives that had authority to execute the Escrow Agreement also have authority to amend, modify, or waive any provisions of the Agreement or take any other authorized action. This is consistent with past escrow agreements executed between Bonneville and its Customers.

- Section 26(c) (Imputed Interest): Commenting Parties recommend minimal edits here to reflect that Section 7.2 of Bonneville's Tariff may also apply to the question of calculating interest.

## **6. Reservation of Rights and Request for Additional Customer Workshops**

Commenting Parties reiterate that nothing contained in these Comments or Attachments constitutes a waiver or relinquishment of any rights or remedies provided by applicable law, Bonneville's Tariff, or by contract. Furthermore, each Commenting Party individually reserves its right, as established through the newly established Business Practice Development process, to initiate a Proposed Business Practice to address any issues that may arise in the course of implementing this, or any other, business practice.

Finally, and as noted previously, Commenting Parties request an additional workshop or other discussion opportunity with Bonneville pursuant to Section 4.5.2 of the Business Practice Process to consider these comments and edits and whether Bonneville's draft Billing Dispute Procedures, if unrevised, would significantly affect terms and conditions of service.

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Commenting Parties appreciate BPA's review of these comments and consideration of the recommendations contained herein. By return e-mail, please confirm BPA's receipt of these comments.

# **ATTACHMENT 1**

# Billing Dispute Procedures

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## **BPA Transmission Business Practice (DRAFT)**

Version 01

2/1/2019

[Revised 3/11/2019](#)

## Billing Dispute Procedures

### Version 01

This Business Practice provides the procedures that Customers must follow for Transmission billing disputes pursuant to sections 7 and 12 of Bonneville’s Open Access Transmission Tariff (OATT) and subject to applicable law. However, nothing in this Business Practice shall (i) require its application to a dispute if Bonneville and the Customer otherwise resolve such dispute, or (ii) amend or modify any provision of the OATT or any service agreement thereunder.

For more information, visit the [BPA Transmission Business Practices page](#) or submit questions to [techforum@bpa.gov](mailto:techforum@bpa.gov).

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### A. Disputing a Billed Charge After Payment to BPA

#### 1. Initiating a Dispute

- a. The customer may unilaterally initiate a billing dispute with Bonneville. To dispute a billed charge after the Customer has already paid the charge to Bonneville, the Customer must ~~provide the following information to its Transmission Account Executive in writing~~ send its Transmission Account Executive an email or some other writing indicating that the Customer is disputing a bill. Such email or writing should provide the following information, to the extent then known by the Customer:
  - i. Identification of the time period and charge(s) being disputed;
  - ii. ~~A detailed~~ An explanation of the basis for the dispute; and
  - iii. ~~Any supporting documentation for the dispute; and~~ A statement of information the Customer requests from Bonneville that may be relevant to resolving the dispute;
  - iv. Identification of the relief sought, including the dollar amount.
    1. If the relief sought includes a request for waiver of a rate that has its own waiver requirements (such as with respect to an Unauthorized Increase Charge) in BPA’s Transmission, Ancillary, and Control Area Service Rate Schedule and General Rate Schedule Provisions, the Customer must also comply with such waiver requirements.

- b. Upon receipt of the ~~above information~~ email or writing from the Customer pursuant to Section A.1.a, the Customer's Transmission Account Executive ~~will~~ shall respond with confirmation ~~formally recognizing of receipt of~~ the Customer's dispute within 3 business days.

## 2. Treatment of Funds in Dispute

- a. ~~Bonneville will continue to retain funds in dispute.~~ Bonneville will not transfer to an escrow account funds in dispute that have already been paid by the Customer. Bonneville will continue to retain the funds pending dispute resolution.
- b. The Customer may not withhold funds from a subsequent invoice to offset funds in dispute that were previously paid by the Customer.

## 3. Dispute Evaluation and Determination by Bonneville

- a. ~~At~~ Consistent with OATT Section 12.1, following initiation of a dispute by the Customer, BPA shall arrange, with the Customer's ~~request, BPA will~~ arrange assistance, a meeting with a BPA designated senior representative and a designated senior representative of the Customer to discuss the dispute as promptly as practicable. Multiple meetings may be arranged, as needed. The Customer shall make reasonable efforts to provide any additional information that Bonneville may reasonably request in writing for purposes of evaluating the Customer's dispute. Bonneville shall make reasonable efforts to provide any additional information that is reasonably requested by the Customer, including any information the Customer has identified pursuant to Section A.1.a.iii above.
- b. ~~b.~~ BPA will evaluate the merits of the dispute. BPA will endeavor to complete this evaluation within sixty (60) days of ~~the later of: i. —~~ the date of the meeting, or the final meeting, with senior representatives; ~~or,~~
- ~~ii. — the date the dispute was recognized in accordance with Section A.1.b, above.~~
- c. Once BPA completes its evaluation, the Transmission Account Executive will notify the Customer in writing of BPA's final decision regarding the dispute, along with any additional explanation of the final decision as BPA may deem necessary or appropriate.

## 4. ~~Appeal Procedures and~~ Disbursement of Funds

- a. BPA will disburse any funds due to the Customer consistent with its final decision. ~~b. If the Customer does not agree with BPA's final decision regarding the dispute, the Customer may request alternative dispute resolution under section 12 of the OATT or pursue legal action in (in the absence of a final determination of a court or agency of competent jurisdiction) or the final determination of~~ a court or agency of competent jurisdiction.

# B. Disputing a Billed Charge Using an Escrow Account

## 1. Initiating a Dispute

- a. The customer may unilaterally initiate a billing dispute with Bonneville. To dispute a billed charge prior to making payment, the Customer must provide the following information to its Transmission Account Executive in writing send its Transmission Account Executive an email or some other writing indicating that the Customer is disputing a bill. Such email or writing should provide the following information, to the extent then known by the Customer:
- i. Identification of the time period and charge(s) being disputed;
  - ii. ~~A detailed~~An explanation of the basis for the dispute; and
  - iii. ~~Any supporting documentation for the dispute; and~~A statement of what information the Customer requests from Bonneville that may be relevant to resolving the dispute;
  - iv. Identification of the relief sought, including the dollar amount.
    1. If the relief sought includes a request for waiver of a rate that has its own waiver requirements (such as with respect to an Unauthorized Increase Charge) in BPA's Transmission, Ancillary and Control Area Service Rate Schedule and General Rate Schedule Provisions, the Customer must also comply with such waiver requirements.
- b. Upon receipt of the email or writing from the Customer pursuant to Section B.1.a, the Customer's Transmission Account Executive shall respond with confirmation of receipt of the Customer's dispute within 3 business days.

## 2. Treatment of Funds in Dispute

- a. A Customer may choose to either pay the charges in dispute consistent with Section A, above, or promptly deposit the funds into an escrow account.
  - i. Disputed charges not paid to BPA or not deposited into escrow ~~by the billing due date~~in accordance with Section B.2.b below will be subject to applicable collection procedures and timelines.
  - ii. Disputed funds deposited into an escrow account are considered unpaid and shall accrue interest pursuant to section 7.2 of BPA's OATT.
- b. Disputed Charges Deposited Into Escrow:
  - i. Upon receipt of the ~~information under~~email or writing from the Customer pursuant to Section B.1.a, BPA's Transmission Account Executive will provide the Customer with an Escrow Agreement.
    1. The Transmission Customer will be solely responsible for the setup costs and administrative fees associated with the escrow account.
  - ii. The Customer ~~must promptly execute the escrow agreement and~~Bonneville will use reasonable efforts to negotiate the unfilled terms of the Escrow Agreement and execute the Escrow Agreement with the Escrow Agent. Within five (5) business days of executing the escrow agreement, the Customer must deposit the funds in dispute into the escrow account.

~~c. Upon completion of Section B.1 and Section B.2.b the Customer's Transmission Account Executive will respond with confirmation formally recognizing the Customer's dispute.~~

### 3. Dispute Evaluation and Determination by BPA

a. ~~At~~ Consistent with OATT Section 12.1, following initiation of a dispute by the Customer, BPA shall arrange, with the Customer's ~~request, BPA will arrange~~ assistance, a meeting ~~between~~ with a BPA designated senior representatives ~~of BPA and a designated senior representative of~~ the Customer to discuss the dispute as promptly as practicable. Multiple meetings may be arranged, as needed. The Customer shall make reasonable efforts to provide any additional information that Bonneville may reasonably request in writing for purposes of evaluating the Customer's dispute. Bonneville shall make reasonable efforts to provide any additional information that is reasonably requested by the Customer, including any information the Customer has identified pursuant to Section B.1.a.iii above.

~~b. BPA will evaluate the merits of the dispute. BPA will endeavor to complete this evaluation within sixty (60) days of the later of: i. the date of the meeting, or the final meeting, between senior representatives; or ii. the date the dispute was recognized in accordance with Section B.2.c, above.~~

~~b.~~ c. Once BPA completes its evaluation, the Transmission Account Executive will notify the Customer in writing of BPA's final decision regarding the dispute, along with any additional explanation of the final decision as BPA may deem necessary or appropriate.

### 4. ~~Appeal Procedures and~~ Disbursement of Funds

a. Following BPA's final decision, the escrow funds will be disbursed in accordance with the escrow agreement.

b. ~~The Customer has 15~~ Not later than 60 days from receipt of BPA's notice provided per section B.3.c ~~to, the Customer shall~~ notify BPA of their ~~its~~ pursuit of, or intent to pursue ~~an~~ alternative dispute resolution under section 12 of the OATT or legal action in a court or agency of competent jurisdiction, in accordance with the Escrow Agreement.

i. Customer must include state in its notice that ~~funds in escrow are to~~, either:

1. ~~Remain~~ That the Customer continues to dispute the entirety of the disputed charge and therefore the funds in escrow are to remain in escrow in full, or;

2. ~~Release funds due to the customer~~ That the Customer does not dispute the entire disputed charge and that the undisputed funds should be released in accordance with the final decision. Remaining funds are to be left in escrow pending apportionment of funds pursuant to Section B.4.d below.

c. Upon disbursement of the escrow funds, BPA will calculate interest owed in accordance with section 7.2 of the OATT.

- d. Funds will be apportioned between BPA and the Customer in accordance with BPA's final decision (in the absence of a final determination of a court or agency of competent jurisdiction) or the final determination of a court or agency of competent jurisdiction.

## **C. Billing Dispute Procedures Shall Be Consistent with OATT Article 12.1; Reservation of Rights**

1. Notwithstanding the foregoing provisions of this Business Practice, consistent with OATT Article 12.1, in the event the designated representatives are unable to resolve the dispute within thirty (30) days [or such other period as the Parties may agree upon], such dispute may be submitted to a court or agency of competent jurisdiction or, by mutual agreement, arbitration and resolved in accordance with the arbitration procedures set forth in Bonneville's OATT Article 12.
2. Nothing contained in this Business Practice shall modify or amend, or constitute a waiver or relinquishment by Bonneville or any Customer of, any rights, remedies, or obligations provided by applicable law or under contract.

# **ATTACHMENT 2**

## ESCROW AGREEMENT

**THIS ESCROW AGREEMENT**, dated \_\_\_\_\_ (“Escrow Agreement”), is by and among {Customer} (“Depositor”); the United States Department of Energy, by and through Bonneville Power Administration, an agency of the United States operating in Portland, Oregon (“Recipient”); and U.S. Bank National Association, a national banking association, as escrow agent hereunder (“Escrow Agent”).

### RECITALS

A. Depositor and Recipient have entered into an electric transmission service agreement (BPA Contract No. \_\_\_\_\_) (the “Underlying Agreement”), dated \_\_\_\_\_ and updated with amended exhibits from time to time under the Recipient’s Open Access Transmission Tariff (“Tariff”). Under Section 7.3 of the Tariff, ~~Depositor pays Recipient for certain transmission services, but if an invoiced amount is disputed, it can be paid in the event of a billing dispute between Recipient and Depositor, Recipient will continue to provide service under the Underlying Agreement as long as Depositor: (i) continues to make all payments not in dispute; and (ii) pays~~ into an independent escrow account the portion of the invoice(s) in dispute, pending resolution of ~~the such~~ dispute under, among other things, Section 12 of the Tariff. Accordingly, Depositor will deposit the Escrow Funds (defined below) in a segregated escrow account to be held by Escrow Agent for the purpose of holding such funds pending dispute resolution. For purposes of this Escrow Agreement, the dispute relates to {summarize the dispute} (hereinafter, the “Dispute”).

B. Escrow Agent has agreed to accept, hold, and disburse the funds deposited with it and the earnings thereon in accordance with the terms of this Escrow Agreement.

C. Depositor and Recipient have appointed the Representatives (as defined below) to represent them for all purposes in connection with the funds to be deposited with Escrow Agent and this Escrow Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Definitions. The following terms have the following meanings when used herein:

“Dispute” has the meaning set forth in section A of the Recitals.

“Escrow Funds” are the funds deposited with Escrow Agent pursuant to Section 3 of this

Agreement, together with any interest and other income thereon.

“Escrow Period” is the period during which the Escrow Funds may be held in the Escrow Account. The Escrow Period begins on the date of this Escrow Agreement. The Escrow Period ends ninety (90) days from the date of Recipient’s letter to Depositor providing its Final Resolution of the Dispute, unless: (1) the Escrow Agreement is earlier terminated by mutual agreement of Depositor and Recipient; or (2) a claim challenging Recipient’s Final Resolution of the Dispute is ~~actively~~ pending in a court or agency of competent jurisdiction, or submitted to arbitration in accordance with Tariff Section 12.1. If a claim is actively pending on the date ninety (90) days from Recipient’s letter to Depositor providing its Final Resolution of the Dispute, the Escrow Period will end in accordance with that court’s or agency’s final decision.

“Final Resolution of the Dispute” is the Recipient’s final decision on the merits of Depositor’s Dispute issued pursuant to Tariff section 7.3 and the Recipient’s Billing Dispute Procedures Business Practice.

“Final Written Direction” is a direction in writing, executed by the Recipient’s Representative upon the end of the Escrow Period, directing Escrow Agent to disburse all or a portion of the Escrow Funds.

“Indemnified Party” has the meaning set forth in Section 10.

“Joint Written Direction” is a direction in writing, executed by one each of the Representatives from the Depositor and Recipient, directing Escrow Agent to disburse all or a portion of the Escrow Funds or take or refrain from taking any other action pursuant to this Escrow Agreement.

“Representatives” are the Depositor Representative and the Recipient Representative.

“Depositor Representative” is the person(s) so designated on Schedule C hereto or any other person designated in a writing signed by Depositor and delivered to Escrow Agent and the Recipient Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

“Recipient Representative” is the person(s) so designated on Schedule C hereto or any other person designated, in a writing signed by Recipient and delivered to Escrow Agent and the Depositor Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

2. Appointment of and Acceptance by Escrow Agent. Depositor and Recipient hereby appoint Escrow Agent to serve as escrow agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt by wire transfer of the Escrow Funds in accordance with Section 3 below, agrees to hold, invest and disburse the Escrow Funds in accordance with this

Escrow Agreement.

3. Deposit of Escrow Funds. Within five (5) business days of the execution and delivery of this Escrow Agreement, Depositor will transfer the Escrow Funds in the amount \$ \_\_\_\_\_ by wire transfer of immediately available funds, to an account designated by Escrow Agent.

4. Disbursements of Escrow Funds. Escrow Agent shall disburse Escrow Funds at any time and from time to time, upon receipt of, and in accordance with, a Joint Written Direction or Final Written Direction. The Joint Written Direction or Final Written Direction will contain complete payment instructions, including wiring instructions or an address to which a check shall be sent. In the case where the account is at a zero dollar balance it may be closed by the Depositor individually. Prior to any disbursement, Escrow Agent shall have received reasonable identifying information regarding the Recipient such that Escrow Agent may comply with its regulatory obligations and reasonable business practices, including without limitation a completed United States Internal Revenue Service (“IRS”) Form W-9 or original IRS Form W-8, as applicable. All disbursements of funds from the Escrow Funds shall be subject to the fees and claims of Escrow Agent and the Indemnified Parties pursuant to Section 10 and Section 11 below.

5. Suspension of Performance; Disbursement into Court. If, at any time, (i) there shall exist any dispute between Depositor, Recipient or the Representatives with respect to the holding or disposition of all or any portion of the Escrow Funds or any other obligations of Escrow Agent hereunder, (ii) Escrow Agent is unable to determine, to Escrow Agent's sole satisfaction, the proper disposition of all or any portion of the Escrow Funds or Escrow Agent's proper actions with respect to its obligations hereunder, or (iii) Depositor and Recipient have not, within 10 calendar days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 8 hereof, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

a. suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Escrow Agreement until such dispute or uncertainty shall be resolved to the sole satisfaction of Escrow Agent or until a successor Escrow Agent shall have been appointed.

b. petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction, in any venue convenient to Escrow Agent, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by Escrow Agent in connection with the

performance of its duties and the exercise of its rights hereunder.

Escrow Agent shall have no liability to Depositor, Recipient or the Representatives, their respective owners, shareholders or members or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Escrow Funds or any delay in or with respect to any other action required or requested of Escrow Agent.

6. Investment of Funds. Based upon Depositor's and Recipient's prior review of investment alternatives, in the absence of further specific written direction to the contrary, the Escrow Agent is directed to initially invest and reinvest the Escrow Funds in the investment indicated on Schedule B hereto. Recipient may provide written instructions changing the investment of the Escrow Funds to the Escrow Agent; provided, however, that no investment or reinvestment may be made except in the following: (a) direct obligations of the United States of America or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America; (b) U.S. dollar denominated deposit accounts and certificates of deposits issued by any bank, bank and trust company, or national banking association (including Escrow Agent and its affiliates), which such deposits are either (i) insured by the Federal Deposit Insurance Corporation or a similar governmental agency, or (ii) with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P or "P-1" by Moody's and maturing no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank); (c) repurchase agreements with any bank, trust company, or national banking association (including Escrow Agent and its affiliates); provided that the Escrow Agent will not be directed to invest in investments that the Escrow Agent in its sole discretion determines are not consistent with the Escrow Agent's policy or practices. Depositor and Recipient acknowledge that the Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice.

If Escrow Agent has not received a written instruction from Recipient at any time that an investment decision must be made, Escrow Agent is directed to invest the Escrow Funds, or such portion thereof as to which no written investment instruction has been received, in the investment indicated on Schedule B hereto. All investments shall be made in the name of Escrow Agent. Notwithstanding anything to the contrary contained herein, Escrow Agent may, without notice to Depositor and Recipient, sell or liquidate any of the foregoing investments at any time for any disbursement of Escrow Funds permitted or required hereunder. All investment earnings shall become part of the Escrow Funds and investment losses shall be charged against the Escrow Funds. Escrow Agent shall not be liable or responsible for loss in the value of any investment made pursuant to this Escrow Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of the Escrow Funds. With respect to any Escrow Funds received by Escrow Agent after ten o'clock Pacific Standard Time, Escrow Agent shall not be required to invest such funds or to effect any investment instruction until the next day upon which banks in St. Paul,

Minnesota and the New York Stock Exchange are open for business.

7. Resignation or Removal of Escrow Agent. Escrow Agent may resign and be discharged from the performance of its duties hereunder at any time by giving ten (10) days prior written notice to the Depositor and Recipient specifying a date when such resignation shall take effect and, after the date of such resignation notice, notwithstanding any other provision of this Agreement, Escrow Agent's sole obligation will be to hold the Escrow Funds pending appointment of a successor Escrow Agent. Similarly, Escrow Agent may be removed at any time by Depositor and Recipient giving at least thirty (30) days' prior written notice to Escrow Agent specifying the date when such removal shall take effect. Upon any such notice of resignation, Depositor and Recipient jointly shall appoint a successor Escrow Agent hereunder prior to the effective date of such resignation or removal. If the Depositor and Recipient fail to appoint a successor Escrow Agent within such time, the Escrow Agent shall have the right to petition a court of competent jurisdiction to appoint a successor Escrow Agent, and all costs and expenses (including without limitation attorneys' fees) related to such petition shall be paid joint and severally by Depositor and Recipient. The retiring Escrow Agent shall transmit all records pertaining to the Escrow Funds and shall pay all Escrow Funds to the successor Escrow Agent, after making copies of such records as the retiring Escrow Agent deems advisable and after deduction and payment to the retiring Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. After any retiring Escrow Agent's resignation or removal, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement.

8. Binding Effect; Successors. This Escrow Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors or assigns. If the Escrow Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including the escrow contemplated by this Escrow Agreement) to another corporation, the successor or transferee corporation without any further act shall be the successor Escrow Agent.

9. Liability of Escrow Agent. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Escrow Agent has no fiduciary or discretionary duties of any kind. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement, including without limitation any other agreement between any or all of the parties hereto or any other persons even though reference thereto may be made herein. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the sole cause of any loss to the Depositor or Recipient. Escrow Agent's sole responsibility shall be for the safekeeping and disbursement of the Escrow Funds in accordance

with the terms of this Escrow Agreement. Escrow Agent shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. Escrow Agent may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds, any account in which Escrow Funds are deposited, this Escrow Agreement or the Underlying Agreement, or to appear in, prosecute or defend any such legal action or proceeding. Escrow Agent may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving any party hereto, and shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the advice of such counsel. Depositor shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel. Depositor and Recipient agree to perform or procure the performance of all further acts and things, and execute and deliver such further documents, as may be required by law or as Escrow Agent may reasonably request in connection with its duties hereunder.

The Escrow Agent is authorized, in its sole discretion, to comply with final orders issued or process entered by any court with respect to the Escrow Funds, without determination by the Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

10. Indemnification of Escrow Agent. From and at all times after the date of this Escrow Agreement, Depositor shall, to the fullest extent permitted by law, indemnify and hold harmless Escrow Agent and each director, officer, employee, attorney, agent and affiliate of

Escrow Agent (collectively, the "Indemnified Parties") against any and all actions, claims (whether or not valid), losses, damages, liabilities, penalties, costs and expenses of any kind or nature (including without limitation reasonable attorneys' fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, including without limitation Depositor, Recipient and the Representatives, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution, performance or failure of performance in connection with this Escrow Agreement or any transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party. Depositor further agrees to indemnify each Indemnified Party for all costs, including without limitation reasonable attorney's fees, incurred by such Indemnified Party in connection with the enforcement of Depositor's indemnification obligations hereunder. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by the Depositor. The obligations of Depositor under this Section 11 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

The parties agree that neither the payment by Depositor of any claim by Escrow Agent for indemnification hereunder nor the disbursement of any amounts to Escrow Agent from the Escrow Funds in respect of a claim by Escrow Agent for indemnification shall impair, limit, modify, or affect, as between Depositor and Recipient, the respective rights and obligations of Depositor and Recipient under the Underlying Agreement.

11. Compensation of Escrow Agent

(a) Fees and Expenses. Depositor is wholly responsible for Escrow Agent's compensation. Depositor agrees to compensate Escrow Agent on demand for its services hereunder in accordance with Schedule A attached hereto. The obligations of Depositor under this Section 11 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

(b) Disbursements from Escrow Funds to Pay Escrow Agent. Escrow Agent is authorized to, and may disburse to itself from the Escrow Funds, from time to time, the amount of any compensation and reimbursement of out-of-pocket expenses due and payable hereunder (including any amount to which Escrow Agent or any Indemnified Party is entitled to seek

indemnification hereunder). Escrow Agent shall notify Depositor and Recipient of any disbursement from the Escrow Funds to itself or any Indemnified Party in respect of any compensation or reimbursement hereunder and shall furnish Depositor and Recipient copies of related invoices and other statements.

(c) Security and Offset. Depositor hereby grants to Escrow Agent and the Indemnified Parties a security interest in, lien upon and right of offset against the Escrow Funds with respect to any compensation or reimbursement due any of them hereunder (including any claim for indemnification hereunder). If for any reason the Escrow Funds are insufficient to cover such compensation and reimbursement, Depositor shall promptly pay such amounts to Escrow Agent or any Indemnified Party upon receipt of an itemized invoice.

12. Representations and Warranties. Depositor and Recipient each respectively make the following representations and warranties to Escrow Agent:

(a) it has full power and authority to execute and deliver this Escrow Agreement and to perform its obligations hereunder; and this Escrow Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms; and

(b) each of the persons designated on Schedule C on behalf of Depositor and Recipient have been duly appointed to act as authorized representatives hereunder and individually have full power and authority to execute and deliver any Joint Written Direction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as authorized representatives under this Escrow Agreement, and in the case of the Recipient Representative, Final Written Direction, without further consent or direction from, or notice to, it or any other party, provided that any change in designation of such authorized representative shall be provided by written notice delivered to each party to this Escrow Agreement.

13. Identifying Information. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Escrow Agent requires documentation to verify its formation and existence as a legal entity. The Escrow Agent may ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The parties acknowledge that a portion of the identifying information set forth herein is being requested by the Escrow Agent in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and each agrees to provide any additional information requested by the Escrow Agent in connection with the Act or any other legislation or regulation to which Escrow Agent is subject, in a timely manner.

15. Consent to Jurisdiction and Venue. In the event that any party hereto commences a lawsuit or other proceeding relating to or arising from this Escrow Agreement, the parties hereto agree to the personal jurisdiction by and venue in the federal courts in the State of Oregon and waive any objection to such jurisdiction or venue. The parties hereto consent to and agree to submit to the jurisdiction of any of the courts specified herein and agree to accept service of process to vest personal jurisdiction over them in any of these courts to the extent permitted by federal law.

16. Notices. All notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be delivered (i) by personal delivery, or (ii) by national overnight courier service, or (iii) by certified or registered mail, return receipt requested, or (iv) via facsimile transmission, with confirmed receipt or (v) via email by way of a PDF attachment thereto of a manually executed document. Notice shall be effective upon receipt except for notice via email, which shall be effective only when the recipient, by return email or notice delivered by other method provided for in this Section 16, acknowledges having received that email (with an automatic “read receipt” or similar notice not constituting an acknowledgement of an email receipt for purposes of this Section 16). Such notices shall be sent to the applicable party or parties at the address specified below:

If to Depositor or Depositor Representative at:

[Depositor Representative]

ATTN:

Address:

Telephone:

Facsimile:

E-mail:

If to Recipient or Recipient Representative at:

Bonneville Power Administration

ATTN:

Address:

Telephone:

Facsimile:

E-mail:

If to the Escrow Agent at:

U.S. Bank National Association, as Escrow Agent

ATTN:

Address:

Telephone:  
Facsimile:  
E-mail:

and to:

U.S. Bank National Association  
ATTN:  
Address:

Telephone:  
Facsimile:  
E-mail:

or to such other address as each party may designate for itself by like notice and unless otherwise provided herein shall be deemed to have been given on the date received.

17. Optional Security Procedures. In the event funds transfer instructions, address changes or change in contact information are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by facsimile or otherwise, the Escrow Agent is authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to the person or persons designated on Schedule C hereto, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Escrow Agent and shall be effective only after Escrow Agent has a reasonable opportunity to act on such changes. If the Escrow Agent is unable to contact any of the designated representatives identified in Schedule C, the Escrow Agent is hereby authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to any one or more of Depositor's or Recipient's executive officers ("Executive Officers"), as the case may be, which shall include the titles of Chief Executive Officer, President and Vice President, as the Escrow Agent may select. Such Executive Officer shall deliver to the Escrow Agent a fully executed incumbency certificate, and the Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. Depositor and Recipient agree that the Escrow Agent may at its option record any telephone calls made pursuant to this Section. The Escrow Agent in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by Depositor or Recipient to identify (a) the beneficiary, (b) the beneficiary's bank, or (c) an intermediary bank. The Escrow Agent may apply any of the Escrow Funds for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. Depositor and Recipient acknowledge that

these optional security procedures are commercially reasonable.

18. Amendment, Waiver and Assignment. None of the terms or conditions of this Escrow Agreement may be changed, waived, modified, discharged, terminated or varied in any manner whatsoever unless in writing duly signed by each party to this Escrow Agreement. No course of conduct shall constitute a waiver of any of the terms and conditions of this Escrow Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Escrow Agreement on one occasion shall not constitute a waiver of the other terms of this Escrow Agreement, or of such terms and conditions on any other occasion. Except as provided in Section 8 hereof, this Escrow Agreement may not be assigned by any party without the written consent of the other parties.

19. Severability. To the extent any provision of this Escrow Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Escrow Agreement.

20. Governing Law. This Escrow Agreement shall be construed and interpreted in accordance with the internal laws of the State of Oregon without giving effect to the conflict of laws principles thereof, except as otherwise required by federal law.

21. Entire Agreement, No Third Party Beneficiaries. This Escrow Agreement constitutes the entire agreement between the parties relating to the holding, investment and disbursement of the Escrow Funds and sets forth in their entirety the obligations and duties of Escrow Agent with respect to the Escrow Funds. Nothing in this Escrow Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Escrow Agreement.

22. Execution in Counterparts, Facsimiles. This Escrow Agreement and any Joint Written Direction may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement. The delivery of copies of this Escrow Agreement and any Joint Written Instruction or Final Written Instruction and their respective signature pages by PDF or facsimile transmission shall constitute effective execution and delivery as to the parties and may be used in lieu of originals for all purposes.

23. Termination. This Escrow Agreement shall terminate upon the distribution of all the Escrow Funds pursuant to any applicable provision of this Escrow Agreement, and Escrow Agent shall thereafter have no further obligation or liability whatsoever with respect to this Escrow Agreement or the Escrow Funds.

24. Dealings. The Escrow Agent and any stockholder, director, officer or employee of the Escrow Agent may buy, sell, and deal in any of the securities of the Depositor or Recipient

and become pecuniarily interested in any transaction in which the Depositor or Recipient may be interested, and contract and lend money to the Depositor or Recipient and otherwise act as fully and freely as though it were not Escrow Agent under this Agreement. Nothing herein shall preclude the Escrow Agent from acting in any other capacity for the Depositor or Recipient or for any other entity.

25. Brokerage Confirmation Waiver. Depositor and Recipient acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant either the right to receive brokerage confirmations for certain security transactions as they occur, Depositor and Recipient specifically waive receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish the Depositor and Recipient periodic cash transaction statements that include detail for all investment transactions made by the Escrow Agent.

26. Tax Reporting. Escrow Agent shall have no responsibility for the tax consequences of this Agreement and Depositor and Recipient shall consult with independent counsel concerning any and all tax matters. Depositor and Recipient shall provide Escrow Agent Form W-9 and an original Form W-8, as applicable, for each payee, together with any other documentation and information requested by Escrow Agent in connection with Escrow Agent's reporting obligations under applicable IRS regulations. If such tax documentation is not so provided, Escrow Agent shall withhold taxes as required by the IRS. Recipient and Depositor have determined that any interest or income on Escrow Funds shall be reported on an accrual basis and deemed to be for the account of Depositor. Depositor and Recipient shall prepare and file all required tax filings with the IRS and any other applicable taxing authority; provided that the parties further agree that:

(a) Escrow Agent IRS Reporting. Depositor shall accurately provide the Escrow Agent with all information requested by the Escrow Agent in connection with the preparation of all applicable Form 1099 and Form 1042-S documents with respect to all distributions as well as in the performance of Escrow Agent's reporting obligations under the Foreign Account Tax Compliance Act and Foreign Investment in Real Property Tax Act or other applicable law or regulation.

(b) Withholding Requests and Indemnification. Depositor agrees to (i) assume all obligations imposed now or hereafter by any applicable tax law or regulation with respect to payments or performance under this Agreement, (ii) request the Escrow Agent in writing with respect to withholding and other taxes, assessments or other governmental charges, and advise Escrow Agent in writing with respect to any certifications and governmental reporting that may be required under any applicable laws or regulations, and (iii) indemnify and hold the Escrow Agent harmless pursuant to Section 10 hereof from any liability or obligation on account of taxes, assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be assessed or asserted against Escrow Agent.

(c) Imputed Interest. To the extent that IRS imputed interest regulations ~~apply~~ or Tariff Section 7.2 applies, Depositor and Recipient shall so inform Escrow Agent, provide Escrow Agent with all imputed interest calculations and direct Escrow Agent to disburse imputed interest amounts as Depositor and Recipient deem appropriate. Escrow Agent shall rely solely on such provided calculations and information and shall have no responsibility for the accuracy or completeness of any such calculations or information.

27. Publicity. No party will (a) use any other party's proprietary indicia, trademarks, service marks, trade names, logos, symbols, or brand names, or (b) otherwise refer to or identify any other party in advertising, publicity releases, or promotional or marketing publications, or correspondence to third parties without, in each case, securing the prior written consent of such other party.

**IN WITNESS WHEREOF**, the parties hereto have caused this Escrow Agreement to be executed under seal as of the date first above written.

**{Depositor}**

{Draft Only – Not for Execution}

**Bonneville Power Administration**

{Draft Only – Not for Execution}

**U.S. BANK NATIONAL ASSOCIATION  
as Escrow Agent**

{Draft Only – Not for Execution}

## SCHEDULE A

### Schedule of Fees for Services as Escrow Agent

01010	<b>Acceptance Fee</b> (One Time Fee) The acceptance fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a one-time fee, payable at closing.  U.S. Bank Corporate Trust Services reserves the right to refer any or all escrow documents for legal review before execution. Legal fees (billed on an hourly basis) and expenses for this service will be billed to, and paid by, the customer. If appropriate and upon request by the customer, U.S. Bank Corporate Trust Services will provide advance estimates of these legal fees.	\$1,000.00
04460	<b>Escrow Agent</b> (One Time Fee) One time administration fee for performance of the routine duties of the escrow agent associated with the management of the account. Administration fees are payable in advance.	\$1,000.00
<b><i>Direct Out of Pocket Expenses</i></b> Reimbursement of expenses associated with the performance of our duties, including but not limited to publications, legal counsel after the initial close, travel expenses and filing fees.		At Cost

#### ***Extraordinary Services***

Extraordinary services are duties or responsibilities of an unusual nature, including termination, but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the service and the responsibility involved. At our option, these charges will be billed at a flat fee or at our hourly rate then in effect.

Account approval is subject to review and qualification. Fees are subject to change at our discretion and upon written notice. Fees paid in advance will not be prorated. The fees set forth above and any subsequent modifications thereof are part of your agreement. Finalization of the transaction constitutes agreement to the above fee schedule, including agreement to any subsequent changes upon proper written notice. In the event your transaction is not finalized, any related out-of-pocket expenses will be billed to you directly. Absent your written instructions to sweep or otherwise invest, all sums in your account will remain uninvested and no accrued interest or other compensation will be credited to the account. Payment of fees constitutes acceptance of the terms and conditions set forth.

#### **IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

**Dated:**

## **SCHEDULE B**

### **U.S. BANK NATIONAL ASSOCIATION**

#### **MONEY MARKET ACCOUNT AUTHORIZATION FORM**

##### **DESCRIPTION AND TERMS**

The U.S. Bank Money Market account is a U.S. Bank National Association (“U.S. Bank”) interest-bearing money market deposit account designed to meet the needs of U.S. Bank’s Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank’s discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as Agent for its trust customers. U.S. Bank’s trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

U.S. BANK, WHEN ACTING AS AN INDENTURE TRUSTEE OR IN A SIMILAR CAPACITY, IS NOT REQUIRED TO REGISTER AS A MUNICIPAL ADVISOR WITH THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF COMPLYING WITH THE DODD-FRANK WALL STREET REFORM & CONSUMER PROTECTION ACT. INVESTMENT ADVICE, IF NEEDED, SHOULD BE OBTAINED FROM YOUR FINANCIAL ADVISOR.

##### **AUTOMATIC AUTHORIZATION**

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account. The U.S. Bank Money Market Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions.

## **SCHEDULE C**

Each of the following person(s) is a **Depositor Representative** authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on Depositor's behalf (only one signature required):

_____	_____	_____
Name	Specimen signature	Telephone No.
_____	_____	_____
Name	Specimen signature	Telephone No.
_____	_____	_____
Name	Specimen signature	Telephone No.

*(Note: if only one person is identified above, please add the following language:)*  
The following person not listed above is authorized for call-back confirmations:

_____	_____
Name	Telephone Number

Each of the following person(s) is a **Recipient Representative** authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on Recipient's behalf (only one signature required):

_____	_____	_____
Name	Specimen signature	Telephone No.

The following person not listed above is authorized for call-back confirmations

_____	_____
Name	Telephone No.

# **ATTACHMENT 3**

# **Billing Dispute Procedures**

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## **BPA Transmission Business Practice (DRAFT)**

Version 01

2/1/2019

Revised 3/11/2019

## Billing Dispute Procedures

### Version 01

This Business Practice provides the procedures that Customers must follow for Transmission billing disputes pursuant to sections 7 and 12 of Bonneville’s Open Access Transmission Tariff (OATT) and subject to applicable law. However, nothing in this Business Practice shall (i) require its application to a dispute if Bonneville and the Customer otherwise resolve such dispute, or (ii) amend or modify any provision of the OATT or any service agreement thereunder.

For more information, visit the [BPA Transmission Business Practices page](#) or submit questions to [techforum@bpa.gov](mailto:techforum@bpa.gov).

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### A. Disputing a Billed Charge After Payment to BPA

#### 1. Initiating a Dispute

- a. The customer may unilaterally initiate a billing dispute with Bonneville. To dispute a billed charge after the Customer has already paid the charge to Bonneville, the Customer must send its Transmission Account Executive an email or some other writing indicating that the Customer is disputing a bill. Such email or writing should provide the following information, to the extent then known by the Customer:
  - i. Identification of the time period and charge(s) being disputed;
  - ii. An explanation of the basis for the dispute; and
  - iii. A statement of information the Customer requests from Bonneville that may be relevant to resolving the dispute;
  - iv. Identification of the relief sought, including the dollar amount.
    1. If the relief sought includes a request for waiver of a rate that has its own waiver requirements (such as with respect to an Unauthorized Increase Charge) in BPA’s Transmission, Ancillary, and Control Area Service Rate Schedule and General Rate Schedule Provisions, the Customer must also comply with such waiver requirements.
- b. Upon receipt of the email or writing from the Customer pursuant to Section A.1.a, the Customer’s Transmission Account Executive shall respond with confirmation of receipt of the Customer’s dispute within 3 business days.

2. Treatment of Funds in Dispute
  - a. Bonneville will not transfer to an escrow account funds in dispute that have already been paid by the Customer. Bonneville will continue to retain the funds pending dispute resolution.
  - b. The Customer may not withhold funds from a subsequent invoice to offset funds in dispute that were previously paid by the Customer.
3. Dispute Evaluation and Determination by Bonneville
  - a. Consistent with OATT Section 12.1, following initiation of a dispute by the Customer, BPA shall arrange, with the Customer's assistance, a meeting with a BPA designated senior representative and a designated senior representative of the Customer to discuss the dispute as promptly as practicable. Multiple meetings may be arranged, as needed. The Customer shall make reasonable efforts to provide any additional information that Bonneville may reasonably request in writing for purposes of evaluating the Customer's dispute. Bonneville shall make reasonable efforts to provide any additional information that is reasonably requested by the Customer, including any information the Customer has identified pursuant to Section A.1.a.iii above.
  - b. BPA will evaluate the merits of the dispute. BPA will endeavor to complete this evaluation within sixty (60) days of the date of the meeting, or the final meeting, with senior representatives.
  - c. Once BPA completes its evaluation, the Transmission Account Executive will notify the Customer in writing of BPA's final decision regarding the dispute, along with any additional explanation of the final decision as BPA may deem necessary or appropriate.
4. Disbursement of Funds
  - a. BPA will disburse any funds due to the Customer consistent with its final decision (in the absence of a final determination of a court or agency of competent jurisdiction) or the final determination of a court or agency of competent jurisdiction.

## **B. Disputing a Billed Charge Using an Escrow Account**

1. Initiating a Dispute
  - a. The customer may unilaterally initiate a billing dispute with Bonneville. To dispute a billed charge prior to making payment, the Customer must send its Transmission Account Executive an email or some other writing indicating that the Customer is disputing a bill. Such email or writing should provide the following information, to the extent then known by the Customer:
    - i. Identification of the time period and charge(s) being disputed;
    - ii. An explanation of the basis for the dispute; and
    - iii. A statement of what information the Customer requests from Bonneville that may be relevant to resolving the dispute;
    - iv. Identification of the relief sought, including the dollar amount.

1. If the relief sought includes a request for waiver of a rate that has its own waiver requirements (such as with respect to an Unauthorized Increase Charge) in BPA's Transmission, Ancillary and Control Area Service Rate Schedule and General Rate Schedule Provisions, the Customer must also comply with such waiver requirements.
  - b. Upon receipt of the email or writing from the Customer pursuant to Section B.1.a, the Customer's Transmission Account Executive shall respond with confirmation of receipt of the Customer's dispute within 3 business days.
2. Treatment of Funds in Dispute
- a. A Customer may choose to either pay the charges in dispute consistent with Section A, above, or promptly deposit the funds into an escrow account.
    - i. Disputed charges not paid to BPA or not deposited into escrow in accordance with Section B.2.b below will be subject to applicable collection procedures and timelines.
    - ii. Disputed funds deposited into an escrow account are considered unpaid and shall accrue interest pursuant to section 7.2 of BPA's OATT.
  - b. Disputed Charges Deposited Into Escrow:
    - i. Upon receipt of the email or writing from the Customer pursuant to Section B.1.a, BPA's Transmission Account Executive will provide the Customer with an Escrow Agreement.
      1. The Transmission Customer will be solely responsible for the setup costs and administrative fees associated with the escrow account.
    - ii. The Customer and Bonneville will use reasonable efforts to negotiate the unfilled terms of the Escrow Agreement and execute the Escrow Agreement with the Escrow Agent. Within five (5) business days of executing the escrow agreement, the Customer must deposit the funds in dispute into the escrow account.
3. Dispute Evaluation and Determination by BPA
- a. Consistent with OATT Section 12.1, following initiation of a dispute by the Customer, BPA shall arrange, with the Customer's assistance, a meeting with a BPA designated senior representative and a designated senior representative of the Customer to discuss the dispute as promptly as practicable. Multiple meetings may be arranged, as needed. The Customer shall make reasonable efforts to provide any additional information that Bonneville may reasonably request in writing for purposes of evaluating the Customer's dispute. Bonneville shall make reasonable efforts to provide any additional information that is reasonably requested by the Customer, including any information the Customer has identified pursuant to Section B.1.a.iii above.

BPA will evaluate the merits of the dispute. BPA will endeavor to complete this evaluation within sixty (60) days of the date of the meeting, or the final meeting, between senior representatives.

- b. Once BPA completes its evaluation, the Transmission Account Executive will notify the Customer in writing of BPA's final decision regarding the dispute, along with any additional explanation of the final decision as BPA may deem necessary or appropriate.
4. Disbursement of Funds
    - a. Following BPA's final decision, the escrow funds will be disbursed in accordance with the escrow agreement.
    - b. Not later than 60 days from receipt of BPA's notice provided per section B.3.c, the Customer shall notify BPA of its pursuit of, or intent to pursue, alternative dispute resolution under section 12 of the OATT or legal action in a court or agency of competent jurisdiction, in accordance with the Escrow Agreement.
      - i. Customer must state in its notice that, either:
        1. That the Customer continues to dispute the entirety of the disputed charge and therefore the funds in escrow are to remain in escrow in full, or;
        2. That the Customer does not dispute the entire disputed charge and that the undisputed funds should be released in accordance with the final decision. Remaining funds are to be left in escrow pending apportionment of funds pursuant to Section B.4.d below.
    - c. Upon disbursement of the escrow funds, BPA will calculate interest owed in accordance with section 7.2 of the OATT.
    - d. Funds will be apportioned between BPA and the Customer in accordance with BPA's final decision (in the absence of a final determination of a court or agency of competent jurisdiction) or the final determination of a court or agency of competent jurisdiction.

## **C. Billing Dispute Procedures Shall Be Consistent with OATT Article 12.1; Reservation of Rights**

1. Notwithstanding the foregoing provisions of this Business Practice, consistent with OATT Article 12.1, in the event the designated representatives are unable to resolve the dispute within thirty (30) days [or such other period as the Parties may agree upon], such dispute may be submitted to a court or agency of competent jurisdiction or, by mutual agreement, arbitration and resolved in accordance with the arbitration procedures set forth in Bonneville's OATT Article 12.
2. Nothing contained in this Business Practice shall modify or amend, or constitute a waiver or relinquishment by Bonneville or any Customer of, any rights, remedies, or obligations provided by applicable law or under contract.