

January 19, 2023

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Northwest Power Pool d/b/a Western Power Pool, Docket No. ER23-____-000;
Service Agreement No. 1; Western Resource Adequacy Program Agreement
Between Western Power Pool and Bonneville Power Administration

Dear Secretary Bose:

Northwest Power Pool d/b/a Western Power Pool (“WPP”), pursuant to section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, and section 35.12 of the Federal Energy Regulatory Commission’s (“Commission”) regulations, 18 C.F.R. § 35.12, submits for filing and acceptance an executed Western Resource Adequacy Program Agreement (“Bonneville WRAPA”) between WPP and the Bonneville Power Administration (“Bonneville”) (together, “Parties”). As explained in more detail below, WPP is filing the Bonneville WRAPA because the agreement contains terms and conditions that do not conform to the form of Western Resource Adequacy Program Agreement (“WRAPA”) in the proposed Western Resource Adequacy Program Tariff (“WRAP Tariff” or “Tariff”) on file with the Commission.¹ WPP asks that the Commission accept the Bonneville WRAPA effective January 1, 2023, which is the effective date to which the Parties agreed in the Bonneville WRAPA, and the same effective date proposed for the WRAP Tariff.² The requested effective date is fewer than 30 days prior to the date of this filing.³

¹ Submission of Tariff to Establish a Western Resource Adequacy Program of Northwest Power Pool d/b/a Western Power Pool, Docket No. ER22-2762-000 (Aug. 31, 2022) (“WRAP Tariff Filing”); Response to Deficiency Letter of Northwest Power Pool d/b/a Western Power Pool, Docket No. ER22-2762-001 (Dec. 12, 2022) (“WRAP Deficiency Response”).

² WRAP Tariff Filing at 77-78; WRAP Deficiency Response at 1-2.

³ See 18 C.F.R. § 35.3(a)(2). While the requested effective date precedes the filing date, compliance with section 35.3(a)(2) ensures this is not impermissible retroactive ratemaking. As contemplated by section 35.3(a)(2), the Bonneville WRAPA is a “service agreement . . . authorizing a customer to take electric service under the terms of a tariff,” i.e., authorizing Bonneville to take service under the

I. BACKGROUND

WPP is a non-profit, mutual-benefit corporation based in Portland, Oregon. Upon Commission acceptance of the WRAP Tariff, WPP will become the Program Administrator⁴ for the WRAP, a multi-state resource adequacy program within the Western Interconnection.

Bonneville is a federal power marketing administration within the United States Department of Energy established to market and otherwise dispose of, at wholesale, electric power produced by 31 federal hydroelectric projects in the Pacific Northwest, including the Federal Columbia River Power System owned and operated by the U.S. Army Corp of Engineers and the U.S. Bureau of Reclamation and non-federal resources, including the Columbia Generating Station nuclear power plant owned and operated by Energy Northwest. Among its responsibilities, Bonneville administers and operates extensive generation and transmission facilities in the Pacific Northwest. Bonneville is governed by federal statutes enacted over the long history of federal support for hydropower development in the Pacific Northwest; prominent among those are the Bonneville Project Act of 1937, 16 U.S.C. §§ 832 *et seq.*, the Federal Columbia River Transmission System Act, 16 U.S.C. §§ 838 *et seq.*, and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839 *et seq.*

Bonneville has been actively engaged since 2019 in the WRAP development process as a potential Participant. Separately, Bonneville has conducted its own public process starting in August 2021, involving numerous meetings and workshops and solicitation of stakeholder comments, on Bonneville's decisions to join a non-binding phase of the WRAP and then the Commission-jurisdictional binding phase. In October 2022, Bonneville published a draft decision, for public comment, to become a Participant in the binding phase of WRAP. Following consideration of the comments received, Bonneville released in December 2022 its final close-out letter to memorialize Bonneville's final decision to become a WRAP Participant, subject to certain

terms of the WRAP Tariff. Here, assuming the Commission accepts the WRAP Tariff with the January 1, 2023 effective date proposed for the tariff in Docket No. ER22-2762, "electric service" to Bonneville "under the terms of [the WRAP] [T]ariff" can "commence[]" as early as January 1, 2023. Consistent with section 35.3(a)(2), the Bonneville WRAPA is "tendered for filing with the Commission and posted not more than 30 days after" that January 1, 2023 service commencement date.

⁴ Capitalized terms not otherwise defined in this transmittal have the meaning provided in the WRAP Tariff.

contingencies.⁵ One of those contingencies is Commission acceptance of a non-conforming participation agreement, acceptable to Bonneville, to accommodate Bonneville's status as a federal entity.⁶

The WRAP Tariff requires each WRAP Participant to execute a WRAPA, either as set forth in Attachment A to the Tariff "or as set forth for an individual Participant in a non-conforming version of such participation agreement accepted by [the Commission]."⁷ The *pro forma* WRAPA contains provisions obligating WPP to provide all services under the Tariff and Participants to comply with all Tariff requirements and pay their share of WRAP administrative costs. The WRAPA also contains provisions addressing, among other matters, amendments to the WRAPA, termination of a Participant's WRAPA, and the ability of a Participant to withdraw from the program (including on an expedited basis if certain events arise).

The Bonneville WRAPA submitted with this filing reflects the variations to the *pro forma* WRAPA, agreeable to both WPP and Bonneville, to accommodate Bonneville's status and unique needs as a federal power marketing administration. Prior to the Parties' execution of the Bonneville WRAPA, Bonneville worked with its statutory preference customers to address concerns related to the draft agreement that had been raised in Bonneville's public process, and WPP presented the draft to the Resource Adequacy Participants Committee.⁸

II. THE BONNEVILLE WRAPA VARIATIONS FROM THE *PRO FORMA* WRAPA ARE JUST AND REASONABLE

The Bonneville WRAPA differs from the *pro forma* WRAPA only to the extent such differences are necessary to accommodate Bonneville's need to participate in a

⁵ Bonneville Power Administration, Bonneville's Final Decision to Participate in the Western Resource Adequacy Program Phase 3B, Department of Energy (Dec. 16, 2022), <https://www.bpa.gov/-/media/Aep/projects/resource-adequacy/wrap-final-closeout-letter.pdf> ("Closeout Letter").

⁶ Closeout Letter at 2.

⁷ Tariff § 1 (definition of Western Resource Adequacy Program Agreement).

⁸ This prudent outreach is not intended to imply that agreement or endorsement from any entity that is not a party to the non-conforming WRAPA is required for any non-conforming WRAPA.

manner that is consistent with its statutory authorities and other legal obligations. As shown below, the variations from the *pro forma* WRAPA⁹ are just and reasonable.

The Commission has recognized the need for such accommodations in its prior orders accepting non-standard participation agreements for Bonneville and other power marketing administrations in other regional energy constructs, including Bonneville's participation in the California Independent System Operator Corporation ("CAISO") Energy Imbalance Market ("EIM"),¹⁰ and the Western Area Power Administration's ("WAPA's") participation in the Southwest Power Pool, Inc. ("SPP") Western Energy Imbalance Service Market.¹¹

The Bonneville WRAPA adds several new subsections to section 1 of the *pro forma* WRAPA. Section 1.1 acknowledges Bonneville's unique statutory authorities and obligations, and clarifies that in the event of a conflict between the Bonneville WRAPA and the WRAP Tariff, the Bonneville WRAPA will take precedence with respect to the application of the Tariff to Bonneville.

Section 1.2, recognizing that the Bonneville WRAPA is non-conforming and requires approval by the Commission, provides for procedures in the event the Commission does not accept or modifies the Bonneville WRAPA. Section 1.2 further provides that, following the Commission's acceptance of the Bonneville WRAPA, WPP may not file under FPA section 205 or FPA section 206, 16 U.S.C. §824e, to modify the Bonneville WRAPA without Bonneville's prior written agreement. If WPP makes such a filing without Bonneville's prior written agreement, then the change will not be enforceable against Bonneville, and Bonneville may terminate the Bonneville WRAPA on 30-days' prior written notice. Section 1.2 clarifies that nothing in that subsection limits WPP's right to file changes to the WRAP Tariff under the FPA, but recognizes that certain Tariff

⁹ This filing does not reiterate the support for the provisions adopted from the *pro forma* WRAPA, given that those are already fully supported in the WRAP Tariff Filing.

¹⁰ See *Cal. Indep. Sys. Operator Corp.*, Letter Order, Docket No. ER22-25-000 (Nov. 17, 2021); Filing of EIM Participation Agreements with Bonneville Power Administration of California Independent System Operator Corporation, Docket No. ER22-25-000, at 3-5 (Oct. 1, 2021) (explaining differences between each of the Bonneville participation agreements and the corresponding *pro forma* service agreements in the CAISO tariff).

¹¹ See *Sw. Power Pool, Inc.*, 173 FERC ¶ 61,267, at P 20 (2020) (accepting Western Joint Dispatch Agreement between SPP and WAPA); Submission of Western Energy Imbalance Service Market Tariff, Western Joint Dispatch Agreements, and the Western Markets Executive Committee Charter of Southwest Power Pool, Inc., Docket Nos. ER21-3-000, Exhibit No. SPP-0008, Amended and Restated Western Joint Dispatch Agreement Between [SPP] and [WAPA], at section 12 (Oct. 1, 2020) ("Participation by the Government of the United States of America.").

changes may permit Bonneville to terminate the Bonneville WRAPA under section 9 of the agreement.

Section 1.3 establishes certain Implementing Procedures in the event Bonneville identifies (1) a conflict between its obligations under the Tariff (including a conflict with the Business Practice Manuals (“BPM”) in the manner set forth in section 1.3.5), and any federal statute, regulation, or order applicable to Bonneville; or (2) a circumstance that Bonneville believes would permit an early termination under section 9.2.1.2 of the agreement. Recognizing the seriousness (and presumed rarity) of such a conflict or circumstance, the Implementing Procedures are intended to promote transparency and good faith in the identification and resolution of such conflict or circumstance, were it to arise.

Thus, under section 1.3.1, Bonneville is to provide as much advance written notice as reasonably possible of such a conflict or circumstance, or of any proposed action by WPP that Bonneville believes would give rise to such conflict or circumstance.

Similarly, under section 1.3.2, when Bonneville determines such conflict or circumstance exists, it will identify to WPP in writing the Tariff obligation at issue and the legal obligation applicable to Bonneville, the relevant factors that Bonneville considered to avoid or minimize such conflict, and whether Bonneville has initiated a decision process with respect to such conflict and the resolution of such conflict, and if so, the anticipated procedure and schedule for such process.

Section 1.3.3 adds that when Bonneville provides such a notice, Bonneville and WPP will reasonably work together in good faith to determine if there are mutually acceptable means to resolve or avoid the conflict or circumstance. Section 1.3.3 recognizes that the Parties shall appropriately engage with WRAP stakeholder bodies in furtherance of such effort, and to promote transparency in the operation of the WRAP.

Section 1.3.4 establishes that if, after engaging with WPP, Bonneville determines that there is an unacceptable conflict with a legal obligation applicable to Bonneville, then Bonneville may initiate its exit from the WRAP under section 9.2.1.2 of the Bonneville WRAPA.¹² However, if Bonneville chooses not to exit the program, then it is presumed to be capable of complying with the Tariff provision identified in section 1.3.2 of the Implementing Procedures, or the solution resulting from the resolution to the conflict developed under section 1.3.3 of the Implementing Procedures. Section 1.3.4 further clarifies that nothing in that subsection limits the right of any Party to take any legal action they deem appropriate as provided under section 10.2 (as discussed below). This section

¹² That section identifies that one of the extenuating circumstances which permits Participant withdrawal from the WRAP on less than 24-months’ notice is that “[c]ontinued participation in the WRAP conflicts with applicable governing statutes or other applicable legal authorities or orders, as determined by Bonneville.”

helps make clear the Parties' expectation that the type of conflict that would result in Bonneville's exit from the WRAP would be serious and rare.

Section 1.3.5 addresses the application of the Implementing Procedures to conflicts between Bonneville's legal obligations and a provision of the WRAP BPM. The section expresses the Parties' anticipation that such a conflict is very unlikely, recognizing that a BPM conflict is likely to be subsumed within a Tariff conflict with a Bonneville legal obligation, and that BPM conflicts could be resolved through the BPM development process and Bonneville's right to withdraw with standard notice under section 9.1 of the agreement. Nonetheless, if such a conflict with a BPM were to arise, section 1.3.5 establishes that it will be identified and resolved through the Implementing Procedures set forth in section 1.3.

Section 5 provides that Bonneville's participation in the WRAP, including its obligations under the Bonneville WRAPA and the WRAP Tariff, is subject in all respects to the federal statutes, regulations, or orders applicable to Bonneville. This section protects Bonneville against taking any actions that are not permitted under its governing laws.

Section 6 is modified to clarify that while WPP may amend the *pro forma* WRAPA through written notice to WRAP Participants and by filing such changes with the Commission, amendments to the Bonneville WRAPA proposed by WPP will be governed by section 1.2 of the agreement (as discussed above).

Section 7 imposes a not-to-exceed level of \$3,000,000 per calendar year on Bonneville's maximum payment obligation for WRAP administrative costs under Tariff Schedule 1. This provision provides appropriate certainty on this financial obligation for Bonneville, as a federal entity. WPP and other Participants are protected, however, because the agreement's specified not-to-exceed level is well above the level Bonneville could face under the Tariff even if WPP's Schedule 1 costs, and the share of such costs to be borne by Bonneville, both substantially increased.

Section 10.1 affirms certain limits on Bonneville's liabilities and obligations required by federal law, including the Antideficiency Act and the Federal Tort Claims Act, and clarifies that Bonneville has no obligation to defend claims against WPP notwithstanding Tariff section 8.3, which otherwise establishes such an obligation for Participants in certain circumstances.

Section 10.2 includes customary language for a Bonneville agreement that nothing in the Bonneville WRAPA will be construed to constitute a waiver or relinquishment of any rights to claim exemptions, privileges, and immunities as may be provided by law, including sovereign immunity. Section 10.2 adds, however, an important clarification that no provision of the Tariff or the Bonneville WRAPA at the time of execution of the

agreement is a penalty;¹³ and that the Parties do not anticipate that provisions of the Bonneville WRAPA or the Tariff reasonably required for Bonneville's participation in, and realization of the benefits from, the regional resource adequacy program established by the WRAP, would be such penalties.

Section 10.3 clarifies that nothing in the Agreement purports to modify the legal authority of Bonneville or the Commission, or the rights or processes established by law for obtaining judicial review of actions of the Commission or of Bonneville. Section 10.3 adds that, except for certain identified limitations, nothing in the Bonneville WRAPA changes any right of any Party otherwise granted by law to seek appropriate relief from any administrative or judicial body of competent jurisdiction.

Finally, new section 12 is added to provide that the Bonneville WRAPA shall be governed by Federal law.

The remaining provisions of the Bonneville WRAPA are generally the same as those in the *pro forma* WRAPA with conforming or non-substantive exceptions.

III. EFFECTIVE DATE

WPP requests that this Agreement be made effective on January 1, 2023. As previously noted, the requested effective date is the date agreed to by the Parties, corresponds to the proposed effective date of the WRAP Tariff, and is less than 30 days before the date of this filing.¹⁴

IV. SERVICE

In addition to serving all persons on the Commission's service list for this proceeding, WPP will post a complete copy of this filing on the WPP website: www.westernpowerpool.org.

V. CONTENTS OF FILING

The following attachments, in addition to this transmittal letter, support the instant filing:

Attachment A	Executed Bonneville WRAPA; and
Attachment B	Comparison of the Bonneville WRAPA against the proposed <i>pro forma</i> WRAPA.

¹³ This clarification expressly includes, but is not limited to, the as-filed WRAP Tariff provisions on the Deficiency Charge and the Delivery Failure Charge. *See, e.g.*, Tariff §§ 17, 20.7.

¹⁴ *See supra* note 3.

VI. COMMUNICATIONS

Correspondence and communications with respect to this filing should be sent to, and WPP requests the Secretary to include on the official service list, the following:¹⁵

Sarah E. Edmonds	Paul M. Flynn
President and Chief Executive Officer	Matthew J. Binette
Rebecca D. Sexton	Uju Okasi
Director of Reliability Programs	WRIGHT & TALISMAN, P.C.
Northwest Power Pool d/b/a Western	1200 G Street, N.W., Suite 600
Power Pool	Washington, DC 20005-3898
7525 NE Ambassador Place, Suite M	(202) 393-1200
Portland, OR 97220	flynn@wrightlaw.com
(503) 445-1074	binette@wrightlaw.com
Sarah.Edmonds@westernpowerpool.org	okasi@wrightlaw.com
Rebecca.Sexton@westernpowerpool.org	

VII. CONCLUSION

For all of the foregoing reasons, WPP respectfully requests that the Commission accept the Bonneville WRAPA as just and reasonable effective January 1, 2023, without modification or condition.

/s/ Paul M. Flynn
Paul M. Flynn
Matthew J. Binette
Uju Okasi
WRIGHT & TALISMAN, P.C.
1200 G Street, N.W., Suite 600
Washington, DC 20005-3898

***Attorneys for Northwest Power Pool
d/b/a Western Power Pool***

¹⁵ To the extent necessary, WPP requests a waiver of Commission Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to permit more than two persons to be listed on the official service list for this proceeding.

Attachment A

NORTHWEST POWER POOL

D/B/A

WESTERN POWER POOL

Service Agreement No. 1

Western Resource Adequacy Program Agreement

By and Between

Western Power Pool
and
the Bonneville Power Administration

Western Resource Adequacy Program Agreement

This Western Resource Adequacy Program Agreement (“Agreement”) dated as of January 1, 2023 (“Effective Date”) is entered into by and between Western Power Pool Corporation (“WPP”) and the Bonneville Power Administration (“Bonneville” or “Participant”). WPP and Participant are each sometimes referred to in the Agreement as a “Party” and collectively as the “Parties.”

In consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. The Parties agree that this Agreement shall be governed by the rates, terms, and conditions of the Western Resource Adequacy Program Tariff (“Tariff”) and all such rates, terms, and conditions contained therein are expressly incorporated by reference herein. All capitalized terms that are not otherwise defined herein shall have the meanings ascribed by the Tariff.
 - 1.1 Bonneville is a federal power marketing administration within the U.S. Department of Energy established to market and otherwise dispose of, at wholesale, electric power produced by the federal hydroelectric projects in the Pacific Northwest. This Agreement contains provisions that are in addition to the pro forma Western Resource Adequacy Program Agreement to accommodate participation by Bonneville in the Western Resource Adequacy Program (“WRAP”) and recognize Bonneville’s unique statutory authorities and obligations. In the event of a conflict between the provisions in this Agreement that address Bonneville’s participation and any provision of the Tariff, the Parties agree that this Agreement shall have precedence with respect to the application of the Tariff to Bonneville.
 - 1.2 The Parties acknowledge that this Agreement does not conform to the pro forma Western Resource Adequacy Program Agreement that is set forth in the Tariff, and that this Agreement therefore requires filing with and acceptance by the Federal Energy Regulatory Commission (“FERC”) under the Federal Power Act (“FPA”) as a separate service agreement. This Agreement is effective upon the Effective Date as set forth above or such other effective date prescribed by FERC in its order accepting this Agreement for filing. If FERC does not accept this Agreement for filing or conditions its acceptance of this Agreement on any change to or other condition on this Agreement, then this Agreement shall be effective thereafter only if Bonneville agrees in writing to such change(s) and condition(s). Following the filing of this Agreement with FERC, WPP may not file with FERC an amendment to such service agreement under section 205 of the FPA, or request any change to such service agreement under section 206 of the FPA, without the prior express written agreement of Bonneville to such amendment or change. If WPP makes such a filing to change this Agreement without obtaining the prior written agreement of Bonneville, then i) such change shall not be enforceable against Bonneville; and ii) Bonneville may terminate this Agreement on 30 days prior written notice, notwithstanding any other requirement or limitation in this Agreement concerning the advance notice for or timing of a Participant’s exit. Nothing in this subsection 1.2 limits WPP’s right to file changes to the Tariff under

the Federal Power Act; however, certain such Tariff changes may permit Bonneville to terminate this Agreement as provided in section 9 of this Agreement.

- 1.3 The Parties agree to the following procedures (“Implementing Procedures”) in the event Bonneville identifies i) a conflict between its obligations under the Tariff, including the Business Practice Manuals in the manner set forth in section 1.3.5 hereof, and any federal statute, regulation, or order lawfully promulgated thereunder applicable to Bonneville; or ii) a circumstance that Bonneville believes would permit an early termination under section 9.2.1.2 of this Agreement:

1.3.1 Bonneville will endeavor to provide WPP as much advance notice as reasonably possible of such conflict or circumstance, or of any proposed action by WPP that Bonneville believes would give rise to such conflict or circumstance.

1.3.2 When Bonneville determines such conflict or circumstance exists, it will identify to WPP in writing the Tariff obligation at issue and the legal obligation applicable to Bonneville, the relevant factors that Bonneville considered to avoid or minimize such conflict, and whether Bonneville has initiated a decision process with respect to such conflict and the resolution of such conflict, and if so, the anticipated procedure and schedule for such process.

1.3.3 Upon WPP’s receipt of such notice from Bonneville, the Parties shall reasonably work together in good faith in an effort to determine if there are mutually acceptable means to resolve or avoid the conflict or circumstance, and shall appropriately engage with WRAP stakeholder bodies in furtherance of such effort, and to promote transparency in the operation of the WRAP.

1.3.4 If, after engaging with WPP under section 1.3.3, Bonneville determines that there is an unacceptable conflict with a legal obligation applicable to Bonneville as provided under section 5, Bonneville may initiate its exit from the program under section 9.2.1.2. If Bonneville chooses not to exit the program, it shall be presumed to be capable of complying with the Tariff provision identified in section 1.3.2 or the solution resulting from the resolution to the conflict developed under section 1.3.3. Nothing herein limits the right of any Party to take any legal action they deem appropriate as provided under Section 10.2.

1.3.5 The Parties acknowledge the potential, which they anticipate to be very unlikely, of a conflict between Bonneville’s legal obligations and the WRAP Business Practice Manuals that is not already subsumed within a conflict between Bonneville’s legal obligations and the associated WRAP Tariff provision, and that cannot be resolved through the Business Practice Manual development process and Bonneville’s right to withdraw with standard notice under section 9.1. If such a conflict arises, it will be identified and resolved through the procedures of this section 1.3.

2. Participant wishes to participate in the WRAP administered by WPP under the Tariff.

3. Participant certifies that it satisfies all of the following qualifications:
 - 3.1 Participant is a Load Responsible Entity as that term is defined in the Tariff.
 - 3.2 Participant commits to complying with all applicable terms and conditions of WRAP participation as set forth in the Tariff and Business Practice Manuals adopted thereunder, including all Forward Showing Program and Operations Program requirements, subject to the limitations provided in this Agreement.
4. Participant will register all resources and supply contracts and shall disclose any other obligations associated with those resources and supply contracts.
5. Participant represents and warrants that it is authorized by all relevant laws and regulations governing its business to enter into this Agreement and assume all rights and obligations thereunder. Bonneville's participation in WRAP, including its obligations under this Agreement and under the Tariff, is subject in all respects to any applicable federal statutes, regulations, or orders lawfully promulgated thereunder. This reservation includes, but is not limited to, the responsibility of the Bonneville Administrator to make decisions that implement requirements of any federal statutes, regulations, or orders applicable to Bonneville, including Bonneville's obligation to ensure preference and priority is given to public bodies and cooperatives. Nothing in this Agreement or the Tariff shall compel Bonneville to (1) violate federal statutes, regulations, or orders, as determined by Bonneville, or (2) to exceed its statutory authority, as defined by any applicable federal statutes, regulations, or orders, as determined by Bonneville. If any provision of this Agreement or the Tariff is inconsistent with any obligation imposed on Bonneville by federal law or regulation, to that extent it shall be inapplicable to Bonneville. Bonneville shall not incur any liability by failing to comply with any provision of this Agreement or the Tariff that is inapplicable to it by reason of being inconsistent with any federal statutes, regulations, or orders; provided, however, that Bonneville shall use its best efforts to comply with this Agreement and the Tariff to the extent that applicable federal statutes, regulations, and orders permit it to do so. Bonneville shall identify conflicts and work with WPP to resolve such conflicts in the manner set forth in the Implementation Procedures in Section 1.3.
6. It is understood that, in accordance with the Tariff, WPP, as authorized by its independent Board of Directors, may amend the terms and conditions of the pro forma Western Resource Adequacy Program Agreement or the Tariff by notifying the Participant in writing and making the appropriate filing with FERC, subject to any limitations on WPP's authority to amend the Tariff as set forth therein; provided that section 1.2 governs changes proposed by WPP to this Agreement, as distinct from changes proposed by WPP to the pro forma Western Resource Adequacy Program Agreement or the Tariff.
7. Subject to the limitations provided in this Agreement, Participant agrees to pay its share of all administrative costs associated with the WRAP, as calculated pursuant to Schedule 1 of the Tariff. The manner and timing of such payment shall be as specified in Schedule 1 of the Tariff. Bonneville's maximum payment obligation under Schedule 1 of the Tariff shall not exceed \$3,000,000 for any calendar year.

8. WPP agrees to provide all services as set forth in the Tariff.
9. Term and termination. This Agreement shall commence upon the Effective Date and shall continue in effect until terminated either by WPP by vote of its Board of Directors or by Participant's withdrawal as set forth herein. WPP and Participant agree that participation in the WRAP is voluntary, subject to the terms and conditions of this Agreement and the Tariff. The date upon which a Participant's withdrawal is effective and its participation in the program terminates is referred to as the "Withdrawal Date."
 - 9.1 Normal Withdrawal: In general, Participant may withdraw from this Agreement by providing written notice to WPP no less than twenty-four months prior to commencement of the next binding Forward Showing Program period. Once notice has been properly given, Participant remains in a "Withdrawal Period" until the Withdrawal Date.
 - 9.1.1 During Participant's Withdrawal Period, Participant remains subject to all requirements and obligations imposed by the Tariff and this Agreement, including but not limited to all obligations imposed in the Forward Showing Program and Operations Program and the obligation to pay Participant's share of all costs associated with the WRAP.
 - 9.1.2 All financial obligations incurred prior to and during the Withdrawal Period are preserved until satisfied.
 - 9.1.3 During the Withdrawal Period, Participant is not eligible to vote on any actions affecting the WRAP that extend beyond the Withdrawal Period.
 - 9.2 Expedited Withdrawal: Participant may withdraw from this Agreement with less than the required twenty-four month notice as set forth below. Participant shall negotiate with WPP regarding the timing of the Expedited Withdrawal.
 - 9.2.1 Extenuating Circumstances: The following such events and circumstances shall constitute "extenuating circumstances" justifying a withdrawal on less than twenty-four months. Participant invoking an extenuating circumstance shall negotiate with WPP regarding potential ways to minimize the impact of the expedited withdrawal on all other Participants and WPP. Such extenuating circumstances and any mitigation plan to minimize the impact of the expedited withdrawal must be reviewed and approved by the Board of Directors prior to termination of Participant's WRAP obligations. Regardless of the extenuating circumstance, all financial obligations incurred prior to the Withdrawal Date remain in effect until satisfied.
 - 9.2.1.1 A governmental authority takes an action that substantially impairs Participant's ability to continue to participate in the WRAP to the same extent as previously; provided, however, that Participant shall be obligated to negotiate with WPP regarding potential ways to address the impact of the regulatory action

without requiring a full withdrawal of Participant from the WRAP if possible.

- 9.2.1.2 Continued participation in the WRAP conflicts with applicable governing statutes or other applicable legal authorities or orders, as determined by Bonneville.
 - 9.2.1.3 Participant voted against a RAPC determination and disagreed with a Board of Directors decision to release composite or aggregated data under Section 10.2.1 of the Tariff, provided that such right to expedited withdrawal is exercised promptly after the first time that the Board of Directors determines that the form and format of composite or aggregated data sufficiently protects against the release of confidential or commercially sensitive Participant data. Failure to exercise this right promptly upon the first occurrence of the Board of Directors voting on a specific form and format of composite or aggregated data shall constitute a waiver of the right to expedited withdrawal for any future disclosures of composite or aggregated data in the same or substantially similar form and format.
 - 9.2.1.4 FERC or a court of competent jurisdiction requires the public disclosure of a Participant's confidential or commercially sensitive information, as further described in Section 10.5 of the Tariff; provided however that such right to expedited withdrawal shall be exercised promptly upon the exhaustion of all legal or administrative remedies aimed at preventing the release.
- 9.2.2 Exit Fee: If the impact of Participant's withdrawal on WRAP operations can be calculated with a high degree of confidence and mitigated by the payment of an "exit fee" to be calculated by WPP, an expedited withdrawal will be permitted. Such exit fee shall include (but not be limited to): (i) any unpaid WRAP fees or charges; (ii) Participant's share of all WRAP administrative costs incurred up to the next Forward Showing Program period; (iii) any costs, expenses, or liabilities incurred by WPP and/or the Program Operator directly resulting from Participant's withdrawal; and (iv) any costs necessary to hold other participants harmless from the voluntary expedited withdrawal. The exit fee may be waived to the extent that it would violate any federal, state, or local statute, regulation, or ordinance or exceed the statutory authority of a federal agency. The exit fee shall be paid in full prior to the Withdrawal Date.
- 9.2.3 Amendments to Section 3.4 of the Tariff: In the event that amendments to Section 3.4 of the Tariff are approved by the RAPC and Board of Directors, a Participant that voted against such a change may withdraw with less than the required twenty-four month notice, provided that the Participant satisfy all obligations in the Forward Showing Program and Operations Program

and satisfy all other financial obligations incurred prior to the date that the amendments to Section 3.4 of the Tariff are made effective by FERC.

9.2.4 Expulsion: The Board of Directors, in its sole discretion, may terminate Participant's participation in the WRAP and may terminate this Agreement with Participant for cause, including but not limited to material violation of any WPP rules or governing documents or nonpayment of obligations. Prior to exercising such right to terminate, the Board of Directors shall provide notice to Participant of the reasons for such contemplated termination and a reasonable opportunity to cure any deficiencies. Such Board of Directors termination shall be after an affirmative vote consistent with the Board of Directors standard voting procedures. Such termination shall not relieve the Participant of any financial obligations incurred prior to the termination date, and WPP may take all legal actions available to recover any financial obligations from Participant.

10. Federal Statutory Limitations; No Waiver of Defenses.

10.1 With respect to payment obligations of the United States, by and on behalf of Bonneville, for any WRAP fees or charges under this Agreement and the Tariff, nothing in this Agreement shall be interpreted or construed as a commitment or requirement that the United States, acting by and through Bonneville, will be obligated or pay funds in contravention of the Antideficiency Act. Bonneville's liability for non-contractual damages is determined in accordance with the Federal Tort Claims Act, and it is understood that Bonneville has no obligation to defend claims against WPP notwithstanding Tariff section 8.3.

10.2 Nothing in this Agreement shall be construed to constitute a waiver or relinquishment of any rights to claim exemptions, privileges, and immunities as may be provided by law, including sovereign immunity. As of the time of execution of this Agreement, the Parties agree that no provision of this Agreement or the Tariff is a penalty, including without limitation the Deficiency Charge and Delivery Failure Charge; and that the Parties do not anticipate that provisions of this Agreement or the Tariff reasonably required for Bonneville's participation in, and realization of the benefits from, the regional resource adequacy program established by the WRAP, would be such penalties.

10.3 Nothing herein purports to modify the legal authority of FERC or of Bonneville, or the rights or processes established by law for obtaining judicial review of actions of FERC or of Bonneville. Subject to the limitations in this section 10, and the limitations in the Tariff and this Agreement on WPP's right to seek changes under FPA sections 205 and 206, nothing herein changes any right of any Party otherwise granted by law to seek appropriate relief from any administrative or judicial body of competent jurisdiction.

11. No Waiver of Non-FERC-Jurisdictional Status. If Participant is not subject to the jurisdiction of FERC as a public utility under the Federal Power Act, Participant shall not

be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over Participant that does not otherwise exist. Participant acknowledges that FERC has jurisdiction over the WRAP, including Participant's activities in the WRAP.

12. Governing Law. This Agreement shall be governed by Federal law.

SIGNATURES

Northwest Power Pool, d/b/a Western
Power Pool

By: *Sarah Edmonds*

Sarah Edmonds
Name

Chief Executive Officer
Title

Jan 18, 2023
Date

Bonneville Power Administration

Company

By: **Joel D. Cook** Digitally signed by Joel D. Cook
Date: 2023.01.18 10:03:11
-08'00'

Joel D. Cook
Name

Chief Operating Officer
Title

January 18, 2023
Date







Bonneville non-conforming WRAPA for signature

Final Audit Report

2023-01-18

Created:	2023-01-18
By:	Maya McNichol (maya.mcnichol@westernpowerpool.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4GL38IITnxG17McPW5XoTU9-P4kCUxzH

"Bonneville non-conforming WRAPA for signature" History

-  Document digitally presigned by Joel D. Cook (jdcook@bpa.gov)
2023-01-18 - 6:03:11 PM GMT
-  Document created by Maya McNichol (maya.mcnichol@westernpowerpool.org)
2023-01-18 - 7:04:28 PM GMT
-  Document emailed to Sarah Edmonds (sarah.edmonds@westernpowerpool.org) for signature
2023-01-18 - 7:05:55 PM GMT
-  Email viewed by Sarah Edmonds (sarah.edmonds@westernpowerpool.org)
2023-01-18 - 7:36:50 PM GMT
-  Document e-signed by Sarah Edmonds (sarah.edmonds@westernpowerpool.org)
Signature Date: 2023-01-18 - 7:36:59 PM GMT - Time Source: server
-  Agreement completed.
2023-01-18 - 7:36:59 PM GMT



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Attachment B

ATTACHMENT A

Western Resource Adequacy Program Agreement

This Western Resource Adequacy Program Agreement (“Agreement”) dated as of January 1, 2023 (“Effective Date”) is entered into by and between Western Power Pool Corporation (“WPP”) and (the Bonneville Power Administration (“Bonneville” or “Participant”)). WPP and Participant are each sometimes referred to in the Agreement as a “Party” and collectively as the “Parties.”

In consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. The Parties agree that this ~~agreement~~ Agreement shall be governed by the rates, terms, and conditions of the Western Resource Adequacy Program Tariff (“Tariff”) and all such rates, terms, and conditions contained therein are expressly incorporated by reference herein. All capitalized terms that are not otherwise defined herein shall have the meanings ascribed by the Tariff.
 - 1.1 Bonneville is a federal power marketing administration within the U.S. Department of Energy established to market and otherwise dispose of, at wholesale, electric power produced by the federal hydroelectric projects in the Pacific Northwest. This Agreement contains provisions that are in addition to the pro forma Western Resource Adequacy Program Agreement to accommodate participation by Bonneville in the Western Resource Adequacy Program (“WRAP”) and recognize Bonneville’s unique statutory authorities and obligations. In the event of a conflict between the provisions in this Agreement that address Bonneville’s participation and any provision of the Tariff, the Parties agree that this Agreement shall have precedence with respect to the application of the Tariff to Bonneville.
 - 1.2 The Parties acknowledge that this Agreement does not conform to the pro forma Western Resource Adequacy Program Agreement that is set forth in the Tariff, and that this Agreement therefore requires filing with and acceptance by the Federal Energy Regulatory Commission (“FERC”) under the Federal Power Act (“FPA”) as a separate service agreement. This Agreement is effective upon the Effective Date as set forth above or such other effective date prescribed by FERC in its order accepting this Agreement for filing. If FERC does not accept this Agreement for filing or conditions its acceptance of this Agreement on any change to or other condition on this Agreement, then this Agreement shall be effective thereafter only if Bonneville agrees in writing to such change(s) and condition(s). Following the filing of this Agreement with FERC, WPP may not file with FERC an amendment to such service agreement under section 205 of the FPA, or request any change to such service agreement under section 206 of the FPA, without the prior express written agreement of Bonneville to such amendment or change. If WPP makes such a filing to change this Agreement without obtaining the prior written agreement of Bonneville, then i) such change shall not be enforceable against Bonneville; and ii) Bonneville may terminate this Agreement on 30 days prior

written notice, notwithstanding any other requirement or limitation in this Agreement concerning the advance notice for or timing of a Participant's exit. Nothing in this subsection 1.2 limits WPP's right to file changes to the Tariff under the Federal Power Act; however, certain such Tariff changes may permit Bonneville to terminate this Agreement as provided in section 9 of this Agreement.

1.3 The Parties agree to the following procedures ("Implementing Procedures") in the event Bonneville identifies i) a conflict between its obligations under the Tariff, including the Business Practice Manuals in the manner set forth in section 1.3.5 hereof, and any federal statute, regulation, or order lawfully promulgated thereunder applicable to Bonneville; or ii) a circumstance that Bonneville believes would permit an early termination under section 9.2.1.2 of this Agreement:

1.3.1 Bonneville will endeavor to provide WPP as much advance notice as reasonably possible of such conflict or circumstance, or of any proposed action by WPP that Bonneville believes would give rise to such conflict or circumstance.

1.3.2 When Bonneville determines such conflict or circumstance exists, it will identify to WPP in writing the Tariff obligation at issue and the legal obligation applicable to Bonneville, the relevant factors that Bonneville considered to avoid or minimize such conflict, and whether Bonneville has initiated a decision process with respect to such conflict and the resolution of such conflict, and if so, the anticipated procedure and schedule for such process.

1.3.3 Upon WPP's receipt of such notice from Bonneville, the Parties shall reasonably work together in good faith in an effort to determine if there are mutually acceptable means to resolve or avoid the conflict or circumstance, and shall appropriately engage with WRAP stakeholder bodies in furtherance of such effort, and to promote transparency in the operation of the WRAP.

1.3.4 If, after engaging with WPP under section 1.3.3, Bonneville determines that there is an unacceptable conflict with a legal obligation applicable to Bonneville as provided under section 5, Bonneville may initiate its exit from the program under section 9.2.1.2. If Bonneville chooses not to exit the program, it shall be presumed to be capable of complying with the Tariff provision identified in section 1.3.2 or the solution resulting from the resolution to the conflict developed under section 1.3.3. Nothing herein limits the right of any Party to take any legal action they deem appropriate as provided under Section 10.2.

1.3.5 The Parties acknowledge the potential, which they anticipate to be very unlikely, of a conflict between Bonneville's legal obligations and the WRAP Business Practice Manuals that is not already subsumed within a conflict between Bonneville's legal obligations and the associated WRAP Tariff provision, and that cannot be resolved through the Business Practice Manual development process and Bonneville's right to withdraw with standard notice under section 9.1. If such a conflict arises, it will be identified and resolved through the procedures of this section 1.3.

~~2. Participant wishes to participate in the Western Resource Adequacy Program (“WRAP”)~~ 2. Participant wishes to participate in the WRAP administered by WPP under the Tariff.

3. Participant certifies that it satisfies all of the following qualifications:

3.1 Participant is a Load Responsible Entity as that term is defined in the Tariff.

3.2 Participant commits to complying with all applicable terms and conditions of WRAP participation as set forth in the Tariff and Business Practice Manuals adopted thereunder, including all Forward Showing Program and Operations Program requirements, subject to the limitations provided in this Agreement.

4. Participant will register all resources and supply contracts and shall disclose any other obligations associated with those resources and supply contracts.

5. Participant represents and warrants that it is authorized by all relevant laws and regulations governing its business to enter into this Agreement and assume all rights and obligations thereunder. Bonneville’s participation in WRAP, including its obligations under this Agreement and under the Tariff, is subject in all respects to any applicable federal statutes, regulations, or orders lawfully promulgated thereunder. This reservation includes, but is not limited to, the responsibility of the Bonneville Administrator to make decisions that implement requirements of any federal statutes, regulations, or orders applicable to Bonneville, including Bonneville’s obligation to ensure preference and priority is given to public bodies and cooperatives. Nothing in this Agreement or the Tariff shall compel Bonneville to (1) violate federal statutes, regulations, or orders, as determined by Bonneville, or (2) to exceed its statutory authority, as defined by any applicable federal statutes, regulations, or orders, as determined by Bonneville. If any provision of this Agreement or the Tariff is inconsistent with any obligation imposed on Bonneville by federal law or regulation, to that extent it shall be inapplicable to Bonneville. Bonneville shall not incur any liability by failing to comply with any provision of this Agreement or the Tariff that is inapplicable to it by reason of being inconsistent with any federal statutes, regulations, or orders; provided, however, that Bonneville shall use its best efforts to comply with this Agreement and the Tariff to the extent that applicable federal statutes, regulations, and orders permit it to do so. Bonneville shall identify conflicts and work with WPP to resolve such conflicts in the manner set forth in the Implementation Procedures in Section 1.3.

6. It is understood that, in accordance with the Tariff, WPP, as authorized by its independent Board of Directors, may amend the terms and conditions of ~~this~~ the pro forma Western Resource Adequacy Program Agreement or the Tariff by notifying the Participant in writing and making the appropriate filing with FERC, subject to any limitations on WPP’s authority to amend the Tariff as set forth therein; provided that section 1.2 governs changes proposed by WPP to this Agreement, as distinct from changes proposed by WPP to the pro forma Western Resource Adequacy Program Agreement or the Tariff.

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7. Subject to the limitations provided in this Agreement, Participant agrees to pay its share of all administrative costs associated with the WRAP, as calculated pursuant to Schedule 1 of the Tariff. The manner and timing of such payment shall be as specified in Schedule 1 of the Tariff. Bonneville's maximum payment obligation under Schedule 1 of the Tariff shall not exceed \$3,000,000 for any calendar year.
8. WPP agrees to provide all services as set forth in the Tariff.
9. Term and termination. This Agreement shall commence upon the Effective Date and shall continue in effect until terminated either by WPP by vote of its Board of Directors or by Participant's withdrawal as set forth herein. WPP and Participant agree that participation in the WRAP is voluntary, subject to the terms and conditions of this Agreement and the Tariff. The date upon which a Participant's withdrawal is effective and its participation in the program terminates is referred to as the "Withdrawal Date."
- 9.1 Normal Withdrawal: In general, Participant may withdraw from this Agreement by providing written notice to WPP no less than twenty-four months prior to commencement of the next binding Forward Showing Program period. Once notice has been properly given, Participant remains in a "Withdrawal Period" until the Withdrawal Date.
- 9.1.1 During Participant's Withdrawal Period, Participant remains subject to all requirements and obligations imposed by the Tariff and this Agreement, including but not limited to all obligations imposed in the Forward Showing Program and Operations Program and the obligation to pay Participant's share of all costs associated with the WRAP.
- 9.1.2 All financial obligations incurred prior to and during the Withdrawal Period are preserved until satisfied.
- 9.1.3 During the Withdrawal Period, Participant is not eligible to vote on any actions affecting the WRAP that extend beyond the Withdrawal Period.
- 9.2 Expedited Withdrawal: Participant may withdraw from this ~~agreement~~ Agreement with less than the required twenty-four month notice as set forth below. Participant shall negotiate with WPP regarding the timing of the Expedited Withdrawal.
- 9.2.1 Extenuating Circumstances: The following such events and circumstances shall constitute "extenuating circumstances" justifying a withdrawal on less than twenty-four months. Participant invoking an extenuating circumstance shall negotiate with WPP regarding potential ways to minimize the impact of the expedited withdrawal on all other Participants and WPP. Such extenuating circumstances and any mitigation plan to minimize the impact of the expedited withdrawal must be reviewed and approved by the Board of Directors prior to termination of Participant's WRAP obligations. Regardless of the extenuating circumstance, all financial obligations incurred prior to the Withdrawal Date remain in effect until satisfied.

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- 9.2.1.1 A governmental authority takes an action that substantially impairs Participant's ability to continue to participate in the WRAP to the same extent as previously; provided, however, that Participant shall be obligated to negotiate with WPP regarding potential ways to address the impact of the regulatory action without requiring a full withdrawal of Participant from the WRAP if possible.
- 9.2.1.2 Continued participation in the WRAP conflicts with applicable governing statutes or other applicable legal authorities or orders, as determined by Bonneville.
- 9.2.1.3 Participant voted against a RAPC determination and disagreed with a Board of Directors decision to release composite or aggregated data under Section 10.2.1 of the Tariff, provided that such right to expedited withdrawal is exercised promptly after the first time that the Board of Directors determines that the form and format of composite or aggregated data sufficiently protects against the release of confidential or commercially sensitive Participant data. Failure to exercise this right promptly upon the first occurrence of the Board of Directors voting on a specific form and format of composite or aggregated data shall constitute a waiver of the right to expedited withdrawal for any future disclosures of composite or aggregated data in the same or substantially similar form and format.
- 9.2.1.4 FERC or a court of competent jurisdiction requires the public disclosure of a Participant's confidential or commercially sensitive information, as further described in Section 10.5 of the Tariff; provided however that such right to expedited withdrawal shall be exercised promptly upon the exhaustion of all legal or administrative remedies aimed at preventing the release.
- 9.2.2 Exit Fee: If the impact of Participant's withdrawal on WRAP operations can be calculated with a high degree of confidence and mitigated by the payment of an "exit fee" to be calculated by WPP, an expedited withdrawal will be permitted. Such exit fee shall include (but not be limited to): (i) any unpaid WRAP fees or charges; (ii) Participant's share of all WRAP administrative costs incurred up to the next Forward Showing Program period; (iii) any costs, expenses, or liabilities incurred by WPP and/or the Program Operator directly resulting from Participant's withdrawal; and (iv) any costs necessary to hold other participants harmless from the voluntary expedited withdrawal. The exit fee may be waived to the extent that it would violate any federal, state, or local statute, regulation, or ~~ordinance~~ ordinance or exceed the statutory authority of a federal agency. The exit fee shall be paid in full prior to the Withdrawal Date.

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- 9.2.3 Amendments to Section 3.4 of the Tariff: In the event that amendments to Section 3.4 of the Tariff are approved by the RAPC and Board of Directors, a Participant that voted against such a change may withdraw with less than the required twenty-four month notice, provided that the Participant satisfy all obligations in the Forward Showing Program and Operations Program and satisfy all other financial obligations incurred prior to the date that the amendments to Section 3.4 of the Tariff are made effective by FERC.
- 9.2.4 Expulsion: The Board of Directors, in its sole discretion, may terminate Participant's participation in the WRAP and may terminate this Agreement with Participant for cause, including but not limited to material violation of any WPP rules or governing documents or nonpayment of obligations. Prior to exercising such right to terminate, the Board of Directors shall provide notice to Participant of the reasons for such contemplated termination and a reasonable opportunity to cure any deficiencies. Such Board of Directors termination shall be after an affirmative vote consistent with the Board of Directors standard voting procedures. Such termination shall not relieve the Participant of any financial obligations incurred prior to the termination date, and WPP may take all legal actions available to recover any financial obligations from Participant.

10. Federal Statutory Limitations; No Waiver of Defenses.

- 10.1 With respect to payment obligations of the United States, by and on behalf of Bonneville, for any WRAP fees or charges under this Agreement and the Tariff, nothing in this Agreement shall be interpreted or construed as a commitment or requirement that the United States, acting by and through Bonneville, will be obligated or pay funds in contravention of the Antideficiency Act. Bonneville's liability for non-contractual damages is determined in accordance with the Federal Tort Claims Act, and it is understood that Bonneville has no obligation to defend claims against WPP notwithstanding Tariff section 8.3.
- 10.2 Nothing in this Agreement shall be construed to constitute a waiver or relinquishment of any rights to claim exemptions, privileges, and immunities as may be provided by law, including sovereign immunity. As of the time of execution of this Agreement, the Parties agree that no provision of this Agreement or the Tariff is a penalty, including without limitation the Deficiency Charge and Delivery Failure Charge; and that the Parties do not anticipate that provisions of this Agreement or the Tariff reasonably required for Bonneville's participation in, and realization of the benefits from, the regional resource adequacy program established by the WRAP, would be such penalties.
- 10.3 Nothing herein purports to modify the legal authority of FERC or of Bonneville, or the rights or processes established by law for obtaining judicial review of actions of FERC or of Bonneville. Subject to the limitations in this section 10, and the limitations in the Tariff and this Agreement on WPP's right to seek changes under FPA sections 205 and 206, nothing herein changes any right of any Party otherwise

granted by law to seek appropriate relief from any administrative or judicial body of competent jurisdiction.

~~10~~11. No Waiver of Non-FERC-Jurisdictional Status. If Participant is not subject to the jurisdiction of FERC as a public utility under the Federal Power Act, Participant shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over Participant that does not otherwise exist. Participant acknowledges that FERC has jurisdiction over the WRAP, including Participant’s activities in the WRAP.

12. Governing Law. This Agreement shall be governed by Federal law.

~~{SIGNATURE BLOCKS}~~

SIGNATURES

Northwest Power Pool, d/b/a Western
Power Pool

Company

By:

By:

Sarah Edmonds
Name

Name

Chief Executive Officer
Title

Title

Date

Date