

AMENDED AND RESTATED AGREEMENT LIMITING LIABILITY

AMONG

WESTERN INTERCONNECTED SYSTEMS

The Parties, by execution of a counterpart of this Amended and Restated Agreement Limiting Liability Among Western Interconnected Systems (“Agreement”), agree as follows:

RECITALS

1. The Parties hereto are electric utility systems each of which is interconnected with one or more other systems so that all Parties are interconnected directly or indirectly with all other Parties in a system termed the Western Interconnected Systems.

2. Parties who are members or affiliate members of WECC exchange information and develop design and operating criteria for the reliable and economic operation of the Western Interconnected Systems.

3. Parties are also members of regional power pools which have developed electric utility practices which differ in some respects from each other. It is not the intention of the Parties that this Agreement be made the vehicle for resolving such differences.

4. System design and operating criteria are intended to minimize creation of electric disturbances, and to minimize damage from electric disturbances that do occur. However, electric disturbances cannot be wholly avoided, and human error cannot be entirely eliminated.

5. Interconnection of properly designed and operated electric systems provides greater continuity and reliability of service to customers, and enables more economic provision for reserves and power interchanges. Electric disturbances, whether originating on a small or

large system, could travel through the interconnected systems with risk of damage to all systems' facilities.

6. Each system is best able to provide the level of design protection desired by it to avoid damage to its system facilities from electric disturbances originating on either its own or interconnected systems but is unable to control the extent of damage on other systems resulting from an electric disturbance originating on its own system.

7. Interconnected and coordinated operation requires interchange of information and signals, interaction of automatic control devices, and rapid cooperation of system dispatchers. Such operations cannot be effectively carried out if the operators must simultaneously weigh the possible threat of indefinite and uncertain legal liability for accidental harm to electric systems of the Parties.

8. Each Party insures its own electric system against loss or damage either by carrying insurance or by self-insuring. Assertion of liability between Parties merely transfers payment from one insurer to another. Potential liabilities for damage to large, remote systems which insure themselves at an appropriate level might require a small system to maintain insurance of inappropriate size, or else forego the general benefits of interconnection.

9. This Agreement is entered into to limit liability for system damage and establish responsibility for interconnected system design and operation between the Parties hereto.

10. Pursuant to the Bonneville Project Act, 16 U.S.C §832a(f) and the Pacific Northwest Power Act, 16 USC §839f(a), Bonneville's Administrator has extensive authority to enter into contracts, agreements, and arrangements, and make expenditures to accomplish Bonneville's objectives "in such manner as he may deem necessary."

11. Pursuant to the Energy Policy Act, 16 U.S.C 839d-1, the Bonneville Power Administration and the Corps of Engineers have entered into the Memorandum of Agreement (MOA) for Direct Funding of Power Operations and Maintenance Costs at the Corps Projects (Contract No. 98-PB-10211), and the Capital Costs MOA (Contract No. DE-MS79-94BP94655).

12. Pursuant to the Energy Policy Act, 16 U.S.C 839d-1, the Bonneville Power Administration and the Bureau of Reclamation have entered into the MOA for Direct Funding of Power Operations and Maintenance Costs at Reclamation Projects (Contract No. 96MS-95129), and the Capital Costs MOA (Contract No. DE-MS79-92-BP93660).

13. The Parties intend this Agreement to, as between and among the Parties, replace and supersede all prior versions of the Agreement Limiting Liability Among Western Interconnect Systems in their entirety.

1. LIABILITY - INTERCONNECTED SYSTEM OPERATION

1.1 No Party (First Party), its directors, officers and employees, shall be liable to any other Party (Second Party) for any loss or damage to the electric system of any Second Party caused by or arising out of an electric disturbance, whether or not such electric disturbance resulted from the negligent, grossly negligent or wrongful act or omission of any Party, its directors, officers or employees, whether its or their own or imputed, in the design, construction, operation, maintenance, use or ownership of First Party's electric system, or the performance or nonperformance of the obligation of any Party under Section 2 of this Agreement. Each Second Party releases each other First Party, its directors, officers and employees, from any such liability.

1.2 The Bonneville Power Administrator shall hold harmless each other Party, its directors, officers and employees, from any claim or action for any loss or damage to the Federal

Columbia River Power System caused by or arising out of an electric disturbance, whether or not such electric disturbance resulted from the negligent, grossly negligent, or wrongful act or omission of such Party, its directors, officers or employees, whether its own or their own or imputed, in the design, construction, operation, maintenance, use or ownership of such Party's electric system, or the performance or nonperformance of the obligation of such Party under Section 2 of this Agreement.

① 1.3 Each Party represents to the other Parties that the provisions of subsections 1.1 and 1.2 are not inconsistent with any insurance policy that such Party now holds, and each Party agrees that any insurance contract that it may hereafter enter into shall not be inconsistent with the provisions of said subsections 1.1 and 1.2.

1.4 The provisions of subsections 1.1 and 1.2 do not apply to loss or damage resulting from Willful Action. The term "Willful Action" as used herein is defined as an action taken or not taken by a Party, which action is knowingly or intentionally taken or failed to be taken, with intent that injury or damage would result therefrom or which action is wantonly reckless. Willful Action does not include any act or failure to act which is involuntary, accidental, negligent or grossly negligent.

1.5 The provisions of subsections 1.1 and 1.2 do not apply to loss or damage resulting from action taken or not taken by a Party which action or non-action has previously been determined by arbitration award to be a default under subsection 2.1 of this Agreement and which occurs or continues beyond the time specified in such arbitration award for curing such default or, if no time to cure is specified, which, after the date of the award, occurs or continues beyond a reasonable time to cure such default. Such Party agrees to pay for such loss or damage which occurs while such Party is a party to this Agreement.

An action or non-action under this subsection 1.5 is one taken by a director or officer, or any employee who has management or administrative responsibility affecting the Party's performance under this Agreement, namely an employee who is responsible for one or more of the functions of planning, organizing, coordinating, directing or supervising the Party's performance under this Agreement.

1.6 The provisions of subsections 1.1 and 1.2 do not apply to any Party's firm contractual obligation to purchase, exchange or sell power.

1.7 The words "loss or damage" mean physical damage to an electric system; loss or damage resulting from making an electric system or any portion thereof inoperable; and loss or damage consequential to either such loss or damage, including loss of use.

The word "Party" means any person, firm or association, or any nonprofit, private or municipal corporation, or any governmental agency, which operates an electric system within any of the states of Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, South Dakota, Texas, Utah, Washington, or Wyoming or the Provinces of British Columbia or Alberta, the system of which is interconnected with the Western Interconnected Systems, and who has executed a counterpart of this Agreement.

The words "electric system" mean (1) electric distribution facilities or (2) generation facilities or (3) transmission facilities, or any combination of the three, and include transmission lines, distribution lines, substations, switching stations, generating plants and all associated equipment for generating, transmitting, distributing or controlling flow of power. The electric system of a Party includes the facilities of another entity operated or controlled by such Party. The words "electric system" include any devices or equipment (1) by which information is originated on an electric system or by the person operating such system, (2) by which such

information is transmitted, and (3) by which such information is received either for information or for operation of a system, whether by the originating system or by another system.

The words "electric disturbance" means any sudden, unexpected, changed or abnormal electric condition originating in an electric system which causes damage.

The words "Federal Columbia River Power System" mean the integrated federal power system in the Pacific Northwest, as defined in Public Law 88-552, comprising the: (1) power generating facilities, and substations and transmission facilities adjacent thereto, of the Corps of Engineers (civil functions), Department of the Army, and of the Bureau of Reclamation, Department of the Interior, and (2) electric power lines and substations, and facilities and structures appurtenant thereto, of the Bonneville Power Administration. For purposes of this Agreement, the FCRPS includes only the facilities that the Bonneville Power Administration is statutorily required to fund.

"WECC" means the Western Electricity Coordinating Council or its successor.

2. RESPONSIBILITY - INTERCONNECTED SYSTEM DESIGN AND OPERATION

2.1 Each Party shall design, construct, operate, maintain and use its electric system in conformance with accepted electric utility practices:

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

(b) To minimize the effect on its electric system, and on its customers, of electric disturbances originating on its own or another electric system.

2.2 Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party.

2.3 Should differences arise between Parties regarding the implementation of subsection 2.1, they will seek an equitable solution and will perform necessary technical studies which will not be unreasonably delayed. In the event agreement cannot be reached, and if in the judgment of any Party to the disagreement the necessary technical studies have been performed, such Party may demand the matter be arbitrated. "Differences" as used herein shall not include differences of opinion on any subject which is in controversy between regional pools, and this provision shall not be used to resolve any such differences.

The Party demanding arbitration shall give notice in writing of such demand to all other Parties. The Parties desiring to participate shall meet within ten (10) days thereafter to select an arbitrator by mutual agreement. The arbitrator shall be an individual of national reputation having demonstrated expertise in the field of the matter or item to be arbitrated. In the event such Parties cannot agree upon an arbitrator, the Chief Judge of the United States Court of Appeals, Ninth Circuit, or such tribunal as may at the time be the successor of such Court may, upon request of a Party, appoint the arbitrator. If, pending any arbitration under this Agreement, the arbitrator or successor or substitute arbitrator, shall die or for any reason be unable or unwilling to act, his successor shall be appointed as he was appointed, and such successor or substitute arbitrator, as to all matters then pending, shall act the same as if he had been originally appointed as an arbitrator. The award of the arbitrator so chosen shall be final as to all Parties to this Agreement. Each Party to the arbitration shall bear the expense of preparing and presenting its own case; and the expense of the arbitrator, including the expense of any technical studies required by the arbitrator, shall be equitably apportioned among Parties to the arbitration by the arbitrator.

2.4 The mutual covenants of Section 1 are independent of and divisible from the covenants of subsection 2.1 and are not affected by nonperformance under subsection 2.1. It is the intent of this Agreement that the obligations of subsection 2.1 shall be enforceable only indirectly by the risk of liability for loss or damage resulting from failure to comply with an arbitration award as provided in subsection 1.5. Accordingly, the obligation to arbitrate may be enforced by appropriate judicial action, and loss or damage resulting from failure to comply with an arbitration award may be recovered as and to the extent provided in subsection 1.5, but otherwise no action or suit shall be brought to enforce the obligations of this Section 2.

2.5 Except as otherwise herein provided, arbitration shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect.

3. EXECUTION, EFFECTIVE DATE AND ADDITIONAL PARTIES

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

3.2 This Agreement shall be effective upon the deposit of two or more signed counterparts with the Secretary, WECC. As between and among the Parties, this Agreement supersedes and replaces all prior versions of the Agreement Limiting Liability Among Western Interconnected Systems in their entirety.

3.3 Any entity operating an electric system within one or more of the states or the province cited in subsection 1.7 and whose electric system is interconnected directly or through the facilities of another entity with the Western Interconnected Systems may become a Party hereto at any time by (1) execution of a counterpart of this Agreement and (2) deposit of such counterpart with the Secretary, WECC. The name and address of the person to whom notices

under the Agreement are to be sent shall be furnished at the same time. A Party may change such name or address at any time on written notice to the Secretary.

3.4 Any Party may terminate this Agreement as to itself by written notice to all other entities listed as Parties on a list furnished for such purpose by the Secretary, WECC, sent by registered mail to the address set forth for such Party on such list. The termination shall be effective thirty days after the date the notice was mailed. Termination shall not affect any liability arising hereunder prior to the effective date of such termination.

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

3.6 This Agreement is subject to the approval of regulatory agencies having jurisdiction.

Signature Pages Follow

Each Party represents that it has caused this Amended and Restated Agreement Limiting Liability Among Western Interconnected Systems to be executed by its duly authorized representative as of the date shown in its signature block below.

[[ENTITY NAME]]

By: [[insert name]]
Its: [[Insert title]]
Date: [[insert date]]