

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

executed by

THE UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

acting by and through the

BONNEVILLE POWER ADMINISTRATION

POWER SERVICES

and

«FULL NAME OF CUSTOMER»

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Agreement”) is executed by the UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, acting by and through the BONNEVILLE POWER ADMINISTRATION (“BPA”) POWER SERVICES and the «FULL NAME OF CUSTOMER» («Customer Name»), a «public utility district, people’s utility district, non-profit corporation, municipal corporation», established under the laws of the State of «State», herein referred to individually as “Party” and, collectively, as the “Parties.” This Agreement shall take effect on the date signed by the Parties.

WHEREAS the Parties believe that pricing information is commercially sensitive relative to BPA contemplating the acquisition of power sourced from the market related to development of a PF Tier 2 Vintage Market Sourced Rate VR1-2016; and

WHEREAS BPA desires «Customer Name» to have access to certain pricing information for potential use in assisting «Customer Name» to make elections regarding the purchase of power from BPA at the PF Tier 2 Vintage Market Sourced Rate VR1-2016, if established; and

WHEREAS the Parties agree that the pricing information shared between the two is Confidential and Proprietary; and

WHEREAS, the Parties seek to limit the distribution and other use of such Confidential and Proprietary Information so as to prevent the public disclosure of the identity of the participating utilities and the disclosure of information submitted by BPA and those utilities to each other;

NOW, THEREFORE, the Parties agree as follows:

1. TERM.

The effective date of this Agreement shall be determined by the date affixed hereto by the party last signing this Agreement, and shall remain in effect until the sooner of: (1) 30 days after the end of the yearly quarter in which BPA acquires power from the market related to the PF Tier 2 Vintage Market Sourced Rate **VR1-2016**; or (2) the commencement of the 2016 7(i) Rate Case Process by publication of a Federal Register notice; or (3) December 31, 2014, or (4) as may be otherwise extended by the written agreement of both Parties. Termination of this Agreement shall not extinguish any obligations accrued hereunder at the time of termination, and such obligations shall survive termination to the extent necessary to permit their complete fulfillment or discharge.

2. DEFINITION OF CONFIDENTIAL AND PROPRIETARY INFORMATION.

(a) All yearly pricing and the weighted pricing cap information related to any power that is or could be acquired from the market by BPA, the price of which is to serve as the cost allocated to the establishment of the PF Tier 2 Vintage Market Sourced Rate as will be described in the PF Tier 2 Vintage Market Sourced Rate Statement of Intent. BPA may source such

information and data from potential counterparties, market research, and other sources as may arise.

(b) The furnishing of Confidential and Proprietary Information provided by either «Customer Name» or BPA may take the form of verbal communications, electronic transmittals, hardcopy, or any other form of communication.¹

3. RESTRICTED USES OF INFORMATION.

BPA's use of the Confidential and Proprietary Information is to inform BPA of power prices in the market for purposes of identifying a market cost which may be allocated to a PF Tier 2 Vintage Market Sourced Rate VR1-2016.

«Customer Name» may use the Confidential and Proprietary Information provided under this Agreement only for the purpose of informing «Customer Name» in deciding whether to sign the PF Tier 2 Vintage Market Sourced Rate Statement of Intent offered to «Customer Name» by BPA, indicating a binding commitment to purchase power from BPA at the PF Tier 2 Vintage Market Sourced Rate, VR1-2016, if established by BPA.

4. NON-DISCLOSURE.

The Confidential and Proprietary Information covered pursuant to this Agreement shall not be disclosed to any person not employed or retained by the Parties or their affiliates, except to the extent disclosure is (1) required by law as determined by the other Party's legal counsel; or (2) otherwise permitted by consent of the other Party, such consent which shall not be

¹ It is recognized and accepted by the Parties that due to the mechanism whereby real-time data is generally contemplated to be shared under this Confidentiality and Non-Disclosure Agreement on a "real-time" basis, that there will not exist a ready means of marking such data. Thus, the marking of such Confidential and Proprietary Data as "Confidential—Subject to BPA Confidentiality and Non-Disclosure Agreement No. 12PB-«#####»" shall only apply where such real-time data is archived and stored on a computer disk or in a data base or otherwise presented/recorded in a form amendable to such marking. This is without derogation, however, to the duty of «Customer Name» to safeguard the Confidential and Proprietary information herein with its members as otherwise specified herein, regardless of whether such Confidential and Proprietary Data is marked "Confidential and Proprietary."

unreasonably withheld; or (3) required to be made in connection with regulatory proceedings (including proceedings relating to Federal Energy Regulatory Commission, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency); or (4) required to comply with North American Electric Reliability Organization, regional reliability council, or successor organization requirements. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain, save for such information in the public domain as a result of a breach of this provision.

5. EXCEPTIONS TO NON-DISCLOSURE.

Such prohibitions against disclosure provided in this Agreement shall not apply, however, to any Confidential and Proprietary Information which:

(a) is developed in the course of work entirely independent of any disclosure made hereunder of the subject matter of this Agreement by a person or persons who have not had access to the Confidential and Proprietary Information received by BPA from «Customer Name»; or

(b) is or becomes part of the public domain other than through breach of this Agreement or through the fault of «Customer Name»; or

(c) is approved for release by written authorization of the Designated Contact Representative of either Party; or

(d) is necessary to establish a rate in conjunction with any purchases made under the PF Tier 2 Vintage Market Sourced rate.

6. NO WAIVER OF CONFIDENTIALITY OR PRIVILEGE.

Include the following for PNGC: By entering into this Agreement, PNGC, its members, and customers of its members do not waive any valid claim of confidentiality or discovery privilege enforceable at law.

Include the following for all other customers: By entering into this Agreement, «Customer Name» does not waive any valid claim of confidentiality or discovery privilege enforceable at law.

7. DUTY OF CARE.

Each Party agrees that it shall use a reasonable standard of care, but no less than the degree of care that it uses for the protection of its own confidential and proprietary information, to safeguard Confidential and Proprietary Information provided by BPA. Disclosure currently permitted without the express written consent of the other Party (“the Disclosing Party”) shall include those employees, managers, agents, consultants, and legal counsel of each Party (“the Receiving Party”), yet in each case only those who: (1) have a need to know to further the purposes set forth herein; and (2) have been advised of the nature of the Confidential and Proprietary Information supplied hereunder; and (3) who have agreed to abide by the terms of this Agreement (“Authorized Representatives”). BPA and «Customer Name» agree that each party shall be liable for any breach of this Agreement by its own Authorized Representatives.

8. EXCEPTIONS FOR DISCLOSURE OTHERWISE COMPELLED BY LAW.

(a) Notwithstanding the foregoing language of Paragraph 4, in the event that either Party, or one of either Party’s Authorized Representatives is required to disclose Confidential and

Proprietary Information provided under this Agreement by: subpoena, court order, or directive of an administrative agency; Congressional Committee; requirement under the Freedom of Information Act; requirements under any state public records act or any other applicable state statutory requirements; as such Party's legal counsel shall so determine; the Receiving Party agrees to provide the Disclosing Party with prompt notice of such request in order to permit the Disclosing Party to: (i) seek an appropriate protective order or other remedy at its own expense; (ii) consult with the Disclosing Party with respect to taking steps to resist or narrow the scope of such request or legal process; or (iii) waive compliance, in whole or in part, with the terms of this Agreement.

(b) In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions hereof, the Receiving Party agrees to furnish only that portion of information so provided under this Agreement which the Receiving Party's legal counsel advises is legally required, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such information.

9. NO CONTRACT FOR PURCHASE.

It is hereby agreed and understood that information provided under this Agreement is for the purpose of evaluation of a possible power purchase/sale among the Parties, but that any such power purchase/sale agreement will be memorialized in its entirety in a separate written agreement without reference to this Agreement. It is further agreed and understood that this Agreement creates no obligations or rights save for those explicitly set forth herein; and that by virtue of the provision of information under this Agreement no obligation is created to enter into discussions or negotiations of a possible power purchase/sale.

10. ASSIGNMENT PROHIBITED.

Any assignment of a Party's rights, obligations, or duties under this Agreement without the other Party's prior written consent shall be void ab initio.

11. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the Parties concerning the confidentiality of the Confidentiality and Proprietary Information. No modification of this Agreement or waiver of the terms and conditions hereof shall be binding upon the Parties, unless approved in writing by each of them.

12. DUE AUTHORIZATION.

Each Party represents and warrants that: (a) it has full power and authority to enter into this Agreement; (b) execution of this Agreement will not violate any other agreement with a third party; and (c) the person executing this Agreement on its behalf has been properly authorized and empowered to enter into this Agreement.

13. INTERPRETATION.

Paragraph headings are intended only as an aid to the reader, and are not to be considered in interpreting this Agreement. In interpreting this Agreement, it is acknowledged by the Parties that this Agreement was prepared jointly by the Parties and not by any Party to the exclusion of the other Party; and that in preparing this Agreement, each party had access to advice of its own legal counsel.

14. GOVERNING LAW.

This Agreement shall be interpreted, governed and construed in accordance with federal law.

15. NOTICES.

(a) All notices that may be required under this Agreement shall be provided, in writing, to the Designated Contact Representatives shown below, whose mailing addresses, telephone numbers, facsimile numbers, and electronic mailing addresses are also shown below. For convenience, notices may be routed via electronic mail or facsimile, provided, however, that such notices are also routed contemporaneously in written form via U.S. Mail to the Designated Contact Representative's address indicated below.

(b) Notwithstanding Paragraph 11 above, modifications to contact information only, including the designation of a new Designated Contact Representative under this Agreement, shall be accomplished by timely written notice to each Party's then current Designated Contact Representative routed via U.S. Mail. Such notice shall, where applicable, include any changes in mailing address, telephone number, facsimile number, and electronic mail address.

DESIGNATED CONTACT REPRESENTATIVE.

If to «Customer Name»:

«Utility Name»
«Street Address»
«P.O. Box »
«City, State, Zip»
Attn: «Contact Name»
«Contact Title»
Phone: «###-###-####»
FAX: «###-###-####»
E-Mail: «E-mail address»

If to BPA:

Bonneville Power Administration
«Street Address»
«P.O. Box»
«City, State, Zip»
Attn: «AE Name - Routing»
«Senior »Account Executive
Phone: «###-###-####»
FAX: «###-###-####»
E-Mail: «E-mail address»

16. EXECUTION IN COUNTERPART AND EFFECTIVE DATE.

This Agreement will be effective upon the date when executed by both Parties. This Agreement may be executed in two counterparts, which when taken together shall constitute one

Agreement binding on both Parties, notwithstanding that each Party is not a signatory to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

17. SIGNATURES.

The Parties have caused this Agreement to be executed as of the date both Parties have signed this Agreement.

«FULL NAME OF CUSTOMER»

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name _____
(Print/Type)

Name _____
(Print/Type)

Title _____

Title _____

Date _____

Date _____

(PS«X/LOC»- «File Name with Path».DOC) «mm/dd/yy» *(Drafter's Note: Insert date of finalized contract here)*

