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UTILITY SERVICE AREA AGREEMENT

BETWEEN

YAKAMA POWER AND BENTON RURAL ELECTRIC ASSOCIATION

THIS UTILILTY SERVICE AREA AGREEMENT (“Service Area Agreement”) is entered into between Yakama Power (“Yakama Power”) and Benton Rural Electric Association (“Benton REA”), hereinafter sometimes referred to individually as “Utility” or jointly as “Utilities”.

RECITALS

WHEREAS, the Confederated Tribes and Bands of the Yakama Nation is a federally recognized Indian tribe under the laws and regulations of the United States; and

WHEREAS, Yakama Power is a Tribal electric distribution utility formed, and wholly owned, by the Yakama Nation under the laws and regulations of the Yakama Nation whose purpose is to provide electric service within the external boundaries of the Reservation of the Yakama Nation; and

WHEREAS, Benton REA is a Washington non-profit corporation owned by its members, and is an electric utility providing electric service to its members in Benton and Yakima Counties, State of Washington, and the surrounding area, including portions of the Reservation of the Yakama Nation; and

WHEREAS, Yakama Power and Benton REA have signed an Installment Sale, Lease and Transfer Agreement (“Transfer Agreement”) pursuant to which Yakama Power is purchasing certain of Benton REA’s electrical distribution infrastructure and assets, and leasing from Benton REA certain other electrical distribution infrastructure and assets, all within the external boundaries of the Reservation of the Yakama Nation as established by the Treaty of 1855; and

WHEREAS, this transfer and lease of assets, the Utilities wish to prevent any future disputes over service areas or territories; and

WHEREAS, the State of Washington has a statutory policy of encouraging public utilities and electrical cooperatives to avoid the duplication of electric lines and services in the interests of economic efficiency, public safety, investments, and attractiveness and deems it in the public interest for utilities to enter into agreements to avoid such duplication, RCW 54.48 *et seq.*; and

WHEREAS, Yakama Power is a tribal non-profit utility established by Charter by the Confederated Tribes and Bands of the Yakama Nation on October 12, 2004, and Article XIV of

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that Charter authorizes Yakama Power to waive sovereign immunity in any contract, agreement or other document when approved by its Board of Directors.

NOW, THEREFORE, Yakama Power and Benton REA agree to the following terms and conditions as a settlement and compromise on the present and future electrical distribution service areas on the Reservation of the Yakama Nation and in other areas of the State of Washington:

Section 1. Definitions

When capitalized and used in this Service Area Agreement, the following terms are defined as follows:

- A. “Effective Date” means the day and year when both the last required signature for this Service Area Agreement to take effect has been affixed to this Service Area Agreement.
- B. “Electrical Facilities” means the physical electric facilities and associated real property interests placed in service by the Utility that are necessary to provide Retail Delivery Service to a Retail Customer or New Customer.
- C. “New Customer” means a Retail Customer for which Electrical Facilities have not been installed to provide Retail Delivery Service as of the Effective Date, and whose electric service entrance is located in the Non-exclusive Area.
- D. “Non-exclusive Area” means that area so designated on Exhibit A which has not been assigned to either Utility as a Service Area pursuant to this Service Area Agreement.
- E. “Purchased PacifiCorp Assets” has the meaning given such term in Section 3(f).
- F. “Reserved Assets” means the nine (9) power poles, wires and associated hardware, located within the external boundaries of the Reservation on the northwest side of Boundary Road, Yakima County, Washington, the ownership and use of which will be retained by Benton REA subsequent to the change in ownership of the Transferred Assets pursuant to the Transfer.
- G. “Retail Customer” means those persons or entities legally responsible for payment for electric energy delivered to their residence, facility, or place of business and for which Electrical Facilities were installed to provide Retail Delivery Service within the Service Area of a Utility prior to the effective date of this Service Area Agreement, or any such person or entity that commences Retail Delivery Service during the term of this Service Area Agreement whose electric service entrance is located within the Service Area of the Utility.

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- H. “Retail Delivery Service” means providing electrical distribution functions and associated electrical services by either Utility through Electrical Facilities and system operations, thereby allowing a Retail Customer, or a New Customer, to be connected to a source of electric energy.
- I. “Service Area” means those two areas, as established by the location of the Service Area Boundary Line(s), one of which is assigned to each Utility as set forth on Exhibit A, and within which each Utility has, as of the effective date of this Service Area Agreement, the exclusive right to provide Retail Delivery Service to Retail Customers located therein.
- J. “Service Area Boundary Line(s)” means the line or lines of separation between the shaded areas which demarcate the Service Areas of the Utilities, as graphically depicted on Exhibit A.
- K. “Transferred Assets” means all Electrical Infrastructure and other items to be transferred from Benton REA to Yakama Power pursuant the Transfer Agreement, a complete listing of which is set forth on Exhibits A through J attached thereto.
- L. “Trust Land(s)” means certain real property or fixtures to such property currently held in trust, or in the future transferred into trust and held, by the United States for the benefit of either the Yakama Nation or one or more of its enrolled members, and which is located outside the existing boundaries of the Reservation.
- M. “Utility Service Area Agreement” has the meaning given such term in the Introduction.
- N. “Yakama Nation Reservation” or “Reservation” means that area governed by the Yakama Nation Tribal Council, as established in the Treaty of 1855.

Section 2. Term and Termination

- A. Term. This Service Area Agreement shall take effect upon the Effective Date. This Service Area Agreement shall remain in effect from the date of execution for a period of twenty-five (25) years unless such term is extended by written agreement of the Utilities, or is earlier terminated pursuant to Section 2(B).
- B. Termination. This Service Area Agreement may be terminated by the written agreement of the Utilities at any time during its term, *provided however*, that those obligations specifically preserved herein shall survive the expiration or termination of this Service Area Agreement.

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Section 3. Rights and Obligations of the Parties

- A. Service Areas. Each Utility's respective Service Area that is the subject of this Service Area Agreement is defined and shown on the map in Exhibit A (Benton REA Service Area and Yakama Power Service Area).
- B. No Service to Other Utility's Customers. Except as provided in Section 3(E), neither Utility may solicit or serve a Retail Customer located or to be located in the other Utility's Service Area, regardless of any preference or expressed choice of such Retail Customer, unless both Utilities mutually agree otherwise, in writing.
- C. Delivery of Service to Customers. Except as provided in Section 3(E), neither Utility will extend any Electrical Facilities within the Service Area of the other Utility, or solicit nor respond to a request for Retail Delivery Service from any Retail Customer with an electric service entrance that is within the other Utility's Service Area, *provided however*, that pursuant to Section 4(B) of the Transfer Agreement, Benton REA will retain ownership and use of the Reserved Assets both before and after the transfer of the Transferred Assets has been completed.
- D. Service in Non-exclusive Area. Subject to the limitations set forth in Sections 3(E) and (E), either Benton REA or Yakama Power may provide Retail Delivery Service to New Customers, with such Retail Delivery Service being provided by the Utility having existing electric distribution facilities closest to such New Customer's electric service entrance on the date of New Customer's written application for such Retail Delivery Service. Neither Utility will extend or install any Electrical Facilities in any Non-exclusive Area except to provide Retail Delivery Service to a New Customer which such Utility is entitled to serve pursuant to this Section 3(D), *provided however*, that the Utilities may agree in writing to the extension of Electrical Facilities that would not otherwise be permitted by this Section 3(D). In the event that either Utility elects for any reason not to provide Retail Delivery Service to any New Customer it would otherwise be entitled to serve pursuant to this Section 3(D), the Utility declining to provide such Retail Delivery Service will provide written notice to the other Utility of such election, and the Utility receiving such notice may elect to provide Retail Delivery Service to such New Customer.
- E. Service to Trust Lands. Any Trust Land, whether located inside or outside of Benton REA's Service Area, shall be considered part of Yakama Power's Service Area, even if not currently shown as such on Exhibit A. In the event that Yakama Power elects to provide Retail Delivery Service within any Trust Land, whether located within or outside Benton REA's Service Area, Yakama Power may construct Electrical Facilities within the external boundaries of such Trust Land to provide such Retail Delivery Service. The Utilities agree that Yakama Power will forego the construction of any Electrical Facilities outside the external boundaries of such Trust Land if such Electrical Facilities would be within

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Benton REA's Service Area. In the event that Yakama Power elects to provide Retail Delivery Service within such Trust Land located within Benton REA's Service Area, Benton REA agrees to provide Yakama Power under a separate agreement wheeling services for electric energy and capacity needed by Yakama Power to provide Retail Delivery Service within such Trust Land. The rate for such wheeling service will be a commercially reasonable rate based on the cost of the facilities (including operations and maintenance costs) used to provide such wheeling service. Yakama Power agrees that it will not use any Electrical Facilities or any other facilities installed to provide Retail Delivery Service within such Trust Land to solicit or provide Retail Delivery Service to any Retail Customers located within the Benton REA Service Area. Except for the foregoing wheeling service, Benton REA will have no obligation to permit Yakama Power to use its Electrical Facilities or other facilities to provide Retail Delivery Service to or within such Trust Land.

- F. Service to Purchased PacifiCorp Assets. In the event that either Utility purchases from PacifiCorp its electrical distribution assets located within the municipal boundaries of Zillah, Granger and Union Gap, or any or all of them, for the purpose of providing Retail Delivery Service to the residences and businesses located therein (such assets, "Purchased PacifiCorp Assets"), then after the consummation of such purchase the area within the municipal boundaries within which the Purchased PacifiCorp Assets are located will be considered part of the Service Area of the Utility making such purchase for purposes of this Service Area Agreement.
- G. Revision of Exhibit A. The Utilities shall periodically revise Exhibit A to reflect any changes to the Utility's respective Service Areas pursuant to Section 3 as well as any other revisions as agreed to by both of the Utilities.

Section 4. Dispute Resolution, Applicable Laws and Venues

- A. Limited Waiver Sovereign Immunity. So that Yakama Power and Benton REA will be sure that it and/or they may enforce the terms and conditions of this Service Area Agreement or resolve any dispute arising between them, Yakama Power and Benton REA each covenants and agrees that each of them may sue or be sued to enforce or interpret the terms and conditions of this Service Area Agreement, or to enforce any of the obligations or rights of the Utilities, in accordance with the terms and conditions set forth below in this Section 4. For this purpose, Yakama Power grants a limited waiver of its sovereign immunity to be sued under an explicit provision of this Service Area Agreement, provided that all the following conditions are met:
 - 1. The claim is made by Benton REA, or its successors and assigns;

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2. The claim alleges a dispute between the Utilities regarding interpretation or application of this Service Area Agreement, or performance by either Utility hereunder, including without limitation a breach by Yakama Power of one or more specific duties owed to Benton REA that is expressly assumed by Yakama Power under the terms of this Service Area Agreement. No suit shall be had for any other reason;
3. The claim seeks either specific performance by Yakama Power to bring Yakama Power into compliance with the obligations or duties expressly assumed by Yakama Power by entering into this Service Area Agreement, provided that specific performance is reasonably possible; or payment of a monetary obligation arising from a breach of an explicit duty owed by Yakama Power to Benton REA under the terms of this Service Area Agreement. No other monetary compensation shall be permitted; and
4. The claim brought by Benton REA follows the dispute resolution procedure set forth below in Section 4(B).

B. Dispute Resolution

1. Initial Procedure
If a dispute arises between the Utilities regarding interpretation or application of this Service Area Agreement, or performance by either Utility hereunder, then either Utility agrees to notify the other Utility by registered U.S. mail to the other Utility's general manager requesting the Utilities' representatives meet within twenty (20) calendar days of the notice to resolve the dispute.
2. Nonbinding Mediation
If a dispute cannot be resolved within the twenty (20) day Initial Procedure, then within forty (40) calendar days following receipt of the initial notice by either Utility of such dispute, the Utilities shall meet to reach agreement on selection of a mediator, or invoke a process whereby a mediator is appointed for purposes of convening appropriate proceedings in an attempt to settle the dispute. The mediation process will be non-binding and, unless otherwise agreed to by the Utilities, the mediation process will conclude within twenty (20) calendar days of commencement.
3. Post-Mediation Binding Arbitration
Any dispute which is not resolved through dispute resolution under Sections 4(B)(1) and (B)(2) above shall be resolved by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, provided that the Utilities shall have full rights of discovery as provided in the Federal Rules of Civil Procedure in such binding arbitration process. Yakama Power and Benton REA consent to and agree that any final judgment or award by the arbitrator(s)

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shall be conclusive and may be enforced in any court having jurisdiction thereof, including, but not limited to, the United States District Court for the Eastern District of Washington pursuant to Title 9 of the United States Code, Yakima County Superior Court, or the Yakama Nation Tribal Court. The prevailing Utility in any arbitration proceeding under this Service Area Agreement shall be entitled to receive its reasonable attorney's fees and costs.

- C. No Other Waiver. Notwithstanding the limited waiver granted in this Section 4, Benton REA understands and agrees that Yakama Power, by entering into this Service Area Agreement, does not waive the Yakama Nation's sovereign immunity from suit, nor does it waive, alter, or otherwise diminish the Yakama Nation's sovereign rights, privileges, remedies, or services guaranteed by the Treaty with the Yakamas of 1855 (12 Stat. 951). The limited waiver granted in this Section 4 applies only to Yakama Power and to the individual transactions and obligations under this Service Area Agreement.

Section 5. Other Agreements with Third Parties

The Utilities have or, in the future, may have service area agreements with other utilities and jurisdictions, and the Utilities agree that this Service Area Agreement does not modify or change any such third party service area agreements and that any such third party service area agreements shall not modify or change this Service Area Agreement.

Section 6. Future Information Sharing

The Utilities agree to share with one another from time to time, or upon request, such information as may be necessary to effectuate the orderly administration of this Service Area Agreement, including without limitation technical information regarding transmission and distribution line locations and load growth patterns, so long as such information is not considered confidential or business sensitive by the providing Utility.

Section 7. Amendments, Revisions and Incorporation of Exhibit

The Utilities may mutually agree in writing to amend this Service Area Agreement and/or its Exhibit at any time and any such written amendment must be approved by each of the Utilities' boards and signed by each Utility's authorized representatives. If at any time it is determined that any portion of this Service Area Agreement is in conflict with applicable federal or state law, or a substantial change in applicable federal or state law has occurred, both Utilities agree that they will enter into good faith negotiations, on a timely basis, for purposes of eliminating any conflicts caused by such changes in law and otherwise making this Service Area Agreement consistent with applicable law, while preserving for both Utilities to the extent legally practicable the benefits of this Service Area Agreement as originally drafted. Exhibit A attached hereto is hereby incorporated into this Agreement and is made a part hereof as if fully set forth herein.

Section 8. Entire Agreement

The terms and conditions set forth in this Service Area Agreement represent the full and complete understanding and commitment between Yakama Power and Benton REA as to the subject matter of this Service Area Agreement.

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Section 9. Binding Nature of Service Area Agreement and No Third Party Rights

This Service Area Agreement shall be binding upon the Utilities and their successors. This Service Area Agreement is made and entered into for the sole protection and legal benefit of the Benton REA and Yakama Power, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Service Area Agreement.

Section 10. Choice of Laws

This Service Area Agreement shall be interpreted in accordance with the laws of the State of Washington.

Section 11. Section Headings

The headings contained in this Service Area Agreement are solely for convenience and do not constitute a part of the Service Area Agreement between the Utilities, nor should such headings be used to aid in any manner in the construction of this Service Agreement.

Section 12. Survival of Provisions

The following provisions survive the expiration or termination of this Service Area Agreement, and the Utilities intend that the obligations in each such provision shall remain fully enforceable subsequent thereto: Sections 3, 4, 5 and 10

Section 13. Approvals

This Service Area Agreement has been approved by the governing bodies of each of the Utilities and the documents reflecting such approvals have been exchanged. It is the responsibility of each Utility to obtain and maintain any and all approvals required of it by other entities as a condition of entering into this Service Area Agreement.

Section 14. Execution and Counterparts

Execution of the Service Area Agreement is by a representative of each Utility who has been authorized and empowered to execute this Service Area Agreement, as set forth below. This Service Area Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 15. All Other Rights Reserved

Except as expressly provided in this Service Area Agreement, Yakama Power and Benton REA agree that they reserve all of their respective rights under federal, state and tribal law.

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YAKAMA POWER:

JoDe Goudy, Chair, Board of Directors, Yakama Power

Date

BENTON RURAL ELECTRIC ASSOCIATION:

Michael Freepons, President, Board of Trustees, Benton REA

Date

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