

ENERGY CONSERVATION AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
ORCAS POWER AND LIGHT COOPERATIVE

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Exhibit A Implementation Budget

This ENERGY CONSERVATION AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and the ORCAS POWER AND LIGHT COOPERATIVE (Orcas), a cooperative utility organized under the laws of the State of Washington, and may be referred to individually as "Party" or collectively as "Parties."

RECITALS

BPA is required by the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h (Northwest Power Act), to meet the net firm power load requirements of its customers in the Pacific Northwest.

BPA is authorized to acquire Conservation to reduce the firm power load requirements of its customers in the Pacific Northwest.

BPA offers a portfolio of initiatives and infrastructure support activities to ensure the conservation targets established in the Northwest Power and Conservation Council's Sixth Power Plan are achieved.

Beginning October 1, 2009, BPA will transition to two-year rate periods. Understanding that conservation projects can extend beyond two years, BPA offers this

Agreement to provide long-term certainty to customers implementing Conservation projects and programs.

This Agreement is an overarching agreement that incorporates the requirements of the Conservation Rate Credit and Conservation Acquisition Agreement Implementation Manual (Implementation Manual), or its successor. This Agreement includes an Implementation Budget intended to satisfy BPA's obligations during the term of this Agreement, including obligations during rate periods where a conservation rate credit may not be available. Assurance of funding through this Agreement is intended to encourage BPA's customers to continue implementation of their conservation programs and projects.

Orcas intends to install cost-effective Measures within its service area, producing a quantity of cost-effective Energy Savings, and report such achievements in the Planning, Tracking and Reporting (PTR) system, or its successor.

The Parties agree as follows:

1. TERM

- (a) This Agreement takes effect on the date signed by both Parties (Effective Date), and expires on September 30, 2014, unless terminated earlier as provided in section 6, Termination. Except as provided for in section 3(c), all liabilities shall remain until satisfied.
- (b) The Parties agree that on the Effective Date, this Agreement shall replace Conservation Acquisition Agreement No. 06ES-10677 and transfer all Work in Progress initiated under the requirements of the Implementation Manual, or its successor, to this Agreement. Orcas agrees that no other invoices shall be paid by BPA for Completed Units delivered under Conservation Acquisition Agreement No. 06ES-10677.

2. DEFINITIONS

All capitalized terms used in this Agreement shall have the following meaning:

- (a) "Completed Unit" means a Unit that is properly installed, operating and, when applicable, commissioned in accordance with the manufacturer's requirements and specifications for normal operations and, as applicable, has met specifications and requirements set forth in the Implementation Manual, or its successor, and the PTR system.
- (b) "Conservation" means any reduction in electric energy consumption resulting from an increase in the efficiency of electric energy use, production or distribution.
- (c) "Consumer" means any end user of electric energy in Orcas' service area that contributes to Orcas' total retail load.

- (d) “Energy Savings” means the ascribed, deemed, calculated, estimated, evaluated, or verified Conservation, in first year kilowatt-hours (kWh) attributable to Completed Units.
- (e) “Fiscal Year” means the period beginning each October 1 and ending the following September 30.
- (f) “Implementation Budget” means the amount of money BPA shall make available to Orcas, included in Exhibit A, to expend on Implementation Costs during the Implementation Period.
- (g) “Implementation Costs” means the sum of all or part of the actual total costs to install or implement Measures that result in Completed Units.
- (h) “Implementation Period” means the period of time from the Effective Date through September 30, 2014.
- (i) “Measure(s)” means materials or equipment installed, or activities implemented, to achieve Conservation.
- (j) “Other Requirements” means any revision, restriction, or alteration, which BPA may impose on any Measure as a result of any directive or order of any court or regulatory agency of competent jurisdiction, or the result of a final record of decision of any process conducted by BPA pursuant to the National Environmental Policy Act.
- (k) “Unit” means any Measure or combination of Measures that achieve Conservation.
- (l) “Work in Progress” means Units committed to by Orcas, the installation of which has not been completed to make such Units Completed Units.

3. PURCHASE OF ENERGY SAVINGS

- (a) BPA agrees to provide reimbursement and, if available, accept claims toward a conservation rate credit provided for the purchase of Energy Savings. Orcas agrees to sell to BPA the Energy Savings from Completed Units installed in accordance with this Agreement.
- (b) Orcas may request additional Implementation Budget at any time during the term of this Agreement. If BPA approves the request, BPA shall send a revised Exhibit A to Orcas.
- (c) Unless otherwise agreed to, in writing, by BPA, BPA shall not be obligated to pay for Energy Savings from Completed Units delivered after the Implementation Period.

- (d) In the event a conservation rate credit is not available during the term of this Agreement, Orcas may report Completed Units and BPA shall provide reimbursement from the Implementation Budget in Exhibit A.

4. IMPLEMENTATION BUDGET

- (a) On the Effective Date of this Agreement Orcas is authorized by BPA to incur Implementation Costs in an amount equal to the Implementation Budget in Exhibit A.
- (b) The Implementation Budget provided by BPA in Exhibit A shall be available to Orcas for the term of this Agreement, except as provided in section 3(c) and section 6, Termination.
- (c) Unless otherwise agreed to in writing by BPA, BPA shall not be obligated to pay Implementation Costs in excess of the Implementation Budget in Exhibit A.
- (d) BPA may, but is under no obligation to, supplement the Implementation Budget in Exhibit A.
- (e) Unless otherwise specified in this Agreement, Orcas shall release BPA of its obligation for the balance of any Implementation Budget remaining upon conclusion of the Implementation Period in Exhibit A.

5. PROJECT IMPLEMENTATION

- (a) The Implementation Manual, or its successor, and any changes made to the Implementation Manual or its successor are incorporated by reference into this Agreement.
- (b) Orcas shall:
 - (1) install Units in accordance with the requirements of the Implementation Manual or its successor;
 - (2) report Completed Units in accordance with the requirements of the Implementation Manual or its successor;
 - (3) submit invoices no more often than monthly; and
 - (4) implement this Agreement in accordance with all applicable law(s).
- (c) Orcas may subcontract to provide Completed Units under this Agreement. If Orcas does so, Orcas shall, by such subcontract, require that the entity comply with the terms and conditions of the Implementation Manual or its successor and all applicable laws.

6. TERMINATION

- (a) Either Party may terminate this Agreement upon thirty days' written notice. Orcas shall have one year from the Effective Date of termination pursuant to this section to complete Work in Progress.
- (b) BPA may terminate this Agreement upon thirty days' written notice if Orcas:
 - (1) has failed to comply with the environmental, technical, or record-keeping requirements;
 - (2) has failed to use any portion of the Implementation Budget in a manner consistent with this Agreement;
 - (3) gives notice to BPA that it will stop placing firm load on BPA pursuant to its existing firm power sales contract, or its successor, for a period of at least one year;
 - (4) gives notice to BPA of its intent to terminate, or terminates such existing or successor firm power sales contract with BPA; or
 - (5) becomes insolvent, files a petition for bankruptcy or reorganization, or assigns substantially all assets to creditors.
- (c) Orcas shall not be allowed a completion period for Work in Progress Measures beyond the Effective Date of a notice of termination for a termination under section 6(b).
- (d) If this Agreement is terminated in accordance with section 6(b), Orcas shall be liable for all payments for Work in Progress to Consumers and shall pay a reimbursement charge to BPA. The reimbursement charge shall be calculated by BPA using the following formula:

$$R = P*(T-A) \div T$$

Where:

R = Reimbursement to BPA;

P = Total BPA payments to Orcas for Implementation Costs to the termination date of this Agreement;

A = Sum of the Energy Savings from all Completed Units for the full Measure life from the date of BPA's payment; and

T = Sum of the Energy Savings from all Completed Units from the date of termination of this Agreement through the remaining life of the Completed Units.

The following conditions apply to the reimbursement charge.

- (1) Energy Savings shall be consistent with the Measure life in the PTR system.
- (2) BPA shall present an invoice to Orcas for payment calculated pursuant to section 6(d).
- (3) Orcas may reimburse BPA by either:
 - (A) making a lump sum payment within 30 calendar days of the date of BPA's invoice; or
 - (B) making no more than three consecutive equal monthly payments, with the first payment due within 30 days of the date of BPA's invoice and each successive payment is due 30 days after the last due date.
- (4) If Orcas reimburses BPA by installments, pursuant to section 6(d)(3)(B), then BPA shall charge interest at the prime rate (as listed in the Money Rates section of the Wall Street Journal) on the date of BPA's notice of termination under section 6(b). BPA shall calculate interest for the period of time between the date of the first payment made by BPA to Orcas and the date of the last reimbursement payment made by Orcas to BPA pursuant to section 6(d)(3)(B).

7. STANDARD PROVISIONS

- (a) **Amendments**

Except where this Agreement explicitly allows one party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision to this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.
- (b) **Interpretations**

BPA may issue interpretations, determinations, and findings related to this Agreement that are binding on the Parties. Such decisions shall be provided to Orcas in writing. In administering this Agreement, only the written statements of BPA officials acting within the scope of their authority shall be considered to be official BPA statements.
- (c) **Assignment**

This Agreement is binding on any successors and assigns of the Parties. BPA may assign this Agreement to another Federal agency to which BPA's statutory duties have been transferred. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld.

BPA shall consider any request for assignment consistent with applicable BPA statutes.

(d) **Entire Agreement**

This Agreement, including documents expressly incorporated by reference, constitutes the entire Agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

(e) **Order of Precedence**

In the event of conflict, the body of this Agreement shall prevail over the Exhibit of this Agreement.

(f) **No Third Party Beneficiaries**

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

(g) **Severability**

If any term of this Agreement is found to be invalid by a court of competent jurisdiction, then such term shall remain in force to the maximum extent permitted by law. All other terms shall remain in force unless that term is determined not to be severable from all other provisions of this Agreement by such court.

(h) **Waivers**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

8. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law. Orcas and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

(a) **Judicial Resolution**

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth

Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Orcas or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section, then Orcas may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section.

(b) **Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 8(a) above, shall be subject to arbitration, as set forth below.

- (1) Orcas may request that BPA engage in binding arbitration to resolve any dispute. If Orcas requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 8 are met. BPA may request that Orcas engage in binding arbitration to resolve any dispute. In response to BPA's request, Orcas may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 8 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.
- (2) Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 8(a) above and is not resolved via binding arbitration, unless Orcas notifies BPA that it does not wish to proceed with non-binding arbitration.

(c) **Arbitration Procedure**

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitral dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

(d) **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the

determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

(e) **Finality**

- (1) In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.
- (2) In non-binding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to non-binding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 365 calendar days after the date the arbitration award was issued.

(f) **Arbitration Costs**

Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

9. UNCONTROLLABLE FORCES

The parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party's reasonable care, diligence and foresight, such party was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (a) strikes or work stoppage;
- (b) floods, earthquakes, or other natural disasters; terrorist acts; and
- (c) final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with section 10, Notices and Contact Information.

10. NOTICES AND CONTACT INFORMATION

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

- (a) delivered in person;
- (b) by a nationally recognized delivery service with proof of receipt;
- (c) by United States Certified Mail with return receipt requested;
- (d) electronically, if both Parties have the means to verify the electronic notice's origin, date, time of transmittal and receipt; or
- (e) by another method agreed to by the Parties.

Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change consistent with this section. Parties shall deliver notices to the following person and address:

If to Orcas:

Orcas Power and Light Cooperative
183 Mt. Baker Road
Eastsound, WA 98245
Attn: Randy J. Cornelius
General Manager
Phone: (360) 376-3512
FAX: (360) 376-3505
E-Mail: rcornelius@opalco.com

If to BPA:


Bonneville Power Administration
P.O. Box 3621 - KLK-1
Portland, OR 97208
Attn: Sheila Gardner
Phone: (503) 230-5991
FAX: (503) 230-3380
E-Mail: sdgardner@bpa.gov

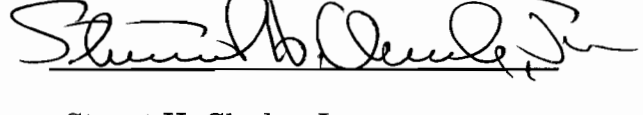
11. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

ORCAS POWER AND LIGHT
COOPERATIVE

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By 

By 

Name Randy J. Cornelius
(Print / Type)

Name Stuart H. Clarke, Jr.
(Print / Type)

Title General Manager

Title Senior Account Executive

Date 8/18/09

Date July 29, 2009

(PSW/Seattle-S:\PM\CUST_SHC\OR\EE_2009_ECA_#11092\Or_11092_20090729_Contract_Final.doc) 7/29/2009

Revision No. 11, Exhibit A
IMPLEMENTATION BUDGET
Effective on October 16, 2013

This revision subtracts \$88,310.00 dollars from the Implementation Budget.

1. IMPLEMENTATION BUDGET

(a) Implementation Budget Amount

BPA shall provide \$393,270.00 dollars (the Implementation Budget) for the implementation of Conservation Measures. Orcas may invoice BPA up to this total Implementation Budget for Completed Units installed.

(b) Implementation Budget Review

BPA shall periodically review Orcas' activities. In consultation with Orcas and after providing three months written notice, BPA may reduce the Implementation Budget. BPA shall take into account factors that Orcas believes will affect future rates of expenditure. If BPA reduces the Implementation Budget, BPA shall revise this Exhibit and send the revised Exhibit to Orcas. However, if requested by BPA, Orcas shall provide a list of potential deemed Measures and custom projects to BPA. Upon receipt of such a list, BPA shall not reduce the Implementation Budget below the level needed to:

- (1) meet all the estimated costs of deemed Measures and custom projects either approved by BPA, or custom project proposals that are under review by BPA; and
- (2) cover the estimated cost associated with all deemed Measures and custom project proposals that have been presented to Orcas by any Consumer, and that, in the opinion of Orcas have a high likelihood of gaining Orcas and BPA approval.