

PUBLIC UTILITY DISTRICT NO. 1

of Whatcom County

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AGENDA ITEM # 7
FEBRUARY 28, 2017

Memo

To: Commissioners Kenner, McClure and Murphy
From: Brian Walters – Director of Utility Operations
Date: February 28, 2017
Re: Approve Interlocal Agreement with Public Utility District No. 1 of Clallam County

Requested Action – APPROVE INTERLOCAL AGREEMENT WITH PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY AND AUTHORIZE THE DISTRICT’S GENERAL MANAGER TO EXECUTE THE AGREEMENT.

Background – Public Utility District No. 1 of Clallam County (“Clallam PUD”) has requested from the District a transfer of a portion of the District’s remaining BPA Energy Efficiency Investment Program (“EEI”) budget for BPA’s fiscal year 2016-17. The District has sufficient budget remaining to accommodate Clallam PUD’s request. The transfer is a paper transaction with no actual funds provided to Clallam PUD. The District has previously entered into similar arrangements with the cities of Blaine and Sumas. The Interlocal Agreement, if approved, is the document enabling the District to legally transfer BPA allocated EEI budget to Clallam PUD. The amount of the requested transfer is \$150,000, as detailed in Exhibit C.

Clallam PUD, like the District, buys power from BPA and receives an allocation of the BPA EEI budget. The PUD offers several programs and implements projects involving residential, commercial, and industrial customers. Clallam PUD has exhausted its EEI budget for FY 2016-17 and is currently expending approximately one million dollars per month on energy efficiency programs and projects.

Should Clallam PUD request transfers in the future of the EEI program budget, it will be accomplished through Amendments to Exhibit C.

If the transfer of EEI budget to Clallam PUD is approved, then the District will have approximately \$275,000 remaining EEI budget for use through September 30, 2017. This remaining budget amount is sufficient to cover the District’s anticipated energy efficiency efforts for the remainder of BPA’s 2016-17 rate period and to accommodate any transfer requests from the cities of Blaine and Sumas. The District will receive another EEI budget allocation for BPA’s FY 2018-19 rate period, starting October 1, 2017.

Fiscal Impact – If the Interlocal Agreement is approved, it will have no fiscal impact on the District’s 2017 annual budget.

Recommended Action – APPROVE INTERLOCAL AGREEMENT WITH PUBLIC UTILITY DISTRICT NO.1 OF CLALLAM COUNTY AND AUTHORIZE THE DISTRICT’S GENERAL MANAGER TO EXECUTE THE AGREEMENT.

**INTERLOCAL AGREEMENT
BETWEEN
PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY
AND
PUBLIC UTILITY DISTRICT NO.1 OF CLALLAM COUNTY
FOR SHARING OF
ELECTRIC SYSTEM RELATED SERVICES**

THIS INTERLOCAL AGREEMENT (the "Agreement") is made this _____ day of February 2017, between Public Utility District No. 1 of Whatcom County, a Washington municipal corporation (hereinafter "Whatcom PUD"), and Public Utility District No. 1 of Clallam County, a Washington municipal corporation (hereinafter "Clallam PUD"). Whatcom PUD and Clallam PUD are jointly referred to herein as (the "Parties") and individually as ("Party").

WHEREAS, Whatcom PUD and Clallam PUD are authorized to engage in the provision of electric energy supply and services to wholesale and retail customers; and

WHEREAS, Whatcom PUD and Clallam PUD are authorized to construct and operate facilities necessary to generate, transmit, and/or distribute electric energy within their respective service areas; and

WHEREAS, the Parties have a common interest in sharing resources, when feasible, for the cost-effective delivery of electric energy related services to their respective customers; and

WHEREAS, the Parties are both power supply and transmission customers of the Bonneville Power Administration; and

WHEREAS, it is in the public interest for the Parties as public entities to work in a cooperative manner; and

WHEREAS, the Parties desire to enter into this Agreement under the terms and conditions of Chapter 39.34 RCW (entitled the Interlocal Cooperation Act);

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Whatcom PUD and Clallam PUD agree as follows:

1.0 PURPOSE.

The purpose of this Agreement is to establish procedures whereby the Parties can combine, share, and use their respective skills and assets, thereby expediting their respective receipt and delivery of electric energy and related services to customers within their respective service areas. The cooperative efforts enabled by this Agreement are intended to reduce the cost of electric system planning, construction, and operation over what would otherwise be achieved if the Parties acted independently. Further, this Agreement enables a sharing of benefits available to each Party as a wholesale customer of the Bonneville Power Administration ("BPA").

2.0 DECISIONS.

All decisions under this Agreement shall be by consensus of the Parties, subject to the financial, technical, and legal limitations of both Parties. In the event that the Parties are unable to agree upon a means of undertaking any proposed action pursuant to this Agreement, then either Party shall have the unilateral right to reject such means, without contributing additional time or other resources to the further negotiation thereof.

3.0 GENERAL SCOPE OF SERVICES.

The services to be provided under this Agreement are limited in scope to the transfer from either Party to the other of a portion of either Party's BPA conservation budget, also referred to as the EEI budget. Such budget is determined by BPA through a rate setting process and allocated among each of BPA's power supply customers for each two year BPA power rate period. The allocated budget is available to customers to reimburse them for a portion of the cost of qualifying conservation (i.e. energy efficiency) programs and projects customers implement.

3.1 EXHIBIT A – TRANSFERS

Any transfer of BPA conservation funds as agreed to by the Parties shall be as described on Exhibit A, attached hereto and incorporated herein by this reference. Any revision to the transfer amount and/or conditions on such transfers shall be by amendment to Exhibit A.

4.0 COMPENSATION FOR SERVICES.

For the scope of services described above, there is no compensation by either Party to the other.

5.0 TERM.

This Agreement shall commence as of the date entered in the above first paragraph of this Agreement and shall continue until day 31 of the month of December 2023 unless either Party terminates this agreement by providing written notice to the other Party, not less than 30 days prior to the date such party desires the termination of the Agreement to become effective. Either Party may require that the terms and conditions of this Agreement be re-negotiated by providing written notice to the other Party, not less than 30 days prior to the date such party desires the modification to the Agreement to become effective. A notice of re-negotiation shall not be a notice of termination; however, nothing prevents a party from delivering both a notice of re-negotiation and a notice of termination.

If the Agreement is terminated, in accordance with the provisions of this section 5, then the Parties agree to negotiate in good faith to unwind the obligations entered into under this Agreement. If the Parties cannot agree to a resolution of the obligations entered into within ninety days of the termination date of this Agreement, then the Parties agree to submit to binding arbitration, as set forth in Section 9.7 below.

6.0 CONTACT PERSONS.

The following persons, referred to as Contact Person(s), are responsible for the administration of this Agreement for each Party and have the authority to execute Task Orders on behalf of their Party under this Agreement:

For Whatcom PUD: General Manager
For Clallam PUD: General Manager

or such other persons as may be specified from time to time in writing by either Party.

7.0 RELATIONSHIPS OF THE PARTIES, RELEASE AND INDEMNIFICATION.

The Parties agree that they are each independent public entities operating pursuant to the terms and conditions of this Agreement. No agent, employee, or representative of a Party to this Agreement shall be deemed to be an agent, employee, or representative of any other party for any purpose. To the extent permitted by law, each Party remains solely and entirely responsible for the acts of its respective staff performing services for the other Party under this Agreement.

- 7.1 *Release by Clallam PUD.* To the extent permitted by law, Clallam PUD hereby releases Whatcom PUD, its successors and assigns, Directors, Commissioners, officers, employees, agents, and representatives from any and all claims, losses, injuries, harm, liabilities, damages, costs, charges and expenses including all reasonable and necessary attorney's fees incurred in connection with Whatcom PUD and its employees' performance under this Agreement.
- 7.2 *Release by Whatcom PUD.* To the extent permitted by law, Whatcom PUD hereby releases Clallam PUD, its successors and assigns, Directors, Commissioners, officers, employees, agents, and representatives from any and all claims, losses, injuries, harm, liabilities, damages, costs, charges and expenses including all reasonable and necessary attorney's fees incurred in connection with Clallam PUD and its employees' performance under this Agreement.
- 7.3 *Indemnification.* Each Party, as an indemnitor, agrees to protect, defend, hold harmless, and indemnify each other Party from and against all third party claims, suits, and actions arising from the intentional or negligent acts or omissions of such indemnitor, its agents, or employees in the performance of this Agreement.

8.0 EXTENT OF AGREEMENT AND MODIFICATIONS.

This Agreement, together with the Exhibits and Addenda as may be added upon approval of both Parties, contains all of the terms and conditions agreed upon by the Parties. The Parties agree that there are no understandings, oral or otherwise, modifying or adding to this Agreement. No amendments, changes, or modification of this Agreement shall be valid or binding upon either Party unless such amendment, change, or modification be in writing and executed by both Parties.

9.0 MISCELLANEOUS PROVISIONS.

- 9.1 *No waiver.* The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.
- 9.2 *Applicable Law.* This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Washington, except to the extent such laws may be preempted by the laws of the United States of America.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives all as of the day and year first above written.

PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY

Stephan Jilk
General Manager

Date

ATTEST:

PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY

Doug Nass
General Manager

Date

ATTEST:

EXHIBIT C

BPA EEI BUDGET TRANSFERS

This Exhibit C is attached to and by this reference incorporated into the Interlocal Agreement between Public Utility District No.1 of Whatcom County (“Whatcom PUD”) and Public Utility District No. 1 of Clallam County (“Clallam PUD”) (collectively referred to as the “Parties”).

1.0 Budget Transfer – BPA FY 2017

Subject to Bonneville Power Administration (“BPA”) approval, Whatcom PUD and Clallam PUD agree for each Party’s respective BPA fiscal year (FY) 2017 as follows:

Whatcom PUD and Clallam PUD agree to request that BPA transfer ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) of BPA’s fiscal year 2017 Energy Efficiency Incentive (EEI) program budget funds, which were previously allocated to Whatcom PUD, to Clallam PUD. This transfer does not involve any actual monetary payment by Whatcom PUD to Clallam PUD, nor is Whatcom PUD obligated to make any payment to Clallam PUD. Rather, it is a joint request to BPA to re-allocate a portion of the BPA EEI program budget funds allocated to Whatcom PUD for FY 2017 to Pacific PUD.

2.0 Conditions on Transfer

For this specific transfer of EEI program budget during BPA FY 2017 from Whatcom PUD to Pacific, there are no conditions on the transfer with the exception of BPA prior approval.

3.0 Amendments to Exhibit C

Should either Party request future fiscal year BPA conservation budget transfers from the other Party and such Party agrees, then it shall be by amendment to this Exhibit C, pursuant to written agreement of the Parties.

IN WITNESS WHEREOF, the Parties have caused this EXHIBIT C to the AGREEMENT to be executed by their duly authorized representatives all as of the day and year written above.

PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY

Stephan Jilk
General Manager

Date

ATTEST:

PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY

Doug Nass
General Manager

Date

ATTEST:
