

September 22, 2005

Service Area Agreement

between

Public Utility District No. 1 of Franklin County



and

Big Bend Electric Cooperative, Inc.



**Service Area Agreement
between
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and
Big Bend Electric Cooperative Inc.**

This Service Area Agreement by Big Bend Electric Cooperative, Inc. (the "Cooperative") and Public Utility District No. 1 of Franklin County, a municipal corporation in the State of Washington (the "District"), sometimes hereafter referred to collectively as "Parties" or individually as "Party", shall take effect when signed by both Parties, which both operate electric utilities in the State of Washington.

WITNESSETH:

WHEREAS, the District has been serving and serves its retail customers within Franklin County, Washington, and the Cooperative has been serving and serves its members within Adams and Franklin Counties, Washington; and

WHEREAS, RCW 54.48. et. seq., authorizes suppliers of electricity serving retail customers in adjoining service areas to enter into agreements with each other for the designation of boundaries and the establishment of procedures for extension of service; and

WHEREAS, the Legislature of the State of Washington in 1969, enacted RCW 54.48 et.seq. declaring at RCW 54.48.020 "that the duplication of the electric lines and service of public utilities and cooperatives is uneconomical, may create unnecessary hazards to the public safety, discourages investment in permanent underground facilities, and is unattractive, and thus is contrary to the public interest and ... that it is in the public interest for public utilities and cooperatives to enter into agreements for the purpose of avoiding or eliminating such duplication"; and

WHEREAS, in aid of the foregoing policy, RCW 54.48.030 authorizes public utility districts and cooperatives "to enter into agreements ... for the designation of the boundaries of adjoining service areas which each utility shall observe, for the establishment of procedures for orderly extension of service in adjoining areas not currently served by any such public utility or ... cooperative and for the acquisition or disposal by purchase or sale ... of duplicating utility facilities"; and

WHEREAS, pursuant to said legislative policy, the District and the Cooperative, in accordance with the terms of this agreement, desire to avoid duplication of their facilities, and encourage the orderly extension of service into areas not currently served; and

WHEREAS, the Parties wish to more clearly define their respective service area boundaries as shown on the map contained herein as Exhibit A and legal descriptions contained herein as Exhibit B; and

WHEREAS, the Parties wish to approve and include a list of "service exceptions" with regard to each Party's respective service territory contained herein as Exhibit C;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

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EXHIBITS

Exhibit A Map of Service Area Boundary between the Parties

Exhibit B Service Area Boundary Description

Exhibit C Service Area “Service Exceptions”

Section 1 DEFINITIONS

When capitalized and used in this agreement the following terms are defined as follows:

- 1.1 “Delivery Service” means the provision of electrical distribution functions by the utility, through poles, lines, facilities, and system operations, allowing the end use customer to be connected to a source of energy supply.
- 1.2 “Distribution Lines” means overhead and underground wires, poles, and equipment for the primary purpose of providing electrical service connection to the end use customer.
- 1.3 “Existing Customer” means an end use customer who is connected to the electrical Distribution Lines of either Party to this agreement at a particular location and any successor to the customer at the same location.
- 1.4 “New Customer” means a prospective new end use customer that does not have Delivery Service at a new location.
- 1.5 “Point of Use” means the location where electric power is used by an end use customer.
- 1.6 “Service Area” means the geographic areas totally or predominantly served by one utility, described and illustrated in Exhibits A and B to this agreement, where one of the Parties to this agreement has the exclusive right to provide Delivery Service to Existing or New Customers, regardless of distance from Distribution Lines of the utility.

Section 2 TERM AND TERMINATION

- 2.1 **Term.** Subject to the provisions for termination or revision as set forth in Section 2.2 or Section 13, the term of this agreement shall commence upon its approval and execution by the Board of Commissioners of Public Utility District No. 1 of Franklin County and the Board of Trustees of Big Bend Electric Cooperative, Inc. This agreement shall be in effect for a period of thirty (30) years, and shall continue thereafter unless terminated by either Party as provided below.
- 2.2 **Termination.** Either Party may terminate this agreement by giving the other Party notice in writing one hundred and eighty (180) days in advance of the desired termination date.

Section 3 DELIVERY SERVICE

- 3.1 **Delivery Service to Existing Customers – General Provisions.** As of the effective date of this agreement, each utility will continue to serve its Existing Customers in the other’s Service Area. Neither utility will extend its Delivery Service facilities within the Service Area of the other utility unless in accordance with Section(s) 3.2 and/or 3.3. All existing lines, as shown on attached Exhibit C,

which cross the boundary into the Service Area of the other utility, shall remain the property of the serving utility. Neither utility shall solicit requests for Delivery Service from an Existing Customer for the delivery of power to a Point of Use that is being served by the other utility.

3.2 Expansion of Delivery Service to Customers. Any proposal to extend the existing Distribution Lines of either utility to serve an Existing Customer in the Service Area of the other utility shall be deemed a new request to extend facilities and shall be subject to the terms of Section 3.3.

3.3 Service Area Exceptions – New Service Requests. Service Area exceptions that exist as of the effective date of this agreement are specified in Exhibit C. Upon receipt of any new request for service in the Service Area of the other utility, the receiving utility will forward all pertinent information relative to such request to the Manager of the serving utility, which shall have a period of sixty (60) days to determine whether or not it will furnish such service. The serving utility shall notify the other utility of its decision in writing within said 60-day period. Should serving utility determine to allow such service exception, the other utility may extend service upon mutual agreement between the Parties. Any new Service Area exception will be added to a revised Exhibit C.

Section 4 SERVICE AREA BOUNDARY

As of the effective date of this agreement, the Parties jointly agree to the Service Area boundary set forth on the map of Franklin County designated as Exhibit A.

Section 5 IMPACT ON PRIOR AGREEMENTS

This agreement supercedes any previous Service Area agreements, both written and verbal, that the Parties may have entered into under the authority of RCW 54.48.

Section 6 DISPUTE RESOLUTION

6.1 Any disputes arising under this agreement shall be resolved through arbitration as provided in this Section 6, except as may be otherwise expressly provided by Washington law. During the process of dispute resolution the Parties shall continue to perform under the terms of this agreement. Prior to any arbitration, the Parties agree to consult about any differences they may have arising from this agreement. If the Parties are unable to agree upon a resolution within ten (10) days, the Parties shall engage in arbitration. The Parties agree to arbitrate their dispute through the selection of a mutually acceptable neutral arbitrator. Written notice requesting arbitration shall name a proposed arbitrator. Consent to the selection of an arbitrator shall not be unreasonably withheld.

6.2 Upon receipt of written notice requesting arbitration, the receiving Party shall, in writing and within ten (10) days after the receipt of such notice, either agree to the proposed arbitrator or reject the proposed arbitrator and propose an alternate

arbitrator. If the proposed alternate arbitrator is rejected by the Party requesting arbitration, said Party will notify the Presiding Judge of Franklin County Superior Court for the State of Washington and request that a qualified arbitrator be appointed.

- 6.3 The arbitrator shall apply applicable provisions of Washington law, including those related to arbitration, in reaching a determination, which will be rendered within sixty (60) days after the arbitrator is selected by the Parties or appointed. The arbitrator shall issue a written statement to the Parties setting forth in reasonable detail the reasons for the determination.
- 6.4 The determination by the arbitrator shall be binding upon the Parties absent any appeal, which may proceed if there is an outstanding issue or mistake of law. Each Party shall bear its own costs and expenses for the arbitration, including attorney's fees and costs incurred in the arbitration for consultants and witnesses. The Parties shall share equally the cost of the arbitrator.

Section 7 HOLD HARMLESS

- 7.1 The District shall defend, indemnify and hold the Cooperative harmless from all claims, damages, losses, liability, and expenses arising from the negligent or other tortious acts or omissions of the District, its employees, agents, or contractors arising under this agreement.
- 7.2 The Cooperative shall indemnify and hold the District harmless from all claims, damages, losses, liability, and expenses arising from the negligent or other tortious acts or omissions of the Cooperative, its employees, agents, or contractors arising under this agreement.

Section 8 ASSIGNMENT

- 8.1 Each Party agrees that it shall not sell, assign or transfer its interests, rights or obligations under this agreement except as follows:
 - a) To any trustee, bank or secured party as security for bonds, letters of credit or other indebtedness.
 - b) To any corporation or other entity with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 8.2 In the event of any such assignment or transfer, the Party making the assignment shall provide the other Party with notice of the assignment or transfer not less than ten (10) days prior to the date of execution.
- 8.3 This agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties.

Section 9 OBLIGATIONS AND LIABILITIES ARE SEVERAL

The obligations and liabilities of the Parties under this agreement are several and are not joint. Neither Party shall be obligated or liable for any obligation or liability of the other Party. Neither Party shall have by virtue of this agreement any right, power or authority to incur any obligation or liability of, to act as the agent or representative of, or to otherwise bind the other Party.

Section 10 GOVERNING LAW

This agreement shall be interpreted, governed by, and construed under the laws of the State of Washington.

Section 11 WAIVERS

Except as agreed by the Parties, no provision of this agreement may be waived except as confirmed in writing. Any waiver at any time by a Party of its rights with respect to default under this agreement or with any other matter arising in connection herewith, shall not be deemed a waiver with respect to any subsequent default or matter. Either Party may waive any notice or agree to accept a shorter notice than specified in this agreement. Such waiver of notice or acceptance of shorter notice by a Party at any time regarding a notice shall not be considered a waiver with respect to any subsequent notice required under this agreement.

Section 12 INVALID PROVISION

- 12.1 The invalidity or unenforceability of any provision of this agreement shall not affect the other provisions hereof, and this agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 12.2 If any provision of this agreement is found to be invalid or unenforceable, or a substantial change in applicable federal, state or local law occurs, the Parties shall negotiate in a timely manner for purpose of amending the invalid or unenforceable provision, and/or making this agreement consistent with the applicable law.

Section 13 AMENDMENT

No change, amendment or modification of any provision of this agreement shall be valid unless set forth in a written amendment to this agreement signed by both Parties.

Section 14 INTERPRETATION OF AGREEMENT

The Parties agree that both Parties drafted this agreement, and that if any ambiguities arise in the later interpretation of this agreement, such ambiguities

shall not be construed against either Party as the sole drafter of the agreement.

Section 15 NOTICES

15.1 Any notice, demand, approval, proposal, consent, direction or request provided for in this agreement shall be effective from the date mailed or transmitted by facsimile or other means, and shall be directed as follows:

a) If to the District: Manager
Franklin PUD
PO Box 2407
Pasco, WA 99302-2407

b) If to the Cooperative: Manager
Big Bend Electric Cooperative, Inc.
PO Box 348
Ritzville, WA 99169-0348

15.2 Either Party may change its recipient of notice at any time by designating a new recipient by letter delivered to the other Party.

Section 16 SIGNATURE CLAUSE

Each Party hereto represents that it has the authority to execute this agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement in counterparts.

Public Utility District No. 1 of Franklin County

Big Bend Electric Cooperative, Inc.

By William Gordon
President and Commissioner

By John E. Holt
President and Trustee

Attest:
By Charles Holt
Secretary and Commissioner

Attest:
By James H. Person
Secretary and Trustee

Date: 9-27-05

Date: 9/22/05