

ORDER NO. 22-043

ENTERED Feb 10 2022

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2211

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Implementation of House Bill 2475.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on February 8, 2022, the Public Utility Commission of Oregon adopted the Administrative Hearings Division's recommendation in this matter. The AHD Report with the recommendation is attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in blue ink, appearing to read "Nolan Moser".

Nolan Moser
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: February 8, 2022**

REGULAR X CONSENT RULEMAKING EFFECTIVE DATE N/A

DATE: February 2, 2022

TO: Public Utility Commission

FROM: Nolan Moser

THROUGH: Michael Grant **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. UM 2211) Interim Agreements for HB 2475 Intervenor Funding

RECOMMENDATION:

Approve the attached agreement for interim funding for environmental justice and low-income organizations consistent with House Bill (HB) 2475. Approve the initial allocation funds, initial eligible organizations, and procedures for management of funding as outlined in this memo.

DISCUSSION:

Issue

Whether the Commission should authorize the implementation of interim funding agreements prior to (i) the development of a final intervenor funding agreement between the utilities and recipient groups and (ii) adoption of final HB 2475 intervenor funding rules in AR 652.

Applicable Rule or Law

On September 25, 2021, HB 2475 was enrolled into state law. As enrolled, HB 2475 took effect January 1, 2022. HB 2475 is legislation with two components. One component is designed to address issues associated with energy burden, and permits utilities and the Commission to take action to relieve energy burden for certain classes of customers. The second component of the legislation provides for intervenor funding for two distinct groups of advocates; those representing “environmental justice communities” and “low-income communities.”

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This legislation allows for up to \$500,000 in new annual intervenor funding to groups that represent the broad interests of low-income residential customers and residential customers that are members of environmental justice communities in regulatory proceedings conducted by the PUC related to public utilities that provide electricity or natural gas. The PUC is required to establish a process for organizations to access financial assistance and must evaluate and approve intervenor funding agreements.

Analysis

Background

Prior to the passage of HB 2475, intervenor funding was available only to groups that represented a broad class of customer interests. With the passage of HB 2475, two distinct categories of organizations are now eligible for funding, aside from those representing a broad customer class:

- Organizations that represent the interests of low-income residential customers
- Organizations that represent the interests of customers that are members of environmental justice communities.

These terms are also newly defined in the legislation:

“Environmental justice” means equal protection from environmental and health hazards and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality and play.

“Environmental justice communities” includes communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including but not limited to seniors, youth and persons with disabilities.

HB 2475 places a \$500,000 cap on the amount of funds that can be provided to these new categories of intervenors annually, across all utilities. For reference, the current annual allocation of funds to organizations representing broad customer interests, consistent with the Fourth Amended and Restated Intervenor Funding Agreement is roughly 1.2 million annually.

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Importantly, HB 2475 follows the model of Oregon's currently applicable intervenor funding statute. In that model, utilities and intervenors come to an agreement regarding the provision of funding, and the conditions for providing that funding. The agreement must then be approved by the Commission. The legislation also requires that the Commission promulgate rules that will allow effective implementation of these agreements.

Action to Implement HB 2475

The Commission has tasked the Administrative Hearings Division (AHD) to develop these new rules. In 2021, AHD completed the following tasks in an effort to implement the rules.

- Reviewed the legislation with advocates involved in the passage of HB 2475, or who are anticipated to request funding through HB 2475.
 - Through these conversations helpful feedback from advocates about the future rulemaking, and the design of future agreements was provided.
 - In discussion with advocates, the importance of interim intervenor funding was stressed.
- Developed and scheduled for 2022, a series of trainings for advocates that will explain Commission processes and provide valuable insight on effective advocacy and will explain access to intervenor funding.
- Worked with utilities to discuss and develop interim intervenor agreements.

Consistent with the schedule outlined for AR 652, the docket in which HB 2475 rules will be developed, final rules are expected to be in place July of this year. Accordingly, in order to have funding available to advocates prior to the finalization of these rules, interim funding agreements are necessary.

Summary of Interim Funding Issues and Recommendations

AHD gathered utility representatives together to review interim funding options and discuss next steps. Portland General Electric (PGE) provided draft discussion

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agreements for consideration, and worked with utilities regarding subsequent changes to the document. We thank PGE for its support and coordination with the utility group.

After review and discussion with utilities, we have developed the following recommendations.

- Approve the interim agreements as drafted by utilities.
- Designate the below listed organizations as eligible for funding.
- Approve a definition for proceedings that are eligible for funding.
- Approve the allocation of funds among the utilities and under the standard interim funding agreement as described in this memo.

Below we describe the common elements in the individual agreements that the utilities have authored. We describe the role of the Commission in confirming eligibility, approving budgets, and authorizing distributions to organizations. This memo also reviews eligibility criteria, and lists specific groups and dockets that should be eligible for funding in the near term.

Standardized Utility Interim Funding Agreements

PGE, PacifiCorp, Northwest Natural, Avista, Idaho Power, and Cascade have all agreed to utilize the attached standard interim funding agreement, which will simplify process for intervenors to receive funding before a final intervenor funding agreement and rules can be finalized and adopted. These agreements are bilateral contracts that are signed between the utility and individual intervenors. The agreement includes the following core elements:

- Intent to Pursue Funding

The agreement contemplates intervenors instigating the funding process by requesting in a petition to intervene (in a contested case) or through a notice to participate (to be filed as part of a funding requested in an undocketed process or a non-contested case) to be funded for participation. The Commission will review and issue a decision on this request.

- Budgets

The standard agreement outlines a procedure for the development and submission to the utility and the Commission of a proposed budget for the work of an eligible organization in the docket. The proposed budget must include a general description of work to be performed, the budget for staff, operational, and attorney support, and any

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estimated costs of consultants or expert witnesses. For contested cases, budgets must be filed within 30 days of when a prehearing conference is held. Ultimately, the Commission or its delegated representative will review and approve budgets, consistent with these agreements. The agreements include criteria for Commission review of budgets.

- Commission Decision on Petition

The Commission will act on the petition for intervention for notice of participation. In doing so, the Commission will (a) designate the matter as an “Eligible Proceeding” and (b) determine that the participant qualifies as an “Eligible Recipient,” having demonstrated in its petition that it qualifies under HB 2475, and that it represents the interests of residential customers of the applicable utility.¹

- Disbursements

The agreements also describe how organizations will make requests for payment. The request must include specific elements which demonstrate authorized expenses. The Commission reviews these requests, and then authorizes payment. Utilities commit to disburse funds within 30 days of approval of the request.

- Recovery of Funds

The agreement states that the Commission will authorize the utilities to recover amounts paid to intervenors through the agreements. The agreement describes the individual deferral and amortization provisions proposed by all the utilities.

Division of Funds amongst Utilities and during Interim Period and Management of Overall Budgets

As part of the discussion over interim agreements, distribution of funds amongst utilities was discussed. Utilities propose to allocate the full \$500,000.00 for use with these interim agreements. This does not mean that the full amount will be allocated before

¹ The Commission may reference its order regarding this memo as justification as determining that any of the groups listed below are eligible in specific proceedings.

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final rules are developed; however, it does provide certainty for utilities and intervenors alike regarding the total per-utility distribution of funds over the course of the year.

Utilities reviewed current intervenor funding agreement allocations and discussed other considerations related to meaningful opportunities to participate in proceedings. Based on this review, we propose the following distribution:

- PGE: \$141,667.00
- PacifiCorp: \$141,667.00
- Idaho Power: \$25,000.00
- Northwest Natural: \$141,667.00
- Avista: \$25,000.00
- Cascade: \$25,000.00

The Commission will track, review, and manage these individual and collective budgets. For eligible dockets (discussed in more detail below) that are issue based and affect multiple utilities, the Commission will allocate funds pro-rata consistent with the above allocation. The Commission will apply this pro-rata allocation to budgets of utilities subject to the regulation of the individual docket. The standard interim funding agreement caps the amount of funding made available under interim funding agreements at 80% of the annual funding for each utility.

Criteria for Eligibility

Eligibility criteria will be consistent with statute. As discussed above, the statute describes “environmental justice communities,” and makes funding available to groups that represent the interests of customers in these communities. As explained in the legislation, “environmental justice communities” includes communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including but not limited to seniors, youth and persons with disabilities.

The legislation and Commission rules do not define “low-income residential customers,” but similar terms have been defined by other agencies. Specifically, the Oregon

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Housing and Community Services Department have issued rules that govern Low-Income Weatherization Assistance Programing. This programing provides support to agencies and households for the purpose of investing in energy conservation measures to relieve the energy burden of low-income households.

In Chapter 813 of the Oregon Administrative Rules, the Oregon Housing and Community Services Department has promulgated the following definitions:

(3) "Household" means any individual residing alone, a family with or without children, or a group of individuals who are living together as one economic unit and purchase residential energy in common.

(4) "Low-income household" or "Low-income" means a household with income that is at or below 200% of the federal poverty level.²

Accordingly for the interim period, we propose to utilize this low-income definition. Given these definitions, organizations eligible for HB 2475 funding are organizations that either:

- represent the interests of residential households that are predominantly at or below 200% of the federal poverty level, or
- represent the interests of customers that are members of environmental justice communities as described in statute.³

In reviewing whether or not to approve an individual agreement between a utility and an organization, the Commission or its delegated representative will consider what community of customers an organization serves, and how that organization is accountable to those communities. The Commission will consider the environmental justice community definition as expressed in statute. In the course of review and decision regarding eligible organizations, the Commission may further describe

² See OAR 813-205-0005

³ We will also consider eligible for funding any group that would qualify under a future definition, adopted by the Commission, in any docket or separate rulemaking proceeding. For example, should the Commission adopt a definition of low-income customer for disconnect or late fee protection rules, a group that represents such customers may qualify under these interim agreements.

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conditions for eligibility on a case by case basis, as it interprets HB 2475 and applies it to the individual agreements.

Groups Preliminarily Eligible

The following organizations below have been in contact with AHD and utilities. We recommend that they be found eligible under HB 2475 and the utility agreements as described below. We note that under the procedures outline in the agreement attached, these groups will still need to request eligibility and enter into a separate interim funding agreement for each proceeding in which HB 2475 funding is requested; however by approving eligibility here future individual docket determinations may rely on the order approving this memo to justify a determination of eligibility.

- The Coalition of Communities of Color (CCC)

CCC is an alliance of culturally-specific organizations with representation from African, African American, Asian, Latino, Middle Eastern and North African, Native American, Pacific Islander, and Slavic communities. The CCC supports a collective racial justice effort to improve outcomes for communities of color through policy analysis and advocacy, environmental justice, culturally-appropriate data and research, and leadership development in communities of color. For over a decade, CCC has built intentional relationships and deep partnerships across communities of color and community-based organizations in Oregon. CCC works to reflect its commitment to advancing racial equity by centering the expertise of low-income communities of color on the frontlines of climate change, and working towards solutions that provide benefits to underserved communities while avoiding harm.

- Rogue Climate

Rogue Climate was founded in 2013 in the Rogue Valley of Southern Oregon. This organization serves and works alongside Southern Oregon and South Coast communities most impacted by climate change, including low-income, rural, youth, and communities of color, by organizing for clean energy, sustainable jobs, and a healthy environment. Rogue Climate does so through leadership development, political

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education, fostering conversations, and campaigns for policies that benefit these environmental justice and low-income communities.

- The Community Action Partnership of Oregon (CAPO)

CAPO works to alleviate the high energy-burden of low-income Oregonians by providing energy assistance and energy efficiency services. Additionally, CAPO's advocates and is involved in national, local, and state energy policy as a representative of vulnerable communities.

- Community Energy Project (CEP)

CEP is a 501(c)(3) community based organization that believes everyone deserves a safe, healthy and efficient home, regardless of income. CEP achieves this by providing direct in-home safety repairs, weatherization, and energy efficiency upgrades for vulnerable and underserved populations. CEP clients include seniors, people with disabilities, women, people experiencing low income, people of color, and other historically marginalized groups. CEP's work is centered in effective community engagement and includes education and training. On a three-year average, 68% of CEP clients are people of color, 95% are low-income and 74% are women. All clients have disproportionately high safety and energy bill burdens, which compromise their ability to remain housed. CEP primarily and historically serves Multnomah County, but will soon be working in Clackamas County and has a strategic goal to expand geographically. CEP programming has helped thousands of households live more comfortably and use less energy as a result of the education and services provided.

Eligible Dockets

Consistent with the standard interim funding agreements, non-complaint contested cases, rulemakings, and non-contested dockets that affect the applicable utility and its low-income residential customers and environmental justice communities are eligible for funding. Additionally, named, non-docketed Commission led processes addressing issues that affect the applicable utility and its low-income residential customers and

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environmental justice communities will be eligible under these agreements. Participation in Integrated Resource Plan dockets will also be eligible for funding.

Example dockets include but are not limited to:

- UM 2114: COVID Impacts and Disconnection Protection (addresses many issues relevant to low-income customers regarding bill payment and disconnection)
- UM 2211: Umbrella Docket for Differential Rates and Programs under HB 2475
- ADV 1365: PGE Schedule 18 interim Income Qualified Bill Discount
- UM 2164: Transportation Electrification Framework (includes targeted offerings for underserved communities)

PROPOSED COMMISSION MOTION:

Accept the recommendation of AHD and approve interim funding agreements as outlined in this memo.

**Commission Approved Form of
Interim Funding Agreement (HB 2475)¹**

This HB 2475 Interim Funding Agreement (“Agreement”) is entered into by and between _____ (“Utility”) and _____, a non-profit corporation (“Recipient”)(individually, a “Party” and collectively, the “Parties”), in Docket No. _____ (“Docket”) or proceeding otherwise designated as _____ (the “Proceeding”).

WHEREAS, HB 2475 authorized the Public Utility Commission of Oregon (the “Commission”) to establish a process for evaluating agreements to provide for financial assistance to organizations that represent the interests of low-income residential customers or the interests of residential customers that are members of environmental justice communities;

WHEREAS, Recipient has submitted a Petition to Intervene in Docket No. _____ or otherwise provided its Notice of Intent to participate in another designated Commission proceeding (_____) affecting the interests of this Utility and its residential customers;

WHEREAS, the Commission, by Order _____, has approved the participation by Recipient in the matter as an eligible recipient (“Eligible Recipient”) meeting the requirements under HB 2475 and authorized by the Commission to receive funding made available pursuant to HB 2475, and has determined that the matter is an Eligible Proceeding for which funding is available under this Agreement. The Commission may determine a proceeding to be an “Eligible Proceeding” if it is a proceeding before the Commission that affects the Utility and its low-income residential customers or environmental justice communities, including, but not limited to, rulemaking proceedings, declaratory ruling proceedings, contested case proceedings (e.g. rate cases), integrated resource plans and power or purchased gas adjustments. Eligible Proceeding does not include a formal complaint proceeding in which the Utility is a party;

WHEREAS, the Utility has made available \$ _____ during the calendar year 2022, in total, for distribution to all Eligible Recipients in all Eligible Proceedings, in accordance with HB 2475, under interim funding agreements; and

WHEREAS, Utility intends to fund Recipient’s participation in the Proceeding pursuant to the terms of this Agreement.

NOW, THEREFORE, subject to the terms and conditions set forth in this Agreement, Utility and Recipient agree as follows:

I. EFFECTIVE DATE

¹ By Order _____, the Commission approved the allocation of available HB 2475 funding among affected Utilities for calendar year 2022 and capped the amount of such HB 2475 funding that may be made available pursuant to interim funding agreements at 80% of such allocated amount. Utility’s designated annual allocation of HB 2475 funding is \$ _____ up to \$ _____ of which may be made available pursuant to interim funding agreements. This Order also approved this form of Interim Funding Agreement for use by all utilities.

This Agreement shall be effective on the date the Agreement is signed by both Parties.

II. PROPOSED BUDGETS

- a. **Submission of Proposed Budgets.** Eligible Recipients may submit to the Commission a proposed budget (“**Proposed Budget**”) for funds (“**HB 2475 Grant Funds**”) for its participation in this Proceeding. The Proposed Budget must include (a) a statement of work to be performed by the Recipient for which the Recipient is seeking funding; (b) a description of the areas to be investigated and addressed by Recipient; (c) a budget showing estimated attorney fees, which may include the cost for appropriate support staff and operational support; and (d) a budget showing estimated consultant fees and expert witness fees, which may include the cost for appropriate support staff and operational support. The deadline for filing a Proposed Budget shall be 30 days after the prehearing conference at which the schedule for the proceeding is established or by such other date as the Commission designates.
- b. **Commission Review and Approval of Proposed Budgets.** Within 30 days of receiving a Proposed Budget in this Proceeding, the Commission will make best efforts to review the sufficiency of the request and act upon it. The Commission may approve or deny, in whole or in part, Recipient’s Proposed Budget based on any of the following factors: (a) the breadth and complexity of the issues; (b) the degree to which any policy issues affect the interests of low-income residential customers or the interests of residential customers that are members of environmental justice communities; (c) the procedural schedule; (d) the dollar magnitude of the issues at stake; (e) the participation of other parties that adequately represent the interests Recipient seeks to represent; (f) the qualifications of the party and experience before the Commission; (g) the level of available funds remaining for the year under HB 2475; and (h) other Eligible Proceedings in which other stakeholders may seek additional HB 2475 Grant Funds. The Commission may not approve a Proposed Budget if approval would cause all HB 2475 Funding Grants to exceed the Utility’s cap identified above for funding made available pursuant to interim funding agreements.
- c. **Proposed Budget – Commission Amendments.** The Commission may amend an approved Proposed Budget if it finds that there has been a material change in the breadth and complexity of the issues, the significance of the policy issues, or the dollar magnitude at stake, such that the initial approved Proposed Budget is no longer warranted. If the Commission amends an approved Proposed Budget, it will provide notice to the Recipient and afford an opportunity to comment and provide a revised budget. A Commission amendment of an approved Proposed Budget shall take effect on a prospective basis only.
- d. **Proposed Budget – Recipient Amendments.** At any time during this Proceeding, Recipient may file to amend its budget and request additional funding due to unforeseen changes in the scope or complexity of issues, positions taken by other parties, changes in the schedule of the case, or other good cause. The Commission may seek additional information concerning a Proposed Budget amendment. The Commission will make best efforts to act upon the request within 21 days of receiving the proposed amendment or, if

applicable, any supplemental information provided in response to the Commission's request.

III. HB 2475 GRANT FUNDS DISBURSEMENT

- a. **Total Funds.** The maximum funds the Utility may disperse to Recipient in this Proceeding shall not exceed the amount approved by the Commission in connection with a Proposed Budget submitted by Recipient in this Proceeding.
- b. **Request for payment.** In order to receive payment of the HB 2475 Grant Funds approved by the Commission and available under this Agreement, Recipient must submit a request for payment (“**Request for Payment**”) to the Commission with a copy sent to the Utility. The request may be made at any time during this Proceeding but no later than 60 days after the Commission’s final order issued in this Proceeding. The Request for Payment must:
 - (1) Itemize the expenses, payees and hourly rates for amounts to be reimbursed, including billing details, and including separately identified amounts for consultant or expert witness fees and travel expenses;
 - (2) Demonstrate that the expenses are reasonable and are directly attributable to issues and positions pursued on behalf of a particular customer class and consistent with the intervenor's proposed budget;
 - (3) Specify whether the Request for Payment is for a progress payment or final payment in full.
- e. **Commission Review and Approval.** Within 30 days of receiving a Request for Payment, the Commission will make best efforts to review the sufficiency of the request and act upon it. The Commission may disallow a request for payment, in whole or in part, if it determines that the request seeks reimbursement for expenses that are inconsistent with Recipient’s proposed budget or not reasonably related to Recipient’s representation or advocacy before the Commission in this Proceeding. The Commission will notify Recipient and the Utility of the amount of payment approved. The Commission may not award a Request for Payment in excess of the Proposed Budget, nor may the Commission award a Request for Payment if the award would cause all HB 2475 funding payments by Utility under interim funding agreements to exceed the Utility’s cap identified above for funding made available pursuant to interim funding agreements.
- c. **Delegation.** The Commission may delegate its authority under Sections II and III of this Agreement and the authority to approve Eligible Recipients and identify which proceedings are Eligible Proceedings to any Commission employee or category of employees. If the Commission delegates this authority, the delegate’s decisions may be appealed by either party to the Commission for resolution.

d. **Utility Disbursement.** The Utility will disperse the HB 2475 Grant Funds consistent with the Commission's direction within 30 days of receiving the notice of approval from the Commission.

IV. RECOVERY OF HB 2475 FUNDS

The Commission shall allow the Utility to recover in rates all amounts paid to Recipient under this Agreement. If the Utility seeks rate recovery through a deferred account, the account and amortization of the account shall be exempt from the amortization caps and earnings test set forth in subsections 5, 6, 7, 8 and 10 of ORS 757.259, as such subsections may be amended from time to time, and shall not be included in any calculation of the amortization cap for other deferred accounts. Amounts in any deferred account under this Section IV will include carrying costs at the Utility's authorized cost of capital until amortization of the deferred amounts is approved by the Commission. Deferred amounts being amortized will accrue interest as approved by the Commission, currently the modified blended treasury rate. The timing and amortization period for recovering of such HB 2475 Grant Funds will be left to the discretion of the Utility subject to Commission approval.

V. AUDIT

The Commission may audit the relevant, not privileged, records of Recipient as necessary to verify the accuracy of the information provided in the request for payment or the request under Section III.

VI. TERM

Unless terminated sooner, this Agreement shall expire on the later of (i) two years after the Effective Date or (ii) sixty business (60) days after the Commission issues a final order in this Proceeding in which the Commission has approved a Proposed Budget. The term of this Agreement shall not be affected by rules established by the Commission after the Effective Date.

VII. MISCELLANEOUS

- A. **Limitation of Liability.** IN NO EVENT SHALL PGE BE LIABLE UNDER THIS AGREEMENT TO RECIPIENT OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS

BASED. PGE'S TOTAL AGGREGATE LIABILITY UNDER AGREEMENT SHALL NOT EXCEED THE TOTAL DCF FUNDING AMOUNT RECEIVED BY RECIPIENT UNDER THIS AGREEMENT.

- B. Severability.** If any provisions of this Agreement are for any reason held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement should be construed to give effect as nearly as possible to the intent of the parties. The parties agree to work together to replace such invalid, illegal or unenforceable provision as promptly as possible with a provision that is valid, legal and enforceable.
- C. Jury Waiver.** To the fullest extent permitted by law, each of the Parties waive any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each Party further waives any right to consolidate, or to request the consolidation of, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.
- D. Controlling Law and Venue.** THE AGREEMENT SHALL BE INTERPRETED IN ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF OREGON WITHOUT REGARD TO CHOICE-OF-LAW PRINCIPLES. RECIPIENT IRREVOCABLY CONSENTS TO THE JURISDICTION OF THE COURTS OF THE STATE OF OREGON OR OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF OREGON FOR ANY ACTION, SUIT, OR PROCEEDING IN CONNECTION WITH THE AGREEMENT AND WAIVES ANY OBJECTION THAT RECIPIENT MAY NOW OR HEREAFTER HAVE REGARDING CHOICE OF FORUM. THE PARTIES AGREE THAT THE COMMISSION MAY ENFORCE THE TERMS OF THIS AGREEMENT AND RESOLVE ANY DISPUTE ARISING UNDER THIS AGREEMENT. THE COMMISSION AND THE STATE AND FEDERAL COURTS OF THE STATE OF OREGON SHALL BE THE EXCLUSIVE VENUES FOR RESOLVING DISPUTES UNDER THIS AGREEMENT.
- E. No Third Party Beneficiaries.** This Agreement is intended solely for the benefit of the parties hereto. Nothing in the Agreement shall be construed to create any liability to or any benefit for any person not a party to the Agreement.
- F. Termination.** Either party may immediately terminate this Agreement on written notice to the other party if the other party: (i) is in material breach of this Agreement where the breach is incapable of remedy; or (ii) is in material breach of this Agreement where the breach is capable of remedy and fails to cure that breach within 30 days after receiving written notice of such breach.

- G. **Force Majeure.** Neither Party will be liable for failure or delay in performance to the extent caused by circumstances that were (i) not reasonably foreseeable and (ii) beyond its reasonable control.
- H. **No Waiver.** Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.
- I. **Dispute Resolution.** The parties agree to confer and make a good faith effort to resolve any dispute arising under this Agreement before bringing an action or complaint to the Commission or any court.
- J. **Counterparts.** The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.
- K. **Assignment.** Neither party may assign this Agreement without the written consent of the other party.
- L. **Amendments.** Any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.
- M. **Entire Agreement.** This Agreement states all terms agreed between the parties and supersede all other agreements between the parties relating to its subject matter. In entering into this Agreement neither party has relied on, and neither party will have any right or remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly stated in this Agreement.
- N. **Successors and Assigns.** This Agreement shall be binding on the parties' successors, and insofar as assignment is permitted, on the parties' assignees.

The Parties, through their duly authorized representatives, have executed this Agreement as of the dates indicated below.

RECIPIENT

Date: _____

Printed Name: _____

Title: _____

Company: _____

UTILITY

Date: _____

Printed Name: _____

Title: _____