

Section 27<sup>3</sup> Severability<sup>5 6</sup>

(a) <sup>7</sup>If any provisions of this Agreement; including any provision of this Agreement and its Attachments, Operating Rules, and the Interface Control Documents; is held to be unenforceable, illegal, or in violation of a tariff or legal order of a governmental agency by a court of law or governmental agency with jurisdiction over the matter, then if the essential terms and conditions of the Agreement remain valid, legal and enforceable, such provision shall be deemed severed and shall not affect the validity of the other provisions of this Agreement, including the other provisions of the Attachments, Operating Rules, and the Interface Control Documents which will at all times remain in full force and effect.<sup>8</sup>

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(b) (i) Further, notwithstanding any other provision of this Agreement, no provision of this Agreement (including any provision of any Attachment or other agreement incorporated into this Agreement) shall operate to obligate an Account Holder which is:<sup>10</sup>

(A) a Balancing Authority; and also<sup>11</sup>

(B) a Qualified Reporting Entity acting solely in the capacity of reporting Output on behalf of a Generating Unit that is not owned by the Qualified Reporting Entity<sup>12</sup>

to undertake any action which the Account Holder determines to be in violation of the Account Holder's tariff, or of orders imposed upon such Account Holder by the Federal Energy Regulatory Commission ("FERC") or other governing agency/entity with jurisdiction over Balancing Authority-Account Holder.<sup>13</sup>

(ii) If such Account Holder reasonably believes that any portion of this Agreement might cause or is causing a violation of its tariff or orders imposed by FERC or other governing entity, then Account Holder shall deliver to the WREGIS Director written notice, signed by a senior executive (vice president, president, or person of equivalent capacity), of Account Holder's determination. This notice shall cite the relevant provisions of the Agreement and of the tariff or orders forming the basis of the notice. Upon receipt of this notice, the terms of the Agreement specified in the notice shall be immediately and temporarily suspended as they apply to this Account Holder.<sup>14</sup>

(iii.) If this Agreement's essential intent and purpose, or distribution of economic risks and benefits, are thereby affected and impaired, (The Parties shall meet and confer, within three business days [this is too short of a time period] of such notice, At this meeting, which may be by telephone, the Parties shall make good faith efforts to identify a mutually acceptable plan to resolve the issue/reform the Agreement between them so that its essential intent and purpose, and distribution of economic risks and benefits, may be carried out. The Parties may, for example, develop amendments to the Agreement (and/or incorporated document), or agree to a waiver of the provision (subject to Section 22 [Waiver] of the Agreement); explore methods for amending the tariff, or undertake any other actions to resolve the conflict identified by the Account Holder.<sup>15</sup>

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(iv.) In the event that the Parties are unable to reach a resolution or agree on a written plan to include action and timelines, within five business days after the date of the notice, then ~~the suspended terms of the Agreement shall be reinstated.~~<sup>16</sup>

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Thereafter, either Party may terminate this Agreement for convenience pursuant to Section 10 (c) [Termination for Convenience by Either Party] herein, except that the terminating Party may, at its option, set the termination date to be effective immediately or for any other time up to 60 days from the date of the notice of termination; and provided further that any provision suspended by the Account Holder's notice will remain suspended through to such termination.<sup>17</sup> *PacifiCorp note: If in fact the provision is illegal, it can't be reinstated. As originally written, this defeats the purpose of a severability clause. The idea of a severability clause is that if a clause in the agreement is found to be unenforceable, the unenforceable provision is not enforced, and the remainder of the document remains in force, if the essential intent and purpose of the agreement can still be carried out (and, e.g., if the consideration for the agreement does not fail due the the severance). For example, there are some states where a choice of law clause in a contract is ineffective; the parties may nevertheless want the agreement to remain in effect between them notwithstanding their inability to elect another jurisdiction's law.*

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(v.) If the Parties have agreed upon a mutually acceptable written plan pursuant to (iii) above, but one Party reasonably believes that actions specified in the plan are not being carried out as agreed, then that Party may provide written notice to the other Party. That other Party will have 15 days following the date of the notice within which to demonstrate to the reasonable satisfaction of the first Party that the plan will be carried out as agreed. If the Party serving notice (i.e. the first Party) is not reasonably satisfied within the 15 day period, then either Party may, at its option, terminate the Agreement as provided in the preceding subsection.<sup>18</sup>

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