



Gregory L. Geist
Director

December 2, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of the Agreement between Water Environment Services and Portland General Electric Company for the First Supplement to Agreement for Primary Voltage Alternate Electric Services under Schedule 83. Fiscal Impact is \$77,280 through WES Capital Improvement Funds. No General Fund dollars are involved.

Purpose/Outcome	Approval of the Agreement between Water Environment Services and Portland General Electric Company for the First Supplement to Agreement For Primary Voltage Alternate Electric Services Under Schedule 83.
Dollar Amount and Fiscal Impact	\$77,280
Funding Source	WES Capital Improvement Funds. No general fund dollars.
Duration	The Agreement ends December 31, 2041.
Previous Board Action/Review	This item was presented at Issues on November 30, 2021. Construction of TC WRRF on May 10, 1988.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This project supports the WES Strategic Plan to provide Enterprise Resiliency, Infrastructure Strategy and Performance and Operational Optimization and support the expected 20-year growth horizon. 2. This project supports the County Strategic Plan to build public trust through good government and building strong infrastructure.
Counsel Review	Review Date: November 22, 2021 Counsel: Amanda Keller
Procurement Review	Was this project processed through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Item is a cooperative agreement with Portland General Electric.
Contact Person	Jeff Stallard, WES Capital Supervisor, 503-278-2311
Contract No.	NA

BACKGROUND:

WES is required to provide emergency backup power to the Tri City Water Resource Recovery Facility (TC WRRF) to keep the plant operational during unplanned power outages. During construction of the TC WRRF in the mid-1980's, it was determined that the preferred way to meet this requirement was to have a two power feeds to the plant from two different PGE Substations (Abernethy and Jennings). At that time, WES paid a lump sum amount to secure

reserve power from PGE on the secondary Jennings substation. In 2012, an on-site generator was added for back-up power for a portion of the facility, while the dual PGE feeds remained to power a portion.

With the completion of the Solids project, WES now has a need to secure additional reserve capacity (400kw) on the Jennings Substation to provide required emergency backup power. This contract will secure the required reserve capacity on the Jennings substation.

At this time, WES has elected to pay for his required additional capacity on a monthly basis (\$322/month) in lieu of a lump sum fee (\$60,032). This approach will provide WES with flexibility to provide this required emergency backup today, and avoid a stranded investment should future studies and expansions require a different approach.

RECOMMENDATION:

WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the Agreement between Water Environment Services and Portland General Electric Company for the First Supplement to Agreement for Primary Voltage Alternate Electric Services under Schedule 83.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Greg Geist", with a long horizontal flourish extending to the right.

Greg Geist
Director, WES

Attachments: First Supplement to Agreement for Primary Voltage Alternate Electric Service under Schedule 83.



RECORDING MEMO

New Agreement/Contract

Amendment/Change/Extension

Other: _____

Originating County Department: _____

Purchasing for: _____

Other party to contract/agreement: _____

Title from Business Meeting Agenda:

After recording please return to:

Clerk to the Board please complete below this line after Board approval _____

Board Agenda Date: _____

Agenda Item Number: _____

WATER ENVIRONMENT SERVICES AND
PORTLAND GENERAL ELECTRIC COMPANY

FIRST SUPPLEMENT TO AGREEMENT FOR PRIMARY VOLTAGE ALTERNATE ELECTRIC SERVICE
UNDER SCHEDULE 83

Customer's Premises: 15941 S. Agnes Rd., Oregon City, OR 97045

NOVEMBER 19, 2021

This First Supplement to Agreement for Primary Voltage Alternate Electric Service Under Schedule 83 ("Supplement") is entered into by and between WATER ENVIRONMENT SERVICES ("Customer"), an intergovernmental entity formed pursuant to Oregon Revised Statutes Chapter 190, with its principal place of business at 15941 S. Agnes Rd., Oregon City, OR 97045, and PORTLAND GENERAL ELECTRIC COMPANY ("PGE"), an Oregon corporation with its principal place of business at 121 SW Salmon St., Portland, OR 97204. Hereafter, Customer and PGE may be referred to individually as a "Party" and collectively as "the Parties."

WHEREAS, PGE and Tri-City Service District previously entered into an Agreement for Primary Voltage Alternate Electric Service Under Schedule 83, dated May 10, 1988 (the "Existing Agreement"); and

WHEREAS, on or about July 17, 2017, Tri-City Service District assigned, transferred and set over unto Water Environment Services all of Tri-City Service District's rights, title, and interests in and to all its contracts, including the Existing Agreement, and Water Environment Services accepted such assignment, thereby agreeing to be bound by and to pay and perform, observe and discharge all of the duties under the Existing Agreement; all of which was accomplished in accordance with the agreement attached hereto as Exhibit A; and

WHEREAS, the Parties desire to supplement and, in the instances identified herein, supersede certain of the terms and conditions of the Existing Agreement for purposes of increasing the amount of "alternate kVA" capacity to be reserved under paragraph 5 of the Existing Agreement, for Customer's emergency use; and

WHEREAS, it is appropriate for the changes contemplated herein by the Parties to be documented in written form and executed by both Parties.

NOW, THEREFORE, in consideration of the mutual promises, considerations and representations set forth herein, the Parties agree as follows:

1. Term of Supplement

- a) This Supplement shall commence on the date on which the latter of the two Parties executes this agreement (the "Effective Date") and remain in effect for twenty (20) years, unless earlier terminated in accordance with Section 10 herein.
- b) Customer may renew this Supplement for an additional 10-year term by providing PGE written notice of its intent to renew at least 30 days prior to the end of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term"). If the Term is renewed for any Renewal Term(s) pursuant to this Section, the terms and conditions of this Supplement during each such Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal. If Customer fails to provide timely notice of its intent to renew this Supplement, then, unless otherwise sooner terminated in accordance with its terms, this Supplement shall terminate on the expiration of the then-current Term.

2. Conditions of Service

- a) No Installation of Additional Equipment by Customer and No Additional Operating Conditions. No additional equipment must be installed by Customer and no additional operating conditions must be imposed in order for PGE to accommodate Customer's requested increase in its capacity reservation for Alternate Service under this Supplement.
- b) This Supplement provides for an increase in capacity only—up from the original 1200 kVA to 1600 kVA—but does not authorize any increase in alternate capacity or service above 1600 kVA. Service may, therefore, be interrupted if actual kVA demand on the existing alternate service facilities exceeds the aggregated maximum of 1600 kVA, (hereafter sometimes referred to as "the Total Contracted Amount") that is collectively reserved by Customer pursuant to paragraph 5 of the Existing Agreement (the initial 1200 kVA) and paragraph 3 of this Supplement (for the additional 400kW).

3. Additional Contracted Amount of Alternate Capacity

The additional amount of reserved capacity that PGE shall maintain for Customer's use, subject to the terms of this Supplement, is 400 kW.

4. Location to be Served and Designated Service Point

- a) Pursuant to the terms of this Supplement, 400kW of Additional Alternate Service will be available to the same Location at that described in the Existing Agreement [15941 S. Agnes Rd, Oregon City, Oregon 97045].
- b) The point of delivery for the Total Contracted Amount of Alternate Service available under both the Existing Agreement and this Supplement is described as: **The line side termination at the customer's primary voltage switchgear at the address listed in paragraph 2 of the Existing Agreement, more specifically, at Service Point ID # 0550222319.** To be clear, this paragraph 4.b. is intended to supersede the terms and conditions contained in paragraph 3 of the Existing Agreement, at least for the duration of this Supplement.

5. Payment

- a) Customer agrees to make timely payments to PGE, in the amount of \$322.00 per month, in exchange for no more than 400 kW of additional reserved capacity available to serve the location/Service Point noted above.
- b) Customer shall, at all times, ensure that its demand for alternate electric service does not exceed the Total Contracted Amount of reserved capacity, and Customer shall promptly execute a supplemental or new agreement for any amount of alternate capacity above 1600 kVA that may be required.
- c) If and when the alternate service capacity is utilized by Customer, then, in addition to the capacity reservation charge listed above, Customer's monthly billing will also consist of the standard kW and kVAR demand charges on either the preferred or alternate service feeder, whichever is the greater, the sum total kWh charge for both services and, in the event that Customer imposes a demand on the alternate service facilities in excess of the 1600 kVA contracted for, Customer will pay PGE an additional monthly amount for that month and the succeeding eleven (11) months. Such additional amount will be determined by multiplying the excess kVA demand by the current sum of tariffed transmission and distribution demand charges and the applicable facilities capacity charges. Should a condition of excess kVA demand occur, Customer shall promptly modify plant operation(s) to prevent further excess demand until a new or supplemental agreement, for an additional amount of reserved capacity (above 1600kVA) can be executed between the Parties. It is understood and agreed that the cost of additional reserved capacity will be based on the effective costs of such, to PGE, at that time. Finally, Customer will be billed and shall pay the actual cost of any damage to PGE's facilities that are caused by Customer's demand on the alternate service facilities in excess of the Total Contracted Amount of capacity. Customer shall also be subject to indemnification obligations provided for in Section 7. It is the intent of the Parties that this paragraph 5.c. supersede all but the first paragraph of Section 5 of the Existing Agreement.

6. Force Majeure.

If either Party is delayed or hindered in, or prevented from the performance required under this Supplement, other than the payment of money, by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, pandemic, or other reason of like nature not the fault of the Party delayed in performing work or doing acts, such Party is excused from such performance for the period of delay, provided that the Party claiming Force Majeure has notified the other Party of the delay.

7. Indemnification

Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, Customer shall,

to the fullest extent permitted by law, protect, defend, indemnify and hold harmless, PGE and its affiliates and their respective employees, directors, and agents ("Indemnitees") from and against any losses, costs, claims, penalties, fines, liens, demands, liabilities, legal actions, judgments, and expenses of every kind (including, without limitation, reasonable attorneys' fees, including at trial and on appeal) asserted or imposed against any Indemnitees by any third party (including, without limitation, employees of Customer or PGE) and arising out of the negligent or wrongful acts or omissions of Customer or any subcontractor of or consultant to Customer or any of their respective employees, directors or agents arising out of or in any way related to the performance or nonperformance of this Supplement ("Indemnified Losses"), except to the extent such Indemnified Losses are caused by the sole negligence or willful misconduct of the Indemnitees.

Customer warrants to PGE that its indemnity obligation will be supported by liability insurance to be furnished by it, or self-insurance approved by PGE for these purposes, provided that recovery under or in respect of this indemnity shall not be limited to the proceeds of any insurance.

8. Disclaimer of Consequential Damages

EXCEPT TO THE EXTENT REQUIRED BY LAW, PGE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS SUPPLEMENT.

9. Successors and Assigns

This Supplement shall inure to the benefit of and be binding upon each of the Parties and, to the extent applicable, to each of their respective successors and permitted assigns. Customer may assign this Supplement to a third party or a successor-in-interest as long as a) Customer is assigning the Existing Agreement to the same assignee; b) in PGE's reasonable judgment such third party's or successor's creditworthiness and ability to perform Customer's obligations under this Supplement are at least as good as that of Customer; and b) the assignee or successor agrees to be bound by all the terms and conditions of this Supplement and the Existing Agreement.

10. Early Termination

- a) This Supplement may be terminated by Customer upon 30 days' written notice to PGE, provided that, upon termination, Customer pays to PGE the amount that PGE's depreciated investment in any such additional alternate service facilities (installed to increase the capacity to serve Customer at such location and pursuant to this Supplement) exceeds the current value of those facilities to PGE. The Parties expressly intend this paragraph 10.a. to supersede the full second paragraph of Section 8 of the Existing Agreement.
- b) Either Party may unilaterally terminate this Supplement, without consequence, in the event the Parties enter into a new supplement solely for purpose of increasing the amount of reserved capacity for alternate service required by Customer at the same location and service point identified in Section 4 above.
- c) PGE may terminate this Supplement for Customer's failure to make timely payment of costs identified in Section 5, if, after 30 days' notice and a reasonable opportunity to cure, Customer fails to bring its account current with respect to such costs. Upon such termination Customer shall pay to PGE 1) if applicable, the amount that PGE's depreciated investment in any Alternate Service Facilities installed to serve Customer at the location identified in Section 4, exceeds the then current value of the facilities to PGE, as determined by PGE, and 2) the costs for removal of any such Alternate Service Facilities

as PGE may deem appropriate.

- d) In the event that Customer fails to prevent excess kVA demand and refuses to execute a new or supplemental agreement with PGE for an additional amount of reserved capacity above 1600 kVA, then, upon written notice to Customer, PGE may terminate both this Supplement and the Existing Agreement. Upon such termination Customer shall pay to PGE 1) if applicable, the amount that PGE's depreciated investment in any Alternate Service Facilities installed to serve Customer at the location identified in Section 4, exceeds the then current value of the facilities to PGE, as determined by PGE, and 2) the costs for removal of any such Alternate Service Facilities as PGE may deem appropriate. The availability of alternate electric service following termination of this Supplement and the Existing Agreement is subject to all changes that may have occurred in applicable tariffs, including Utility Rules and Regulations and all lawful orders of the Public Utility Commission of Oregon, and it is understood that terms and conditions, different from those contained within this Supplement, may apply.

11. Miscellaneous

- a) This Supplement shall be treated as a supplement to the Existing Agreement for the duration of this Supplement unless the terms of this Supplement make clear that certain provisions of the Existing Agreement are being superseded. After this Supplement expires or is earlier terminated, the Existing Agreement shall revert to its pre-Supplement terms and conditions, unless also terminated.
- b) In the event of any discrepancy or inconsistency with the terms and conditions of the Existing Agreement, the terms and conditions of this Supplement shall govern and control for as long as this Supplement remains in effect.
- c) This Supplement shall be interpreted, governed by, and construed in accordance with the laws of the State of Oregon, without regard to the conflict of law provisions of such State. With respect to any suit, action or proceedings related to this Supplement and the Existing Agreement (the "Proceedings"), each Party irrevocably submits to the exclusive jurisdiction of the courts of the State of Oregon and the United States District Court located in Multnomah County, Oregon.
- d) This Supplement may be executed in counterparts, each of which is deemed an original, but collectively they constitute one and the same document. Delivery of an executed counterpart of this Supplement electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Supplement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; THE SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned parties have executed this First Supplement to Agreement for Primary Voltage Alternate Electric Service Under Schedule 83, this 19th day of November, 2021.

CUSTOMER: WATER ENVIRONMENT SERVICES

(Signature)

(Title)

(Date)

UTILITY: PORTLAND GENERAL ELECTRIC COMPANY


John McFarland (Nov 22, 2021 08:27 PST)

(Signature)

clc
clc

Chief Customer Officer

(Title)

Nov 22, 2021

(Date)

Reviewed and approved by PGE's Rates and Regulatory Affairs Dept.


JT