

**Residential Exchange Program Settlement  
Agreement Proceeding (REP-12)**

**ADMINISTRATOR'S FINAL  
RECORD OF DECISION**

**APPENDIX B:  
AMENDMENTS TO  
CONSUMER-OWNED UTILITY  
RESIDENTIAL PURCHASE  
AND SALE AGREEMENTS**

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July 2011

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REP-12-A-02B



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**AMENDATORY AGREEMENT NO. 2 TO THE RESIDENTIAL PURCHASE AND  
SALE AGREEMENT**

**(CONTRACT NO. 09PB-12132)**

**executed by the  
BONNEVILLE POWER ADMINISTRATION  
and  
CLARK PUBLIC UTILITIES**

This Amendatory Agreement No. 2 to the Residential Purchase and Sale Agreement (“Amendment” or “Amendment No. 2 to this Agreement”) between the Bonneville Power Administration (“BPA”) and Clark Public Utilities (“Clark”), accomplishes the following changes to the Residential Purchase and Sale Agreement (“RPSA” or “Agreement”) Contract No. 09PB-12132: deleting in their entirety and replacing with new language Sections 7, 11, and 12; and adding new Section 22, CALCULATION OF EXCHANGE PERIOD BENEFIT AMOUNTS, and new Section 23, WAIVERS.

**1. EFFECTIVE DATE AND TERM OF AMENDMENT**

- (a) This Amendment shall take effect on October 1, 2011, but only if all of the following conditions precedent have been completed prior to that date:
  - (i) This Amendment is executed by individuals of BPA and Clark who have been duly authorized to do so, and such executed copies of the Amendment are delivered to both BPA and Clark.
  - (ii) Clark executes and delivers to BPA the 2012 Revised Residential Exchange Settlement Agreement, Contract No. 11PB-12322 (“Revised Settlement Agreement”) on or before June 3, 2011, with all of the foregoing actions being taken in accordance with the terms of the Revised Settlement Agreement.
  - (iii) All of the conditions precedent to the Revised Settlement Agreement taking effect as set forth in sections 1.2 and 3.7 of the Revised Settlement Agreement have been satisfied.
  - (iv) BPA has signed the Revised Settlement Agreement on or before August 1, 2011.

If the conditions precedent identified in section 1(a)(i)-(iv) have not been satisfied on or before the dates specified therefore, then all provisions of this Amendment will be *void ab initio*.

- (b) This Amendment will remain in effect until September 30, 2028, unless it is earlier terminated as follows:

- (i) The Revised Settlement Agreement is terminated pursuant to section 3.7, 10.6 or 14 thereof, in which case this Amendment shall be *void ab initio*.
- (ii) Clark terminates this Amendment by providing BPA written notice of termination upon the occurrence of either of the following:
  - 1. BPA adopts a final record of decision that changes the terms of the 2008 ASC Methodology applicable to REP participants with CHWM Contracts and such change results in a material reduction in the REP benefits available to Clark.
  - 2. BPA adopts, in a final record of decision, a calculation of benefit amounts available to Clark that is inconsistent with or different from the calculation of benefit amounts set forth in section 3(a) of this Amendment.

Notice of termination under this section 1(b)(ii) must be provided no less than thirty (30) days prior to the effective date of such termination.

- (c) In the event that this Amendment expires at the end of its term, or is terminated pursuant to section 1(b)(ii) hereof, then all obligations incurred hereunder will be preserved until satisfied.

**2. SECTIONS OF THE RPSA THAT ARE DELETED AND REPLACED**

Sections 7, 11, and 12 are deleted in their entirety, and replaced with the language set out below for the term of this Amendment:

(a) Section 7, IN-LIEU TRANSACTIONS

In consideration of the mutual benefits afforded by the Amendment No. 2 to this Agreement, BPA shall not acquire or make arrangements to acquire In-Lieu Power for sale to Clark during the term of this Agreement.

(b) Section 11, SUSPENSION OF AGREEMENT

11.1 Suspension of Agreement

11.1.1 Clark may suspend performance under this Agreement for any reason upon 30 days advance written notice to BPA prior to the start of the Exchange Period. Such suspension shall suspend the rights and obligations of both Parties as of such date, and such suspension shall continue until the earlier to occur of (i) Clark's reactivation of participation under this Agreement as of the beginning of an Exchange Period upon 30 days advance written notice to BPA, provided that Clark has timely submitted to BPA a new Appendix 1 for the Exchange Period, as required by the ASC Methodology, or (ii) the expiration of the term of this Agreement.

11.1.2 Upon suspension of this Agreement pursuant to section 11.1.1, Clark shall not be entitled to REP benefits unless and until Clark reactivates participation under this Agreement as of the beginning of an Exchange Period pursuant to section 11.1.1 above.

11.1.3 No other provision of this Agreement shall be affected by such suspension.

11.2 Suspension of Sections 5 and 6

11.2.1 The purchase and sale in sections 5 and 6 above shall be suspended for any month of any Fiscal Year in the event that the amount BPA would charge Clark for such month pursuant to section 6 would exceed the amount Clark would charge BPA for such month pursuant to section 5.

11.2.2 During the period of suspension, BPA shall not be entitled to any payments, whether as cash or as setoffs against future REP benefits, nor shall BPA account for or keep track of any amounts that would otherwise be owing but for the suspension provided in this section.

11.2.3 No other provision of this Agreement shall be affected by such suspension.

11.3 Remedies

If the Federal Energy Regulatory Commission (FERC) or a court of competent jurisdiction remands, reverses, or otherwise finds unlawful a BPA final decision or decisions that affect Clark's receipt of, or failure to receive, REP benefits, then BPA will review and determine the rights and obligations of the Parties through additional administrative actions(s) as necessary to respond to such regulatory or court decisions.

(c) Section 12, BALANCING ACCOUNT

In consideration of the mutual benefits afforded by the Amendment No. 2 to this Agreement, Section 12, Balancing Account, of this Agreement is hereby deleted in its entirety.

**3. SECTIONS ADDED TO THE RPSA**

The following provisions are added to the RPSA for the term of this Amendment:

(a) A new section 22 is added to the RPSA which states:

## 22. CALCULATION OF EXCHANGE PERIOD BENEFIT AMOUNTS

22.1 BPA's calculation of REP benefits for Clark will be in accordance with Exhibit D of Clark's CHWM Contract, including without limitation the calculation of BPA's Base Tier 1 PF Exchange Rate. Clark's utility specific PF Exchange rate will be determined such that the forecast of REP benefits payable to Clark, as determined in each 7(i) Process during the term of this Agreement, will result in the amount of REP benefits calculated using the following formula:

$$\text{COUREP} = \frac{(\text{REP Settlement Benefits} + \text{COU Settlement Amount}) \times \text{Unconstrained COU Benefits}}{\sum \text{Unconstrained IOU Benefits}}$$

Where:

1. REP Settlement Benefits has the meaning established in the Revised Settlement Agreement.
2. COU Settlement Amount is \$76,537,617 for each fiscal year.
3. Unconstrained IOU and COU Benefits, whether pursuant to the Revised Settlement Agreement or an RPSA, are calculated in each 7(i) Process as follows: (i) In the case of each IOU whose applicable ASC exceeds the applicable Base PF Exchange Rate, by subtracting the applicable Base PF Exchange Rate from the applicable ASC for each such IOU, multiplying the difference so determined by the forecast Residential Load Eligible for Monetary Benefits for each such IOU; and (ii) in the case of each COU whose applicable ASC exceeds the applicable Base Tier 1 PF Exchange Rate, by subtracting the applicable Base Tier 1 PF Exchange Rate from the applicable ASC for each such COU, and multiplying the difference so determined by the forecast of Actual RHWM Exchange Load as defined in section 20 for each such COU. The Unconstrained Benefits for IOUs and COUs whose applicable ASC does not exceed the applicable Base PF Exchange Rate will equal zero dollars.

(b) A new section 23 is added to the RPSA which states:

## 23. WAIVERS

- 23.1 Clark waives any and all rights it has or may have to receive payments under the REP for the term of Amendment No. 2 to this Agreement that differs from the payments calculated pursuant to section 22.
- 23.2 Clark agrees to not challenge BPA actions that implement the Amendment No. 2 to this Agreement that are consistent with its terms, or assert that BPA should, for any Rate Period (or any portion of any Rate Period), make REP benefit payments to Clark or determine such REP benefit payments to Clark in a manner inconsistent with the



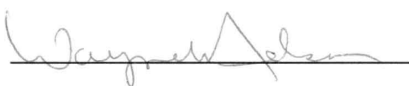
Amendment No. 2 to this Agreement; *provided, however*, that nothing in this section will limit Clark's right to (a) oppose any arguments that BPA should establish rates in a manner that is inconsistent with the Amendment No. 2 to this Agreement, or (b) challenge any other BPA actions, including without limitation BPA actions that are inconsistent with the terms of Amendment No. 2 to this Agreement.

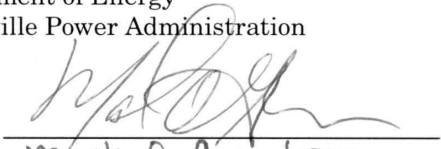
**4. SIGNATURES**

The Parties have caused this Amendment No. 2 to be executed as of the date both Parties have signed this Amendment No. 2.

CLARK PUBLIC UTILITIES

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

By   
Name Wayne Nelson  
*(Print/Type)*  
Title CEO and General Manager  
Date 7-12-2011

By   
Name Mark O. Gendron  
*(Print/Type)*  
Title VP, Requirements Marketing  
~~Account Executive~~  
Date 7-13-2011

(PSW-W:\Power\Contract\Customer\Clark Public Utilities\09PB-12132\12132\_RPSA\_Amendment No.2\_Final.Doc) 06/24/11

**AMENDATORY AGREEMENT NO. 2 TO THE RESIDENTIAL PURCHASE AND  
SALE AGREEMENT  
(CONTRACT NO. 11PB-12448)**

**executed by the  
BONNEVILLE POWER ADMINISTRATION  
and  
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY**

This Amendatory Agreement No. 2 to the Residential Purchase and Sale Agreement ("Amendment" or "Amendment No. 2 to this Agreement") between the Bonneville Power Administration ("BPA") and Public Utility District No. 1 of Snohomish County ("Snohomish"), accomplishes the following changes to the Residential Purchase and Sale Agreement ("RPSA" or "Agreement") Contract No. 11PB-12448: deleting in their entirety and replacing with new language Sections 7, 11, and 12; and adding new Section 22, CALCULATION OF EXCHANGE PERIOD BENEFIT AMOUNTS, and new Section 23, WAIVERS.

**1. EFFECTIVE DATE AND TERM OF AMENDMENT**

- (a) This Amendment shall take effect on October 1, 2011, but only if all of the following conditions precedent have been completed prior to that date:
- (i) This Amendment is executed by individuals of BPA and Snohomish who have been duly authorized to do so, and such executed copies of the Amendment are delivered to both BPA and Snohomish.
  - (ii) Snohomish executes and delivers to BPA the 2012 Revised Residential Exchange Settlement Agreement, Contract No. 11PB-12322 ("Revised Settlement Agreement") on or before June 3, 2011, with all of the foregoing actions being taken in accordance with the terms of the Revised Settlement Agreement.
  - (iii) All of the conditions precedent to the Revised Settlement Agreement taking effect as set forth in sections 1.2 and 3.7 of the Revised Settlement Agreement have been satisfied.
  - (iv) BPA has signed the Revised Settlement Agreement on or before August 1, 2011.

If the conditions precedent identified in section 1(a)(i)-(iv) have not been satisfied on or before the dates specified therefore, then all provisions of this Amendment will be *void ab initio*.

(b) This Amendment will remain in effect until September 30, 2028, unless it is earlier terminated as follows:

(i) The Revised Settlement Agreement is terminated pursuant to section 3.7, 10.6 or 14 thereof, in which case this Amendment shall be *void ab initio*.

(ii) Snohomish terminates this Amendment by providing BPA written notice of termination upon the occurrence of either of the following:

1. BPA adopts a final record of decision that changes the terms of the 2008 ASC Methodology applicable to REP participants with CHWM Contracts and such change results in a material reduction in the REP benefits available to Snohomish.
2. BPA adopts, in a final record of decision, a calculation of benefit amounts available to Snohomish that is inconsistent with or different from the calculation of benefit amounts set forth in section 3(a) of this Amendment.

Notice of termination under this section 1(b)(ii) must be provided no less than thirty (30) days prior to the effective date of such termination.

(c) In the event that this Amendment expires at the end of its term, or is terminated pursuant to section 1(b)(ii) hereof, then all obligations incurred hereunder will be preserved until satisfied.

**2. SECTIONS OF THE RPSA THAT ARE DELETED AND REPLACED**

Sections 7, 11, and 12 are deleted in their entirety, and replaced with the language set out below for the term of this Amendment:

(a) Section 7, IN-LIEU TRANSACTIONS

In consideration of the mutual benefits afforded by the Amendment No. 2 to this Agreement, BPA shall not acquire or make arrangements to acquire In-Lieu Power for sale to Snohomish during the term of this Agreement.

(b) Section 11, SUSPENSION OF AGREEMENT

11.1 Suspension of Agreement

11.1.1 Snohomish may suspend performance under this Agreement for any reason upon 30 days advance written notice to BPA prior to the start of the Exchange Period. Such suspension shall suspend the rights and obligations of both Parties as of such date, and such suspension shall continue until the earlier to occur of (i) Snohomish's reactivation of participation under this Agreement as of the beginning of an Exchange Period upon

30 days advance written notice to BPA, provided that Snohomish has timely submitted to BPA a new Appendix 1 for the Exchange Period, as required by the ASC Methodology, or (ii) the expiration of the term of this Agreement.

11.1.2 Upon suspension of this Agreement pursuant to section 11.1.1, Snohomish shall not be entitled to REP benefits unless and until Snohomish reactivates participation under this Agreement as of the beginning of an Exchange Period pursuant to section 11.1.1 above.

11.1.3 No other provision of this Agreement shall be affected by such suspension.

11.2 Suspension of Sections 5 and 6

11.2.1 The purchase and sale in sections 5 and 6 above shall be suspended for any month of any Fiscal Year in the event that the amount BPA would charge Snohomish for such month pursuant to section 6 would exceed the amount Snohomish would charge BPA for such month pursuant to section 5.

11.2.2 During the period of suspension, BPA shall not be entitled to any payments, whether as cash or as setoffs against future REP benefits, nor shall BPA account for or keep track of any amounts that would otherwise be owing but for the suspension provided in this section.

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11.3 Remedies

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(a) A new section 22 is added to the RPSA which states:

## **22. CALCULATION OF EXCHANGE PERIOD BENEFIT AMOUNTS**

22.1 BPA's calculation of REP benefits for Snohomish will be in accordance with Exhibit D of Snohomish's CHWM Contract, including without limitation the calculation of BPA's Base Tier 1 PF Exchange Rate. Snohomish's utility specific PF Exchange rate will be determined such that the forecast of REP benefits payable to Snohomish, as determined in each 7(i) Process during the term of this Agreement, will result in the amount of REP benefits calculated using the following formula:

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Where:

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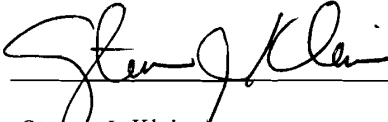
23.2 Snohomish agrees to not challenge BPA actions that implement the Amendment No. 2 to this Agreement that are consistent with its terms, or assert that BPA should, for any Rate Period (or any portion of any Rate Period), make REP benefit payments to Snohomish or determine such REP benefit payments to Snohomish in a manner inconsistent with the Amendment No. 2 to this Agreement; *provided, however*, that nothing in this section will limit Snohomish's right to (a) oppose any arguments that BPA should establish rates in a manner that is inconsistent with the Amendment No. 2 to this Agreement, or (b) challenge any other BPA actions, including without limitation BPA actions that are inconsistent with the terms of Amendment No. 2 to this Agreement.

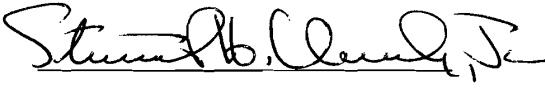
4. **SIGNATURES**

The Parties have caused this Amendment No. 2 to be executed as of the date both Parties have signed this Amendment No. 2.


PUBLIC UTILITY DISTRICT NO. 1 OF  
SNOHOMISH COUNTY

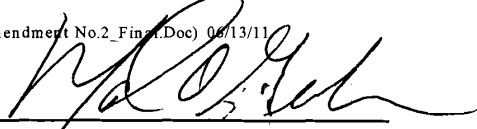
UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

By   
Name Steven J. Klein  
*(Print/ Type)*  
Title General Manager  
Date July 5, 2011

By   
Name Stuart H. Clarke, Jr.  
*(Print/ Type)*  
Title Senior Account Executive  
Date July 12, 2011

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REVIEWED BY:   
DATE: July 1, 2011

By   
Name Mark O. Gendron  
Title Vice President, Requirements Marketing  
Date July 18, 2011



