

PROPOSED SETTLEMENT AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
CLARK PUBLIC UTILITIES

Table of Contents

Section	Page
1. Term	2
2. Definitions	2
3. Termination of Prior Agreement	2
4. Satisfaction of Section 5(c) Obligations	2
5. Monetary Benefit	3
6. Payment Provisions	3
7. Pass-through of Benefits	4
8. Audit Rights	4
9. Notice Provided to Residential and Small Farm Customers	4
10. Notices	4
11. Governing Law and Dispute Resolution	5
12. Standard Provisions	6
13. Signatures	8

Exhibit A Residential Load Definition

This PROPOSED SETTLEMENT AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and CLARK PUBLIC UTILITIES (Clark). Clark is a public utility district organized under the laws of the State of Washington. BPA and Clark are sometimes referred to in the singular as “Party” or in the plural as “Parties.”

RECITALS

The Northwest Power Act establishes a Residential Exchange Program to provide benefits to residential and small farm consumers of Pacific Northwest utilities.

BPA implements the Residential Exchange Program through the offer, when requested, of a Residential Purchase and Sale Agreement.

On April 16, 2001, BPA and Clark entered into a PF Firm Block Power Sales Agreement, Contract No. 01PB-12243 (the "Current Power Sales Agreement").

On August 29, 2005, BPA and Clark entered into a Residential Purchase and Sale Agreement, Contract No. 05PB-11643 ("RPSA").

BPA and Clark desire to enter into this Agreement in order to settle the Parties' rights and obligations for the Residential Exchange Program for the term of this Agreement.

The Parties agree:

1. TERM

This Agreement takes effect on the date signed by the Parties ("Effective Date"), and shall continue in effect through September 30, 2011.

2. DEFINITIONS

- (a) "Contract Year" means each period during the term of this Agreement that begins each October 1 and which ends the following September 30. For instance, Contract Year 2002 begins October 1, 2001, and continues through September 30, 2002.
- (b) "Monetary Benefit" means the monetary settlement benefits provided under this Agreement, as described in section 6 below.
- (c) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501.
- (c) "Residential Exchange Program" means the program established under section 5(c) of the Northwest Power Act.
- (d) "Residential Load" means the load eligible to receive benefits under this Agreement, as such load is defined in Exhibit A.

3. TERMINATION OF PRIOR AGREEMENT

The RPSA shall terminate on the Effective Date, and any obligations incurred by either Party under the RPSA shall terminate on such Effective Date.

4. SATISFACTION OF SECTION 5(c) OBLIGATIONS

(a) Satisfaction of Section 5(c) Obligations

BPA shall, in full and complete satisfaction of all of its obligations during the period from the Effective Date through September 30, 2011, under or arising out of section 5(c) of the Northwest Power Act, provide to Clark Monetary Benefit payments pursuant to section 6 of this Agreement. Clark agrees that the Monetary Benefits provided under this Agreement satisfy all of BPA's obligations during the period from the Effective Date through September 30, 2011, under or arising out of section 5(c) of the Northwest Power Act.

(b) **Invalidity**

In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that this Agreement is unlawful, void, or unenforceable, then the provisions of section 5(a) above shall be of no further force or effect, and the Parties intend and agree that: (1) the Monetary Benefit payment(s) provided prior to such final determination shall be retained by Clark; and (2) the satisfaction of BPA's obligations to Clark under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law. This section 5(b) shall survive, notwithstanding any determination that any other provision of this Agreement is unlawful, void, or unenforceable.

(c) **Negotiation of New Agreement if this Agreement Held Invalid**

If this Agreement is finally determined to be unlawful, void, or unenforceable as described in section 5(b) above, then both Parties will endeavor to negotiate in good faith a new, mutually acceptable agreement that would, until the end of its term, be in satisfaction of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act. The term of such new agreement would continue for the remaining term of this Agreement.

5. MONETARY BENEFIT

BPA shall, on the dates shown below (the "Due Dates"), pay Clark the following Monetary Benefit lump sum payments:

Due Date	Monetary Benefit Payment Amount
October 2, 2006	\$2,283,038
October 1, 2007	\$5,000,000
October 1, 2008	\$5,000,000

The payment due on October 2, 2006, has been reduced from \$5,000,000 to \$2,283,038 in order to account for a \$2,716,962 payment made by BPA under the RPSA prior to the Effective Date.

6. PAYMENT PROVISIONS

Payment of all amounts due to Clark from BPA shall be in the amounts and on the dates specified in section 5 above. If payment is made after each such date, a late payment charge shall be applied each day to any unpaid balance. The late payment charge is calculated by dividing the Prime Rate for Large Banks as reported in the Wall Street Journal, plus 4 percent; by 365. The applicable Prime Rate for Large Banks shall be the rate reported on the first day of the month in which payment is received. Payment by BPA to Clark shall be by electronic funds transfer to the following institution and account:

7. PASSTHROUGH OF BENEFITS

- (a) Except as otherwise provided in this Agreement, Monetary Benefit payments received by Clark from BPA under this Agreement shall be passed through to each residential and small farm consumer, as a credit against the charges for electric service to Clark's qualified residential and small farm consumers.
- (b) Monetary Benefit payments shall be distributed to the Residential Load in a timely manner.
- (c) Monetary Benefit payments shall be separately identified on Clark's books of account.

8. AUDIT RIGHTS

BPA retains the right to audit Clark at BPA's expense to determine whether the Monetary Benefit payments provided to Clark under this Agreement were passed through to Clark's eligible Residential Load. BPA retains the right to take action consistent with the results of such audit to require the pass-through of such Monetary Benefit payments to eligible Residential Load. BPA's right to conduct such audits of Clark with respect to each Contract Year shall expire 12 months after the end of each such Contract Year. As long as BPA has the right to audit Clark pursuant to this Agreement, Clark agrees to maintain records and documents showing all transactions and other activities pertaining to the terms of this Agreement with respect to which BPA has audit rights.

9. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CUSTOMERS

Clark will ensure that any entity that issues customer bills to Clark's residential and small farm consumers shall provide written notice on such customer bills that a portion of their power and associated benefits is "Federal Columbia River Benefits supplied by BPA."

10. NOTICES

Any notice required under this Agreement shall be in writing and shall be delivered: (a) in person; (b) by a nationally recognized delivery service; or (c) by United States Certified Mail. Notices are effective when received. Either Party may change its address for notices by giving notice of such change consistent with this section.

If to Clark:

Clark Public Utilities
 PO Box 8900
 Vancouver, WA 98668
 Attn: Wayne Nelson
 General Manager
 Phone: 360-992-3378
 FAX: 360-992-3140
 E-Mail: wnelson@clarkpud.com

If to PBL:

Bonneville Power Administration
 P.O. Box 3621
 Portland, OR 97208-3621
 Attn: Theresa Rockwood.
 Account Executive
 Phone: 503-230-5738
 FAX: 503-230-3242
 E-Mail: terockwood@bpa.gov

11. GOVERNING LAW AND DISPUTE RESOLUTION

- (a) This Agreement shall be interpreted consistent with and governed by Federal law. Final actions subject to section 9(e) of the Northwest Power Act are not subject to binding arbitration and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals. Any dispute regarding any rights of the Parties under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. Clark reserves the right to seek judicial resolution of any dispute arising under this Agreement that is not subject to arbitration under this section 11. For purposes of this section 11 BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application, or makes a determination under an applicable statute. If either Party asserts that a dispute is excluded from arbitration under this section 11, either Party may apply to the Federal court having jurisdiction for an order determining whether such dispute is subject to arbitration under this section 11.
- (b) Any contract dispute or contract issue between the Parties arising out of this Agreement, except for disputes that are excluded through section 11(a) above, shall be subject to binding arbitration. The Parties shall make a good faith effort to resolve such disputes before initiating arbitration proceedings. During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.
- (c) Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The CPR Institute for Dispute Resolution's arbitration procedures for commercial arbitration, Non-Administered Arbitration Rules (CPR Rules), shall be used for each dispute; provided, however, that: (1) the Parties shall have the discovery rights provided in the Federal Rules of Civil Procedure unless the Parties agree otherwise; and (2) for claims of \$1 million or more, each arbitration shall be conducted by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a list containing the names of 15 qualified individuals supplied by the CPR Institute for Dispute Resolution. If the Parties cannot agree upon three arbitrators on the list within 20 business days, the Parties shall take turns striking names from the list of proposed arbitrators. The Party initiating the arbitration shall take the first strike. This process shall be repeated until three arbitrators remain on the list, and those individuals shall be designated as the arbitrators. For disputes involving less than \$1 million, a single neutral arbitrator shall be selected consistent with section 6 of the CPR Rules.
- (d) Except for arbitration awards which declare the rights and duties of the Parties under this Agreement, the payment of monies shall be the exclusive remedy available in any arbitration proceeding. Under no circumstances shall specific performance be an available remedy against BPA. The arbitration award shall be final and binding on both Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the

award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

- (e) Each Party shall be responsible for its own costs of arbitration, including legal fees. The arbitrators may apportion all other costs of arbitration between the Parties in such manner as they deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

12. STANDARD PROVISIONS

- (a) **Amendments**

No oral or written amendment, rescission, waiver, modification, or other change of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

- (b) **Assignment**

This Agreement is binding on any successors and assigns of the Parties. BPA may assign this Agreement to another Federal agency to which BPA's statutory duties have been transferred. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld. BPA shall consider any request for assignment consistent with applicable BPA statutes. Clark may not transfer or assign this Agreement to any of its retail customers.

- (c) **Information Exchange and Confidentiality**

The Parties shall provide each other with any information that is reasonably required, and requested by either Party in writing, to operate under and administer this Agreement, including load forecasts for planning purposes, information needed to resolve billing disputes, scheduling, and metering information reasonably necessary to prepare power bills that is not otherwise available to the requesting Party. Such information shall be provided in a timely manner. Information may be exchanged by any means agreed to by the Parties. If such information is subject to a privilege of confidentiality, a confidentiality agreement or statutory restriction under state or Federal law on its disclosure by a Party to this Agreement, then that Party shall endeavor to obtain whatever consents, releases, or agreements are necessary from the person holding the privilege to provide such information while asserting the confidentiality over the information. Information provided to BPA which is subject to a privilege of confidentiality or nondisclosure shall be clearly marked as such and BPA shall not disclose such information without obtaining the consent of the person or Party asserting the privilege, consistent with BPA's obligation under the Freedom of Information Act. BPA may use such information as necessary to provide service or timely bill for service under this Agreement. BPA shall only disclose information received under this provision to BPA employees who need the information for purposes of this Agreement.

(d) **Entire Agreement**

This Agreement, including all provisions, exhibits incorporated as part of this Agreement, and documents incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

(e) **Exhibit**

The exhibit listed in the table of contents is incorporated into this Agreement by reference. The exhibit may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibit. The body of this Agreement shall prevail over the exhibit to this Agreement in the event of a conflict.

(f) **No Third-Party Beneficiaries**

This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.

(g) **Waivers**

Any waiver at any time by either Party to this Agreement of its rights with respect to any default or any other matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.

(h) **BPA Policies**

Any reference in this Agreement to BPA policies, including without limitation BPA's NLSL Policy and the 5(b)/9(c) Policy, and any revisions thereto, does not constitute agreement by Clark to such policy, nor shall it be construed to be a waiver of the right of Clark to seek judicial review of any such policy.

(i) **Severability**

If any term of this Agreement is found to be invalid by a court of competent jurisdiction then such term shall remain in force to the maximum extent permitted by law. All other terms shall remain in force unless that term is determined not to be severable from all other provisions of this Agreement by such court.

(j) **Hold Harmless**

Each Party assumes all liability for injury or damage to persons or property arising from the act or negligence of its own employees, agents, members of governing bodies, or contractors. Each Party shall indemnify and hold the other Party harmless from any liability arising from such act or negligence.

13. SIGNATURES

Each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party for whom he or she signs.

CLARK PUBLIC UTILITIES

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name _____
(Print/Type)

Name _____
(Print/Type)

Title _____

Title _____

Date _____

Date _____

Exhibit A
RESIDENTIAL LOAD DEFINITION

1. Clark's Residential Load means the sum of the loads within the Pacific Northwest eligible for the Residential Exchange Program under the tariff schedules described below, adjusted for distribution losses as determined pursuant to Exhibit D, as such Exhibit D may be revised, supplemented, or superseded. If BPA determines that any action changes Clark's general tariffs or service schedules in a manner which would allow loads other than Residential Loads, as defined in the Northwest Power Act, to be included under these tariff schedules, or that the original general tariffs or service schedules include loads other than Residential Loads, such nonresidential loads shall be excluded from this Agreement.
 - (a) The schedules listed below are those under which Clark serves Residential Load:
 - (1) Schedule 7 (Residential and Farm Service)
 - (2) Schedule 95 (Residential Lighting and Local Utility Districts)
 - (3) Schedule 34 (General Service):
 - (b) the portion of the Residential Load as determined pursuant to section 2 of this Exhibit A, supplied by Clark under the Northwest Power Act, section 5(c).

2. Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

$$\text{Irrigation/Pumping Load} = 400 \times 0.746 \times \text{days in billing period} \times 24$$

provided, however, that this amount shall not exceed that farm's measured energy for the same billing period.

where:

400 is equal to the horsepower limit defined in the Northwest Power Act,

0.746 is the factor for converting horsepower to kW,

days in billing period is determined in accordance with prudent and normal utility business practices, and

24 is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the

farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.

4. A farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels as determined by BPA.

Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to Clark which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

- use
- ownership
- control
- operating practices
- distance between parcels

5. Unused irrigation allocations may not be reallocated to other farms or to another billing period.
6. The operator of a farm is required to certify to Clark all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide Clark and BPA all documentation requested to assist in the farm determination.

7. This Exhibit A shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.