

1. COST RECOVERY

- (a) Nothing included in or omitted from this Agreement creates or extinguishes any right or obligation, if any, of BPA to assess against «Customer Name» and «Customer Name» to pay to BPA at any time a cost underrecovery charge pursuant to an applicable transmission rate schedule or otherwise applicable law.
- (b) BPA may adjust the rates for power set forth in the applicable power rate schedule during the term of this Agreement pursuant to the Cost Recovery Clause in the 2001 GRSP's, or successor GRSP's.

2. UNCONTROLLABLE FORCES

BPA shall not be in breach of its obligation to provide Firm Power and the «Customer Name» shall not be in breach of its obligation to purchase Firm Power to the extent the failure to fulfill that obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that impairs that Party's ability to perform its contractual obligations under this Agreement and which, by exercise of that Party's reasonable diligence and foresight, such Party could not be expected to avoid and was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (a) any unplanned curtailment or interruption for any reason of firm transmission used to deliver power to «Customer Name»'s facilities or distribution system, including but not limited to unplanned maintenance outages;
- (b) any unplanned curtailment or interruption, failure or imminent failure of «Customer Name»'s distribution facilities, including but not limited to unplanned maintenance outages;
- (c) any planned transmission or distribution outage that affects either «Customer Name» or BPA serving as the power supplier which was provided by a third party transmission or distribution owner, or by a transmission provider, including BPA, that is functionally separated from the generation provider in conformance with FERC Orders 888 and 889 or their successors;
- (d) strikes or work stoppage, including the threat of imminent strikes or work stoppage;
- (e) floods, earthquakes or other natural disasters; and
- (f) orders or injunctions issued by any court having competent subject matter jurisdiction, or any order of an administrative officer which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force.

The Party claiming the Uncontrollable Force shall notify the other Party as soon as practicable of that Party's inability to meet its obligations under this Agreement due to an Uncontrollable Force. The Party claiming the Uncontrollable Force also agrees to notify any control area involved in the scheduling of a transaction which may be curtailed due to an Uncontrollable Force.

Both Parties shall be excused from their respective obligations, other than from payment obligations incurred prior to the Uncontrollable Force, without liability to the other, for the duration of the Uncontrollable Force and the period reasonably required for the Party claiming the Uncontrollable Force, using due diligence, to restore its operations to conditions existing prior to the occurrence of the Uncontrollable Force.

3. GOVERNING LAW AND DISPUTE RESOLUTION

- (a) This Agreement shall be interpreted in accordance with and governed by Federal law. Final actions subject to section 9(e) of the Northwest Power Act (16 U.S.C. 839f(e)(1)-(e)(5)) are not subject to binding arbitration and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals.
- (b) Any contract dispute or contract issue between the Parties arising out of this Agreement 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, they 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 pursuant to section 6 of the CPR Rules.

- (c) Except for arbitration awards which declare the rights and duties of the Parties under the 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.

- (d) Each Party shall be responsible for its own costs of arbitration, including legal fees. The arbitrator(s) 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.