

Notes to the contract drafters are in italics and between brackets.

Contract No. 00PB-«#####»
DRAFT 05/02/00

[Draft Prototype]

SETTLEMENT AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

«FULL NAME OF CUSTOMER»

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This SETTLEMENT AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and «FULL NAME OF CUSTOMER» («Customer Name»). «Customer Name» is a «_____» organized under the laws of the State of «_____». BPA and «Customer Name» are sometimes referred to as “Party” or “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.

BPA and «Customer Name» 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. Performance of this Agreement by the Parties shall begin on October 1, 2001, and shall continue through September 30, «____» (Expiration Date).

2. DEFINITIONS

- (a) "Contract Year" means the period 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) "Firm Power" means electric power that PBL will make continuously available to «Customer Name» under the Firm Power Block Power Sales Agreement.
- (c) "Firm Power Block Power Sales Agreement" means Contract No. 00PB-XXXXX, attached to this Agreement as Exhibit A. *(Drafter's Note: If customer purchases no Firm Power during CY 2002 through 2006, then change Contract No. to prototype contract.)*
- (d) "Forward Flat-Block Forecast" means BPA's forecast of the wholesale market price for the purchase of additional amounts of power at 100 percent annual load factor for the period of the RL Rate established in a BPA power rate case Record of Decision (ROD) as finally approved by the Federal Energy Regulatory Commission and affirmed, if appealed, by the United States Court of Appeals for the Ninth Circuit.
- (e) "Lowest PF Rate" means the lowest applicable cost-based power rate provided under the applicable PF rate schedule as applied to the same type purchases of Firm Power by BPA's preference customers. The applicable power rate shall be the PF rate for the same period as the RL Rate for the Firm Power purchases provided under the Firm Power Block Power Sales Agreement.

- (f) “Monetary Benefit” means the monetary settlement benefits provided under this Agreement as determined pursuant to the methodology described in section 4(c) below.
- (g) “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501.
- (h) “Qualified Entity” means an entity authorized under state law or by order of the applicable state regulatory authority to serve all or a portion of «Customer Name»’s Residential Load.
- (i) “RL Rate” means the then-current Residential Load Firm Power rate schedule established in accordance with the terms of the Firm Power Block Power Sales Agreement.
- (j) “Residential Exchange Program” means the program established under section 5(c) of the Northwest Power Act.
- (k) “Residential Load” means the load eligible to receive benefits under this Agreement, as such load is defined in Exhibit B.
- (l) “Residential Purchase and Sale Agreement,” or “RPSA,” means an agreement between BPA and a Pacific Northwest utility that implements the Residential Exchange Program.

3. SATISFACTION OF SECTION 5(c) OBLIGATIONS AND SETTLEMENT OF DISPUTES

- (a) **Satisfaction of Section 5(c) Obligations**

BPA shall, in full and complete satisfaction of all of its obligations during the period from October 1, 2001, through September 30, 2006 [or 2011], under or arising out of section 5(c) of the Northwest Power Act, provide to «Customer Name» Firm Power or Monetary Benefit payments, or both, pursuant to this Agreement.
- (b) **Settlement of Disputes**

The Parties agree to terminate all pending, and to commence no new litigation, contract disputes, or regulatory or administrative disputes between the Parties, including ASC filing determinations, load determinations, billing disputes, and other issues regarding the Residential Exchange Program, with respect to Residential Exchange Program benefits for the period prior to October 1, 2006 [or 2011], except for claims of breach of this Agreement. Nothing in this Agreement precludes either Party from intervening in or otherwise becoming a party to any proceeding for the purpose of upholding the terms of this Agreement.

4. SETTLEMENT BENEFITS

(a) **Total Benefits**

BPA shall provide to «Customer Name» a total benefit comprised of Firm Power and Monetary Benefit, both of which are expressed in annual average megawatts (aMW). This total benefit is as follows:

<u>Period of Time</u>	Total of Firm Power and Monetary Benefit for«Customer Name»	State 1	State 2	State 3
	<u>(annual aMW)</u>	<u>(annual aMW)</u>	<u>(annual aMW)</u>	<u>(annual aMW)</u>
10/1/01, through 9/30/06	_____	_____	_____	_____
10/1/06, through 9/30/11	_____	_____	_____	_____

The allocation and disposition of this total benefit between Firm Power and Monetary Benefit is described in sections 4(b) and 4(c) below.

(b) **Firm Power Sale Portion of Total Benefits**

(1) **October 1, 2001, through September 30, 2006**

(A) Subject to the terms of this Agreement, BPA shall make available and sell, and «Customer Name» shall purchase, Firm Power at a “flat” rate of delivery (100 percent load factor) during every hour under the RL Rate. The terms and conditions for this sale shall be as provided for in the Firm Power Block Power Sales Agreement. The annual amounts of Firm Power are as follows:

<u>Period of Time</u>	Firm Power	State 1	State 2	State 3
	<u>(annual aMW)</u>	<u>(annual aMW)</u>	<u>(annual aMW)</u>	<u>(annual aMW)</u>
10/1/01, through 9/30/06	_____	_____	_____	_____

(B) If «Customer Name» terminates the Firm Power Block Power Sales Agreement pursuant to section 16 of such agreement, BPA shall convert the Firm Power sale to Monetary Benefits and provide Monetary Benefits in the amount of the Firm Power sale, pursuant to section 4(c) below, from the effective date of such termination through September 30, 2006.

(2) **October 1, 2006, through September 30, 2011**

(A) Subject to the terms of this Agreement, BPA shall, no later than October 1, 2005, notify «Customer Name» in writing of the amount of Firm Power in annual aMW that will be

provided to «Customer Name» during the period that begins October 1, 2006, and ends on September 30, 2011. The terms and conditions for this sale shall also be as provided for in the Firm Power Block Power Sales Agreement, and such agreement shall be amended by the Parties to reflect the amount of Firm Power to be sold during such period. BPA shall not offer an amount of Firm Power that exceeds «Customer Name»'s net requirement at the time of the notice issued pursuant to this section. Prior to issuing such notice, BPA shall consult with «Customer Name» regarding its desire for Firm Power or Monetary Benefits.

- (B) If «Customer Name» does not purchase any Firm Power during the period from October 1, 2001, through September 30, 2006, «Customer Name» shall establish an initial net requirement under Exhibit C of the Firm Power Block Power Sales Agreement by August 1, 2005, for Contract Year 2007. «Customer Name» shall execute a contract including the terms and conditions of the Firm Power Block Power Sales Agreement, and the information provided on net requirements under this section by January 1, 2006, if BPA notifies «Customer Name» under section 4(b)(2)(a) that a portion of its benefits under section 4(a) will be provided as Firm Power.
- (C) If the RL Rate calculated at 100 percent annual load factor for the period from October 1, 2006, through September 30, 2011 exceeds the Lowest PF Rate for the same 100 percent load factor during such period, «Customer Name» may, by written notice to BPA within 30 days after BPA published its power rate case ROD, notify BPA that it will convert its entire Firm Power purchase under the Firm Power Block Power Sales Agreement to Monetary Benefits, pursuant to section 4(c) below, for the remaining term of this Agreement.

(c) **Monetary Benefit Portion of Total Benefits**

(1) **Amount of Monetary Benefit**

- (A) **October 1, 2001, through September 30, 2006**
BPA shall provide the following Monetary Benefits expressed in annual aMW to «Customer Name» for the period that begins October 1, 2001, and continues through September 30, 2006.

<u>Period of Time</u>	<u>Monetary Benefit (annual aMW)</u>	<u>State 1 (annual aMW)</u>	<u>State 2 (annual aMW)</u>	<u>State 3 (annual aMW)</u>
10/1/01, through 9/30/06	_____	_____	_____	_____

- (B) **October 1, 2006, through September 30, 2011**
 BPA shall, no later than October 1, 2005, notify «Customer Name» in writing of the amount of Monetary Benefit expressed in annual aMW, for which payments will be made to «Customer Name» during the period that begins October 1, 2006, and continues through September 30, 2011.

(2) **Determination of Monetary Benefit Monthly Payment Amounts**

- (A) **October 1, 2001, through September 30, 2006**
 The Monetary Benefit monthly payment amounts shall be determined in accordance with the following formula:

$$MP = \frac{(FBPF - RL) \times MB \times 8760 \text{ hours}}{12 \text{ months}} \text{ (8784 hours in leap years)}$$

Where:

MP = Monthly Payment Amount

FBPF = Forward Flat-Block Price Forecast established in the BPA power rate case for the period beginning October 1, 2001, through September 30, 2006.

RL = The RL Rate calculated at 100 percent annual load factor.

MB = Monetary Benefit amount in annual aMW.

- (B) **October 1, 2006, through September 30, 2011**
 The Monetary Benefit monthly payment amounts shall be determined in accordance with the following formula:

$$MP = \frac{(FBPF - RL) \times MB \times 8760 \text{ hours}}{12 \text{ months}} \text{ (8784 hours in leap years)}$$

Where:

MP = Monthly Payment Amount

FBPF = Forward Flat-Block Price Forecast established in the BPA power rate case establishing the RL Rate and other power rates for the period of October 1, 2006, through September 30, 2011.

RL = The RL Rate calculated at 100 percent annual load factor.

MB = Monetary Benefit amount in annual aMW.

(C) **Exception to Use of RL Rate in Sections 4(c)(2)(A) and 4(c)(2)(B)**

If, for the purposes of the formulas shown in sections 4(c)(2)(A) and 4(c)(2)(B) above, there is: (i) no RL Rate in effect; or (ii) the RL Rate exceeds the Lowest PF Rate, then the Lowest PF Rate shall replace the RL Rate in such formulas. Use of the Lowest PF Rate in such event shall apply to Monetary Benefits provided in accordance with sections 4(b)(1)(B), 4(b)(2)(C), and 4(c)(1).

(3) **Payment Provisions**

BPA shall pay “«Customer Name»” the monthly Monetary Benefit as determined in section 4(c)(2). The monthly Monetary Benefit shall be netted against the monthly payment amounts «Customer Name» owes BPA for Firm Power purchased in accordance with section 4(b). If the monthly Monetary Benefit exceeds the monthly amount «Customer Name» owes BPA, then BPA shall pay «Customer Name» either: (1) on the due date of the bill issued under Exhibit A; or (2) if «Customer Name» is not purchasing power under the Firm Power Block Power Sales Agreement within 30 days of the end of the calendar month for which Monetary Benefits are paid (Due Date). BPA shall pay by electronic funds transfer using «Customer Name»’s established procedures.

5. CASH PAYMENTS IF FIRM POWER CANNOT BE DELIVERED

(a) **Conditions Under Which Firm Power Cannot be Delivered**

(1) **Amount of Firm Power Purchased Exceeds Net Requirement**

If, for any Contract Year, pursuant to section 5 of Exhibit C of the Firm Power Block Power Sales Agreement, there is a reduction in the hourly amounts of Firm Power provided during each hour of the Contract Year, then the amount of such Firm Power reduction (“Excess Requirements Energy”) shall be converted to cash payments as provided for in section 5(b) below.

(2) **Firm Power Cannot Be Delivered Pursuant to Section 8(b)**

If, pursuant to section 8(b) below, monthly amounts of Firm Power cannot be delivered, then such amounts of Firm Power shall be converted to cash payments as provided for in section 5(b) below.

(3) **Insufficiency and Allocations**

If, pursuant to section 14(b) of Exhibit A, there is a restriction of

power deliveries under this Agreement, then such restricted amounts shall be converted to cash payments as provided in section 5(b) below.

(4) **Termination for Export of Regional Resource**

If, pursuant to section 14(e)(3) of the Firm Power Block Power Sales Agreement, BPA terminates the Firm Power Block Power Sales Agreement, the amounts of Firm Power provided under such agreement shall be converted to cash payments as provided in section 5(b) below.

(5) **Firm Power That is Not Delivered Due to a Monthly Purchase Deficiency**

If, for any month, there is a Monthly Purchase Deficiency, as that term is defined in section 5 of the Firm Power Block Power Sales Agreement for reasons other than Excess Requirements Energy as defined in section 5(a)(1) above, then such amount(s) of Monthly Purchase Deficiency shall be converted to cash payments as provided in section 5(b) below.

(b) **Determination of Cash Payment Amounts**

(1) **Default Payment Option**

Cash payments pursuant to this section shall be made monthly according to the following formula:

$$MP = (MIDC - WC - RL) \times MWH$$

Where:

MP = Monthly Cash Payment Amount

MIDC = The average price for the month of the Dow Jones daily firm On-Peak index price at the Mid-C for HLH, and the Off-Peak index price at the Mid-C for LLH. If, in the future, the Mid-C index is no longer available, or does not accurately reflect the value of daily firm energy, then it will be replaced with another prevailing index (or indices) that best represents the market price for firm power traded in eastern Washington.

WC = Wheeling Charge from Federal system generators to the Mid-C point of delivery based on the posted Point-to-Point tariff of BPA's transmission business or its successor over unconstrained paths plus any mandatory posted ancillary service charges and transmission losses for scheduled power under such tariff. If, in the future, the Point-to-Point tariff is no

longer available, or does not accurately reflect the cost of wheeling power from Federal system generators to the Mid-C point of delivery, then it will be replaced with a tariff that best represents the cost of wheeling fixed amounts of power between known points over unconstrained transmission paths.

RL = The monthly RL rate calculated at 100 percent load factor for HLH and LLH periods.

MWH = Monthly amount of power that cannot be delivered, expressed in megawatthours for HLH and LLH periods.

(2) **«Customer Name» Offer of Put Right to BPA**

Rather than receive payments under the default option described in section 5(b)(1) above, «Customer Name» may elect to offer BPA a put right for amounts of power that cannot be delivered pursuant to sections 5(a)(1), 5(a)(2), 5(a)(3), and 5(a)(4), subject to the following terms:

(A) No later than 10 days prior to the start of a month, «Customer Name» shall notify BPA if it desires to provide BPA with a put right for such month. Such put right shall provide BPA the right to sell the amount of power determined in sections 5(a)(1), 5(a)(2), 5(a)(3), and 5(a)(4) above at the Mid-C index price, and at the point of delivery described in section 5(b)(2)(D) below.

(B) If BPA chooses to exercise the put, it must do so prior to 2:00 p.m. on the later of: (i) three business days prior to the end of the month; or (ii) the day prior to the last day of trading for that month on the New York Mercantile Exchange futures market, or the put right expires for that month.

(C) If «Customer Name» offers BPA the put right for a given month, then BPA shall pay «Customer Name» a cash payment according to the following formula:

$$MP = (MIDC - RL) \times MWH$$

Where:

MP = Monthly Cash Payment Amount

MIDC = The average price for the month of the Dow Jones daily firm On-Peak index price at the

Mid-C for HLH, and the Off-Peak index price a the Mid-C for LLH. If, in the future, the Mid-C index is no longer available, or does not accurately reflect the value of daily firm energy, then it will be replaced with another prevailing index (or indices) that best represents the market price for firm power traded in eastern Washington.

RL = The monthly RL rate calculated at 100 percent load factor.

MWH = Monthly amount of power that is offered by «Customer Name» as a put right, expressed in megawatthours.

(D) The point of delivery for power that is put to «Customer Name» will be the same point where BPA makes Firm Power available to «Customer Name» in the Firm Power Block Power Sales Agreement to wheel to its load.

(3) **Payment Provisions**

If the monthly payment amount determined pursuant to the formulas in sections 5(b)(1) and 5(b)(2) is positive, then BPA shall pay «Customer Name» such amount; if any such amount is negative, then «Customer Name» shall pay BPA such amount. Monthly payment obligations under this section 5 shall appear as adjustments to BPA's payments or «Customer Name»'s payments under section 4(c)(3) above.

6. PASSTHROUGH OF BENEFITS

- (a) Except as otherwise provided in this Agreement, Firm Power and Monetary Benefit amounts received by «Customer Name» from BPA under this Agreement shall be passed through, in full, to each residential and small farm consumer, as either: (1) an adjustment in applicable retail rates; (2) monetary payments; or (3) as otherwise directed by the applicable State regulatory authority.
- (b) Monetary payments shall be distributed to the Residential Load in a timely manner. The amount of benefits held in the account described in section 6(c) below at any time shall not exceed the expected receipt of monetary payments from BPA under this Agreement over the next 180 days. If the annual monetary payment is less than \$600,000, then «Customer Name» may distribute benefits on a less frequent basis provided that distributions are made at least once each year.

- (c) Benefits shall be passed through consistent with procedures developed by «Customer Name»'s State regulatory authority(s). Monetary Benefits and any cash benefits under section 5 shall be identified on «Customer Name»'s books of account. Funds shall be held in an interest bearing account, and shall be maintained as restricted funds, unavailable for the operating or working capital needs of «Customer Name». Benefits shall not be pooled with other monies of «Customer Name» for short-term investment purposes. Firm Power shall be delivered monthly, and only to Residential Loads.
- (d) Nothing in this Agreement shall require that any power be delivered on an unbundled basis to residential and small farm customers of «Customer Name» or that «Customer Name» provide retail wheeling of such power.

7. AUDIT RIGHTS

BPA retains the right to audit «Customer Name» at BPA's expense to determine whether the benefits provided to «Customer Name» under this Agreement were provided only to «Customer Name»'s eligible Residential Load. BPA retains the right to take action consistent with the results of such audit to require the passthrough of such benefits to eligible customers. BPA's right to conduct such audits of «Customer Name» with respect to a Contract Year shall expire 60 months after the end of such Contract Year. As long as BPA has the right to audit «Customer Name» pursuant to this Agreement, «Customer Name» 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.

8. ASSIGNMENT

- (a) «Customer Name» shall be required to assign benefits under this section 8 to BPA if another Qualified Entity serves Residential Load formerly served by «Customer Name» unless BPA has approved an agency agreement for such Qualified Entity under section 8(c).
- (b) 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 without the other Party's written consent. Such consent shall not be unreasonably withheld; **provided, however**, that «Customer Name» agrees it shall assign benefits under this Agreement subject to the following terms and conditions:
 - (1) «Customer Name» shall quantify an amount of Residential Load each month served by Qualified Entities that would have been eligible to receive benefits if served by «Customer Name», and provide written notice to BPA of such amount no later than five days prior to the beginning of a month. Such amount shall be determined in account months based on the amounts served by «Customer Name» and Qualified Entities in the last full calendar month prior to such written

notice to BPA. An account month is the number of days of service to a Residential Load account during a month, divided by the number of days in such month.

- (2) Based on the determination in section 8(b)(1) above, «Customer Name» shall assign to BPA during the month following such notice a share of the total benefits specified in section 4(a) above. Such share shall be the account months of Residential Load served by Qualified Entities divided by the account months of Residential Load of «Customer Name» that would be eligible to receive benefits, whether or not «Customer Name» continues to serve such Residential Load. For purposes of section 8(b)(1) and this section 8(b)(2), the Residential Load of «Customer Name» shall not include Residential Load receiving benefits over a new distribution system under section 8(d).
 - (3) The amounts of Firm Power and Monetary Benefit assigned to BPA shall be in the same proportion as «Customer Name» receives under this Agreement.
 - (4) If the passthrough of benefits is made to consumers under section 8(c) below, then «Customer Name» shall retain the Monetary Benefits assigned to BPA under this section 8(b) and the amount of Firm Power determined under this section 8(b) shall be retained by BPA and converted to dollars pursuant to section 5 above. «Customer Name» shall use such amount of dollars plus the Monetary Benefits to provide benefits to individual residential and small farm consumers under section 8(c) below.
- (c) «Customer Name» may continue to pass through benefits to individual residential and small farm consumers under this Agreement not served by «Customer Name» if «Customer Name» is acting as the agent under an agreement entered into between «Customer Name» and a Qualified Entity which has been approved by «Customer Name»'s applicable state regulatory authority and BPA. «Customer Name» may continue to act as an agent for a Qualified Entity until an RPSA is signed by BPA and the Qualified Entity. Such benefits shall be equal to each such consumer's share of the Qualified Entity's share of the Residential Load, as calculated under section 8(b) above. «Customer Name» may distribute such benefits on a less frequent basis than monthly, provided that distributions are made at least once each Contract Year.
- (d) If a Qualified Entity eligible to purchase Firm Power acquires all or a portion of the distribution system serving the Residential Load of «Customer Name», «Customer Name» shall assign to BPA for the remaining term of this Agreement a share of the total benefits specified in section 4(a) above. Such share shall be based on the amount of Residential Load that would have been eligible to receive benefits from the new Qualified Entity for the 12-month period prior to the date of assignment divided by the total of Residential

Load of «Customer Name» that would have been eligible to receive benefits during that same 12-month period regardless of who served such Residential Load. All provisions of this section 8, other than section 8(b)(2), shall apply to assignments under this section 8(d).

9. DEEMER ACCOUNT BALANCE

As a result of entering this Agreement, neither BPA nor «Customer Name» have prejudiced its right, if any, to assert that a deemer balance, if any, from the 1981-2001 Residential Purchase and Sale Agreement between BPA and «Customer Name» is required to be carried over to any subsequent agreement offered by BPA pursuant to section 5(c) of P.L. 96-501.

10. CONSERVATION AND RENEWABLE DISCOUNT

Subject to the terms specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, BPA shall apply the Conservation and Renewables Discount to «Customer Name»'s Monetary Benefits as established in section 4 of this Agreement. For purposes of establishing Monetary Benefits eligible for this discount, «Customer Name» shall provide PBL a reasonable forecast of its Monetary Benefits and amounts of Firm Power provided pursuant to the Firm Power Block Power Sales Agreement through Contract Year 2006 by no later than August 1, 2001.

If, during any Contract Year, «Customer Name» has significant change in the total amount of Monetary Benefits or Firm Power provided pursuant to the Firm Power Block Power Sales Agreement, the Parties may, by no later than August 31 prior to the succeeding Contract Year, revise the forecast used to calculate the Conservation and Renewables Discount. If the revised forecast is less than 90 percent of, or greater than 110 percent of, the forecast used to calculate the existing Conservation and Renewables Discount, the revised forecast shall be used to recalculate the Conservation and Renewables Discount for the succeeding Contract Years.

To retain the full amount of the Conservation and Renewable Discount «Customer Name» shall satisfy all obligations associated with the Conservation and Renewables Discount as specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs. «Customer Name» shall reimburse BPA for any amount it received but for which it did not satisfy such obligations.

Monetary benefits shall be treated in the same manner as Firm Power for purposes of any Conservation and Renewable Discount Program or similar program based on Firm Power purchases. «Customer Name» shall be eligible for the Conservation and Renewable Discount, or any similar program based on Firm Power purchases under section 5(b) of the Northwest Power Act that BPA decides to establish through a section 7(i) hearing for the period that begins October 1, 2006, and ends on September 30, 2011.

11. **GOVERNING LAW AND DISPUTE RESOLUTION (02/29/00 Version)**

(Drafter's Note: The reference below to "CPR" means "Center for Policy Resolution." CPR is a proper name and should not be spelled out. The CPR arbitration rules are located in PBL Contracts menu under Contract-Related Documents).

[OPTIONS for section 11.]

Option 1-Include the following if customer prefers to litigate (not arbitrate) disputes.

This Agreement shall be interpreted in accordance with and governed by Federal law. The Parties shall make a good faith effort to negotiate a resolution of disputes before initiating litigation. During a contract dispute or contract issue between the Parties arising out of this Agreement, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.

Option 2-Include the following if customer prefers to arbitrate (not litigate) disputes.

- (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.
- (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 consistent with section 6 of the CPR Rules.
- (d) 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.

- (e) 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.

End of OPTIONS for section 11.]

12. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CUSTOMERS

«Customer Name» will ensure that any entity that issues customer bills to «Customer Name» 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.”

13. STANDARD PROVISIONS

(a) Amendments *(03/29/00 Version)*

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) Information Exchange and Confidentiality *(03/29/00 Version)*

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 PBL which is subject to a privilege of confidentiality or nondisclosure shall be clearly marked as such and PBL 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. PBL may use such information as necessary to provide service or timely bill for service under this Agreement. PBL shall only disclose information received under this provision to PBL employees who need the information for purposes of this Agreement.

- (c) **Entire Agreement (03/29/00 Version)**
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.
- (d) **Exhibits (03/29/00 Version)**
The exhibits listed in the table of contents are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.
- (e) **No Third-Party Beneficiaries (03/29/00 Version)**
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.
- (f) **Waivers (03/29/00 Version)**
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.

14. SIGNATURES (02/05/99 Version)

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for whom they sign.

«FULL NAME OF CUSTOMER»

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Account Executive

Name _____
(Print/Type)

Name _____
(Print/Type)

Title _____

Date _____

Date _____

(PBLLAN-PSB-5-W:\PSC\PM\CT\SETT_5-2.DOC.DOC)

Exhibit A

Contract No. 00PB-«#####»

PROTOTYPE DATE 04/20/00 12 PM

(Drafter's Note: Modify the draft to reflect latest changes.)

DRAFT 05/02/00

IOU Draft Prototype

FIRM POWER BLOCK

POWER SALES AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

«FULL NAME OF CUSTOMER»

(RL ONLY)

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This BLOCK POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and «FULL NAME OF CUSTOMER»

«Customer Name»). «Customer Name» is a « _____ » organized under the laws of the State of « _____ ».

RECITALS

This Agreement will replace Contract No. « _____ » which is available through September 30, 2001, and offered by BPA pursuant to section 5(b) of the Northwest Power Act.

BPA has administratively divided its organization into two business lines in order to functionally separate the administration and decisionmaking activities of BPA's power business from the administrative and decisionmaking activities of its transmission business. References in this Agreement to the Power Business Line (PBL) are solely for the purpose of establishing which BPA business line is responsible for the administration of this Agreement.

BPA and «Customer Name» agree:

[OPTIONS for section 1.

Option 1-Include the following if no third-party approval of this Agreement is required.

1. TERM (04/27/00 Version)

This Agreement takes effect on the date signed by the Parties. Performance by the Parties, except for the preparatory actions for performance (*Drafter's Note: feel free to delete the rest of this parenthetical*) contained in sections 6, 8, and 15(f) of the body of this Agreement, Exhibit A (Rate Commitments), and Exhibit C (Net Requirements), shall commence on October 1, 2001, and shall continue through September 30, « ____ » (Expiration Date). (*Drafter's Note: The Expiration Date must not exceed September 30, 2011.*)

Option 2-Include the following if third-party approval of this Agreement is required.

1. TERM (04/27/00 Version)

This Agreement takes effect on the date signed by the Parties subject to « _____ » approval. Performance by the Parties, except for the preparatory actions for performance (*Drafter's Note: feel free to delete the rest of this parenthetical*) contained in sections 6, 8, and 15(f) of the body of this Agreement, Exhibit A (Rate Commitments), and Exhibit C (Net Requirements), shall commence on October 1, 2001, and shall continue through September 30, « ____ » (Expiration Date). (*Drafter's Note: Identify applicable organization, i.e., United States Department of Agriculture Rural Utilities Service, the National Rural Utilities Cooperative Finance Corporation, etc. The Expiration Date must not exceed September 30, 2011.*)

Option 3-Include the following if customer is currently not eligible under applicable state law to receive service under this Agreement but is endeavoring to become eligible and BPA has not reached its 75 MW limit.

1. TERM (04/27/00 Version)

- (a) This Agreement takes effect on the date signed by the Parties. Subject to section 1(b), performance by the Parties, except for the preparatory actions for performance *(Drafter's Note: feel free to delete the rest of this parenthetical)* contained in sections 6, 8, and 15(f) of the body of this Agreement, Exhibit A (Rate Commitments), and Exhibit C (Net Requirements), shall commence no later than one year after the notice required under section 1(b) is provided, and shall continue through September 30, «____» (Expiration Date). *(The Expiration Date must not exceed September 30, 2011.)*
- (b) The Parties agree that if «Customer Name» meets BPA's standards for service then «Customer Name» shall be eligible for service under this Agreement. PBL shall notify «Customer Name» within ten days of PBL's determination that «Customer Name» is eligible for service and the Parties shall mutually agree when service under this Agreement shall begin consistent with section 1(a). If «Customer Name» is not eligible to receive service under this Agreement by September 30, 2006, PBL may terminate this Agreement.

End of OPTIONS for section 1.]

2. DEFINITIONS (04/27/00 Version)

Capitalized terms in this Agreement shall have the meanings defined below, in the exhibits or in context. All other capitalized terms and acronyms are defined in BPA's applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions (GRSPs), or its successors. *(Drafter's Note: Terms listed below that are defined in the GRSPs will be made consistent with the definitions in the final GRSPs. All references to "successor rate schedules and GRSPs" in 3 and 5 year non-portfolio contracts may be deleted if requested by customer.)*

- (a) "Amounts Taken" **(04/27/00 Version)** means an amount deemed equal to the amount of power scheduled by «Customer Name» under section 7 of this Agreement or an amount of power as measured at Points of Measurement, as appropriate.
- (b) "Contract Year" or "CY" **(04/27/00 Version)** means the period 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.
- (c) "Contracted Power" **(04/27/00 Version)** means Firm Power provided under this Agreement.
- (d) "Diurnal" **(04/27/00 Version)** means the division of hours of the day between Heavy Load Hours (HLH) and Light Load Hours (LLH).

- (e) “Firm Power” **(04/27/00 Version)** means electric power that PBL will make continuously available to «Customer Name» under this Agreement
- (f) “Northwest Power Act” **(03/29/00 Version)** means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501.
- (g) “Party” or “Parties” **(04/27/00 Version)** means PBL and/or «Customer Name».
- (h) “Points of Measurement” **(04/27/00 Version)** means the interconnection points between BPA, «Customer Name» and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.
- (i) “Point of Receipt” **(04/27/00 Version)** means the points of interconnection on the transmission provider's transmission system where Contracted Power will be made available to «Customer Name»’s transmission provider by PBL.
- (j) “Power Business Line” or “PBL” **(03/29/00 Version)** means that portion of the BPA organization or its successor that is responsible for the management and sale of BPA’s Federal power.
- (k) “Region” **(03/29/00 Version)** means the definition established for “Region” in the Northwest Power Act.
- (l) “Settlement Agreement” means Contract No. 00PB-XXXXX. This Agreement is attached as Exhibit A to the Settlement Agreement.
- (m) “Surplus Firm Power” **(04/27/00 Version)** means surplus firm electric power that is made available and sold consistent with section 5(f) of the Northwest Power Act.
- (n) “Total Retail Load” **(04/27/00 Version)** means all electric power consumption including electric system losses, within a utility’s distribution system as measured at Points of Measurement, adjusted as needed for unmetered loads or generation, nonfirm or interruptible loads agreed to by the Parties, transfer loads of other utilities served by «Customer Name» and «Customer Name»’s transfer loads located in other control areas, and losses on «Customer Name»’s transmission system. No distinction is made between load that is served with Contracted Power and load that is served with electric power from other sources.
- (o) “Transmission Business Line” or “TBL” **(04/27/00 Version)** means that portion of the BPA organization or its successor that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

3. APPLICABLE RATES (03/29/00 Version)

Purchases under this Agreement may be subject to more than one rate schedule. The Residential Load Firm Power (RL) rate schedule, including the GRSPs, or its successors are incorporated by reference into this Agreement. Purchases under such rate schedule are established as follows:

Residential Load Firm Power Rate (03/29/00 Version)

Section 4 of the body of this Agreement, Exhibit A (Rate Commitments), and Exhibit B (Billing) establish rates and Contracted Power amounts subject to the RL rate schedule.

4. RL FIRM POWER PRODUCT (03/29/00 Version)

(a) **RL Product for Contract Years 2002 Through 2006 (04/27/00 Version)**
PBL shall sell and make available and «Customer Name» shall purchase under the applicable RL rate ____ megawatts each hour.

(b) **RL Product for Contract Years 2007 Through 2011 (04/27/00 Version)**
«Customer Name» shall purchase, during the period that begins October 1, 2006, and continues through September 30, 2011, the MW amounts determined by BPA pursuant to section 4(b)(2) of the Settlement Agreement. This Agreement shall be amended by the Parties to reflect such MW amounts.

(c) **Changes to MW Amounts**

The amounts established in sections 4(a) and 4(b) above may be updated pursuant to the Settlement Agreement and section 5 of Exhibit C, Net Requirements.

5. LOAD LOSS

If PBL determines, that «Customer Name» purchased less Contracted Power in any month than it was contractually obligated to purchase under this Agreement (Monthly Purchase Deficiency), then such Monthly Purchase Deficiency shall be converted to cash payments to «Customer Name» from PBL or to PBL from «Customer Name» in accordance with the Settlement Agreement.

6. SCHEDULING (04/27/00 Version)

All Contracted Power transactions under this Agreement shall be scheduled and implemented consistent with Exhibit D, Scheduling. The procedures for scheduling described in Exhibit D, Scheduling, are the standard utility procedures followed by PBL for power transactions between PBL and other utilities or entities in the Region that require scheduling.

7. DELIVERY

(a) **Transmission Service for Contracted Power (03/29/00 Version)**

This Agreement does not provide transmission services for, or include the delivery of, Contracted Power to «Customer Name». «Customer Name» shall

be responsible for executing one or more wheeling agreements with a transmission supplier for the delivery of Contracted Power (Wheeling Agreement). The Parties agree to take such actions as may be necessary to facilitate the delivery of Contracted Power to «Customer Name» consistent with the terms, notice, and the time limits contained in the Wheeling Agreement.

- (b) **Liability for Delivery (04/27/00 Version)**
«Customer Name» waives any claims against PBL arising under this Agreement for nondelivery of power to any points beyond the applicable Points of Receipt. PBL shall not be liable for any third-party claims related to the delivery of power after it leaves the Points of Receipt. In no event will either Party be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership. These limitations on liability apply regardless of whether or not this Agreement provides for transfer service.
- (c) **Points of Receipt (04/27/00 Version)**
PBL shall make Contracted Power available to «Customer Name» under this Agreement at Points of Receipt solely for the purpose of scheduling transmission to points of delivery on «Customer Name»'s distribution system. «Customer Name» shall schedule, if scheduling is necessary, such Contracted Power solely for use by its firm retail electric power consumer load. PBL, for purposes of scheduling transmission for delivery under this Agreement, shall specify Points of Receipt in a written notice to «Customer Name» prior to August 1, 2000.

If required by the Wheeling Agreement when PBL designates such Points of Receipt, PBL will provide capacity amounts for transmission under the Wheeling Agreement associated with the initial Points of Receipt that can be accepted as firm Points of Receipt under «Customer Name»'s Wheeling Agreement (except in the unlikely event that all Points of Receipt on the Federal Columbia River Power System (FCRPS) would be considered nonfirm). The sum of capacity amounts requested by PBL shall not exceed the amount of Contracted Power specified in section 4 of this Agreement. *(Drafter's Note. Customer may elect the following sentence instead of previous sentence: "The capacity amounts requested by PBL shall not exceed the amount reasonably necessary for PBL to provide Contracted Power.")* Such Points of Receipt and their capacity amounts may only be changed through mutual agreement. However at any time PBL may request the use of a nonfirm Point of Receipt to provide Contracted Power to «Customer Name», but PBL shall reimburse «Customer Name» for any additional costs.

- (d) **Transmission Losses (04/27/00 Version)**
PBL shall provide «Customer Name» the losses, between the Points of Receipt and the point of interconnection between the BPA Control Area and

the Control Area in which «Customer Name» resides, for Contracted Power, at no additional charge. Losses will be provided at Points of Receipt as established under section 7(c), and under the terms and conditions as defined in the transmission provider's tariff.

8. MEASUREMENT *(04/27/00 Version)*

- (a) Amounts Taken are deemed equal to the amount scheduled by «Customer Name» under section 7 of this Agreement or an amount of power as measured at Points of Measurement, as appropriate.
- (b) «Customer Name» shall provide reasonable notice to PBL prior to changing control areas.

9. BILLING AND PAYMENT

- (a) **Billing *(04/27/00 Version)***

PBL shall bill «Customer Name» monthly, consistent with applicable BPA rates, including the GRSPs and the provisions of this Agreement for the Amounts Taken and other services provided to «Customer Name» in the preceding month or months under this Agreement. PBL may send «Customer Name» an estimated bill followed by a final bill. PBL shall send all bills on the bill's issue date either electronically or by mail, at «Customer Name»'s option. If electronic transmittal of the entire bill is not practical, PBL shall transmit a summary electronically, and send the entire bill by mail.
- (b) **Payment *(04/27/00 Version)***

Payment of all bills, whether estimated or final, must be received by the 20th day after the issue date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or Federal holiday, the Due Date is the next business day. If payment has been made on an estimated bill before receipt of a final bill for the same month, «Customer Name» shall pay only the amount by which the final bill exceeds the payment made for the estimated bill. PBL shall provide «Customer Name» the amounts by which an estimated bill exceeds a final bill through either a check or as a credit on the subsequent month's bill. After the Due 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. «Customer Name» shall pay by electronic funds transfer using BPA's established procedures. PBL may terminate this Agreement if «Customer Name» is more than three months behind in paying its bills under this Agreement and «Customer Name» cannot demonstrate an ability to make the payments owed.

(c) **Disputed Bills (03/29/00 Version)**

In case of a billing dispute, «Customer Name» shall note the disputed amount and pay its bill in full by the Due Date. Unpaid bills (including both disputed and undisputed amounts) are subject to late payment charges provided above. If «Customer Name» is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate used to determine the interest is calculated by dividing the Prime Rate for Large Banks as reported in the Wall Street Journal; 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 by BPA.

10. NOTICES (04/27/00 Version)

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. *(Drafter's Note: Check BPA address and phone number to ensure it is applicable.)*

If to «Customer Name»:

« _____ »
« _____ »
« _____ »
Attn: « _____ »
« _____ »
Phone: « ____ - ____ - ____ »
FAX: « ____ - ____ - ____ »
E-Mail: « _____ »

If to PBL:

Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621
Attn: « _____ - ____ »
Account Executive
Phone: 503-230-« ____ »
FAX: « ____ - ____ - ____ »
E-Mail: « _____ »

11. COST RECOVERY (03/29/00 Version)

- (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 Contracted Power set forth in the applicable power rate schedule during the term of this Agreement pursuant to the Cost Recovery Adjustment Clause in the 2002 GRSPs, or successor GRSPs.

12. UNCONTROLLABLE FORCES (04/27/00 Version)

PBL shall not be in breach of its obligation to provide Contracted Power and «Customer Name» shall not be in breach of its obligation to purchase Contracted 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 Contracted 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 PBL which was provided by a third-party transmission or distribution owner, or by a transmission provider, including TBL, that is functionally separated from the generation provider in conformance with Federal Energy Regulatory Commission (FERC) Orders 888 and 889 or its 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. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

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.

13. GOVERNING LAW AND DISPUTE RESOLUTION (04/27/00 Version)

(Drafter's Note: The reference below to "CPR" means "Center for Policy Resolution." CPR is a proper name and should not be spelled out. The CPR arbitration rules are located in PBL Contracts menu under Contract-Related Documents).

[OPTIONS for section 13.

Option 1-Include the following if customer prefers to litigate (not arbitrate) disputes.

This Agreement shall be interpreted consistent with and governed by Federal law. The Parties shall make a good faith effort to negotiate a resolution of disputes before initiating litigation. During a contract dispute or contract issue between the Parties arising out of this Agreement, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable. «Customer Name» reserves the right to seek judicial resolution of any dispute arising under this Agreement.

Option 2-Include the following if customer prefers to arbitrate (not litigate) disputes.

- (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. «Customer Name» reserves the right to seek judicial resolution of any dispute arising under this Agreement that is not subject to arbitration under this section 13.
- (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, 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.

End of OPTIONS for section 13.]

14. STATUTORY PROVISIONS

- (a) **Annual Financial Report and Retail Rate Schedules (04/27/00 Version)**
«Customer Name» shall provide PBL with a current copy of its annual financial report and its retail rate schedules, as required by Section 5(a) of the Bonneville Project Act, P.L. 75-329.
- (b) **Insufficiency and Allocations (03/29/00 Version)**
If BPA determines, consistent with section 5(b) of the Northwest Power Act and other applicable statutes, that it will not have sufficient resources on a planning basis to serve its loads after taking all actions required by applicable laws then BPA shall give «Customer Name» a written notice that BPA may restrict service. Such notice shall be consistent with BPA's insufficiency and allocations methodology, published in the Federal Register on March 20, 1996 and shall state the effective date of the restriction, the amount of «Customer Name» load to be restricted, and the expected duration of the restriction. BPA shall not change that methodology without the written agreement of all affected customers. Such restriction shall take effect no sooner than five years after notice is given to «Customer Name». If BPA imposes a restriction under this provision then the amount of Contracted Power that «Customer Name» is obligated to purchase pursuant to section 4 shall be reduced to the amounts available under such restricted service.
- (c) **Priority of Pacific Northwest Customers (03/29/00 Version)**
The provisions of sections 9(c) and (d) of the Northwest Power Act and the provisions of P.L. 88-552 as amended by the Northwest Power Act are incorporated into this Agreement by reference. BPA agrees that «Customer

Name», together with other customers in the Region shall have priority to BPA power, consistent with such provisions.

(d) **Prohibition on Resale (03/29/00 Version)**

«Customer Name» shall not resell RL Contracted Power except to serve «Customer Name»'s Total Retail Load or as otherwise permitted by Federal law.

(e) **Use of Regional Resources (04/27/00 Version)**

- (1) Within 60 days of the start of each Contract Year, «Customer Name» shall notify PBL of any firm power from a generating resource, or a contract resource during its term, that has been used to serve firm consumer load in the Region that «Customer Name» plans to export for sale outside the Region in the next Contract Year. PBL may during such Contract Year request additional information on «Customer Name» resources if PBL has information that «Customer Name» may have made such an export and not notified PBL. PBL may request and «Customer Name» shall provide within 30 days of such request, information on the planned use of any or all of «Customer Name»'s generating and contractual resources.
- (2) «Customer Name» shall be responsible for monitoring any firm power from generating resources and contract resources it sells in the Region to ensure such firm power is delivered to be used to serve firm consumer load in the Region.
- (3) If «Customer Name» fails to report to PBL in accordance with section (1), above, any of its planned exports for sale outside the Region of firm power from a generating resource or a contract resource that has been used to serve firm consumer load in the Region, and PBL makes a finding that an export which was not reported was made, then PBL may terminate this Agreement upon 30 days written notice to «Customer Name». If PBL concludes that the failure to report is inadvertent and unlikely to reoccur PBL shall not terminate this Agreement and may instead elect to decrement the amount of Contracted Power by up to two times the amount of the export that was not reported. When applicable such decrements shall be established consistent with section 4(c) of Exhibit C.
- (4) For purposes of this section, an export for sale outside the Region means a contract for the sale or disposition of firm power from a generating resource, or a contract resource during its term, that has been used to serve firm consumer load in the Region in a manner that such output is not planned to be used solely to serve firm consumer load in the Region. Delivery of firm power outside the Region under a seasonal exchange agreement that is made consistent with BPA's section 9(c) policy will not be considered an export. Firm power from

a generating resource or contract resource used to serve firm consumer load in the Region means the firm generating or load carrying capability of a generating resource or contract resource as established under Pacific Northwest Coordination Agreement resource planning criteria, or other resource planning criteria generally used for such purposes within the Region.

- (f) **BPA Appropriations Refinancing Act (04/27/00 Version)**
(Drafter's Note: BPA is legally obligated to offer to make section 3201(i) of P.L. 104-134 a part of this Agreement. Customer may exclude this provision at their option.)

The Parties agree that the BPA Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (The BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 1350, as stated in the United States Code on the date this Agreement is signed by the Parties, is incorporated by reference and is a material term of this Agreement. The Parties agree that this provision and the incorporated text shall be included in subsequent agreements between the Parties, as a material term through at least September 30, 2011.

15. STANDARD PROVISIONS

- (a) **Amendments (03/29/00 Version)**
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 (03/29/00 Version)**
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. «Customer Name» may not transfer or assign this Agreement to any of its retail customers.
- (c) **Information Exchange and Confidentiality (04/27/00 Version)**
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 (04/27/00 Version)**

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) **Exhibits (03/29/00 Version)**

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

(f) **No Third-Party Beneficiaries (03/29/00 Version)**

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 (03/29/00 Version)**

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 (03/29/00 Version)**

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 «Customer Name» to such policy, nor shall it be construed to be a waiver of the right of «Customer Name» to seek judicial review of any such policy.

(i) **Severability (04/27/00 Version)**

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) **Rate Covenant (04/27/00 Version)**
«Customer Name» agrees that it will establish, maintain and collect rates or charges for power and energy and other services, facilities and commodities sold, furnished or supplied by it through any of its electric utility properties which shall be adequate to provide revenues sufficient to enable «Customer Name» to make the payments required under this Agreement.

[OPTION for section 15(k).

This provision is optional at customer's discretion.

- (k) **Hold Harmless (03/29/00 Version)**
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.

End of OPTION for section 15(k).]

16. TERMINATION (04/27/00 Version)

«Customer Name» shall have the right to terminate this Agreement if all of the following conditions have been satisfied:

- (a) Any rates adopted in WP-02 Final Rate Proposal, Administrator's Final Record of Decision are remanded to BPA for reconsideration by FERC or the Ninth Circuit Court of Appeals.
- (b) As a result of the remand, the Administrator publishes a subsequent Final Record of Decision which, if confirmed, would result in «Customer Name» being subject to a higher average effective power rate for the period beginning the first day of the billing period immediately following the effective date of new rates contained in the subsequent Final Record of Decision and ending on September 30, 2006.
- (c) «Customer Name» has provided written notice to BPA of its intent to terminate this Agreement within 30 days of publication of the subsequent Final Record of Decision.

Termination shall be effective at the start of the second billing period following the termination notice.

17. SIGNATURES (03/29/00 Version)

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for whom they sign.

«FULL NAME OF CUSTOMER»

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

Name _____
(Print/Type)

Title _____

Date _____

By _____

Account Executive

Name _____
(Print/Type)

Date _____

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Exhibit A
RATE COMMITMENTS

1. DEFINITIONS

- (a) “5-Year Rates” **(03/29/00 Version)** means the Lowest RL Rates established in the 2002 Wholesale Power Rate Case for Contract Years 2002 through 2006.
- (b) “Lowest RL Rates” **(04/27/00 Version)** means the lowest applicable cost-based power rates provided under the applicable RL rate schedule as applied to «Customer Name»’s Contracted Power purchases under this Agreement. The Lowest RL Rates shall be selected by «Customer Name» from the RL rates that are available and from which the Parties agree «Customer Name» is eligible to purchase under at the time «Customer Name» makes its selection as specified in this exhibit. The Lowest RL Rates shall be approximately equal to the PF Preference Rate.

2. PURCHASE DURATION (04/27/00 Version)

«Customer Name» shall purchase all of the power provided in section 4 of the body of this Agreement for the entire term of this Agreement.

3. RESIDENTIAL LOAD FIRM POWER RATE TREATMENT

- (a) **Right to Lowest RL Rates (03/29/00 Version)**
«Customer Name» is contractually guaranteed through «_____» the Lowest RL Rates established in a successor BPA power rates proceeding for its RL Contracted Power purchases under this Agreement. This section shall not be construed to waive, alter, or amend any right that «Customer Name» may have under applicable statutes. *(Drafter’s Note: Insert the actual Expiration Date from section 1 of the body of this Agreement.)*
- (b) **Revisions to Residential Load Firm Power Rates (03/29/00 Version)**
BPA agrees that the 5-Year Rates available to «Customer Name» consistent with this exhibit shall not be subject to revision during their respective terms, except for the application of a Cost Recovery Adjustment Clause as provided in the applicable RL applicable rate schedule and GRSPs and this Agreement.
- (c) **5-Year Rates Treatment (04/27/00 Version)**
All Contracted Power purchases provided under section 4 of the body of this Agreement are subject to the 5-Year Rates. The monthly energy rates for Contracted Power are specified in sections «__» in the section labeled “Schedule RL-02 Residential Load Firm Power” in the 2002 Power Rate Schedules.

Suboption-Include the following if this Agreement extends beyond September 30, 2006.

«Customer Name» must select a follow-on rate period and associated rates from those offered by BPA, and notify PBL of its selection, by the later of:

- (1) six months prior to the expiration of the 5-Year Rates; or
- (2) thirty (30) days after the date BPA's initial proposal for successor rates is published.

Otherwise the follow-on rate period and associated rates shall be the shortest rate period and associated rates that are applicable to «Customer Name».

4. SPECIAL RL LOAD TREATMENT

[OPTIONS for section 4(a).

Option 1-Include the following if customer purchases EPP

(a) Environmentally Preferred Power

(1) Environmentally Preferred Power (04/27/00 Version)

PBL shall sell and «Customer Name» shall purchase during Contract Years 200«_» through 200«_» the Environmentally Preferred Power established below. The Green Energy Premium that «Customer Name» shall pay for such power is «_» dollars per MWh.

“Environmentally Preferred Power” means power deemed to be generated by generating resources that are determined to have environmental benefits relative to BPA system power. For purposes of this Agreement Environmentally Preferred Power is deemed to be generated from the following resources:

«_____». *(Drafter's Note: List the generating resources.)*

PBL may, at any time, add resources to this list that qualify as Environmentally Preferred Power. PBL may also replace or delete resources in this list if a resource that is included in the list is no longer available to PBL. Any such changes shall be noted in the annual report PBL provides «Customer Name» about its Environmentally Preferred Power purchase.

Contract Year	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
2002												
2003												
2004												
2005												
2006												

Suboption-Include the following section 4(a)(2) if the resources is endorsed by the Northwest Public Interest Groups and customer pays for the endorsement. (Drafter's Note: Other groups may provide endorsements based on customer needs. If so alternate language would need to be developed with Al Ingram.)

(2) **Northwest Public Interest Groups Endorsement (04/27/00 Version)**

(A) The resources listed in section 4(a)(1) are endorsed by the Natural Resources Defense Council, Northwest Energy Coalition, and Renewable Northwest Project (Northwest Public Interest Groups) as being an environmentally preferred source of electricity generation for electricity products. «Customer Name» may only use the following endorsement from the Northwest Public Interest Groups to advertise, market, and promote Environmentally Preferred Power to retail electric power consumers inside «Customer Name»'s service territory:

“The «_____» generating facilities are environmentally preferred sources of electricity production, based on our independent review of environmental impacts.”

(B) «Customer Name» agrees to make an additional payment after the end of each Contract Year to the Bonneville Environmental Foundation in exchange for the right to use the Northwest Public Interest Groups endorsement. The amount of the payment shall equal the total kWh of Environmentally Preferred Power provided during the Contract Year multiplied by «_» mills per kWh. Payment is due by no later than 20 days after «Customer Name» receives the notice identified in section 4(a)(3)(A). Such payments to the Bonneville Environmental Foundation qualify as eligible expenditures for the conservation and Renewables Discount. The payment shall be made by wire transfer to the following account:

Account Name: Bonneville Environmental Foundation
Tax ID Number: 93-1248274
Bank Name: Bank of the Northwest
600 Pioneer Tower
888 SW. Fifth Avenue
Portland, OR 97204
Account Number: 0108002777
ABA Routing: 123006680

(3) **Disclosure, Reporting, and Adjustments (04/27/00 Version)**

(A) By no later than 30 days after the end of each Contract Year PBL shall provide «Customer Name» with the following: (i) a statement that discloses information on Environmentally Preferred Power, including the total amount of the Environmentally Preferred Power purchase that qualifies for the Conservation and Renewables Discount; and (ii) a notice that identifies the following for each Contract Year: the actual

monthly amounts of Environmentally Preferred Power that was provided to «Customer Name» by each resource; the total actual monthly power amounts generated by each resource; and the total annual sales from each resource.

- (B) Subject to section 4(a)(3)(C), if the Environmentally Preferred Power provided to «Customer Name» during a Contract Year is less than the amounts specified in section 4(a)(1), the difference shall be determined to have been served with Contracted Power under the terms of this Agreement. PBL shall adjust «Customer Name»'s power bill after the end of each Contract Year to account for such difference once the power amounts provided by the resources during the Contract Year are known.
- (C) «Customer Name» may request that PBL provide «Customer Name» with Environmentally Preferred Power contracted for during a Contract Year that was not provided. «Customer Name» must notify PBL of such request by no later than two weeks after the notification specified in section 4(a)(3)(A)(ii) is received. By no later than 60 days after the end of the Contract Year, if sufficient Environmentally Preferred Power is available, PBL shall provide to «Customer Name», Environmentally Preferred Power equal to the amount contracted for during the Contract Year less the amount provided. If sufficient Environmentally Preferred Power is not available, PBL shall adjust «Customer Name»'s power bill consistent with section 4(a)(3)(B).

Option 2-Include the following if customer does not purchases EPP.

- (a) **Environmentally Preferred Power (03/29/00 Version)**
«Customer Name» may request Environmentally Preferred Power. If available, the Parties shall amend this Agreement to include necessary provisions as mutually agreed.

End of OPTIONS for section 4(a).]

5. REVISIONS (03/29/00 Version)

If this exhibit is inconsistent with BPA's 2002 Power Rate Case Record of Decision or BPA's 2002 RL Power Rate Schedule as finally approved by FERC, whichever is in effect, the Parties shall make a good faith effort to amend this exhibit so that it is consistent.

The Parties shall update this exhibit to reflect necessary changes to establish new rate choices consistent with the applicable future rate cases. This shall be done by mutual agreement except as allowed in section 3 of this exhibit.

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Exhibit B BILLING

1. RESIDENTIAL LOAD FIRM POWER ENTITLEMENTS (04/27/00 Version)

- (a) The hourly amount shown in section 4 of the body of this Agreement multiplied by the number of hours in the applicable Diurnal period establishes «Customer Name»'s RL HLH and LLH Energy Entitlements.
- (b) The hourly amount shown in section 4 of the body of this Agreement establishes «Customer Name»'s RL Demand Entitlement.

2. UNAUTHORIZED INCREASE CHARGE (04/27/00 Version)

Amounts Taken from PBL in excess of Contracted Power shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PBL. Power that has been provided for energy imbalance service pursuant to an agreement between TBL and «Customer Name» will not be subject to an Unauthorized Increase Charge for Demand and Energy under this Agreement.

3. CONSERVATION AND RENEWABLES DISCOUNT (04/27/00 Version)

Subject to the terms specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, BPA shall apply the Conservation and Renewables Discount to «Customer Name»'s Contracted Power as established in section 4 of the body of this Agreement. For purposes of establishing power amounts eligible for this discount, «Customer Name» shall provide PBL a reasonable forecast of such Firm Power amounts through Contract Year 2006 by no later than August 1, 2001.

If during any Contract Year, «Customer Name» has significant load loss or gain, the Parties may, by no later than August 31 prior to the succeeding Contract Year, revise the forecast used to calculate the Conservation and Renewables Discount. If the revised forecast is less than 90 percent of, or greater than 110 percent of, the forecast used to calculate the existing Conservation and Renewables Discount, the revised forecast shall be used to recalculate the Conservation and Renewables Discount for the succeeding Contract Years.

To retain the full amount of the Conservation and Renewable Discount «Customer Name» shall satisfy all obligations associated with the Conservation and Renewables Discount as specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs. «Customer Name» shall reimburse BPA for any amount it received but for which it did not satisfy such obligations.

4. REVISIONS (03/29/00 Version)

If this exhibit is inconsistent with BPA's 2002 Power Rate Case Record of Decision or BPA's 2002 RL Power Rate Schedule as finally approved by FERC, the Parties shall make a good faith effort to amend this exhibit so that it is consistent.

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**Exhibit C
NET REQUIREMENTS**

1. ESTABLISHING NET REQUIREMENT

(a) Initial Net Requirement

(1) Total Retail Load Forecast (04/27/00 Version)

The tables below shows the PBL approved forecast of «Customer Name»'s Total Retail Load. The Parties agree that this forecast shall not be subject to arbitration under section 14 of the body of this Agreement. *(Drafter's Note: Drop last sentence if customer has chosen the litigation option instead of arbitration in section 14.)*

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year 2002												
Total MWh												
Peak MW												

(2) Initial Net Requirement (04/27/00 Version)

«Customer Name»'s net requirement amounts are derived by taking the forecast of «Customer Name»'s Total Retail Load and subtracting from it the resource amounts that are committed to serve «Customer Name»'s Total Retail Load under section 2(c) of this exhibit and the amount of load served by known non-«Customer Name» resources, if any, as established in section 3 of this exhibit.

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year 2002												
Total MWh												
Peak MW												

(b) Annual Update of Net Requirement

(1) Updated Forecast of Total Retail Load (04/27/00 Version)

At least 60 days prior to the start of each Contract Year, «Customer Name» shall provide PBL an updated monthly forecast of «Customer Name»'s Total Retail Load in sufficient detail to fill in the table below. Up to 30 days before the start of the Contract Year PBL may notify «Customer Name» that PBL has determined that the forecast submitted when considered as a whole is not reasonable and that PBL will substitute a forecast of Total Retail Load that it considers reasonable to fill in the table below. The only issue that is subject to arbitration under section 14 of body of this Agreement is whether PBL's forecast when considered as a whole was reasonable. Such arbitration shall not include the interpretation or application of BPA's policies to such load forecast. *(Drafter's Note: Drop previous 2 sentences if customer has chosen the litigation option instead of arbitration in section 14.)* However the Parties may mutually agree to

mediate disputes regarding PBL's forecast. Prior to the start of the Contract Year this exhibit shall be revised to update the forecast in the table below.

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year												
Total MWh												
Peak MW												

- (2) **Review of Net Requirements Amounts (03/29/00 Version)**
 «Customer Name»'s updated net requirement amounts are derived by taking the «Customer Name» forecast of Total Retail Load established in section 1(b)(1) above and subtracting from it the resource amounts that are committed to serve «Customer Name»'s Total Retail Load under section 2(c) and the amount of load served by known non-«Customer Name» resources, if any, as established in section 3 of this exhibit. The updated net requirement amounts shall be shown in the table below.

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year												
Total MWh												
Peak MW												

2. CUSTOMER RESOURCES (04/27/00 Version)

The amounts listed in the tables in this section are only for determining «Customer Name»'s net requirement under this Agreement and do not imply any specific resource operation, nor are the amounts intended to interfere with «Customer Name»'s decisions on how to operate its specific resources. *(Drafter's Note: Separately list the applicable data for each customer resource and contract purchase. All resources that are or have been dedicated to serve customer's must be listed, consistent with BPA's 5(b) policy and the declaration parameters established in the BPA product catalog. Specific information is required for each resource. The X's in the table below establish the information that must be provided for the various resource types which customer is declaring are committed to serve customer's Total Retail Load, for: (1) Generating resources; (2) contract purchases from generating resources; and (3) contract purchases from known system sales, including BPA Pre-Subscription Contract.)*

		1	2	3
Generating Resource Name		X		
Contract Resource, Contract No.			X	X
Contract Resource Source of Supply			X	X
Northwest Power Act Classification	5b1A or 5b1B	X	X	X
Resource Type	Hydro, PNCA Hydro, Wind etc....	X	X	
Nameplate Capability	— MW	X	X	
% of Project Output Acquired	— %	X		
% of Proj Output Dedicated to TRL	— %	X		
Contract Termination Date			X	X

(a) **Declared Output of Specific «Customer Name» Resources (03/29/00 Version)**

«Customer Name» commits the firm output from the following resources (or an equivalent amount from another source) to serve its Total Retail Load. *(Drafter's Note: List all customer resources that are not netted against load. For Block this must be all resources. If none keep this provision but write in "None at this time" after the first resource name below and eliminate the remainder of the provision.)*

(1) **Resource Name (03/29/00 Version)**

The following data applies to this resource. *(Drafter's Note: In addition to the required resource information tables like the one shown below must be established for all Contract Years from 2002 through the Expiration Date at the time of contract signature. These may not be revised except for adjustments allowed in section 4 of this exhibit. Choose the appropriate level of detail for the table and delete the extra rows.)*

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year												
Total MWh												
Peak MW												

(2) **Resource Name (03/29/00 Version)**

(b) **Unspecified Resource Amounts Committed To Serve Total Retail Load (04/27/00 Version, modified for RL Only)**

«Customer Name» shall use its best efforts to meet the obligations to provide unspecified resources established in the provisions below. «Customer Name» agrees that if such power is acquired from PBL under this Agreement, then the power provided will be subject to the Unauthorized Increase Charge.

(1) **Unspecified Resources for Balancing Net Requirements (04/27/00 Version)**

«Customer Name» agrees to provide power from unspecified resources to serve Total Retail Load in amounts, and in periods, equal to its Total Retail Load not served through power purchases established in this Agreement, through resource amounts committed in section 2(a) above, through unspecified resource amounts established in section 2(b)(2) and section 2(b)(3) below, or through amounts in section 3 below. The amount in the table below shall be updated annually to show the amount, if any that the forecast established in section 1(b)(1) of this exhibit exceeds the sum of the following: the power amount established in section 4 of the body of this exhibit (as updated consistent with section 5 of this exhibit); and resource amounts committed for the upcoming Contract Year in sections 2(a), 2(b)(2), 2(b)(3), and 3 of this exhibit. *(Drafter's Note: Choose the*

appropriate level of detail for the block product chosen. If not currently applicable put zeros in the table.)

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year												
Total MWh												
Peak MW												

(2) **Specific Amounts Committed for Contract Term (03/29/00 Version)**

In addition to the resource amounts established in 2(a) above «Customer Name» agrees to serve its Total Retail Load with unspecified resources in the amounts listed in the table below. *(Drafter's Note: Choose the appropriate level of detail for the block product chosen. If applicable data is required for all Contract Years from 2002 through the Expiration Date. If not currently applicable either put zeros in the table or delete the table and write in "None at this time.")*

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year												
Total MWh												
Peak MW												

(3) **Amounts Committed for 9(c) Decrements (03/29/00 Version)**

Below are the amounts of unspecified resources added consistent with BPA's 9(c) Policy and the requirements of section 4(c) of this exhibit. *(Drafter's Note: Choose the appropriate level of detail for the block product chosen. If applicable data is required for all Contract Years from 2002 through the Expiration Date. If not currently applicable delete the table and write in "None at this time.")*

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year												
Total MWh												
Peak MW												

(c) **Total Resource Amounts Committed to Serve Total Retail Load (04/27/00 Version)**

«Customer Name» commits the resources listed in sections 2(a) and 2(b) above to serve Total Retail Load amounts served by «Customer Name» and not served with Contracted Power through this Agreement. The total amount of «Customer Name»'s resources are shown in the table below. These amounts shall be updated whenever sections 2(a) or 2(b) above are modified, consistent with section 4 of this exhibit. *(Drafter's Note: This section establishes the total amount of resource customer commits to serve Total Retail Load. Choose the appropriate level of detail for the block product chosen.)*

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year												
Total MWh												
Peak MW												

(d) **«Customer Name» Resource Not Used to Serve Total Retail Load (03/29/00 Version)**

(Drafter's Note: Following the same resource identification instructions used for other resources list all resources currently owned or previously owned by customer, that BPA has determined no longer must be applied to customer's Regional load. Include all resources currently covered by 9(c) determinations, and when applicable, show the dates of the export sale when the resource may again be applied to Regional load. Output tables are not required for this type of resource.)

3. NON-«CUSTOMER NAME» GENERATING RESOURCES (03/29/00 Version)

Known non-«Customer Name» resources, if any, greater than 1 MW that provide power to serve «Customer Name»'s Total Retail Load or such resources that otherwise connect to «Customer Name»'s distribution system are listed below. *(Drafter's Note: If none write "none at this time" in the first table and put in zeros in the second table.)*

Generating Resource Name	Resource Type	Nameplate Capability
	e.g., Hydro	__ MW
		__ MW

The amounts in the table below establish the total amount of non-«Customer Name» resources that the Parties agree are expected to be applied to serve «Customer Name»'s Total Retail Load to calculate «Customer Name»'s net requirement. These amounts may only be modified consistent with section 4 of this exhibit.

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year 2002												
Total MWh												
Peak MW												

4. CHANGES TO RESOURCE AMOUNTS

(a) **Annual Right to Add New Renewable Resources (04/27/00 Version)**

(Drafter's Note: Consistent with the premise of this provision that allows the resource to be removed prior to the Expiration Date of the Agreement. If customer adds a new renewable resource after the 98/99 Firm Resources Exhibit but prior to Contract Year 2002, BPA will consider in individual negotiations allowing the customer's Block to increase, without the Stepped-Up Multiyear charge if the renewable resource stops being applied prior to the Expiration Date.)

«Customer Name» may add new renewable resources to section 2(a) of this exhibit according to the terms of this provision. «Customer Name» shall

request the addition of such resources at least 60 days before the start of the Contract Year the resources will be added. The request shall identify the resources, the length of time that the resources shall be applied to «Customer Name»'s Total Retail Load and power amounts from the resources for each month of the request. PBL will revise section 2 of this exhibit prior to the start of the Contract Year if PBL agrees that the resource meets BPA's standards to qualify for BPA's Conservation and Renewable Discount, subject to any applicable limits established in BPA's policy on net requirements under section 5(b) of the Northwest Power Act. «Customer Name» shall resume purchasing Contracted Power under this Agreement when its commitment to apply the renewable resource ends. The rate treatment for such power shall be the same «Customer Name» would have received for such power if «Customer Name» had not chosen to apply a resource under this provision.

- (b) **Resource Additions for a BPA Insufficiency Notice (03/29/00 Version)**
In lieu of the unspecified resource amounts established in 2(b)(1), «Customer Name» shall add resources to section 2(a) or 2(b)(2) to replace amounts of Contracted Power BPA notifies «Customer Name» will not be provided due to a notice under section 15(b) of the body of this Agreement.
- (c) **Decrements for 9(c) Export (04/27/00 Version)**
PBL may determine consistent with BPA's policy implementing section 9(c) of the Northwest Power Act and section 3(d) of P.L. 88-552 (9(c) Policy) that an export of a «Customer Name» resource requires a reduction in the amount of Federal power that PBL sells under this Agreement. If PBL determines such a reduction is required it will notify «Customer Name» of the amount and duration of the reduction. PBL shall revise this exhibit to include such amounts as unspecified resources for the duration of the export requiring such reduction under section 2(b)(3) and the resource total in section 2(c) above and to reduce the amount provided by PBL through the terms of section 5 below for the duration of the export requiring such reduction. Determinations by PBL to reduce the amount of Federal power sold are not subject to arbitration under section 14 of the body of this Agreement.
- (d) **Permanent Resource Removal (04/27/00 Version)**
The resource amounts established in section 2 of this exhibit may be removed permanently by «Customer Name» consistent with statutory discontinuance for permanent removal in BPA's policy on net requirements under section 5(b) of the Northwest Power Act. If PBL determines «Customer Name» has met PBL's standards for a permanent removal, the exhibit will be revised to show the agreed resource changes. Additional power purchases under this Agreement as a result of such a resource removal are subject to the terms established in section 4(d) of Exhibit A, Rate Commitments. Determinations by PBL on the permanent removal of a resource are not subject to arbitration under section 14 of the body of this Agreement.

- (e) **Changes to Non-«Customer Name» Resources (04/27/00 Version)**
«Customer Name» shall annually update the information established for non-«Customer Name» resources in section 3 at least 60 days before the start of each Contract Year, if circumstances reasonably warrant such a change. Subject to agreement of the Parties, the exhibit shall be revised to show the updated information prior to the start of the applicable Contract Year.
- (f) **Annual Retail Load Loss and Resource Removal (04/27/00 Version)**
«Customer Name» may reduce the resource amounts established in sections 2(a) and 2(b) above by up to the amount of load loss «Customer Name» reasonably expects in the upcoming Contract Year consistent with the requirements of this section. «Customer Name» shall notify PBL at least 60 days prior to the applicable Contract Year, identifying the total monthly MWh amounts of load loss. Reductions in resource amounts shall apply first to unspecified resources established in sections 2(b)(1) and 2(b)(2) of this exhibit. Additional reductions shall apply to specific resources in section 2(a) of this exhibit identified by «Customer Name» in the notice. The Parties shall revise this exhibit prior to the start of the Contract Year to make the changes in the resources and shall establish those changes in tables below which shall identify the specific changes that were made to the resources. The resource changes shall only apply for one Contract Year. Prior to the start of the subsequent Contract Year this exhibit shall be revised to add back the resources shown in tables below to the applicable provisions in section 2 of this exhibit, except for amounts «Customer Name» requests to remove under this provision for the following Contract Year. Resources removed under this provision continue to be subject to the 9(c) Policy.

*Include if customer regardless of whether the customer has PNCA Resources.
(DRAFTER'S NOTE: If the customer has PNCA resources some language will probably need to be included in the customer's contract but it will be developed in a general PNCA focused process which will be used to establish both the initial amounts that are included in this exhibit and the customer's rights to change.*

- (g) **Revisions for Changes in Resource Output (04/27/00 Version)**
Up to 60 days prior to the start of a Contract Year «Customer Name» may request changes to the monthly distribution of the capabilities of specific resources listed in section 2 of this exhibit. «Customer Name» must demonstrate to PBL's satisfaction that an adjustment is appropriate. If PBL decides to grant the request PBL shall revise section 2 of this exhibit to show the changes to the resource.
- (g) **Resource Additions for PF Off-Ramps (04/27/00 Version)**
In lieu of the unspecified resource amounts established in 2(b)(1), «Customer Name» shall add resources under section 2(a) or 2(b) of this exhibit at least 60 days before the start of a PF Off-Ramp established in section 2 of Exhibit A, Rate Commitments unless «Customer Name» cancels the PF Off-Ramp pursuant to section 2(c) of Exhibit A, Rate Commitments. The monthly resource amounts added shall equal the monthly amounts

established for the PF Off-Ramp. This exhibit shall be revised to add such resources before the start of the applicable Contract Year.

End of OPTION for section 4(g).]

5. REDUCTION OF BLOCK PURCHASE AMOUNTS (04/27/00 Version)

The hourly amounts of power provided under this Agreement shall be reduced in any Contract Year when the sum of the monthly net requirement amounts established in section 1(b)(2) above is less than 8760 hours (8784 in leap years) multiplied by the corresponding hourly amount established in section 4 of the body of this Agreement. The reduction shall be made by reducing the hourly amount provided in each hour of the Contract Year. The hourly amounts shall also be reduced when resource amounts not already used to calculate the monthly values in section 1(b)(2) are added pursuant to section 4(c) above during the Contract Year. Reduced amounts are subject to payments as established in section 5 of the body of this Agreement. If such a reduction occurs this exhibit will be revised to include a table below with the updated values. When a table is included below it shall supersede the table in section 4 of the body of this Agreement.

6. RESOURCE DECLARATIONS (03/29/00 Version)

The resource capabilities set forth in sections 2(a) and (b) of this exhibit are dedicated to serving «Customer Name»'s firm load pursuant to section 5(b) of the Northwest Power Act. In addition to the resource capabilities set forth in such sections that may be removed pursuant to other sections of this Agreement, BPA consents that the resource capabilities set forth in section 2(b) may be discontinued from use in serving «Customer Name»'s firm load upon the termination or expiration of this Agreement. The resources established in sections 2(d) and 3 are not used to serve «Customer Name»'s firm load under section 5(b) of the Northwest Power Act and will not be required to be so used after the termination or expiration of this Agreement.

7. REVISIONS (04/27/00 Version)

When required «Customer Name» shall submit a revised Exhibit C, Net Requirements, to PBL at least 60 days prior to each Contract Year. As long as «Customer Name»'s submittal is consistent with the requirements of this exhibit PBL shall accept it as submitted. If «Customer Name» fails to submit revisions when necessary, or if the information provided is inconsistent with the requirements of this exhibit, PBL shall update this exhibit prior to the beginning of the Contract Year with the information PBL believes is required.

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Exhibit D SCHEDULING

1. PURPOSE OF THIS EXHIBIT (04/27/00 Version)

The purpose of this exhibit is to identify power scheduling requirements and coordination procedures necessary for the delivery of electric power and energy sold under this Agreement. All provisions apply to Purchasing-Selling Entities (PSEs), including their authorized scheduling agent. Transmission scheduling arrangements are handled under separate agreements/provisions with the designated transmission provider. Nothing in this exhibit is intended to relieve the Parties of any obligation they may have under North American Electric Reliability Council (NERC) or Western Systems Coordinating Council (WSCC) policy, procedure, or guideline.

2. COORDINATION: GENERAL, PRESCHEDULE, REAL-TIME, AND AFTER-THE-FACT REQUIREMENTS (04/27/00 Version)

(a) General Requirements

- (1) The Parties may revise and replace this exhibit by mutual agreement. BPA shall also have the right to revise and replace this exhibit under the following circumstances after providing an opportunity for all affected Parties to discuss and comment on any proposed changes: (1) to comply with rules or orders issued by FERC, NERC, or WSCC; or (2) to implement changes reasonably consistent with standard industry practice, but necessary for BPA to administer its power scheduling function.
- (2) PSEs shall have staff available 24 hours a day for each day an active transaction or preschedule is in effect. PSE's must be prepared to verify transactions on an hourly basis if necessary.
- (3) PSEs shall complete the prescheduling and check out processes, and to verify Transactions and associated totals, per NERC tag, and BPA contract.
- (4) Inability to verify Transactions may result in schedule rejection or curtailment.
- (5) PSEs shall verify Transactions and totals after-the-fact (ATF) per both parties' ATF processes.
- (6) BPA is not obligated to accept Transactions that do not comply with the scheduling requirements in this exhibit or the contract.
- (7) Should a PSE attempt to preschedule a Transaction for power for which that PSE has an obligation to provide transmission and fails to

properly reserve the transmission necessary to complete the Transaction, the PSE will not be excused from its payment obligation, if any, under this Agreement.

- (8) All Transactions shall be stated in WSCC time zone and “hour-ending” format.
- (9) All Schedules, except Dynamic Schedules, will be implemented on an hourly basis using the standard ramp as specified by WSCC procedures.
- (10) Any power that is allowed to be resold at wholesale under this Agreement may only be resold if all characteristics of the product (e.g., Point of Receipt, shape, hours) are maintained in the resale.
(Drafter's Note: This section may be replaced with the words “Intentionally omitted” for RL Only contract, if requested by customer.)
- (11) Changes to telephone or fax numbers of key personnel (for Prescheduling, Real-Time, Control Area, or Scheduling Agents, etc.) must be submitted to BPA.

(b) **Prescheduling Requirements**

(1) **Information Required for Any Preschedule**

- (A) Unless otherwise mutually agreed, all Transactions will be submitted according to NERC instructions for E-tagging, as modified by WSCC.
- (B) When completing the NERC E-Tag insert the applicable BPA Contract number(s) in the “reference” column of the miscellaneous section of the tag.
- (C) Transactions going to or from California-Oregon Border (COB) must be identified as using Malin or Captain Jack, or COB Hub.

(2) **Preschedule Coordination**

- (A) Final hourly preschedules (verbal submission of E-tag information) must be submitted for the next day(s) by 1000 of each Workday, unless otherwise agreed.
- (B) Typically, preschedules are for one to three days. By mutual agreement of the parties, final preschedules may be requested for longer time periods to accommodate special scheduling requirements.

- (C) Under certain operating conditions, either party may require submission of estimated daily preschedules for an ensuing period up to ten days in length, prior to the final preschedule.

(c) **Real-Time Requirements**

- (1) PSEs may not make Real-Time changes to the scheduled amounts, including transmission arrangements unless such changes are allowed under individual contract provisions or by mutual agreement.
- (2) If Real-Time changes to the Schedule become necessary, and are allowable as described in section 2(c)(1) above, PSEs must submit such request no later than 30 minutes prior to the hour for which the Schedule change becomes effective.
- (3) Multihour changes to the Schedule shall specify each hour to be changed and shall not be stated as “until further notice.”
- (4) Emergency scheduling and notification procedures (including mid-hour changes) will be handled in accordance with NERC and WSCC procedures.

(d) **After-the-Fact Reconciliation Requirements**

PSEs agree to reconcile all Transactions, Schedules and accounts at the end of each month (as early as possible within the first ten calendar days of the next month). The parties will verify all Transactions per BPA contract, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

3. DEFINITIONS AND ACRONYMS (04/27/00 Version)

Capitalized terms in this Exhibit shall have the meanings defined below, in context, or as used elsewhere in this Agreement.

- (a) **Control Area:** An electrical system bounded by interconnection (tie-line) metering and telemetry. It controls generation directly to maintain its interchange schedule with other control areas and contributes to frequency regulation of the interconnection.
- (b) **Hour Ending:** Designation for one hour periods of time based upon the time which the period ends. For example: the one hour period between 1300 and 1400 is referred to as Hour Ending 1400.
- (c) **Prescheduling:** The process (electronic, oral, and written) of establishing and verifying with all scheduling parties, advance hourly Transactions through the following Workday(s). Preschedules apply to the following day or days (if the following day or days are not Workday(s)).

- (d) **Purchasing-Selling Entity (PSE):** (NERC defined term.) An entity that is eligible to purchase or sell energy or capacity and reserve transmission services.
- (e) **Real-Time:** The hourly or minute-to-minute operation and scheduling of a power system as opposed to those operations which are prescheduled a day or more in advance.
- (f) **Schedule:** The planned Transaction approved and accepted by all PSEs and Control Areas involved in the Transaction.
- (g) **Transaction:** An agreement arranged by a PSE to transfer energy from a seller to a buyer.
- (h) **Workday:** Any day BPA, other regional utilities, and PSEs observe as a working day.

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Exhibit B
RESIDENTIAL LOAD DEFINITION

1. «Customer Name»'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. If BPA determines that any such action changes «Customer Name»'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.

Such tariff schedules as presently effective include:

- (a) for all schedules listed below, include the amount, expressed in kilowatthours, of Residential Load supplied by «Customer Name» under:
- (1) *[schedule]*
 - (2) *[schedule]*
 - (3) *[schedule]*
- (b) a portion of the Residential Load as determined pursuant to section 2 of this Exhibit B, supplied by the Utility under *the Northwest Power Act, section _____*.
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. For purposes of this Agreement, 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. 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 «Customer Name» all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide «Customer Name» and BPA all documentation requested to assist in the farm determination.

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