

# **Proposed Agreements to Implement the Residential Exchange Program or Provide for Settlement of Those Agreements in Accordance with BPA’s Power Subscription Strategy for Specific Northwest Investor- Owned Utilities**

## **Table of Contents**

### **INTRODUCTION**

- **Summary of Proposal**
- **Section 5(c) of the Northwest Power Act**
- **BPA’s Power Subscription Strategy**
- **Allocation Amounts**

### **RESIDENTIAL PURCHASE AND SALE AGREEMENT**

- **Description of the prototype Residential Purchase and Sale Agreement**
- **Principles Used to Develop Subscription Residential Purchase and Sale Agreement**
- **Section by Section Description of Prototype Residential Purchase and Sale Agreement**

### **SETTLEMENT AGREEMENT**

- **Description of the prototype Settlement Agreement**
- **Principles for Prototype Settlement Agreement**
- **Section by Section Description of Prototype Settlement Agreement**

### **ISSUES FOR PUBLIC COMMENT**

- **Which entities are eligible utilities under section 5(c) of the Northwest Power Act?**
- **Are BPA’s proposed terms and conditions for implementing its right to purchase power from another source in lieu of purchasing power at a utility’s ASC reasonable?**
- **Are there any exceptions to the limitations of section 5(c)(6) that preclude the restriction of exchange sales under section 5(c) below the amounts of power acquired from, or on behalf of, the utility pursuant to section 5(c)?**
- **Are BPA’s proposed terms and conditions for implementing the Residential Exchange Program reasonable?**
- **Are the total amount of benefits and the proposed terms and conditions for settling the rights of regional investor-owned utilities to request benefits under the Residential Exchange Program reasonable?**

- **Should BPA require investor-owned utilities to take power if the combined requests of all the companies for physical deliveries are less than 1000 aMW?**
- **How BPA should limit physical deliveries to each investor-owned utility if the companies request physical deliveries of more than 1000 aMW and such deliveries are more power than BPA is willing to offer?**

## **COMMENT OPPORTUNITY**

### **INTRODUCTION**

#### **Summary of Proposal**

BPA's Power Subscription Strategy (Subscription Strategy) proposes comprehensive settlements of the Residential Exchange Program with participating regional investor-owned utilities (IOUs). However, IOUs will also have the option of entering into contracts to participate in the Residential Exchange Program (also referred to as "Program"). The Subscription Strategy also notes that public agency customers are eligible to enter contracts under the Residential Exchange Program.

BPA has prepared a prototype Residential Purchase and Sale Agreement (RPSA) to implement the Residential Exchange Program. This document describes BPA's proposal for contracts implementing the Residential Exchange Program. This prototype would be used as the basis for contracting with all eligible parties to apply for benefits under the Residential Exchange Program. BPA requests public comment on the following issues:

- which entities are eligible utilities to request benefits under section 5(c) of the Northwest Power Act;
- BPA's proposal to implement the in lieu provisions of section 5(c)(5) of the Northwest Power Act through wholesale market purchases;
- any exceptions to the limitations of section 5(c)(6) that preclude the restriction of exchange sales under section 5(c) below the amounts of power acquired from, or on behalf of, the utility pursuant to section 5(c); and
- any comments on the terms and conditions of the prototype RPSA agreement.

This document also describes BPA's proposal for comprehensive settlement of the rights of regional IOUs eligible for benefits under the Residential Exchange Program. BPA has prepared a prototype Settlement Agreement for implementing the Subscription Strategy. This prototype provides power sales pursuant to a contract offered under section 5(b) of the Northwest Power Act. The prototype also provides for the payment of monetary benefits. BPA requests public comment on all relevant issues, including the following issues:

- any comments on the terms and conditions of the prototype Settlement agreement; and
- are the total amount of benefits and the proposed terms and conditions for settling the rights of regional investor-owned utilities to request benefits under the Residential Exchange Program reasonable?

BPA proposed an allocation of benefits to the region's IOUs in its Subscription Strategy that included both physical and monetary components. In the Administrator's Supplemental Record of Decision for the Power Subscription Strategy, BPA has proposed to offer the IOUs the equivalent of 1900 aMW of federal power for the fiscal year 2002-2006 period. Of this amount, at least 1000 aMW would be provided in physical power deliveries. BPA requests that each IOU notify BPA by July 21, 2000, whether they wish to participate in BPA's Residential Exchange Program. The IOU need not make an election whether to accept a settlement offer or participate in the Program through an RPSA at that time. Based on each IOU's request to participate in the Program, BPA will prepare a settlement offer for their consideration prior to October 1, 2000. At the time each IOU requests to participate in the Program in July, BPA asks that each IOU identify (1) its preferred mix of physical deliveries and financial settlement; and (2) whether it would prefer a five-year or ten-year offer. BPA will only make a settlement offer including physical deliveries if the IOU can establish a net requirement for the amount of power requested.

BPA requests public comment on two issues regarding the offer of physical power and financial benefits in settlement of Residential Exchange Program rights:

- should BPA require IOUs to take additional power if the combined requests of all the companies for physical deliveries are less than 1000 aMW; and
- how BPA should limit physical deliveries to each investor-owned utility if the companies request physical deliveries of more than 1000 aMW and such deliveries are more power than BPA is willing to offer.

After receiving public comment on the proposed prototype agreements, BPA will prepare final draft prototypes based on the public comments. These draft prototypes will be published to allow IOUs to determine whether they wish to participate in the Residential Exchange Program pursuant to an RPSA or through a settlement offer based on physical or monetary benefits. Once BPA has received each IOU's request to participate in the Residential Exchange Program, BPA will prepare a settlement offer and an RPSA for each IOU in accordance with the choices made. BPA will also prepare a Record of Decision addressing the public comments. BPA expects to offer both an RPSA and a Settlement Agreement to each IOU around September 1, 2000. The settlement offers will expire on September 29, 2000. If an election has not been made at that time, the IOU will retain the option of signing the RPSA.

## **Section 5(c) of the Northwest Power Act**

Section 5(c) of the Northwest Power Act established the Residential Exchange Program. 16 U.S.C. 839c(c). Under the Residential Exchange Program, a Pacific Northwest electric utility may offer to sell power to BPA at the utility's average system cost (ASC). 16 U.S.C. 839c(c)(1). BPA purchases such power and, in exchange, sells the same amount of power to the utility at BPA's PF Exchange rate. *Id.* The amount of the power exchanged equals the utility's qualifying residential and small farm load. *Id.* BPA's past practice did not require actual power sales. Instead, BPA provided monetary benefits to the utility based on the difference between the utility's ASC and the applicable PF Exchange rate multiplied by the utility's residential and small farm load. These monetary benefits must be passed through directly to the utility's residential and small farm consumers. 16 U.S.C. 839c(c)(3). While Residential Exchange Program benefits have previously been monetary, the Northwest Power Act also provides for the sale of actual power to exchanging utilities in specific circumstances. Pursuant to section 5(c)(5) of the Northwest Power Act, in lieu of purchasing any amount of electric power offered by an exchanging utility, the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to the utility as part of an exchange sale. 16 U.S.C. 839c(c)(5). However, the cost of the acquisition must be less than the cost of purchasing the electric power offered by the utility. *Id.* In these circumstances, BPA acquires power from other sources and sells actual power to the exchanging utility.

At its inception, the Residential Exchange Program was implemented through RPSAs executed in 1981. These contracts established the Program benefits only for the period through June 30, 2001. BPA's proposed RPSA would establish the mechanism for providing Program benefits beyond July 1, 2001.

Between 1981 and the present, all of the RPSAs held by utilities that ever received Program benefits have been settled except for one, which is in "deemer" status. (Deemer status is where a utility sets its ASC equal to BPA's PF Exchange rate and does not receive positive monetary benefits but accrues a negative balance that must be worked off before resuming the receipt of positive monetary benefits.) Regional utilities are eligible to participate in the Residential Exchange Program again beginning July 1, 2001, except for those utilities that have executed settlement agreements for terms extending beyond July 1, 2001.

## **BPA's Power Subscription Strategy**

During the spring and summer of 1998, BPA conducted extensive public meetings with all interested parties regarding the development of a "Power Subscription Strategy." At the conclusion of these lengthy discussions, on September 18, 1998, BPA released a "Power Subscription Strategy Proposal" for public review. During the comment period BPA received nearly 200 responses to the proposal comprising nearly 600 pages of comments. After review and analysis of those comments, BPA published its final "Power

Subscription Strategy” on December 21, 1998. *See* “Power Subscription Strategy” and “Power Subscription Strategy, Administrator’s Record of Decision.” The purpose of the Subscription Strategy is to enable the people of the Pacific Northwest to share the benefits of the Federal Columbia River Power System after 2001 while retaining those benefits within the region for future generations.

Since release of the Power Subscription Strategy, BPA has initiated a number of processes to implement the strategy. BPA requested comment on a number of issues that addressed implementation of the Power Subscription Strategy. *See* Letter dated December 2, 1999, requesting comment on four issues and letter dated November 17, 1999, requesting comment on methodology to allocate Subscription benefits to regional IOUs. BPA published an Administrator’s Supplemental Record of Decision on the Power Subscription Strategy on April 26, 2000, addressing the comments and issues raised in those letters. References to the Power Subscription Strategy are to the December 1998 Power Subscription Strategy.

The Power Subscription Strategy addresses how those who receive the benefits of the region’s low-cost federal power should share a corresponding measure of the risks. The Power Subscription Strategy seeks to implement the subscription concept created by the 1996 Comprehensive Review through contracts for the sale of power and the distribution of federal power benefits in the deregulated wholesale electricity market. The success of the Subscription process is fundamental to BPA’s overall business purpose to provide public benefits to the Northwest through commercially successful businesses.

The Power Subscription Strategy is premised on BPA’s partnership with the people of the Pacific Northwest. BPA is dedicated to reflecting their values, to providing them benefits and to expanding and spreading the value of the Columbia River throughout the region. In this respect, the Strategy has four goals:

- (1) Spread the benefits of the Federal Columbia River Power System as broadly as possible, with special attention given to the residential and rural customers of the region;
- (2) Avoid rate increases through a creative and businesslike response to markets and additional aggressive cost reductions;
- (3) Allow BPA to fulfill its fish and wildlife obligations while assuring a high probability of U.S. Treasury payment; and
- (4) Provide market incentives for the development of conservation and renewables as part of a broader BPA leadership role in the regional effort to capture the value of these and other emerging technologies.

One element the Power Subscription Strategy proposes is a settlement of the Residential Exchange Program for regional IOUs for the post-2001 period. The Power Subscription Strategy proposes that IOUs may agree to a settlement of the Residential Exchange Program which would enable them to receive benefits equivalent to a purchase of a specified amount of power under Subscription for their residential and small farm

consumers at a rate expected to be approximately equivalent to the PF Preference rate. Under the proposed settlement, residential and small farm loads of the IOUs would be assured access to benefits equivalent to 1,900 aMW of federal power for the FY2002-2006 period and 2,200 aMW of federal power for the FY2007-2011 period. While BPA proposed a settlement with benefits equivalent to 1800 aMW in the Power Subscription Strategy, BPA has decided to offer settlement agreements with benefits equivalent to 1900 aMW of federal power for the FY2002-2006 period based on the Administrator's Supplemental Record of Decision on the Power Subscription Strategy.

BPA will set the physical and financial components of the Subscription amount, by year, in the negotiated Subscription settlement contracts. Any cash payment will reflect the difference between the market price of power forecast in the rate case and the rate used to make such Subscription sales. The actual power deliveries for these loads will be in equal hourly amounts over the period.

The Power Subscription Strategy proposes that BPA will offer five-year and 10-year Subscription settlement contracts for the IOUs. Under both contracts, the Power Subscription Strategy (as modified by the Administrator's Supplemental Record of Decision on the Power Subscription Strategy) proposes that BPA will offer and guarantee 1,900 aMW of power and/or monetary benefits for the FY2002-2006 period. At least 1,000 aMW will be met with actual BPA power deliveries. The remainder may be provided through either a financial arrangement or additional power deliveries, depending on which approach is most cost-effective for BPA. The IOUs' settlement of rights to request Residential Exchange Program benefits under section 5(c) of the Northwest Power Act will be in effect until the end of the contract term.

Under the 10-year contract, in addition to the benefits provided during the first five years, BPA proposes to offer and guarantee 2,200 aMW of power or financial benefits for the FY2007-2011 period. BPA intends for this 2,200 aMW to be comprised solely of physical power deliveries and believes that the expiration of existing long term surplus sales should make such deliveries possible. The IOUs' settlement of rights to request Residential Exchange Program benefits under section 5(c) will be in effect until the end of the 10-year term of the contract. In the event of reduction of federal system capability or increased public preference customer load obligations during the term of the 10-year contracts, BPA will determine whether to provide monetary compensation or purchase power to guarantee power deliveries during the FY2007-2011 period.

In summary, residential and small farm loads of the IOUs may receive benefits from the federal system in either of two ways. An IOU may participate in the established Residential Exchange Program by signing an RPSA or it may participate in a settlement of the Residential Exchange Program through Subscription. If an IOU chooses to request Residential Exchange Program benefits under section 5(c), then the total IOU Subscription settlement amount would be reduced by the amount originally allocated to the exchanging utility, with the settlement amounts allocated to other utilities remaining unchanged.

Issues related to rates for power sales under the proposed settlements, as well as the forecast market price of power, are under consideration in BPA's 2002 wholesale power rate case, BPA Docket No. WP-02. The Draft Record of Decision on issues related to BPA's power rate case was released on April 10, 2000. BPA expects to issue a Final ROD for the rate case on May 8, 2000.

### **Allocation Amounts**

Based on the Administrator's Supplemental Record of Decision on the Power Subscription Strategy, BPA has developed a method for allocating the proposed amounts of settlement benefits to each individual IOU. BPA will base its contract negotiations for the Settlement Agreement with the individual IOUs on these amounts.

	<b>Amount of Settlement (aMW) FY2002-2006</b>	<b>Amount of Settlement (aMW) FY2007-2011</b>
Avista Corp. (1)	90	149
Idaho Power Company (1)	120	225
Montana Power Company	24	28
PacifiCorp (Total)	476	590
<i>PacifiCorp (UP&amp;L)</i>	140	140
<i>PacifiCorp (PP&amp;L – WA) (1)</i>	83	109
<i>PacifiCorp (UP&amp;L – OR) (1)</i>	253	341
Portland General Electric	490	560
Puget Sound Energy	700	648
<b>Total</b>	<b>1900</b>	<b>2200</b>

- (1) The allocation of benefits among the states served by these multi-state utilities will be based on the forecasts of the respective state residential and small farm loads at the time the IOU signs its settlement agreement.

## **RESIDENTIAL PURCHASE AND SALE AGREEMENT**

### **Description of the Prototype Residential Purchase and Sale Agreement**

BPA has developed a prototype contract for implementing the Residential Exchange Program. BPA has modified the provisions of the 1981 RPSA to reflect current market conditions and to reflect BPA's experience under the initial RPSA. The draft prototype RPSA reflects substantive discussions with regional IOUs and some discussions with other regional utilities. These discussions were based on the following principles, which were modified as a result of the discussions.

### **Principles Used to Develop Subscription Residential Purchase and Sale Agreement**

1. Residential Exchange Program benefits are available to residential and small farm consumers through all entities serving residential loads under State law or through order of State regulatory authorities.
2. The RPSA should be a standard contract applying to all eligible entities.

3. All Residential Exchange Program benefits should continue to be passed through in full to residential and small farm loads.
4. Recovery of administrative costs for implementing the Residential Exchange Program from State ratepayers is a matter between the entities and the appropriate State regulatory authorities.
5. Average system costs (ASCs) for all entities will be established under an approved ASC Methodology, as required by statute.
6. Entities will establish ASCs by jurisdiction consisting of the service territory of distribution utilities regulated by State commissions as defined in the ASC Methodology.
7. Entities using projected amounts of purchased power to meet load shall base their ASCs on forecasts of purchased power costs for such amounts as well as the costs of their other resources, if any, used to serve their forecasted contract system loads by jurisdiction.
8. BPA's right to purchase power from the wholesale market or to use BPA surplus resources in lieu of purchasing power at an entity's ASC will be implemented based on the entity's forecast of its loads, BPA's forecast of the cost of the in lieu power, and the cost of delivering In Lieu PF Power to the transmission system connected to the distribution system serving the residential and small farm loads in a jurisdiction.
9. BPA will provide monetary benefits under the RPSA for invoiced amounts of residential and small farm load that exceed amounts of In Lieu PF Power provided under an in lieu notice.
10. BPA will allow agency agreements where one entity may act as an agent for another entity in invoicing residential and small farm loads for a jurisdiction under the RPSA. BPA's approval for such agreements will be based on whether the secondary exchanging utility had the same cost basis for ASC purposes as the primary exchanging utility acting as its agent. Examples of such arrangements may include distribution utilities purchasing from the primary exchanging utility on a wholesale requirements basis or licensed electric suppliers without resources using only purchased power to meet loads on the same basis as a default supplier without resources using only purchased power to serve loads.
11. BPA may require Residential Exchange Program benefits to be placed in escrow accounts for entities that do not meet BPA's credit tests until such benefits are distributed to residential and small farm consumers.
12. BPA shall have the right to review all RPSA transactions (e.g., exchange of eligible residential loads) and adjust benefit payments based on the results of such periodic reviews.
13. All obligations of an entity to pay BPA under the RPSA shall be placed in a payment balancing account and used to reduce future benefit payments from BPA under the Residential Exchange Program. Amounts entered in the payment balancing account will not accrue interest for a period of one year.

## **Section by Section Description of Prototype RPSA**

### **Section 1 – Term**

This section provides for RPSAs that extend until a date selected by the customer that cannot exceed September 30, 2011. New RPSAs can start as early as July 1, 2001, unless a customer has settled its rights to the Residential Exchange Program for any period after that date.



## **Section 2 – Definitions**

This section identifies standard defined terms used throughout the agreement.

## **Section 3 – Applicable PF Rate**

This section identifies the PF rate applicable to the Residential Exchange Program (PF Exchange Program rate). The section also provides a commitment not to change the initial rate for a five year period except as provided in the applicable rate schedule.

## **Section 4 – Establishment of ASC to Activate Agreement**

This section establishes a requirement for a customer to file a new Appendix 1 under the ASC Methodology to activate its participation for any Jurisdiction. An Appendix 1 filing is the document that a customer files to initiate the process to establish a final ASC under the ASC Methodology. Customers may participate under the RPSA on a Jurisdiction by Jurisdiction basis. This section describes the purposes of sections 5, 6, and 7 under the agreement.

## **Section 5 – Offer by Customer and Purchase by BPA**

This section describes the amount of power sold by the customer to BPA at its ASC. Amounts sold by the customer are limited to residential and small farm loads actually served by the customer. Customers must be authorized under State law or by order of the applicable State regulatory authority to serve such residential and small farm loads. Customers may participate on a Jurisdiction by Jurisdiction basis. Once a customer has initiated participation in the RPSA for any Jurisdiction, their participation in the Residential Exchange Program for all residential and small farm load they serve in such Jurisdiction is governed by the terms of the Agreement for its remaining term. This section also authorizes a customer to propose agency agreements to BPA whereby they offer power for sale on behalf of residential and small farm loads for another utility subject to BPA's approval of the agreement including whether use of the customer's ASC is appropriate for such other utility.

## **Section 6 – Sale by BPA and Purchase by Customer**

This section describes BPA's sale of power at the PF Exchange Program rate when the Agreement is operating to provide monetary benefits.

## **Section 7 – In-Lieu Transactions**

This section contains a number of subsections describing BPA's right to purchase power in the wholesale market or use its own surplus power in lieu of purchasing power from the customer at its ASC. BPA's sale under the provisions of this section substitutes for that amount of load exchanged under the provisions of sections 5 and 6. This section includes reasonable terms and conditions allowing BPA to issue an in-lieu notice based on a forecast of the customer's residential and small farm load and the wholesale cost of other sources of power delivered to the customer in-lieu of purchasing the customer's power at its ASC. In-lieu deliveries must be made based on forecasted amounts of load instead of metered quantities. Use of forecasts is required to meet standard industry

scheduling requirements and to reflect the standard industry practice of not measuring the actual amounts of a customer's residential and small farm load on an hourly basis. If BPA provides service under an in-lieu notice for a greater amount of residential and small farm load than the customer ultimately serves, BPA will deliver that power in accordance with its in lieu notice, i.e., the customer keeps the "excess". Any amounts of customer load not served by BPA's in lieu notice will receive monetary benefits under sections 5 and 6.

**Section 7(a) – BPA's Right to In-Lieu**

This section describes BPA's right to issue an in-lieu notice. BPA may base its in-lieu notice on an Appendix 1 filing by a customer or a final ASC.

**Section 7(b) – In-Lieu Notice**

BPA may choose to use in-lieu power by providing a customer 30 days written notice. This section describes the information BPA must include in its in-lieu notice.

**Section 7(b)(1) – Source(s) of In-Lieu Power**

This section describes the sources that BPA can use to acquire in-lieu power.

**Section 7(b)(2) - Amount of In-Lieu Power**

This section describes how BPA calculates the amount of power BPA provides at the PF Exchange Program rate under an in-lieu notice. BPA must issue in-lieu notices for a uniform percentage of diurnally differentiated monthly amounts of the customer's forecasted residential and small farm load.

**Section 7(b)(3) – Expected Cost of In-Lieu Power**

This section describes how BPA will forecast the expected cost of the in-lieu power BPA acquires to deliver PF power to the customer. Since a customer is not required to accept the in-lieu power, these costs must be forecasted. Customers must use BPA's forecast of expected cost to decide whether to accept the delivery, reduce their ASC to BPA's expected cost of in-lieu power, or suspend their participation in the RPSA for the duration and amount of load specified in the in-lieu notice.

**Section 7(b)(4) – Term and Quality of the In-Lieu PF Power Sale**

This section specifies that In-Lieu PF Power will be a firm power delivery. BPA must issue in-lieu notices for a period of one-year or multiples thereof unless a notice is for the remaining term of the agreement. The one-year period reflects the annual calculation of a customer's ASC placing the seasonal costs of the in-lieu power on the same basis as the customer's resources.

**Section 7(c) – Customer Election to Either Receive in-Lieu PF Power or Reduce ASC**

This section gives the customer a fifteen-day period to determine whether to accept the In-Lieu PF Power and market its resources in the wholesale market or elect to continue the monetary exchange by reducing its ASC. If the expected cost of the In-Lieu PF Power

is below the PF Exchange Program rate, a customer may suspend its participation in the RPSA for the duration for all or a portion of the load specified in the notice. Under such circumstance, suspension of a customer's participation in the RPSA for power specified in an in-lieu notice would reduce the amount that would otherwise be debited to the customer's payment balancing account. The payment balancing account limits future benefits paid under the RPSA. Allowing a customer to suspend a portion of the load specified in the in lieu notice allows a customer to reflect reductions in the amount of its residential and small farm load from the amount it forecast at the time of its Appendix 1 filing.

#### **Section 7(d) – Delivery and Payment for In-Lieu PF Power**

This section describes BPA's delivery obligation for In-Lieu PF Power. BPA must select the point or points of delivery for the in-lieu power in its in-lieu notice in accordance with this section.

The section also specifies the customer's payment obligation for the in lieu power. Customers must pay for In-Lieu PF Power that BPA makes available. Customers must pay for In-Lieu PF Power they fail to schedule.

#### **Section 7(e) – Scheduling of In-Lieu PF Power**

This section describes the customer's obligation to preschedule amounts of In-Lieu PF Power. BPA has no obligation to deliver unless the customer submits a preschedule.

#### **Section 7(f) – Shaping of In-Lieu PF Power**

This section describes how the monthly and hourly shape of the deliveries of In-Lieu PF Power are determined. These shapes will be based on customer forecasts that are provided by the customer at the same time as the customer's Appendix 1 filings. The section provides a default mechanism for determining the shape of the customer's residential and small farm load if the customer fails to provide a forecast.

#### **Section 8 – Billing and Payment**

This section describes the billing and payment mechanism for the monetary benefits and deliveries of In-Lieu PF Power. The section describes how the amount of residential and small farm load is determined on a monthly basis. It describes how and when BPA pays the customer if BPA owes the customer money. It also describes BPA's standard payment provisions if the customer owes BPA for In-Lieu PF Power. The section also requires customers to provide BPA with commercially reasonable credit information. BPA may require customers to place any benefits received from BPA in an escrow account if they fail to meet BPA's credit standards.

#### **Section 9 – Accounting, Review, and Budgeting**

This section requires customers to retain their records documenting implementation of the RPSA. The section grants BPA the right to review and inspect these records. If BPA determines that any payments were improper, the customer is required to return the overpayment. If BPA determines that payments were not made by BPA, BPA will

provide additional benefits. Any disputed payments will be treated under the disputed bill provisions.

### **Section 10 – Pass Through of Benefits**

This section requires the customer to pass through the benefits it receives under this Agreement in full to each residential and small farm consumer as a credit on their power bill. The customer is precluded from including Program benefits in its retail ratemaking. Customers are required to pass through the benefits in a timely manner and keep the benefits in a separately identified interest bearing account. The section also includes a savings clause ensuring that nothing in the Agreement suggests the power must be directly delivered to individual consumers or that the customer is required to provide any retail wheeling.

### **Section 11 – Termination of Agreement**

This section implements the customer's statutory right to terminate the Agreement if BPA develops new rates and applies a supplemental charge to the PF Exchange Program rate pursuant to section 7(b)(3) of the Northwest Power Act. The section also provides that either party may terminate the Agreement if the ASC Methodology is modified.

### **Section 12 – Payment Balancing Account**

This section implements the provisions of the deemer account from the 1981 RPSA Agreement. BPA will not make cash payments under the RPSA until any amounts in the payment balancing accounts have been paid. Two payment balancing accounts are established: a long-term payment balancing account and an annual payment balancing account. The annual account does not charge interest on amounts debited to the account. This prevents a reduction in benefits under the Agreement that could occur when comparing a single annual ASC rate against BPA's twelve monthly seasonally differentiated PF Exchange Program rates. Any amounts carried over from the previous agreement and any amounts added under this agreement for a period of more than one year accrue interest in the long-term payment balancing account.

### **Sections 13-16, 18, and 20 – Standard BPA Subscription Provisions**

These sections are standard BPA Subscription provisions addressing notice, cost recovery, uncontrollable forces, governing law and dispute resolution, contract administration, and signatures.

### **Section 17 – Statutory Provisions**

This section includes BPA's standard statutory provisions for Subscription contracts on annual financial reporting and retail rates, insufficiency and allocations, new large single loads, priority of Pacific Northwest customers, prohibition on resale, and BPA Appropriations Refinancing Act. The provision on insufficiency and allocation has been modified for the RPSA. It provides that In-Lieu PF Power may not be restricted during the term of an in-lieu notice.

## **Section 19 – Notice Provided to Residential and Small Farm Consumers**

This section requires the customer to include a notice on the consumer’s bill that benefits under the RPSA are “Federal Columbia River Benefits supplied by BPA”.

### **Exhibit A – Residential Load Definition**

This exhibit describes how residential and small farm loads are identified.

### **Exhibit B – Load Factor Specification**

This exhibit describes how monthly energy loads receive a load factor for purposes of applying the demand charge in the PF Exchange Program rate.

### **Exhibit C – New Large Single Loads**

This exhibit identifies any New Large Single Loads of the customer. The cost of resources to serve these loads are excluded from a customer’s ASC.

### **Exhibit D – Average System Cost Methodology**

This exhibit attaches the current ASC Methodology for ease of reference. The ASC Methodology is a BPA rule and not a part of the contract.

### **Exhibit E – Scheduling Provisions**

This exhibit includes BPA’s standard scheduling provisions for scheduling In-Lieu PF Power.

## **SETTLEMENT AGREEMENT**

### **Description of the Prototype Settlement Agreement**

BPA has developed a prototype contract for implementing the settlement of the Residential Exchange Program described in the Subscription Strategy. The draft prototype agreements reflect substantive discussions with regional IOUs. These discussions were based on the following principles, which were modified as a result of the discussions.

### **Principles for Prototype Settlement Agreement**

1. Settlement benefits are available to all residential and small farm loads through assignment provisions.
2. The Settlement Agreement will include provisions allowing, but not requiring, administration of a Residential Exchange Program settlement for a single distribution system by one entity.
3. The Settlement Agreement should be a standard contract applying to all settling IOUs.
4. All Settlement benefits should be passed through in full to residential and small farm loads.
5. Recovery of administrative costs of delivering Settlement benefits is a matter between the IOUs and their state regulatory authority.

6. The Settlement Agreement should be designed to minimize the total cost of administering the delivery of the Settlement benefits, particularly in a retail-access environment.
7. The Settlement Agreement means a settlement of all claims to existing statutory rights under the Residential Exchange Program by the contracting party.
8. All payment and assignment obligations under the Settlement Agreement should be specified in sufficient detail to allow an audit of their performance.
9. The Settlement Agreement provides that Federal power that can no longer be delivered during the term of the Settlement Agreement shall be converted to cash payments based on the market price for power at the time of conversion.
10. Benefits available to each State will be distributed in accordance with procedures developed by each company's State regulatory authority.

## **Section by Section Description of Prototype Settlement Agreement**

### **Section 1 – Term**

This section describes the term of the Settlement Agreement. Customers may elect to settle for a five or ten year period.

### **Section 2 – Definitions**

This section identifies standard defined terms used throughout the agreement.

### **Section 3 – Satisfaction of Section 5(c) Obligations and Settlement of Disputes**

This section provides that the benefits provided by BPA under the Settlement Agreement are a full and complete satisfaction of its obligations under section 5(c) of the Northwest Power Act for the term of the Agreement. This section also obligates both parties to terminate all pending litigation regarding the Residential Exchange Program. The section includes a savings clause ensuring that parties can intervene in any litigation to uphold the terms of the agreement.

### **Section 4 – Settlement Benefits**

This section describes how the benefits will be provided to each company for the first five-year period and the second five-year period. Benefits can either be provided in the form of firm power or monetary benefits.

#### **Section 4(a) – Total Benefits**

This section describes the total benefits provided by State to a company. These total benefits will be provided as either firm power or cash. The total benefit amounts change from the first five-year period to the second five-year period of a ten-year agreement.

#### **Section 4(b) – Firm Power Sale Portion of Total Benefits**

This section specifies the amount of total benefits that will be delivered as firm power to the company in each State during the initial five-year period. The firm power is provided in an annual flat delivery. The terms and conditions for the sale are included in an attached firm power block sales contract. This section allows the customer to terminate

the firm power sale and convert the benefits to monetary benefits if the customer exercises its right to terminate the block sale agreement after a remand of BPA's final 02 rates by the Federal Energy Regulatory Commission or the Ninth Circuit Court of Appeals.

The section includes provisions for BPA notifying the customer by October 1, 2005, of the amount of the total benefits that BPA will provide as firm power during the second five-year period of a ten-year contract. If the customer has not purchased firm power during the first five-year period, they must establish an initial net requirement by August 1, 2005, for the Contract Year starting October 1, 2006. The section also allows the company to convert its firm power sale to monetary benefits for the second five-year period if the RL rate calculated at 100% annual load factor exceeds the lowest applicable PF rate.

#### **Section 4(c) – Monetary Benefit Portion of Total Benefits**

This section specifies the amount of total benefits that will be delivered as monetary benefits to the company in each State during the initial five-year period. This section includes provisions for BPA notifying the customer by October 1, 2005, of the amount of the total benefits that BPA will provide as monetary benefits during the second five-year period of a ten-year contract. The section includes a formula for calculating the monthly monetary benefit payment. The formula provides that the monetary benefits will be based on the lowest applicable PF rate instead of the RL rate if there is no RL rate in effect or the RL rate exceeds the lowest applicable PF rate. The section also includes payment provisions for the monetary benefits.

#### **Section 5 – Cash Payments If Firm Power Cannot Be Delivered**

This section describes the payments that will be made if firm power cannot be delivered to the company under the terms of the power sales contract attached to the Agreement. These payments are designed to preserve the value of the settlement to both parties. These payments are based on market prices at the time the power is returned to BPA.

#### **Section 5(a) – Conditions under Which Firm Power Cannot Be Delivered**

This section describes five conditions in which firm power cannot be delivered to the company. The first condition occurs when the company is unable to establish a net requirement equal to or greater than its contracted amount of firm power purchased from BPA. The second condition occurs when BPA requires that power be assigned back to BPA due to service of the customer's residential and small farm loads by other qualified suppliers. The third condition occurs if BPA issues a notice of insufficiency and restricts firm power deliveries to the company. The fourth condition occurs if BPA terminates the power sales contract due to a failure to report the export of a regional resource. The fifth condition occurs when there is a purchase deficiency under the power sales contract for any reason other than inability to establish a net requirement.

### **Section 5(b) – Determination of Cash Payment Amounts**

This section includes a default payment option for firm power returned under all five conditions. The formula provides for a payment based on the difference between the Dow Jones Mid-C index minus a wheeling charge from BPA's generators to the Mid-C and the BPA RL rate. Customers are provided a right to offer BPA a put right to sell power to the customer at its generators at the Mid-C index rate for the first four conditions where BPA and the customer know in advance that firm power cannot be delivered. If the customer offers BPA the put right under the first four conditions, BPA will modify the formula to remove the wheeling charge. BPA is able to make such offer since it will no longer incur the cost to move the returned power from its generators to the Mid-C market to sell the returned power. If the payment amounts calculated under the formula are positive, then BPA shall pay the customer. If the amounts are negative, then the customer shall pay BPA.

### **Section 6 – Pass Through of Benefits**

This section requires the pass through of the total benefits from the settlement in full to each residential and small farm consumer of the customer. Monetary benefits must be passed through to residential and small farm consumers in a timely manner. Customers are required to keep the cash benefits in a separately identified interest bearing account. The section also includes a savings clause ensuring that nothing in the Agreement suggests the power must be directly delivered to individual consumers or that the customer is required to provide any retail wheeling.

### **Section 7 – Audit Rights**

This section provides BPA audit rights to determine whether the benefits were provided to residential and small farm consumers.

### **Section 8 – Assignment**

This section requires the customer to assign a pro rata share of the total benefits back to BPA for residential and small farm load served by another qualified supplier. The section provides for a customer signing an agency agreement with new qualified suppliers and distributing the benefits directly as the new supplier's agent to the residential and small farm loads of the new supplier. The section includes detailed formulas for allocating the benefits provided under the agreement.

### **Section 9 – Deemer Account Balance**

This section includes a savings clause preserving the rights of both parties regarding application of the deemer account balance from the 1981 RPSA.

### **Section 10 – Conservation and Renewable Discount**

This section specifies the contractual terms for providing a conservation and renewable discount for monetary benefits provided as part of this Settlement Agreement. If BPA decides to offer the conservation and renewable discount or a similar program based on firm power purchases during the FY2007 through FY2011, BPA agrees that the benefits



provided to the customer under the Settlement Agreement will be eligible for the program.

### **Section 11 – Governing Law and Dispute Resolution**

This section includes BPA’s standard provision on governing law and dispute resolution.

### **Section 12 – Notice Provided to Residential and Small Farm Consumers**

This section requires the customer to include a notice on the consumer’s bill that benefits under the Settlement Agreement are “Federal Columbia River Benefits supplied by BPA”.

### **Section 13 – Standard Provisions**

This section includes BPA’s standard provisions on amendments, information exchanges and confidentiality, entire agreement, exhibits, no third-party beneficiaries, and waivers.

### **Section 14 – Signatures**

This section includes a standard provision on contract authority.

### **Exhibit A – Block Power Sales Agreement**

This exhibit is BPA’s prototype power sales contract containing the terms and conditions for sales of flat blocks of power under section 5(b) of the Northwest Power Act. Customers may combine their RL purchases with the purchase of any BPA requirements product (except SLICE) at the NR rate. Customers electing to make an NR purchase would have a combined contract attached to the Settlement Agreement.

### **Exhibit B – Residential Load Definition**

This exhibit describes how residential and small farm loads are identified.

## **ISSUES FOR PUBLIC COMMENT**

### **Which entities are eligible utilities under section 5(c) of the Northwest Power Act?**

Section 5(c) of the Northwest Power Act allows a “Pacific Northwest electric utility” to offer to sell electric power to BPA at the average system cost of that utility’s resources. BPA is obligated to purchase such power subject to BPA’s right to acquire power from other sources in lieu of the power offered by the utility. BPA must offer to sell an equivalent amount of electric power to such utility for resale to the utility’s residential consumers within the region.

When the Northwest Power Act passed, it was relatively easy to identify a Pacific Northwest electric utility serving residential consumers within the region. Entities that served residential loads also provided distribution service to residential consumers. Those utilities may or may not have owned generation or transmission facilities.

BPA's 1981 RPSA did not require a customer to own generation or transmission facilities to qualify to receive an RPSA. Utilities were able to include wholesale purchase power expenses and wheeling contracts with third parties as costs in their Appendix 1 filings to establish an ASC. Distribution costs were excluded from the calculation of ASC.

The advent of deregulation in the electric power industry raises the issue of which entities qualify as "Pacific Northwest electric utilities" for purposes of section 5(c) of the Northwest Power Act. Retail deregulation has resulted in the services previously provided by one entity potentially being provided by multiple entities. One entity may provide the distribution service to all local customers. Another entity may provide for transmission of all wholesale power in a given area. Another entity may provide electric supply service to specified consumers or may provide such service to all consumers not otherwise served by another entity. Another entity may sell generation to electric supply companies.

Earlier this year, a number of customers commented on BPA's prototype RPSA that only utilities were eligible for the RPSA program. However, their comments did not describe which entities were a utility for purposes of section 5(c). BPA believes the intent of Congress under section 5(c) is that benefits of the Federal Columbia River Power System are intended to flow to residential consumers. Congress established the Residential Exchange Program in a manner that the benefits flowed to those consumers through their electricity supplier. BPA believes that "Pacific Northwest electric utilities" for purposes of section 5(c) are those entities serving the residential and small farm loads of the region as authorized by State law or order of the applicable State regulatory authority. BPA sees no intent of Congress to exclude residential consumers from receiving the benefits of the Federal Columbia River Power System based on how a State structures its electric power industry. BPA requests public comment on which entities are "Pacific Northwest electric utilities" for purposes of the proposed RPSAs and Settlement Agreements.

**Are BPA's proposed terms and conditions for implementing its right to purchase power from another source in lieu of purchasing power at a utility's ASC reasonable?**

BPA's 1981 RPSA included a number of contractual terms and conditions describing BPA's right to purchase power in lieu of the utility's resources priced at its ASC. These contractual terms and conditions reflected the electric power industry of that period. The terms assumed that the utility would be developing its own resources or entering long-term purchase power contracts to serve its loads. The 1981 RPSA did not contain specific terms identifying how in lieu power would actually be delivered.

The electric power industry has changed dramatically since 1981. Utilities no longer solely construct generation or make long term power purchases for their wholesale power supply. Increasingly, utilities purchase power on the wholesale market from independent power producers, wholesale marketing entities, or other sources. These entities rely on

purchases of power from power pools, surplus utilities, or merchant generation developed exclusively for sale in the wholesale market.

BPA has structured its right to purchase in-lieu power in one-year intervals in order to reflect the calculation of a utility's ASC as an annual average number. While wholesale market purchases can be arranged at any time on very short notice, BPA has included a 30-day notice period to allow utilities an opportunity to plan for deliveries of physical power, assess their options to reduce their ASC, or suspend participation in the RPSA.

BPA has included a requirement that the utility provide a forecast of its residential and small farm load including the diurnal amounts of such load. Residential and small farm load is generally metered throughout the industry on a monthly basis. Since the standard industry practice requires hourly amounts of power to be identified, BPA has required the customer to provide a forecast of monthly diurnal amounts of its residential and small farm load when it submits its Appendix 1 filing to establish its ASC. These diurnal forecasts are used to establish hourly amounts of deliveries. BPA selected diurnal amounts of residential and small farm load as a reasonable approximation of the load. Currently, the industry in the Pacific Northwest has not adopted residential and small farm load profiles as a standard feature of deregulation. BPA did not think it was appropriate to require utilities to develop these profiles as a condition of participating in the RPSA.

BPA has also specified the costs it will consider when determining whether it is cheaper to purchase the utility's resources at its ASC or deliver an amount of wholesale power to the customer in the shape and amount of its residential and small farm load. Since customers are not required to accept power BPA offers to sell under an in lieu notice, BPA cannot acquire the in lieu power in advance of the notice. BPA has included the cost standards it must meet when acquiring in lieu power.

BPA has included all the necessary terms and conditions for making a sale of In Lieu PF Power. BPA believes Congress included the in lieu purchase right to minimize the cost exposure to the Treasury from a program that does not provide revenues to cover its costs. BPA has structured the in lieu provisions so that BPA does not find itself in the position of purchasing resources that cost more than the wholesale market price for power, thereby jeopardizing BPA's ability to meet its payments to the U.S. Treasury. BPA requests public comment whether BPA's proposed terms and conditions implementing its right to purchase power from another source in lieu of purchasing power at a utility's ASC are reasonable.

**Are there any exceptions to the limitations of section 5(c)(6) that preclude the restriction of exchange sales under section 5(c) below the amounts of power acquired from, or on behalf of, the utility pursuant to section 5(c)?**

Section 5(c) of the Northwest Power Act allows a "Pacific Northwest electric utility" to offer to sell electric power to BPA at the average system cost of that utility's resources.

BPA is obligated to purchase such power under section 5(c)(1) subject to BPA's right under section 5(c)(5) to acquire power from other sources in lieu of the power offered under section 5(c)(1). BPA must offer to sell an equivalent amount of electric power to such utility for resale to the utility's residential consumers within the region. Section 5(c)(6) specifies that the Administrator may not restrict such exchange sales below the amount of power acquired from, or on behalf of, such utility under section 5(c).

BPA had noted in its Section 9(c) Policy that it would address the effect of exports of resources by a customer purchasing power under section 5(c) on a case by case basis. BPA has not included any provisions regarding use of regional resources in its RPSA. BPA requests public comment whether there are any exceptions to the limitations of section 5(c)(6).

**Are BPA's proposed terms and conditions for implementing the Residential Exchange Program reasonable?**

BPA's proposed prototype RPSA includes the terms and conditions for implementing the Residential Exchange Program. BPA requests public comment on the reasonableness of these proposed terms and conditions.

**Are the total amount of benefits and the proposed terms and conditions for settling the rights of regional investor owned utilities to request benefits under the Residential Exchange Program reasonable?**

BPA proposed an allocation of benefits to each of the region's IOUs in the Administrator's Supplemental Record of Decision on the Power Subscription Strategy. In their comments during the development of the Power Subscription Strategy, the IOUs raised a number of arguments that BPA underestimated the benefits that should go to their residential and small farm consumers under the Residential Exchange Program. In addition to arguments over how BPA establishes the PF Exchange rate, the companies question whether the ASC Methodology properly reflects the cost of their resources. They also challenge the validity of any balances in the deemer accounts that are a result of BPA's 1984 modification of the ASC Methodology.

Rather than engage in protracted litigation over these issues, BPA has proposed a settlement of the rights of these utilities on behalf of their residential and small farm consumers. BPA believes a settlement of the disputes regarding implementation of the Residential Exchange Program is in the best interests of all its ratepayers, the residential and small farm consumers served by the IOUs, and the Federal government.

While BPA recognizes that the Montana Power Company has announced its intention to exit the industry, BPA believes that the company still represents the interests of Montana's residential and small farm consumers. Any benefits received by Montana Power will be assignable to the entity ultimately serving its residential and small farm consumers.

BPA requests public comment on the terms and conditions of the prototype Settlement Agreement. BPA also requests any comments on whether BPA should enter the proposed settlement agreements, whether the proposed settlements are reasonable, or any other issue regarding the proposed settlements within the scope of the agreements. For example, issues regarding rates applicable to the settlements are not within the scope of this comment process since those rates are required to be established in a section 7(i) hearing.

**Should BPA require IOUs to take power if the combined requests of all the companies for physical deliveries are less than 1000 aMW?**

BPA's Power Subscription Strategy included both physical and financial components to the settlement proposal. BPA's settlement proposal provides that IOUs would be offered benefits equivalent to 1900 aMW of federal power for the 2002-2006 period. Of this amount, at least 1000 aMW would be provided in physical power deliveries.

BPA requests that each IOU notify BPA by July 21, 2000, whether they wish to participate in BPA's Residential Exchange Program. Based on each IOU's request to participate in the Program, BPA will prepare a settlement offer for their consideration prior to October 1, 2000. At the time each IOU requests to participate in the Program in July, BPA asks that each IOU identify (1) its preferred mix of physical deliveries and monetary settlement; and (2) whether it would prefer a five-year or ten-year Settlement Agreement term.

BPA will only make a settlement offer including physical deliveries if an individual IOU can establish a net requirement for the amount of power requested. While BPA is not sure whether each IOU can establish a net requirement, BPA believes that the combined net requirements of the IOUs easily exceed 1000 aMW. While BPA is willing to offer at least 1000 aMW of firm power, BPA is not sure that it will receive requests for 1000 aMW of firm power deliveries from the combined IOUs.

The Power Subscription Strategy did not specify whether the firm power under the settlement would be made available under section 5(b) or section 5(c) of the Northwest Power Act. BPA has prepared a prototype Settlement Agreement including firm power sales based on section 5(b) of the Northwest Power Act. BPA has informed the IOUs that it is willing to consider settlement offers providing firm power under section 5(c) of the Northwest Power Act. BPA has not prepared a prototype agreement for such sales. BPA will consider offers for firm power deliveries under section 5(c) on a case by case basis. BPA has no proposals at this time.

BPA proposes to allow IOUs to select only the monetary benefits of its Subscription settlement offer during the first five year period rather than requiring the utilities to take a minimum amount of firm power. BPA requests public comment on whether it should

require the IOUs to buy a minimum amount of firm power as part of a Subscription settlement if the total requests of all the IOUs is less than 1000 aMW.

**How BPA should limit physical deliveries to each IOU if the companies request physical deliveries of more than 1000 aMW and such deliveries are more power than BPA is willing to offer?**

BPA's Subscription Strategy stated that BPA would have the option to deliver firm power or financial benefits for the portion of total benefits in excess of 1000 aMW. BPA requests public comment on the method BPA should use to limit physical deliveries in excess of 1000 aMW if the IOUs request more power than BPA is willing to offer.

**COMMENT OPPORTUNITY**

Comments on the Proposed Agreements to Implement the Residential Exchange Program or Provide for Settlement of Those Agreements In Accordance with BPA's Power Subscription Strategy for Specific Northwest Investor-Owned Utilities will be accepted through close of business on June 9, 2000. Written comments should be sent to:

Bonneville Power Administration  
P.O. Box 12999  
Portland, Oregon 97212

You can also send comments electronically to: [comment@bpa.gov](mailto:comment@bpa.gov)  
Additional copies of this proposal may be obtained by calling BPA's Public Information Office at 1-800-622-4520 or by contacting your BPA Power Account Executive. This proposal is also available on BPA's Subscription website:  
<http://www.bpa.gov/Power/subscription>

If you have specific questions on this proposal, please contact the Residential Exchange Program Project Manager, Dennis Oster, at 503-230-3370.