

Draft 5(c) Settlement Agreement

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

Contract No. 00PB-«#####»

**DRAFT 07/13/26/00**

# [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 in the singular as “Party” or in the plural as “Parties.”

## RECITALS

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

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

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 each period during the term of this Agreement that begins each October 1 and which ends the following September 30. For instance, Contract Year 2002 begins October 1, 2001, and continues through September 30, 2002.
- (b) "Deemer Account" means the separate account established pursuant to section 10 of the 1981 Residential Purchase and Sale Agreement between «Customer Name» and BPA that identifies a monetary payment plus interest that would have been owed to BPA by «Customer Name» if «Customer Name» had not "deemed" its Average System Cost equal to the PF Exchange rate.
- (c) "Firm Power" means electric power that PBL will make continuously available to «Customer Name» under the Firm Power Block Negotiated In-Lieu Power Sales Agreement.
- (d) "Firm Power Block Negotiated In-Lieu 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.)*
- (e) "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.

- (f) “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.
- (g) “Monetary Benefit” means the monetary settlement benefits provided under this Agreement as determined pursuant to the methodology described in section 4(c) below.
- (h) “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501.
- ~~(i)~~ “PF Exchange Subscription Rate,” or “PFXS,” means the then-current applicable PF Exchange Subscription rate under the PF rate schedule.
- (j) “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.
- ~~(k)~~ “RL Rate” means the then-current applicable Residential Load Firm Power rate schedule.
- (l) “Residential Exchange Program” means the program established under section 5(c) of the Northwest Power Act.
- (m) “Residential Load” means the load eligible to receive benefits under this Agreement, as such load is defined in Exhibit B.
- (n) “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

- (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. «Customer Name» agrees that the Firm Power and Monetary Benefits provided under this Agreement satisfy all of BPA’s obligations during the period from October 1, 2001, through September 30, 2006 [2011], under or arising out of section 5(c) of the Northwest Power Act.
- (b) **Invalidity**  
In the event the United States Court of Appeals for the Ninth Circuit finally

determines, after all appeals or requests for reconsideration, that this Agreement (or section 4(a), section 4(c), or section 5 of this Agreement) is unlawful, void, or unenforceable, then the provisions of section 3(a) above shall be of no further force or effect, and the Parties intend and agree that: (1) the Firm Power and Monetary Benefits provided prior to such final determination shall be retained by «Customer Name»; and (2) the satisfaction of BPA's obligations to «Customer Name» under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law. This section 3(b) shall survive notwithstanding any determination that any other provision of this Agreement (or the exhibits) is unlawful, void, or unenforceable.

- (c) **Negotiation of New Agreement if this Agreement Held Invalid**  
 If this Agreement (or section 4(a), section 4(c), or section 5 of this Agreement) is finally determined to be unlawful, void, or unenforceable as described in section 3(b) above, then both Parties agree to negotiate in good faith a new, mutually acceptable agreement that would, until the end of its term, be in satisfaction of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act. The term of such new agreement would continue for the remaining term of this Agreement.

**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>	<u>Total of Firm Power and Monetary Benefit for «Customer Name»</u>			
	<u>(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	_____	_____	_____	_____
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~~ [PF Exchange Subscription](#)

Rate. The terms and conditions for this sale shall be as provided for in the Firm Power Block Negotiated In-Lieu Power Sales Agreement, attached hereto as Exhibit A. *(Drafter's Note: If «Customer Name» desires, BPA shall modify or replace the Block Power Sales Agreement to allow for the purchase of products under the NR rate schedule, to the extent «Customer Name»'s Net Requirement exceeds the amount of RL power purchased).* The annual amounts of Firm Power are as follows:

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

(B) If «Customer Name» terminates the Firm Power Negotiated In-Lieu 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 (except as provided in section 5(a)(63) 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 Negotiated In-Lieu 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 BPA's determination of the availability of In-Lieu Power 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.~~

(BE) If the RL-PF Exchange Subscription 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 Negotiated In-Lieu Power Sales Agreement to Monetary Benefits, pursuant to section 4(c) below (except as provided in section 5(a)(63) 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:

$$MP = \frac{(FBPF - PFXS) \times MB \times 8,760 \text{ hours (8,784 hours in leap years)}}{12 \text{ months}}$$

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-PFXS = The RL-PF Exchange Subscription 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:

$$MP = \frac{(FBPF - PFXS) \times MB \times 8,760 \text{ hours (8,784 hours in leap years)}}{12 \text{ months}}$$

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-PFXS = The RL-PF Exchange Subscription Rate calculated at 100 percent annual load factor.

MB = Monetary Benefit amount in annual aMW.

(C) **Exception to Use of RL-PF Exchange Subscription 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-PFXS Rate in effect; or (ii) the RL-PFXS Rate exceeds the Lowest PF Rate, then the Lowest PF Rate shall replace the RL-PFXS 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: (A) on the due date of the bill issued under Exhibit A; or (B) 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). After the Due Date, and for the purposes of section 4(c)(3)(B), a late payment charge is calculated at a daily, simple interest rate determined 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 was received. BPA shall pay by electronic funds transfer using «Customer Name»'s established procedures.

## 5. CASH PAYMENTS IF FIRM POWER NOT DELIVERED

### (a) Conditions Under Which Firm Power Not 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.~~

(12) **Firm Power Not 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(c)(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.~~

(25) **Firm Power 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-Negotiated In-Lieu 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.

**(36) Termination of Block-Negotiated In-Lieu Power Sales Agreement**

If «Customer Name» terminates the Firm Power Block-Negotiated In-Lieu Power Sales Agreement pursuant to section 16 of such agreement and section 4(c)(2)(C) of this Agreement applies, then section 4(b)(1)(B) of this Agreement shall not apply and the amounts of Firm Power not delivered during any month from the Effective Date of such termination through September 30, 2006, shall be converted to cash payments as provided in section 5(b) below.

**(47) Block-Negotiated In-Lieu Power Sales Agreement Held Invalid**

If any or all power deliveries under the Firm Block-Negotiated In-Lieu Power Sales Agreement are restricted due to such agreement being unlawful, void, or unenforceable, then such restricted amounts 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:

$$FBNDP = (MIDC - WC - \del{RL} PFXS) \times MWH$$

Where:

FBNDP= Monthly Cash Payment Amount for Firm Power in MWh not delivered under sections 5(a)(1) through 5(a)(47) above.

MIDC = The volume weighted average price for the month of the Dow Jones daily firm On-Peak index price at the Mid-C for HLH, and the Dow Jones daily firm 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-PF~~ PFXS = The monthly ~~RL-PF~~ Exchange Subscription 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 not delivered pursuant to sections 5(a)(1), ~~through 5(a)(4)~~, section 5(a)(~~36~~), and section 5(a)(~~47~~) 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), ~~through 5(a)(4)~~, section 5(a)(~~36~~), and section 5(a)(~~47~~) above at the Mid-C index price as specified in section 5(b)(2)(C) below for the applicable delivery period, 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 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:

$$PRP = (MIDC - \text{RL-PFXS}) \times MWH$$

Where:

PRP = Monthly Cash Payment Amount for Firm Power in MWh not delivered under sections 5(a)(1), ~~through 5(a)(4)~~, section 5(a)(~~36~~), and section 5(a)(~~47~~).

MIDC = The volume weighted average price for the month of the Dow Jones daily firm On-Peak index price at the Mid-C for HLH, and the Dow Jones daily firm 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.

~~RL-PFXS~~ = The monthly RL-PF Exchange Subscription 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 Negotiated In-Lieu Block Power Sales Agreement to wheel to its load.

(3) **Exception to Use of RL-PF Exchange Subscription Rate in Sections 5(b)(1) and 5(b)(2)**

If, for the purposes of the formulas shown in sections 5(b)(1) and 5(b)(2) above, there is: (i) no RL-PFXS Rate in effect; or (ii) the RL-PFXS Rate exceeds the Lowest PF Rate, then the Lowest PF Rate shall replace the RL-PFXS Rate in such formulas. Use of the Lowest PF Rate in such event shall apply to cash payments provided in accordance with sections 5(a), 5(b)(1), and 5(b)(2).

(4) **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, as set forth in this section 6(b). 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 Contract 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 Load.
- (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 Residential Load. 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) to be assigned to BPA 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» has prejudiced its right, if any, to assert that a Deemer Account 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. BPA and «Customer Name» agree that the Deemer Account balance shall not apply to the Negotiated In-Lieu Power Sales Agreement.

#### 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 and Firm Power Sale as established in section 4 of this Agreement, unless «Customer Name» has notified PBL before August 1, 2001, that it will not participate in the Conservation and Renewable Discount. For purposes of establishing Monetary Benefits and Firm Power amounts 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 95 percent of, or greater than 105 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, and the Conservation and Renewable Discount implementation manual. «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 of negotiated amounts of in-lieu power under section 5(c) 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 (06/06/00 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. «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. Any dispute regarding any rights of the Parties under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. «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 11. For purposes of this section 11, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application, or

makes a determination under an applicable statute. If either Party asserts that a dispute is excluded from arbitration under this section 11, either Party may apply to the Federal District Court of Oregon for an order determining whether such dispute is subject to arbitration under this section 11.

- (b) Any contract dispute or contract issue between the Parties arising out of this Agreement, except for disputes that are excluded through section 11(a) above, shall be subject to binding arbitration. The Parties shall make a good faith effort to resolve such disputes before initiating arbitration proceedings. During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.
- (c) Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The CPR Institute for Dispute Resolution's arbitration procedures for commercial arbitration, Non-Administered Arbitration Rules (CPR Rules), shall be used for each dispute; **provided, however**, that: (1) the Parties shall have the discovery rights provided in the Federal Rules of Civil Procedure unless the Parties agree otherwise; and (2) for claims of \$1 million or more, each arbitration shall be conducted by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a list containing the names of 15 qualified individuals supplied by the CPR Institute for Dispute Resolution. If the Parties cannot agree upon three arbitrators on the list within 20 business days, 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.

(g) **Severability**

All other provisions and exhibits to this Agreement are independent of Exhibit A (~~Firm Block Negotiated In-Lieu~~ Power Sales Agreement) attached hereto, and shall remain in effect even if any or all of such Exhibit A is unlawful, void, or unenforceable.

**14. SIGNATURES (02/05/99 Version)**

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

«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 \_\_\_\_\_

(PBLLAN-PSB-5-W:\PSC\PM\CT\5c\_SETT.DOC)

**Exhibit A**

Contract No. 00PB-«#####»

DRAFT ~~07/13/00~~7/26/00

**IOU Draft Prototype**

~~FIRM POWER BLOCK~~

NEGOTIATED IN-LIEU

**POWER SALES AGREEMENT**

executed by the

**BONNEVILLE POWER ADMINISTRATION**

and

**«FULL NAME OF CUSTOMER»**

~~(RL ONLY)~~

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This ~~BLOCK~~ NEGOTIATED IN-LIEU 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.~~

~~The Northwest Power Act, among other matters, provides that a Pacific Northwest (PNW) electric utility may offer to sell electric power to BPA and BPA shall purchase such electric power at the average system cost (ASC) of that utility's resources and that BPA shall sell in return an equivalent amount of electric power for resale to that utility's residential and small farm users within the PNW.~~

~~BPA and «Customer Name» desire to enter into this Agreement providing for a negotiated amount of power from BPA for resale to «Customer Name»'s residential and small farm users in lieu of purchasing power at the ASC of «Customer Name»'s resources.~~

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:

**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.*)

**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.*)

- ( ) "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.

- ( ) “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.
- ( ) “Contracted Power” **(04/27/00 Version)** means Firm Power provided under this Agreement.
- ( ) “Diurnal” **(04/27/00 Version)** means the division of hours of the day between Heavy Load Hours (HLH) and Light Load Hours (LLH).
- ( ) “Firm Power” **(04/27/00 Version)** means electric power that PBL will make continuously available to «Customer Name» under this Agreement
- ( ) “Northwest Power Act” **(03/29/00 Version)** means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501.
- ( ) “Party” or “Parties” **(04/27/00 Version)** means PBL and/or «Customer Name».
- ( ) “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.
- ( ) “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.
- ( ) “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.
- ( ) “Region” **(03/29/00 Version)** means the definition established for “Region” in the Northwest Power Act.
- ( ) “Settlement Agreement” means Contract No. 00PB-XXXXX. This Agreement is attached as Exhibit A to the Settlement Agreement.
- ( ) “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.
- ~~( ) “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.~~

- ( ) "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~~ are subject to ~~more than~~ one rate schedule. The ~~Residential Load Firm Priority Firm Exchange Subscription~~ Power (~~RLPFEXS~~) rate schedule, including the GRSPs, or their successors, apply to power purchases under this Agreement. Purchases under such rate schedule are established as follows:

**Residential Load Firm Priority Firm Exchange Subscription Power Rate (03/29/00 Version)**

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

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

- (a) **RLPFEXS 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 ~~RLPFEXS~~ rate \_\_\_ megawatts (MW) each hour of Contract Years 2002 through 2006.

- (b) **RLPFEXS Product for Contract Years 2007 Through 2011 (04/27/00 Version)**

PBL shall sell and make available and «Customer Name» shall purchase, during the period that begins October 1, 2006, and continues through September 30, 2011 under the applicable ~~RLPFEXS~~ rate a MW amount for each hour during such period 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. PURCHASE DEFICIENCY**

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 system for the purpose of delivery to «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 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, notwithstanding section 7(b) above, 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 6 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 20<sup>th</sup> day after the issue date of the bill (Due Date). If the 20<sup>th</sup> 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 (06/30/00 Version, ~~modified for RL Only~~)**

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 and «Customer Name», 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 (06/06/00 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 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. **«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. Any dispute regarding any rights of the Parties under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. **«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.** For purposes of this section 13 BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application, or

makes a determination under an applicable statute. If either Party asserts that a dispute is excluded from arbitration under this section 13, either Party may apply to the Federal District Court of Oregon for an order determining whether such dispute is subject to arbitration under this section 13.

- (b) Any contract dispute or contract issue between the Parties arising out of this Agreement, except for disputes that are excluded through section 13(a) above, shall be subject to binding arbitration. The Parties shall make a good faith effort to resolve such disputes before initiating arbitration proceedings. During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.
- (c) Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The CPR Institute for Dispute Resolution's arbitration procedures for commercial arbitration, Non-Administered Arbitration Rules (CPR Rules), shall be used for each dispute; **provided, however**, that: (1) the Parties shall have the discovery rights provided in the Federal Rules of Civil Procedure unless the Parties agree otherwise; and (2) for claims of \$1 million or more, each arbitration shall be conducted by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a list containing the names of 15 qualified individuals supplied by the CPR Institute for Dispute Resolution. If the Parties cannot agree upon three arbitrators on the list within 20 business days, 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 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)**  
~~Firm Power acquired on behalf of «Customer Name» for this Agreement shall not be restricted during any period of delivery under this Agreement. 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 RLPFEXS Contracted Power except to serve «Customer Name»'s Total Retail Load ~~or as unless~~ otherwise permitted by Federal law.

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

~~(1) Within 60 days prior to 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.~~

**(fe) 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 *[Drafter's Note you may add "in the judgment of «Customer Name»" here.]* 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 Rate” **(03/29/00 Version)** means the Lowest PFEXSRL Rate established in the 2002 Wholesale Power Rate Case for Contract Years 2002 through 2006.
- (b) “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-PFEXS Rate for the Firm Power purchases provided under this Agreement.
- (c) “Lowest RL-PFEXS Rate” **(04/27/00 Version)** means the lowest applicable cost-based power rate provided under the applicable RL-PFEXS rate schedule as applied to «Customer Name»’s Contracted Power purchases under this Agreement. ~~The Lowest RL-PFES Rate shall be selected by «Customer Name» from the RL-PFES rate 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.~~

**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 PRIORITY FIRM EXCHANGE SUBSCRIPTION  
POWER RATE TREATMENT**

- (a) **Right to Lowest RL-PFEXS Rates (03/29/00 Version)**  
«Customer Name» is contractually guaranteed through «\_\_\_\_\_» the Lowest RL-PFEXS Rates established in a successor BPA power rates proceeding for its RL-PFEXS 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 Priority Firm Exchange Subscription 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-PFEXS 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 IV.H.2,~~ labeled “Schedule ~~RLPF-02 Residential Load Priority~~ 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 applicable rates rate~~ 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 is~~ applicable to «Customer Name». Subject to establishment in BPA’s rate case, and subject to BPA’s statutory requirements, the Lowest ~~RL-PFEXS~~ Rates shall be approximately equal to the Lowest PF Rate.

**4. SPECIAL ~~RL-PFEXS~~ LOAD TREATMENT**

*[OPTIONS for section 4(a).*

*Option 1-Include the following if customer purchases EPP using a PF adder.*

(a) **Environmentally Preferred Power**

(1) **Environmentally Preferred Power (06/01/00 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 PBL for such power is «\_» dollars per MWh. *(Drafter’s Note: As of 06/01/00 for the Blended Green product this # is 6.40, but use whatever is current from the pricing team for the customer’s green product.)* The entire amount of this Green Energy Premium shall qualify as an eligible expenditure under the Conservation and Renewables Discount. *(Drafter’s Note: Delete the previous sentence if the green product purchased is not the Blended Green Product.)* “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(b)(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 (06/01/00 Version)**

(A) The resources listed in section 4(b)(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. *(Drafter's Note: As of 06/01/00 for the Blended Green product this # is 6.59, but use whatever is current from the pricing team for the customer's green product.)* Payment is due by no later than 20 days after «Customer Name» receives the notice identified in section 4(b)(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 (06/01/00 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 (*Drafter's Note: If the green product purchased is not the Blended Green Product, add the following to this sentence, ", including the total amount of the Environmentally Preferred Power purchase that qualifies as an eligible expenditure 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(b)(3)(C), if the Environmentally Preferred Power provided to «Customer Name» during a Contract Year is less than the amounts specified in section 4(b)(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(b)(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(b)(3)(B).

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

- (a) **Environmentally Preferred Power (04/27/00 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 RLPF 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.

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 PRIORITY FIRM EXCHANGE SUBSCRIPTION~~  
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-PFEXS~~ HLH and LLH Energy Entitlements.
- (b) The hourly amount shown in section 4 of the body of this Agreement establishes «Customer Name»'s ~~RL-PFEXS~~ 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 (06/02/00 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, unless «Customer Name» has notified PBL before August 2001 that it will not participate in the Conservation and Renewable Discount. 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 95 percent of, or greater than 105 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, and the Conservation and Renewables Discount implementation manual. «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 RLPF 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 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 the time zone specified by WSCC and shall be in “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) **[Intentionally Omitted.]**
- (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 as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to «Customer Name» which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

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

5. Unused irrigation allocations may not be reallocated to other farms or to another billing period.

6. The operator of a farm is required to certify to «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.
7. This Exhibit B shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.

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