

**Amendment of  
Contract High Water Mark Power Sales  
Contracts and Residential Purchase and  
Sale Agreements to Reflect Implementation  
of Tiered Rates Methodology**

Administrator's Record of Decision

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July 2009

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**AMENDMENT OF CONTRACT HIGH WATER MARK POWER SALES CONTRACTS  
AND RESIDENTIAL PURCHASE AND SALE AGREEMENTS TO REFLECT  
IMPLEMENTATION OF TIERED RATES METHODOLOGY**

**ADMINISTRATOR'S RECORD OF DECISION**

**Bonneville Power Administration  
U.S. Department of Energy**

**July 8, 2009**

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## I. INTRODUCTION

The Regional Dialogue Residential Purchase and Sale Agreement (RD RPSA) was adopted by BPA in its September 4, 2008, Record of Decision as the basis for contracting with all eligible utilities applying for benefits under the Residential Exchange Program (REP) during fiscal years 2012-2028. Under Section 20 of the RD RPSA, the template stated that the amount of Exchange Load a consumer-owned utility (COU) could use to calculate its REP benefits would be determined in a future public process or section 7(i) ratemaking process. BPA separately negotiated Contract High Water Mark (CHWM) power sales contracts with its COU customers. The CHWM contracts will help BPA to implement tiered power rates. The CHWM contracts provide, generally, that a COU signing such a contract agrees not to exchange new resources under the REP. Neither the RD RPSA nor the CHWM contracts described how REP benefits for a COU with a CHWM contract would be calculated.

Furthermore, because of the timing differences in final adoption of two other major documents that impact how REP benefits would be calculated for a COU (the Tiered Rate Methodology (TRM) and the Average System Cost Methodology (ASCM)), BPA committed to a final re-examination of both contracts and both methodologies for consistency and clarity.

As a result, BPA initiated public processes to clarify language in the RD RPSA and the CHWM contracts in January 2009.

This Record of Decision will address both of the public processes.

## II. BACKGROUND

In June 2008, BPA adopted a revised Average System Cost Methodology (ASCM), which is the methodology BPA will use to establish a utility's Average System Cost (ASC) for purposes of implementing the REP as provided in section 5(c) of the Northwest Power Act.

In addition, in November 2008, BPA adopted the TRM, which is the methodology BPA will use to establish a two-tiered Priority Firm Power (PF) rate design applicable to firm requirements power service for COUs pursuant to CHWM contracts. The tiered rate design differentiates between the costs of service associated with the Tier 1 System Capability (Tier 1 Rates) and the costs associated with amounts of BPA power needed to serve any portion of a COU's Annual Net Requirements not served at a Tier 1 Rate (Tier 2 Rates).

Consistent with the philosophy of tiered rates, the CHWM contracts contained a provision that limited a COU's ability to participate in the REP. The provision states:

### 12.2 Residential Exchange

If «Customer Name» elects to seek residential exchange benefits from BPA pursuant to section 5(c) of the Northwest Power Act, «Customer Name» agrees it will not seek and shall not receive exchange benefits: (1) for Total Retail Load in excess of «Customer Name»'s RHWL load, or (2) based upon the cost of resources in excess of «Customer's Name»'s resource amounts used in calculating its CHWM. The determination of what exchange benefits «Customer Name» shall

not receive as a consequence of «Customer Name»'s agreement in the preceding sentence will be made by BPA pursuant to BPA's then-existing ASC Methodology.

However, neither the CHWM nor the new ASCM defined how a utility that signed a CHWM contract would have its REP benefits calculated. BPA would need to clarify the methodology by which these customers could participate in the REP. BPA proposed to make these clarifications to the RD RPSA and CHWM contracts.

As a result, BPA initiated two public processes with workshops that were held on January 15 and January 22, 2009, to introduce and discuss the two sets of proposed contract language. The first relates to the definition and formula of Exchange Load and would be included in the RPSA template. The second, which would be optional language offered to each COU for amendment to Exhibit D of its CHWM contract, relates to how the three major components of a COU's average system cost are calculated in order to derive a benefit level. The CHWM contract amendment also includes language stating that if BPA materially changes any of the three major components (or Actions, as they are referred to in the language) or does anything else as prescribed that impact the COUs' future exchange benefits (a fourth Action) that meets specified criteria, the customer can request a new power sales contract from BPA (without a CHWM).

Both of the proposed sets of language were refined during the workshops and released for public review and comment. By letter dated January 30, 2009, BPA opened a 3-week public comment period to receive feedback on proposed clarifying language for the CHWM contract and RD RPSA, which would provide further certainty to those COUs expecting to participate in the REP post-2011. Because of timing differences between the TRM, the new RPSAs, and the new ASCM, BPA committed to re-examine the three documents for consistency and clarity regarding the REP as it applies to COUs once these processes were complete. Because these processes have now been concluded, the language proposes to clarify how the three main components for determining exchange benefits for a utility that holds a CHWM contract are calculated: the base Tier 1 PF Exchange Rate; the utility's Rate Period High Water Mark Average System Cost (RHWM ASC); and the utility's RHWM Exchange Load. In addition, the language proposes a remedy for COUs if BPA should change any of the approaches associated with calculating exchange benefits for COUs to their exclusive detriment.

Because the proposed language, although related, is different in the two separate contracts, BPA opened comment on the two sets of proposed language separately. One was entitled RPSA Exchange Load and proposed language for inclusion in the RD RPSA template. The other process was the Exchange Clarification for Consumer-Owned Utilities and proposed optional language for inclusion in a COU's CHWM contract.

BPA received three comments in these two processes from Clark County PUD (Clark), Snohomish County PUD (Snohomish), and a joint comment from Puget Sound Energy, Portland General Electric, PacifiCorp, Avista and Idaho Power Company (IOUs). These comments are addressed below.

After BPA closed the official public comment process, BPA completed an internal review of the proposed language and determined that the Option section required a number of changes. BPA sent its proposed changes to all prior commenters for another round of review. Further comments



were received from Clark and Snohomish during this supplemental review. The proposed changes and comments are addressed below.

### **III. RESOLUTION OF ISSUES**

#### **Issue 1**

Whether the administrative costs of the proposed CHWM contract amendment is prohibitive and should cause BPA to withhold the proposed amendment.

#### **Parties' Positions**

This issue was not raised in comments, but was a significant consideration in BPA's internal deliberations due to BPA's ongoing efforts to control its internal costs. BPA's customers consistently focus intently on BPA's internal costs.

#### **BPA Staff's Position**

BPA Staff believes it is important to keep internal costs as low as practicable.

#### **Evaluation of Positions**

The proposed CHWM contract amendment could add significantly to BPA's internal operating costs in the event that a customer avails itself of the protection it provides. Significant staff time would be required to go through the additional steps prescribed in the amendment, especially if BPA is required to offer an alternative contract to a customer. Internal staff costs for the development and offering of a new contract could easily exceed \$500,000. If that alternative contract is accepted, the ongoing incremental costs of internal systems and staffing to administer a different contract could exceed that amount each year through 2027. Though \$500,000 is an extremely small percentage of BPA's total power costs, it is roughly 0.5% of its internal costs allocated to Power Services and it therefore not insignificant in that context.

Set against this cost increase is the intense level of interest on the part of some customers to have the protections provided in this amendment. BPA believes that the intensity and merit of this interest outweighs the potentially significant internal cost increment the amendment could create.

#### **Decision**

BPA will offer the proposed amendment despite its administrative costs.

#### **Issue 2**

*Whether BPA should amend the RD RPSA template to include the definition of "Exchange Load" for COUs.*

## **Parties' Positions**

Clark submitted comments in support of the proposed language. (Clark, REL090002.)

The IOUs argue that any “methodology for determining the exchange loads of COUs must be consistent with, and determined in accordance with, applicable statutory requirements.” (IOUs, REL090001.) The IOUs also state that although they “are not herein commenting on the specific language of BPA’s proposed amendment, such lack of comments on such specific language should not be interpreted as an endorsement of such specific language or the methodologies described in the specific language.” (*Id.*)

## **BPA Staff's Position**

BPA Staff proposed the following language for public review after multiple discussions with COU and IOU representatives:

«Customer Name» agrees it will not seek and shall not receive residential exchange benefits pursuant to section 5(c) of the Northwest Power Act other than pursuant to Section IV(G) of the 2008 ASC Methodology or its successor. Accordingly, the Parties shall calculate eligible exchange loads based on the following formula:

$$\text{Actual RHW M Exchange Load} = \text{RRL} \times \text{T1Pctg}$$

Where:

Actual RHW M Exchange Load is the monthly residential and small farm load of «Customer Name» used to calculate the actual monthly REP payments to «Customer Name» as specified in this Agreement.

RRL is «Customer Name»’s actual total qualifying residential and small farm retail load for a month as specified in this Agreement.

$$\text{T1Pctg} = \frac{\text{T1MWh} + \text{ExistResMWh}}{\text{TRL} - \text{NLSL}}$$

Where:

T1Pctg is BPA’s forecast percentage of «Customer Name»’s load that is expected to be served by purchases of power at Tier 1 Rates from BPA and from «Customer Name»’s Existing Resources for CHWM, and will be computed for each Fiscal Year of the applicable Rate Period. Such computation will be performed in the applicable RHW M Process for the Rate Period.

T1MWh is the amount of power at Tier 1 Rates BPA forecasts to be purchased by «Customer Name» from BPA in each Fiscal Year of a Rate Period as forecast in each RHW M Process for a Rate Period.

ExistResMWh is the specified output of «Customer Name»'s Existing Resources for CHWM, as specified in Attachment C, Column D, of the TRM.

TRL is BPA's forecast of «Customer Name»'s Total Retail Load in each Fiscal Year of a Rate Period as forecast in each RHWM Process for a Rate Period.

NLSL is BPA's forecast of «Customer Name»'s New Large Single Loads in each Fiscal Year of a Rate Period as forecast in each RHWM Process for a Rate Period.

### **Evaluation of Positions**

Based on the discussions in the BPA workshop and the comments received on this issue, the referenced methodology accurately describes the calculation of Exchange Load for a COU with a CHWM contract. As such, it is appropriate to include in the RD RPSA template.

### **Decision**

*BPA will amend the RD RPSA template to include the definition of "Exchange Load" for COUs. See Exhibit A for the final contract language.*

### **Issue 3**

*Whether BPA should offer for inclusion in COUs' CHWM contracts Exhibit D language that clarifies how REP benefits for such customers are calculated post-2012.*

### **Parties' Positions**

Clark and Snohomish support the proposed language. (Clark, REL090002; Snohomish, REL90003.)

The IOUs argue that "all rate methodologies, including the methodology for calculating the PF Exchange rate applicable to COUs with CHWM contracts, must be consistent with, and determined in accordance with, applicable statutory requirements." (IOUs, REL090001.) The IOUs also state that although they "are not herein commenting on the specific language of BPA's proposed amendment, such lack of comments on such specific language should not be interpreted as an endorsement of such specific language or the methodologies described in the specific language." (*Id.*)

### **BPA Staff's Position**

BPA Staff proposed the following language in January and opened the public comment period as a means of clarifying how REP benefits for COUs with CHWM contracts would be calculated.

## X. LIMITATIONS ON EXCHANGE OF EXISTING RESOURCES

### X.1 Option on Full ASC Participation and Alternative Contract

BPA's 2008 Average System Cost (ASC) Methodology limits the loads and resource costs included in ASCs for consumer-owned utilities that sign a CHWM Contract. The TRM establishes a Tier 1 PF Exchange Rate for such consumer-owned utilities. Pursuant to section 12.2 of the body of this Agreement and section 20 of the Residential Purchase and Sale Agreement (RPSA), «Customer Name» is contractually precluded from seeking or receiving Residential Exchange Program (REP) benefits based on an ASC other than as provided for in Section IV(G) of the 2008 ASC Methodology or its successor.

BPA and «Customer Name» understand and acknowledge that this is the first time BPA has attempted to implement an REP with two different ASC cost structures and two differing levels of benefits, and that as a consequence, the implementation of the REP may be revised over time. Because of the contractual preclusions in the paragraph above and because a limited number of consumer-owned utilities with CHWM Contracts may participate in the REP, the intent of this section X is to provide limited protection to such consumer-owned utilities from future changes in the REP.

Any impact to «Customer Name»'s access to REP benefits, pursuant to section 5(c) of the Northwest Power Act, as a result of an action taken by BPA as required by a statutory change or final judicial action shall not be considered an Action as provided in section X.2 below, shall not be subject to the criteria provided in section X.3 below, and shall not make available the option provided in section X.4 below.

Absent the exercise by «Customer Name» of the option set forth in section X.4 below, nothing in this section X is intended to alter the application of any provision of the ASC Methodology.

### X.2 Actions

If BPA takes any of the following Actions and such Actions meet the criteria specified in section X.3, then «Customer Name» may elect the option set forth in section X.4 below.

**Action 1.** BPA adopts, in a final record of decision issued in a section 7(i) proceeding for a Rate Period, a Base Tier 1 PF Exchange Rate for customers with CHWM Contracts which is calculated in a manner that differs from the following:

$$\text{Base T1 PF Exchange Rate} = \frac{(\text{PFCosts} - \text{PFCredits}) - (\text{T2Costs} - \text{T2Credits})}{\text{PFLoad} - \text{T2Load}} + \text{TmnAddr}$$

Where:

Base T1 PF Exchange Rate is the Base Tier 1 PF Exchange rate prior to the application of any Supplemental 7(b)(3) Rate Charge, as determined in each 7(i) Process.

PFCosts are all costs allocated in a 7(i) Process to the Priority Firm rates at the point in BPA's ratemaking process immediately prior to the performance of the section 7(b)(2) rate test (the unbifurcated PF rate) and any reflection of the tiering of the PF Preference rate.

PFCredits are all credits allocated in a 7(i) Process to the Priority Firm rates at the point in BPA's ratemaking process immediately prior to the performance of the section 7(b)(2) rate test (the unbifurcated PF rate) and any reflection of the tiering of the PF Preference rate.

T2Costs are all costs allocated in a 7(i) Process to Tier 2 Cost Pools.

T2Credits are all credits allocated in a 7(i) Process to Tier 2 Cost Pools.

PFLoad is the BPA forecast of load used to determine the unbifurcated PF rate in a 7(i) Process.

T2Load is the BPA forecast of load used to determine Tier 2 Rates in a 7(i) Process.

TmnAddr is the same unit charge for transmission added to the Base PF Exchange rate.

The Tier 1 PF Exchange rate used to calculate «Customer Name's REP benefits is the Base Tier 1 PF Exchange rate as modified by any Supplemental 7(b)(3) Rate Charge, as determined in each 7(i) Process and may be adjusted pursuant to the Supplemental 7(b)(3) Rate Charge Adjustment, any cost recovery adjustment clause, and any dividend distribution clause, as determined to be applicable to the Tier 1 PF Exchange rate in a 7(i) Process.

**Action 2.** BPA adopts, in a final record of decision, policy or interpretation, a method of calculating «Customer Name's ASC for a Fiscal Year(s) of an Exchange Period pursuant to BPA's 2008 ASC Methodology that differs from the following formula:

$$\text{RHWM ASC} = \frac{\text{Contract System Cost} - \text{NewRes\$}}{\text{Contract System Load} - \text{NewResMWh}}$$

Where:

RHWM ASC is the ASC for «Customer Name» for an Exchange Period, as defined by BPA's 2008 ASC Methodology.

Contract System Cost is as defined in BPA's 2008 ASC Methodology.

NewRes\$ is the forecast cost of resources (including purchased power contracts) used under this Agreement to serve «Customer Name»'s Above-RHWM Load. Such resources are exclusive of «Customer Name»'s Existing Resources for CHWMs as specified in Attachment C, Column D, of the TRM, and exclusive of purchases of power at Tier 1 Rates from BPA. The costs included in NewRes\$ will be determined using a methodology similar to Endnote d of BPA's 2008 ASC Methodology.

Contract System Load is as defined in BPA's 2008 ASC Methodology.

NewResMWh is the forecast generation from resources (including purchased power contracts) used under this agreement to serve «Customer Name»'s Above-RHWM Load. Such resources are exclusive of «Customer Name»'s Existing Resources for CHWMs specified in Attachment C, Column D, of the TRM, and exclusive of purchases of power at Tier 1 Rates from BPA.

**Action 3.** BPA offers «Customer Name» an RPSA with an Exchange Load used to calculate «Customer Name»'s REP benefits payments that differs from the following formula, or interprets such RPSA in a manner that differs from the following formula:

$$\text{Actual RHWM Exchange Load} = \text{RRL} \times \text{T1Pctg}$$

Where:

Actual RHWM Exchange Load is the monthly residential and small farm load of «Customer Name» used to calculate the actual monthly REP payments to «Customer Name» as specified in the RPSA.

RRL is «Customer Name»'s actual total qualifying residential and small farm retail load for a month as specified in the RPSA.

$$\text{T1Pctg} = \frac{\text{T1MWh} + \text{ExistResMWh}}{\text{TRL} - \text{NLSL}}$$

Where:

T1Pctg is BPA's forecast percentage of «Customer Name»'s load that is expected to be served by purchases of power at Tier 1 Rates from BPA and from «Customer Name»'s Existing Resources for CHWM, and will be computed for each Fiscal Year of the applicable Rate Period. Such computation will be performed in the applicable RHWM Process for the Rate Period.

T1MWh is the amount of power at Tier 1 Rates BPA forecasts to be purchased by «Customer Name» from BPA in each Fiscal Year of a Rate Period as forecast in each RHWM Process for a Rate Period.

ExistResMWh is the specified output of «Customer Name»'s Existing Resources for CHWM, as specified in Attachment C, Column D, of the TRM.

TRL is BPA's forecast of «Customer Name»'s Total Retail Load in each Fiscal Year of a Rate Period as forecast in each RHWM Process for a Rate Period.

NLSL is BPA's forecast of «Customer Name»'s New Large Single Loads in each Fiscal Year of a Rate Period as forecast in each RHWM Process for a Rate Period.

**Action 4.** BPA adopts a final record of decision, policy or interpretation that changes the terms of the TRM or the 2008 ASC Methodology applicable to REP participants with CHWM Contracts and such change is not encompassed in Actions 1-3, and such change meets the criteria in section X.3 for application of the option in section X.4.

### X.3 Criteria

The option set forth in section X.4 below is available to «Customer Name» if BPA has taken any of the Actions 1-4 set forth in section X.2 and the Actions taken, when considered in combination with all actions being undertaken at that time, result in a material reduction in the REP benefits of the class of REP participants with CHWM Contracts. A reduction shall not be "material" for purposes of this section X.3 if such Action(s), when considered in combination with all actions being undertaken at that time, are applied to the provisions applicable to all REP participants and produce the same or comparable effects on all REP participants, even if such Action(s) results in an otherwise material reduction in the REP benefits of the class of REP participants with CHWM Contracts.

### X.4 Option

If the criteria for this option as set forth in section X.3 have been met, then «Customer Name», within 30 calendar days of such Action(s), may provide written notice to BPA in accordance with section 20 requesting an alternative power sales contract without a CHWM. Such alternative power sales contract shall be for the same purchase obligation in section 3 of this Agreement that is in effect at the time the notice is provided to BPA. BPA shall have 180 calendar days after receipt of such notice to offer to «Customer Name» such alternative power sales contract. «Customer Name» acknowledges that the terms and conditions of such alternative power sales contract may vary from those contained in the CHWM Contract. «Customer Name» shall notify BPA in accordance with section 20 no later than 60 calendar days after the receipt of such alternative power sales contract whether it will terminate its CHWM Contract and execute such alternative power sales contract, or retain its CHWM Contract. If «Customer Name» fails to notify BPA within the 60 day period of its decision regarding its CHWM Contract, «Customer Name» will be conclusively presumed to have elected to retain its CHWM Contract.

If «Customer Name» provides BPA timely notice of its election to terminate its CHWM Contract and executes the alternative power sales contract, service under such alternative power sales contract shall not commence until the beginning of the Rate Period immediately following the Rate Period in which the alternative power sales contract is executed.

### **Evaluation of Positions**

BPA did not receive any comments objecting to offering contract language in the CHWM contract that clarifies how REP benefits for COUs are calculated post-2012.

### **Decision**

*BPA will offer for inclusion in COUs' CHWM contracts Exhibit D language that clarifies how REP benefits for such customers are calculated post-2012, with the modifications as described in Issues 3 and 4.*

### **Issue 4**

*Whether BPA should clarify how BPA determines whether an "Action" has triggered in the Option section of the proposed amendment.*

### **Parties' Positions**

Snohomish suggested the Option section of the proposed amendment required additional clarification and proposed the following language to provide more certainty:

1. BPA will review the COU notice documentation and will, within 45 days, provide written notification back to the COU stating that BPA either agrees or disagrees that the criteria set forth in Section X.3 have been met. If BPA decides that the criteria have not been met, it will provide specific reasons for its decision.
2. At least 30 days prior to offering an alternative power sales contract, BPA and the COU will begin discussions to review and clarify provisions of such power contract.

(Snohomish, REL090003.)

### **BPA Staff's Position**

BPA Staff proposed the following language for public review after multiple discussions with COU and IOU representatives:

#### **X.4 Option**

If the criteria for this option as set forth in section X.3 have been met, then «Customer Name», within 30 calendar days of such Action(s), may provide written notice to BPA in accordance with section 20 requesting an alternative power sales contract without a CHWM. Such alternative power sales contract shall be for the same purchase obligation in section 3 of this Agreement that is



in effect at the time the notice is provided to BPA. BPA shall have 180 calendar days after receipt of such notice to offer to «Customer Name» such alternative power sales contract. «Customer Name» acknowledges that the terms and conditions of such alternative power sales contract may vary from those contained in the CHWM Contract. «Customer Name» shall notify BPA in accordance with section 20 no later than 60 calendar days after the receipt of such alternative power sales contract whether it will terminate its CHWM Contract and execute such alternative power sales contract, or retain its CHWM Contract. If «Customer Name» fails to notify BPA within the 60 day period of its decision regarding its CHWM Contract, «Customer Name» will be conclusively presumed to have elected to retain its CHWM Contract.

If «Customer Name» provides BPA timely notice of its election to terminate its CHWM Contract and executes the alternative power sales contract, service under such alternative power sales contract shall not commence until the beginning of the Rate Period immediately following the Rate Period in which the alternative power sales contract is executed.

### **Evaluation of Positions**

BPA agrees with Snohomish that the proposed language in Option 4 did not clearly describe the process or the roles of the parties when determining whether an “Action” has occurred. BPA has developed revised language to incorporate the principles identified in Snohomish’s comments.

### **Decision**

*BPA has adopted language for the Option section to provide more certainty regarding the process for determining whether an “Action” has occurred. See also Issue #4.*

### **Issue 5**

*Whether BPA should include language in the Option section of the amendment that clarifies the rights and responsibilities of the parties.*

### **Parties’ Positions**

Clark supports the revisions BPA proposed to the Option section of the amendment. (Clark, Ltr. 6/5/09.)

Snohomish expressed concern that an *ad hoc* group had made additional revisions to the exhibit prior to its release for public comment on June 2, 2009. (Snohomish, Ltr. 6/16/09.) Snohomish claims it would have advocated additional revisions had it known of the forum. (*Id.*) Snohomish argues that BPA should not include in the Option section a responsibility for the COU to participate in a public process as a condition of triggering an Action. (*Id.*)

### **BPA Staff’s Position**

BPA Staff supports the proposed revisions to the Option section of the amendment.

## Evaluation of Positions

After the close of public comment on the initially-proposed contract amendment language, BPA completed an internal review of the proposed language, as well as the comments received during the public comment period. BPA determined that the language was still unclear on the parties' responsibilities as defined in the Option section. Particularly, BPA noted that the proposed language did not give BPA the opportunity to cure if the agency made a decision that inadvertently triggered an Action that met the defined criteria. Furthermore, BPA noted that COUs should assist BPA in noting possible triggers by actively participating in public processes.

As a result, BPA made further proposed changes to the Option section. Because BPA only identified the need for these refinements after the official comment period closed and also because BPA had jointly sponsored the original language with Clark, BPA informally shared the refinements with Clark. On June 2, 2009, BPA then sent the following version of the Option section to the parties that participated in the workshops and the public comment process to receive any additional comments.

### «#».4 **Option**

If «Customer Name» believes that BPA has taken any of the Actions 1-4 set forth in section «#».2 that satisfies the criteria for this option as set forth in section «#».3, and if BPA has provided a public comment process as part of BPA's decision process (for the relevant Action of Actions 1-4 set forth in section «#».2) in which «Customer Name» has commented that BPA was proposing or about to take such Action, then «Customer Name», within 30 calendar days of BPA taking such alleged Action(s), may provide written notice to BPA in accordance with section 20 requesting an alternative power sales contract without a CHWM. Upon receipt of such written notice, BPA shall review the request and, within 60 calendar days, issue a written statement regarding whether the criteria of section «#».3 have been satisfied.

«#».4.1 If BPA believes the criteria of section «#».3 have not been satisfied, the dispute shall be resolved through the dispute resolution provisions in section 22 of this Agreement, provided, however, that the sole function of arbitration shall be to determine whether the criteria of section «#».3 have been satisfied, not the exclusive remedy of money damages set forth in section 22.4 of this Agreement. If the dispute resolution results in a final determination that the criteria of section «#».3 have been satisfied, BPA shall have 90 calendar days from the date of such final determination to take curative action to restore the REP benefits of the class of REP participants with CHWM Contracts to the level that would have existed had BPA not taken the Action(s) that resulted in the criteria of section «#».3 being satisfied; provided, however, that if BPA elects not to take such curative action within such 90 day period, BPA shall have 180 calendar days after the date of such determination to offer to «Customer Name» an alternative power sales contract without a CHWM.

- «#».4.2 If BPA determines that the criteria of section «#».3 have been satisfied, BPA shall have 90 calendar days from the date of such determination to take curative action to restore the REP benefits of the class of REP participants with CHWM Contracts to the level that would have existed had BPA not taken the Action(s) that resulted in the criteria of section «#».3 being satisfied; provided, however, that if BPA elects not to take such curative action, it shall have 180 calendar days after the date of such determination to offer to «Customer Name» an alternative power sales contract without a CHWM.
- «#».4.3 Such alternative power sales contract shall be for the same purchase obligation in section 3 of this Agreement that is in effect at the time the notice under this section «#».4 is provided to BPA. «Customer Name» acknowledges that the terms and conditions of such alternative power sales contract may vary from those contained in the CHWM Contract.
- «#».4.4 «Customer Name» shall notify BPA in accordance with section 20 no later than 60 calendar days after the date of its receipt of such alternative power sales contract whether it will terminate its CHWM Contract and execute such alternative power sales contract, or retain its CHWM Contract. If «Customer Name» fails to notify BPA within the 60-day period of its decision regarding its CHWM Contract, BPA's offer of the alternative power sales contract without a CHWM shall be withdrawn as of the 61<sup>st</sup> day and «Customer Name» will be conclusively presumed to have elected to retain its CHWM Contract.
- «#».4.5 If «Customer Name» provides BPA timely notice of its election to terminate its CHWM Contract and executes the alternative power sales contract, service under such alternative power sales contract shall not commence until the beginning of the Rate Period immediately following the Rate Period in which the alternative power sales contract is executed. Termination of «Customer Name»'s CHWM Contract shall be effective on the date the Parties execute the alternative power sales contract without a CHWM.

In its comments, Snohomish expressed concern that an *ad hoc* group had made additional revisions to the exhibit prior to its release for public comment on June 2, 2009. (Snohomish, Ltr. 6/16/09.) Snohomish claims it would have advocated additional revisions had it known of the forum. (*Id.*) There was, however, no *ad hoc* group that made additional revisions to the exhibit. Instead, as noted above, BPA completed an internal review of the proposed language (as well as the comments received during the public comment period) after the close of public comment on the initially proposed contract amendment language. BPA determined that the language was still unclear on the parties' responsibilities as defined in the Option section. Particularly, BPA noted that the proposed language did not give BPA the opportunity to cure if the agency made a decision that inadvertently triggered an Action that met the defined criteria. Furthermore, BPA noted that COUs should assist BPA in noting possible triggers by actively participating in public processes that might result in Actions. Therefore, it was BPA, not an *ad hoc* group, that developed language to address these newly identified concerns. The new language was limited to a single area and BPA did not propose to reopen the entire exhibit for further comments. All parties had had a

previous opportunity to file comments on any aspect of the proposed exhibit and it was unnecessary to provide parties an additional opportunity to discuss revisions they could have raised previously. Because BPA had jointly sponsored the original language with Clark, BPA first advised Clark that BPA was proposing refinements to the Option section. BPA then provided all participants an opportunity to comment on the proposed changes, which were limited to the Option section, before making any final decisions. Thus, Snohomish and all other parties have had an equal opportunity to comment on the proposed changes.

Snohomish argues that BPA should not include in the Option section a responsibility for the COU to participate in a public process as a condition of triggering an Action. (Snohomish, Ltr. 6/16/09.) BPA disagrees. The introduction to Section «#».4 Option provides:

If «Customer Name» believes that BPA has taken any of the Actions 1 through 4 set forth in section «#».2 that satisfies the criteria for this option as set forth in section «#».3, and if BPA has provided a public comment process as part of BPA's decision process (for the relevant Action of Actions 1 through 4 set forth in section «#».2) in which «Customer Name» has commented that BPA was proposing or about to take such Action, then «Customer Name», within 30 calendar days of BPA taking such alleged Action(s), may provide written notice to BPA in accordance with section 20 of this Agreement requesting an alternative power sales contract without a CHWM.

The highlighted language simply provides that if BPA holds a public process for an agency decision and a customer believes that the agency decision would comprise an Action as defined in the amendment, the customer has the responsibility to advise BPA *in that public process* that the pending decision would comprise an Action. This requirement is important because BPA may be unaware that a particular agency decision may have implications for triggering a customer's possible eligibility for a new power sales contract offer. Because BPA may be considering the interests of over one hundred customers and other interested parties in its public process, BPA may not be focusing on the interests of any single party or small number of parties. The individual customer, focusing on its own interests, is the most likely party to identify a situation that could result in an Action affecting that customer. In such an event, the customer must advise BPA of this circumstance. By having the customer identify a possible Action, BPA can focus directly on the issue and take steps, if necessary or appropriate, to address the implications of the proposed decision in the public process.

### **Decision**

*BPA has adopted the above-noted language for the Option section of the contract amendment to provide more certainty regarding the process for determining whether an "Action" has occurred and to clarify the parties' responsibilities regarding the identification of an Action.*

## **IV. FINDINGS AND CONCLUSIONS**

I have reviewed and evaluated the comments received by BPA regarding proposed amendments to the RD RPSA and the CHWM contracts, which provide a methodology for calculating exchange benefits for COUs with a CHWM contract. Based upon the record compiled in this proceeding,

the decisions expressed herein, and all requirements of law, I hereby adopt the language in the forms attached hereto as Attachments A and B, respectively.

Issue at Portland, Oregon, this 8th day of July, 2009.

/s/ Stephen J. Wright  
Stephen J. Wright  
Administrator and Chief Executive Officer

**Exhibit A: Contract Language for Inclusion in RD RPSA Template for COUs**

*Drafter's Note: Include the following definitions for any public customer that executed a Regional Dialogue contract in 2008 that included a CHWM, and renumber the defined terms accordingly.*

**2. DEFINITIONS**

- 2.⚡️ “7(i) Process” shall have the meaning as defined in the TRM.
- 2.⚡️ “Existing Resources for CHWMs” shall have the meaning as defined in the TRM.
- 2.⚡️ “Rate Period” means the period of time during which a specific set of rates established by BPA pursuant to the TRM is intended to remain in effect.
- 2.⚡️ “Rate Period High Water Mark” or “RHWM means the Tier 1 Rate as defined in the TRM.
- 2.⚡️ “RHWM Process” shall have the meaning as defined in the TRM.
- 2.⚡️ “Tier 1 Rate” means the Tier 1 Rate as defined in the TRM.
- 2.⚡️ “Total Retail Load” shall have the meaning as defined in the TRM.

*Drafter's Note: Include the following section 20 ONLY for any public customer that executed a Regional Dialogue contract in 2008 that included a CHWM.*

**20. AGREEMENT TO LIMIT EXCHANGE TO COSTS OF EXISTING RESOURCES**

⚡️ **Customer Name** agrees it will not seek and shall not receive residential exchange benefits pursuant to section 5(c) of the Northwest Power Act other than pursuant to Section IV(G) of the 2008 ASC Methodology or its successor. Accordingly, the Parties shall calculate eligible exchange loads based on the following formula:

$$\text{Actual RHWM Exchange Load} = \text{RRL} \times \text{T1Pctg}$$

Where:

Actual RHWM Exchange Load is the monthly residential and small farm load of ⚡️ **Customer Name** used to calculate the actual monthly REP payments to ⚡️ **Customer Name** as specified in this Agreement.

RRL is ⚡️ **Customer Name**'s actual total qualifying residential and small farm retail load for a month as specified in this Agreement.

$$\text{T1Pctg} = \frac{\text{T1MWh} + \text{ExistResMWh}}{\text{TRL} - \text{NLSL}}$$

Where:

T1Pctg is BPA's forecast percentage of ⚡️ **Customer Name**'s load that is expected to be served by purchases of power at Tier 1 Rates from BPA and from ⚡️ **Customer Name**'s Existing Resources for CHWM, and will be computed

for each Fiscal Year of the applicable Rate Period. Such computation will be performed in the applicable RHWM Process for the Rate Period.

T1MWh is the amount of power at Tier 1 Rates BPA forecasts to be purchased by «Customer Name» from BPA in each Fiscal Year of a Rate Period as forecast in each RHWM Process for a Rate Period.

ExistResMWh is the specified output of «Customer Name»'s Existing Resources for CHWM, as specified in Attachment C, Column D, of the TRM.

TRL is BPA's forecast of «Customer Name»'s Total Retail Load in each Fiscal Year of a Rate Period as forecast in each RHWM Process for a Rate Period.

NLSL is BPA's forecast of «Customer Name»'s New Large Single Loads in each Fiscal Year of a Rate Period as forecast in each RHWM Process for a Rate Period.

*Drafter's Note: Include the following paragraph only if the customer signed Amendment 1 of their CHWM Contract to include language in Exhibit D entitled Limitations on Exchange of Existing Resources that is cross-referenced below. In this case, renumber the language above as 20.1, enter a space between the section 20 heading and the new section 20.1, and indent section 20.1 accordingly.*

- 20.2 However, if «Customer Name» terminates its CHWM Contract and executes an alternative power sales contract with BPA, all pursuant to section X, Limitations on Exchange of Existing Resources, of Exhibit D of Contract 09PB-«XXXXX» (*Insert contract number of CHWM Contract*), then on and after the effective date of such alternative power sales contract, BPA and «Customer Name» agree that section 20.1 above will be null and void, of no further force or effect, and will not contractually preclude «Customer Name» from seeking and receiving REP benefits other than as provided in Section IV(G) of the 2008 ASC Methodology or its successor.

*End section 20 for publics only*

*End section 20 for publics only*

## **Exhibit B: Optional Contract Language for Inclusion in Exhibit D of CHWM Contracts**

*Drafter's Note: Include the following provision, and number the provision accordingly, if the customer decides to include the following option for the Public Exchange Clarification. If the customer does not elect to include the following option, delete provision (e) and renumber remaining sections accordingly.*

**«#» Exhibit D, Section «fill in section number», Limitations on Exchange of Existing Resources**

The following section «fill in section number» shall be added in «Customer Name»'s Exhibit D:

**«#». LIMITATIONS ON EXCHANGE OF EXISTING RESOURCES**

**«#».1 Option on Full ASC Participation and Alternative Contract**

BPA's 2008 Average System Cost (ASC) Methodology limits the loads and resource costs included in ASCs for consumer-owned utilities that sign a CHWM Contract. The TRM establishes a Tier 1 PF Exchange Rate for such consumer-owned utilities. Pursuant to section 12.2 of the body of this Agreement and section 20 of the Residential Purchase and Sale Agreement (RPSA), «Customer Name» is contractually precluded from seeking or receiving Residential Exchange Program (REP) benefits based on an ASC other than as provided for in Section IV(G) of the 2008 ASC Methodology or its successor.

BPA and «Customer Name» understand and acknowledge that this is the first time BPA has attempted to implement an REP with two different ASC cost structures and two differing levels of benefits, and that as a consequence, the implementation of the REP may be revised over time. Because of the contractual preclusions in the paragraph above and because a limited number of consumer-owned utilities with CHWM Contracts may participate in the REP, the intent of this section «#» is to provide limited protection to such consumer-owned utilities from future changes in the REP.

Any impact to «Customer Name»'s access to REP benefits, pursuant to section 5(c) of the Northwest Power Act, as a result of an action taken by BPA as required by a statutory change or final judicial action shall not be considered an Action as provided in section «#».2 below, shall not be subject to the criteria provided in section «#».3 below, and shall not make available the option provided in section «#».4 below.

Absent the exercise by «Customer Name» of the option set forth in section «#».4 below, nothing in this section «#» is intended to alter the application of any provision of the ASC Methodology.

**«#».2 Actions**

If BPA takes any of the following Actions and such Actions meet the criteria specified in section «#».3, then «Customer Name» may elect the option set forth in section «#».4 below.



**Action 1.** BPA adopts, in a final record of decision issued in a section 7(i) proceeding for a Rate Period, a Base Tier 1 PF Exchange Rate for customers with CHWM Contracts which is calculated in a manner that differs from the following:

$$\text{Base T1 PF Exchange Rate} = \frac{(\text{PFCosts} - \text{PFCredits}) - (\text{T2Costs} - \text{T2Credits})}{\text{PFLoad} - \text{T2Load}} + \text{TmnAddr}$$

Where:

Base T1 PF Exchange Rate is the Base Tier 1 PF Exchange rate prior to the final allocation of any rate protection costs arising from the section 7(b)(2) rate test, as determined in each 7(i) Process.

PFCosts are all costs allocated in a 7(i) Process to the Priority Firm rates when the Base PF Exchange rate is calculated (also known as the unbifurcated PF rate) and prior to any reflection of the tiering of the PF Preference rate.

PFCredits are all credits allocated in a 7(i) Process to the Priority Firm rates when the Base PF Exchange rate is calculated (also known as the unbifurcated PF rate) and prior to any reflection of the tiering of the PF Preference rate.

T2Costs are all costs allocated in a 7(i) Process to Tier 2 Cost Pools.

T2Credits are all credits allocated in a 7(i) Process to Tier 2 Cost Pools.

PFLoad is the BPA forecast of load used to determine the unbifurcated PF rate in a 7(i) Process.

T2Load is the BPA forecast of load used to determine Tier 2 Rates in a 7(i) Process.

TmnAddr is the same unit charge for transmission added to the Base PF Exchange rate.

The Tier 1 PF Exchange rate used to calculate «Customer Name»'s REP benefits is the Base Tier 1 PF Exchange rate as modified by any Supplemental 7(b)(3) Rate Charge, as determined in each 7(i) Process and may be adjusted pursuant to the Supplemental 7(b)(3) Rate Charge Adjustment, any cost recovery adjustment clause, and any dividend distribution clause, as determined to be applicable to the Tier 1 PF Exchange rate in a 7(i) Process.

**Action 2.** BPA adopts, in a final record of decision, policy or interpretation, a method of calculating «Customer Name»'s ASC for a Fiscal Year(s) of an Exchange Period pursuant to BPA's 2008 ASC Methodology or its successor that differs from the following formula:

$$\text{RHWM ASC} = \frac{\text{Contract System Cost} - \text{NewRes\$}}{\text{Contract System Load} - \text{NewResMWh}}$$

Where:

RHWM ASC is the ASC for «Customer Name» for an Exchange Period, as defined by BPA's 2008 ASC Methodology.

Contract System Cost is as defined in BPA's 2008 ASC Methodology.

NewRes\$ is the forecast cost of resources (including purchased power contracts) used under this Agreement to serve «Customer Name»'s Above-RHWM Load. Such resources are exclusive of «Customer Name»'s Existing Resources for CHWMs as specified in Attachment C, Column D, of the TRM, and exclusive of purchases of power at Tier 1 Rates from BPA. The costs included in NewRes\$ will be determined using a methodology similar to Appendix 1 Endnote d of BPA's 2008 ASC Methodology.

Contract System Load is as defined in BPA's 2008 ASC Methodology.

NewResMWh is the forecast generation from resources (including purchased power contracts) used under this agreement to serve «Customer Name»'s Above-RHWM Load. Such resources are exclusive of «Customer Name»'s Existing Resources for CHWMs specified in Attachment C, Column D, of the TRM, and exclusive of purchases of power at Tier 1 Rates from BPA.

**Action 3.** BPA offers «Customer Name» an RPSA with an Exchange Load used to calculate «Customer Name»'s REP benefits payments that differs from the following formula, or interprets such RPSA in a manner that differs from the following formula:

$$\text{Actual RHWM Exchange Load} = \text{RRL} \times \text{T1Pctg}$$

Where:

Actual RHWM Exchange Load is the monthly residential and small farm load of «Customer Name» used to calculate the actual monthly REP payments to «Customer Name» as specified in the RPSA.

RRL is «Customer Name»'s actual total qualifying residential and small farm retail load for a month as specified in the RPSA.

$$\text{T1Pctg} = \frac{\text{T1MWh} + \text{ExistResMWh}}{\text{TRL} - \text{NLSL}}$$

Where:

T1Pctg is BPA's forecast percentage of «Customer Name»'s load that is expected to be served by purchases of power at Tier 1 Rates from BPA and from «Customer Name»'s Existing Resources for CHWM, and will

be computed for each Fiscal Year of the applicable Rate Period. Such computation will be performed in the applicable RHW process for the Rate Period.

T1MWh is the amount of power at Tier 1 Rates BPA forecasts to be purchased by «Customer Name» from BPA in each Fiscal Year of a Rate Period as forecast in each RHW process for a Rate Period.

ExistResMWh is the specified output of «Customer Name»'s Existing Resources for CHWM, as specified in Attachment C, Column D, of the TRM.

TRL is BPA's forecast of «Customer Name»'s Total Retail Load in each Fiscal Year of a Rate Period as forecast in each RHW process for a Rate Period.

NLSL is BPA's forecast of «Customer Name»'s New Large Single Loads in each Fiscal Year of a Rate Period as forecast in each RHW process for a Rate Period.

**Action 4.** BPA adopts a final record of decision, policy or interpretation that changes the terms of the TRM or the 2008 ASC Methodology applicable to REP participants with CHWM Contracts and such change is not encompassed in Actions 1-3, and such change meets the criteria in section «#».3 for application of the option in section «#».4.

**«#».3 Criteria**

The option set forth in section «#».4 below is available to «Customer Name» if BPA has taken any of the Actions 1-4 set forth in section «#».2 and the Actions taken, when considered in combination with all BPA actions being undertaken at that time, result in a material reduction in the REP benefits of the class of REP participants with CHWM Contracts. A reduction shall not be "material" for purposes of this section «#».3 if such Action(s), when considered in combination with all BPA actions being undertaken at that time, are applied to the provisions applicable to all REP participants and produce the same or comparable effects on all REP participants, even if such Action(s) results in an otherwise material reduction in the REP benefits of the class of REP participants with CHWM Contracts.

**«#».4 Option**

If «Customer Name» believes that BPA has taken any of the Actions 1 through 4 set forth in section «#».2 that satisfies the criteria for this option as set forth in section «#».3, and if BPA has provided a public comment process as part of BPA's decision process (for the relevant Action of Actions 1 through 4 set forth in section «#».2) in which «Customer Name» has commented that BPA was proposing or about to take such Action, then «Customer Name», within 30 calendar days of BPA taking such alleged Action(s), may provide written notice to BPA in accordance with section 20 of this Agreement requesting an alternative power sales contract without a CHWM. Upon receipt of such written notice, BPA shall review the request and, within 60 calendar days,

issue a written statement regarding whether the criteria of section «#».3 have been satisfied.

- «#».4.1 If BPA believes the criteria of section «#».3 have not been satisfied, the dispute shall be resolved through the dispute resolution provisions in section 22 of this Agreement, provided, however, that the sole function of arbitration shall be to determine whether the criteria of section «#».3 have been satisfied, not the exclusive remedy of money damages set forth in section 22.4 of this Agreement. If the dispute resolution results in a final determination that the criteria of section «#».3 have been satisfied, BPA shall have 90 calendar days from the date of such final determination to take curative action to restore the REP benefits of the class of REP participants with CHWM Contracts to the level that would have existed had BPA not taken the Action(s) that resulted in the criteria of section «#».3 being satisfied; provided, however, that if BPA elects not to take such curative action within such 90 day period, BPA shall have 180 calendar days after the date of such determination to offer to «Customer Name» an alternative power sales contract without a CHWM.
- «#».4.2 If BPA determines that the criteria of section «#».3 have been satisfied, BPA shall have 90 calendar days from the date of such determination to take curative action to restore the REP benefits of the class of REP participants with CHWM Contracts to the level that would have existed had BPA not taken the Action(s) that resulted in the criteria of section «#».3 being satisfied; provided, however, that if BPA elects not to take such curative action, it shall have 180 calendar days after the date of such determination to offer to «Customer Name» an alternative power sales contract without a CHWM.
- «#».4.3 Such alternative power sales contract shall be for the same purchase obligation in section 3 of this Agreement that is in effect at the time the notice under this section «#».4 is provided to BPA. «Customer Name» acknowledges that the terms and conditions of such alternative power sales contract may vary from those contained in the CHWM Contract.
- «#».4.4 «Customer Name» shall notify BPA in accordance with section 20 no later than 60 calendar days after the date of its receipt of such alternative power sales contract whether it will terminate its CHWM Contract and execute such alternative power sales contract, or retain its CHWM Contract. If «Customer Name» fails to notify BPA within the 60-day period of its decision regarding its CHWM Contract, BPA's offer of the alternative power sales contract without a CHWM shall be withdrawn as of the 61<sup>st</sup> day and «Customer Name» will be conclusively presumed to have elected to retain its CHWM Contract.
- «#».4.5 If «Customer Name» provides BPA timely notice of its election to terminate its CHWM Contract and executes the alternative power sales contract, service under such alternative power sales contract

shall not commence until the beginning of the Rate Period immediately following the Rate Period in which the alternative power sales contract is executed. Termination of «Customer Name»'s CHWM Contract shall be effective at commencement of service under the alternative power sale contract.

*End Option for Public Exchange Clarification*

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