

INDUSTRIAL REPLACEMENT ENERGY INTERIM AGREEMENT

executed by the

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

ELF ATOCHEM NORTH AMERICA

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This INDUSTRIAL REPLACEMENT ENERGY INTERIM AGREEMENT, executed July 7th, 1994, by the UNITED STATES OF AMERICA (Government), Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (Bonneville), and ELF ATOCHEM NORTH AMERICA (Industry).

WITNESSETH:

WHEREAS Bonneville and the Industry have completed contract negotiations on a one (1)-year Interim Agreement (Agreement) to provide for the acquisition of Industrial Replacement Energy (IRE) for the Industry. This Agreement shall facilitate operations during a period of energy restriction, should one occur as specified under the Industry's power sales contract, Contract No. DE-MS79-81BP90355 (Power Sales Contract); and

WHEREAS at the present time, some Industries have an existing IRE Agreement in place dated November 24, 1978 (Prior Agreement) and an existing Protected Storage Agreement dated February 4, 1981 (Protected Storage Agreement). IRE matters not addressed by this Agreement shall be resolved pursuant to the terms of the Prior Agreement. By signing this Agreement, if the Industry did not sign a Prior Agreement it is agreeing to be bound by the terms of the Prior Agreement, attached hereto as Exhibit D, to the same extent as those Industries that are parties to the Prior Agreement. To the extent such terms and conditions of the Prior Agreement are not consistent with this Agreement, this Agreement shall prevail. In addition, by signing this Agreement, the Industry, irrespective of whether or not it is a signatory to the Protected Storage Agreement, is agreeing to be bound by the terms and conditions of such agreement, attached hereto as Exhibit E; and

WHEREAS the Industry may request other terms and conditions not included in this Agreement which are subject to mutual agreement between Bonneville and the Industry. Unless otherwise noted, the provisions of this Agreement shall apply to both Independent IRE Purchasers (IP) and Regular IRE Purchasers (RP).

WHEREAS the periods of Binding Duration, as defined and described herein, are based on the expected hydro conditions on the Federal Columbia River Power System (FCRPS) for the Operating Year 1995 and, therefore, do not affect such periods in future years;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. TERM

This Agreement shall take effect on July 1, 1994, and will remain in effect until the earlier of:

- (a) July 1, 1995; or
- (b) The Effective Date of a new IRE Agreement.

2. DEFINITIONS

The following terms are defined for purposes of this Agreement.

- (a) "Arctic Outbreak" shall mean any period of time during October through March when the average actual and/or forecast temperature, as determined by the National Weather Service for Portland, Seattle, and Spokane (respectively weighted .269/.284/.447), for these three load centers for 3 consecutive days is less than 15 degrees Fahrenheit.
- (b) "Arctic Price Averaged IRE" shall mean the type of IRE service that Bonneville offers to provide the Industry to serve its restricted load during an Arctic Binding Duration. Such IRE service is priced as the average of

Bonneville's purchases made only as the result of the Arctic Outbreak, including related transmission charges, for its own use and the Industry, plus a 2.0 mills per kilowatthour (kWh) adder.

- (c) "Availability Notice" shall mean the notice that Bonneville provides to the RP that identifies potential sources of IRE.
- (d) "Best Estimate" shall mean the most up-to-date information Bonneville has at its disposal regarding the duration of a restriction or potential restriction.
- (e) "Binding Duration" shall mean the term of commitment by Bonneville to relieve the Industry from the requirement to take delivery of Direct Service when purchasing IRE.
- (f) "Broker" shall mean the appointed representative for the IP. (Doug Faulkner currently acts in this capacity for the IP and performs various billing functions for the RP.)
- (g) "Confirmation Notice" shall mean the notice that Bonneville sends to the RP acknowledging that Bonneville has acquired IRE for such Industry pursuant to a Purchase Notice and the terms of this Agreement.
- (h) "Confiscate" or "Confiscation" shall mean Bonneville's taking and paying for energy which the RP had previously acquired as IRE pursuant to a Confirmation Notice; provided, however, that neither the term "confiscation" nor the provisions of section 18 of this Agreement shall apply to IRE acquired by Bonneville pursuant to section 17(b) of this Agreement, "Assignment of IRE to Bonneville," or to purchases made by an IP.
- (i) "Delivered Cost" shall mean the total cost paid by the Industry for energy provided as IRE. The Delivered Cost includes the cost of the energy as well as related charges such as charges for wheeling.

- (j) "Direct Service" shall mean Bonneville Industrial Firm Power provided to the Industry pursuant to such Industry's Power Sales Contract.
- (k) "Independent IRE Purchaser (IP)" shall mean those direct service industrial customers of Bonneville that are purchasing IRE pursuant to the election in section 6 and Exhibit I.
- (l) "Industrial Replacement Energy" or "IRE" shall mean energy which Bonneville, at the Industry's request, or the Industry through the Broker, purchases under this Agreement (1) to replace Industrial Firm Power which the Industry has been purchasing under its Power Sales Contract, and which Bonneville has restricted or may restrict, and (2) to supply any Advance Replacement Energy required pursuant to the terms of the Power Sales Contract.
- (m) "Loaned IRE" shall mean energy that Bonneville advances to the Industry when the Industry's restricted load is in excess of the amount of energy the Industry purchased as IRE and the amount of Stored Energy available to the Industry. Such energy is accounted for in the Industry's Storage Return/Loaned IRE Account.
- (n) "Obligated Amount" shall mean the amount pursuant to section 14, expressed in average kilowatts, of Price Averaged IRE that the Industry commits to purchase during any period of commitment.
- (o) "Preempt" or "Preemption" shall mean the exercise of Bonneville's right under section 18 of this Agreement to take energy identified in the Purchase Notice from the Industry by purchasing said energy for Bonneville's own account; provided however, that energy purchased by an IP is not subject to the provisions of section 18.

- (p) "Preschedule Day" shall mean the last workday before the day on which the Industry takes delivery of IRE.
- (q) "Price Averaged Purchase Amount" shall mean the Industry's Obligated Amount as adjusted within a 3 percent band, due to interruption, due to Industry suffering Uncontrollable Forces as specified in section 14(d), or due to the Industry taking delivery of Direct Service as specified in section 14(d).
- (r) "Purchase Notice" shall mean the notice that the RP provides to Bonneville in response to the IRE Availability Notice; the Purchase Notice authorizes Bonneville to acquire energy as IRE for the account of such Industry.
- (s) "Regular IRE Purchaser (RP)" shall mean the direct service industrial customer of Bonneville that is purchasing IRE exclusively through Bonneville.
- (t) "Spot-Market Purchase(s)" shall mean energy purchases, typically nonfirm, made on the day of delivery (real-time) or scheduled for delivery on the next day or days (prescheduled).
- (u) "Storage Return/Loaned IRE Account" shall mean the Industry's account that reflects the cumulative net amount expressed in kWh, of Stored Energy (positive balance) or Loaned IRE (negative balance).
- (v) "Storage Return/Loaned IRE Fee Account" shall mean the Industry's account that reflects the accumulated amount of energy expressed in kWh, subject to Storage Return/Loaned IRE service fees pursuant to section 19(a)(5).
- (w) "Stored Energy" shall mean the amount of IRE delivered to Bonneville's system that is in excess of the amount of energy delivered to the Industry's restricted load. Such energy is accounted for in the Industry's Storage Return/Loaned IRE Account.

- (x) "Storage Return" shall mean the amount of IRE delivered to the Industry's restricted load from the Industry's Storage Return/Loaned IRE Account.

All other terms used in this Agreement shall have the meaning given to them in the Prior Agreement or in the Power Sales Contract. In the event of conflict between the meaning of a term as expressed in the Power Sales Contract and the Prior Agreement, the definition in the Power Sales Contract shall apply.

3. EXHIBITS

The following exhibits are by this reference incorporated herein and made a part of this Agreement: Exhibit A (SP-93 Rate Schedule); Exhibit B (General Rate Schedule Provisions); Exhibit C (General Contract Provisions); Exhibit D (Prior Agreement); Exhibit E (Protected Storage Agreement); Exhibit F (IRE Contacts); Exhibit G (Routine Suppliers of Energy for Northwest Loads); Exhibit H (Bonneville's 1993 Transmission Rate Schedules and General Transmission Rate Schedule Provisions); and Exhibit I (Services Provided by Bonneville to Independent Purchasers).

4. RESTRICTION COMMUNICATIONS

(a) Twenty-Four Hour Notice of a Restriction

For other than forced outage and stability reserve restrictions pursuant to section 7(b) of the Industry's Power Sales Contract (i.e., capacity restrictions), Bonneville will give as much notice as possible, but at least 24 hours' advance notice of any restriction.

(b) Notice of Restriction

The Notice of Restriction shall be given by FAX to the Industry and the Broker. Bonneville shall also mail the notice directly to the Industry and to the Broker. Such notice shall contain the following information:

- (1) The date and time when the restriction will commence;

- (2) The amount of restriction required by Bonneville from all Industries and each Industry's share (in kilowatts) of the restriction; each Industry's actual share of the restriction obligation (in terms of load reduction on the FCRPS) shall be reduced by any First Quartile curtailment, pursuant to section 9 of the Industry's Power Sales Contract, existing at the time the restriction is implemented; (if Bonneville restricts Second or Third Quartile loads, any curtailment of such Quartiles would likewise reduce the Industry's obligation to reduce its load on the FCRPS);
- (3) The Binding Duration period;
- (4) Any adjustments to the Binding Duration periods due to the projected availability of nonfirm for the months January through the end of the restriction pursuant to section 5(a);
- (5) Bonneville's Best Estimate of the duration of the restriction; and
- (6) The purpose of the restriction.

(c) **Advance Communications**

In addition to the notice of restriction and the routine communications required by section 8(d), Bonneville shall inform the RP and the Broker as soon as practicable of any condition which could realistically be expected to result in a restriction of service to the Industry. Bonneville shall use reasonable efforts to contact the RP and the Broker or, if such Broker or RP contact is unavailable, the designated alternate, to provide information about these conditions or an impending restriction. If Bonneville is unable to reach the Broker or designated alternate(s), Bonneville shall use reasonable efforts to contact the IP.

(d) Notice of Termination or Continuation of a Restriction

Bonneville shall provide as much advance notice as practicable, but not less than 2 weeks before the end of any Binding Duration, if the current restriction will be extended. However, during April, Bonneville shall provide 3 working days' advance notice before the end of any Binding Duration if the restriction will be extended.

(e) Restriction of Second or Third Quartile

If Bonneville restricts either the second or third quartile pursuant to the Industry's Power Sales Contract, the provisions of this Agreement shall apply to IRE purchases to serve this additional restricted load, **provided, however, Bonneville will limit the IRE purchased to serve this additional restricted load to only the amount of this restriction. Bonneville and the Industry will work together to determine a separate Binding Duration period for the second or third quartile restriction(s).**

5. BINDING DURATION

(a) Regular Binding Duration

In the event the Industry has made a purchase for delivery during a Binding Duration period that cannot be terminated without cost to the Industry, Bonneville shall not force the Industry to take delivery of Direct Service prior to the end of any such Binding Duration period. Binding Duration periods during the term of this Agreement shall be:

- (1) from the beginning of the first restriction on or after July 1, through November 30;**
- (2) December 1 through January 31 (unless the exception noted below is applicable);**

- (3) February 1 through March 31 (unless the exception noted below is applicable); and
- (4) a minimum of weekly periods during the month of April.

Notwithstanding sections 5(a)(2) and 5(a)(3), if the probability of nonfirm for the month of January, as determined by Bonneville mid-month in November, (assuming no operations for flow augmentation), is greater than 70 percent, the Binding Duration period under section 5(a)(2) shall be divided into two Binding Duration periods: one for the month of December and one for the month of January. However, if Bonneville restores Direct Service effective on the first day of the month of January (after giving notice pursuant to section 4(d)), there shall be no Binding Duration for the month of January. In addition, if the probability of nonfirm for the month of March as determined by Bonneville mid-month in January (assuming no operations for flow augmentation), is greater than 60 percent (within the 90 percent confidence band--based on volume forecast and 50-year hydro study) the Binding Duration period in section 5(a)(3) shall be divided into two Binding Duration periods: one for the month of February and one for the month of March. However, if Bonneville restores Direct Service effective on the first day of the month of March (after giving notice pursuant to section 4(d)), there shall be no Binding Duration for the month of March.

- (5) Bonneville may restore Direct Service during a period of Binding Duration. In the event that Direct Service is restored during a period of Binding Duration, the Industry's restricted load will be served in the following order until the end of the Binding Duration Period:
 - (A) First, any block purchases of energy that cannot be terminated without cost to the Industry;

- (B) Second, the remainder of the Industry's restricted load may, at the Industry's option (election to be given within 5 working days after the notice to restore Direct Service), be served with all remaining Storage Return from the balance in the Industry's Storage Return/Loaned IRE Account; and
- (C) Third, Direct Service will be available for the remainder of the Industry's restricted load.

To the extent the Industry is only being served with Direct Service then the Unauthorized Increase fee will be applied pursuant to the current practice (which is, the Unauthorized Increase fee will be assessed to the extent that the Industry's restricted load is above the requested operating level during heavy load hours and above Contract Demand during light load hours).

(b) Arctic Binding Duration

- (1) If Bonneville provides the Industry with a Notice of Restriction due to an Arctic Outbreak and the Industry is on Direct Service, Bonneville will attempt to provide the Industry with as much advance notice of such a restriction as possible, but no less than 24 hours consistent with section 4(a). During such a restriction and corresponding Arctic Binding Duration, the Industry may take delivery of Arctic Price Averaged IRE or any other IRE service except regular price averaged IRE.
- (2) If the initial restriction due to an Arctic Outbreak extends beyond 14 days, Bonneville shall provide the Industry with a second Arctic Binding Duration for up to 10 additional days.

(3) If Bonneville requires an extension of such second restriction, the Industry shall return to the Regular Binding Duration period pursuant to section 5(a).

(c) **Extension of Arctic Binding Duration**

Bonneville shall notify the Industry by 5 p.m. 2 working days prior to the end of the Arctic Binding Duration whether the restriction will be extended. If the restriction is to be extended, the Industry shall notify Bonneville by 5 p.m. on the immediately following working day after such notice whether it will take delivery of Arctic Price Averaged IRE pursuant to section 5(b)(2) or Price Averaged IRE pursuant to section 5(b)(3). If the Industry does not continue to take delivery of Arctic Price Averaged IRE during the Arctic Binding Duration period, the Industry may purchase IRE under the terms and conditions governing the provision of IRE herein.

6. INDEPENDENT IRE PURCHASER (IP)

The Industry shall notify Bonneville in writing by close of business July 15, 1994, of its commitment to become an IP through November 30, 1994. The Industry shall notify Bonneville in writing by November 15, 1994; of its commitment to become an IP for the period December 1, 1994, through the term of this Agreement. If Bonneville is not notified of the IP's commitment by the foregoing dates, it shall be deemed to be an RP for such periods.

As an IP, the Industry, at its option, may serve its restricted load with any combination of independent purchases pursuant to Exhibit I and Price Averaged IRE. As requested, pursuant to Exhibit I, Bonneville shall provide services to facilitate the delivery of an independent IRE purchase to the Industry. Exhibit I will be revised as agreed between Bonneville and the IP. The Broker shall forward to Bonneville:

(a) a copy of any necessary terms and conditions to assist Bonneville in scheduling independently purchased IRE, and

(b) the request for services from Bonneville.

7. REGULAR IRE PURCHASER (RP)

Bonneville shall act as the RP's agent for purposes of acquiring and disposing of IRE under this Agreement. In undertaking these obligations, Bonneville and the RP recognize that:

- (a) Bonneville has its own separate and, at times, conflicting interests in purchasing, transmitting, and selling energy either for its own account or for others;
- (b) Bonneville's obligation to purchase IRE is subject to the provisions of sections 9 and 13 herein; and
- (c) Bonneville has no fiduciary or other agency obligations to the RP beyond those expressly included herein or in other contractual agreements with such RP.

8. BONNEVILLE/INDUSTRY COMMUNICATION

(a) Bonneville Contact

Bonneville shall designate a person and an alternate as the contact for receipt of communications to Bonneville regarding administration of this Agreement. Bonneville shall notify the RP and the Broker of the person(s) so designated. Such contact and alternate are identified in Exhibit F, and as changes occur such exhibit will be revised.

(b) RP Contact for IRE Matters

At all times during the term of this Agreement, the RP shall designate a contact to perform the IRE acquisition functions (not performed by the Broker) as described in this Agreement and the Prior Agreement. The RP shall designate an alternate to serve from time to time in the absence of the

designated contact for such Industry. The RP will notify Bonneville in writing of the name of the designated contact and any changes. The parties agree that Bonneville may rely on the information provided to it by the RP contact or the alternate and that Bonneville has no responsibility to determine the accuracy of any such information. The RP contact and alternate are identified in Exhibit F, and as changes occur such exhibit will be revised.

(c) IP Contacts for IRE Matters

At all times during the term of this Agreement, the IP, jointly with the other IP's, shall designate a Broker to perform the Broker's functions as provided in this Agreement. The Broker, with the consent of such Industries, may designate an alternate to serve from time to time in the absence of the Broker. The IP, jointly with the other IP's, will notify Bonneville in writing of the name of the Broker, any alternate and any changes. The parties agree that Bonneville may rely on the information provided to it by the Broker or the IP and that Bonneville has no responsibility to determine the accuracy of any such information. The IP shall designate someone with authority to act on its behalf in the event that the Broker and alternate are unavailable, and if Bonneville needs to communicate directly with the IP about IRE matters. The Broker, alternate, and IP contact are identified in Exhibit F, and as changes occur such exhibit will be revised.

(d) Communications Between Bonneville and the Industry Prior to Restriction

Bonneville will routinely inform the Industry and Broker about system conditions and forecasts of resources, loads, and weather. The purpose of such communications shall be to provide information to the Industry and to determine the Industry's needs. Any ensuing decision regarding restriction shall be made solely by Bonneville consistent with its contract obligations to the Industry.

(e) Copies of IRE Purchase-Related Information

As available each month, Bonneville shall provide the Broker and the RP contact with copies of all invoices to the Industry, contracts, and memos regarding block and spot purchases in which the Industry participated during the previous month.

9. SUPPLY PRIORITY OF IRE AMONG AND RELATED TO BONNEVILLE'S PURCHASES

(a) Bonneville will attempt to acquire the total quantity of IRE identified in the Purchase Notice for the account of the RP. Under certain circumstances, Bonneville's ability to make acquisitions and make deliveries of IRE may be affected by limited supplies of available energy and transmission limitations. At all times, Bonneville shall have the right to satisfy the needs specified in sections 9(a)(1) and 9(a)(2), before providing IRE (to the extent it is available) to such Industry:

(1) To meet Bonneville's Firm Obligations; and

(2) To meet Bonneville's operational obligations for the Federal Columbia River Power System (FCRPS), including fish measures and all other nonpower requirements.

(b) In the event that Bonneville has idled one or more Federal resources for economic reasons, pursuant to contract or Bonneville's authorities, prior to a period of Industry restriction, and if such Federal resources remain idle and available during a period of limited IRE supplies, Bonneville shall use reasonable efforts to offer said idle and available resource(s) to the Industry as IRE, with the cost of said IRE being set equal to the SP Flexible Rate, calculated for the purposes of this Agreement as the variable cost of the identified resource plus 2 mills per kWh. Bonneville shall advise the Industry of the availability and price of such resource, and it shall indicate its

interest in such resource by requesting Bonneville to provide service with such resource.

10. RP STANDARD IRE ACQUISITION AND ALLOCATION PROCEDURES

IRE shall be acquired pursuant to the provisions of this section whenever the parties have had reasonably sufficient time to exchange the required notices as described herein.

(a) IRE Supply Information

(1) IRE Availability Notice

Prior to periods of foreseeable or actual restriction, and at other times when reasonably requested by the RP, Bonneville shall provide the RP with an IRE Availability Notice. In preparing such notice, Bonneville shall survey the energy suppliers with whom Bonneville routinely does business to determine potential sources of IRE. Such suppliers are identified in Exhibit G, hereof. The Availability Notice shall include, to the extent such information is known, the following information for each identified energy supplier who can provide energy in advance of, and/or during the period of an anticipated or actual restriction:

- (A) The name of the supplier, for all suppliers listed in Category C of section 10(a)(2); for suppliers in Categories A, B, and D, Bonneville need not name the supplier;**
- (B) The quantity of available energy from such supplier;**
- (C) The period of energy availability;**
- (D) The Delivered Cost of available energy;**

- (E) Any anticipated minimum acquisition requirements;
- (F) Estimated or actual (if known) deadline dates for expiration of offer; and
- (G) Other relevant terms.

If only estimated quantities, prices, or deadlines are known, then Bonneville's IRE Availability Notice shall state that such terms are "estimates." Bonneville and the RP recognize that such estimates may vary from the supplier's subsequent actual terms.

(See section 10(c).)

(2) Bonneville's Rights to Acquire Energy Identified in the IRE Availability Notice

- (A) In the IRE Availability Notice, Bonneville shall categorize the offers of available energy, designating the following groupings:

Category (A) Energy which Bonneville is actively negotiating to acquire for its own use;

Category (B) Energy which Bonneville is considering acquiring for its own use;

Category (C) Energy which Bonneville does not expect to acquire for its own use and which is available for immediate purchase by the RP for use as IRE; and

Category (D) Energy which may be available in the future, but which has not, as yet, been actually offered for sale.

Category (E) Price averaged IRE to be provided by Bonneville at the estimated delivered rate as set forth in section 14(f).

Energy in Categories A and B shall include purchases that would be included in Price Averaged IRE. The purpose of providing the RP with the information in Categories A, B, and D is to put Category C and E offers in perspective relative to total energy availability.

- (B) At any time prior to receipt of a Purchase Notice from the RP, Bonneville may acquire any resources identified in the IRE Availability Notice (as well as any other energy that may have since become available), but shall immediately so notify such Industry. Upon receipt of a Purchase Notice, Bonneville's right to purchase Category C energy pursuant to the provisions of this section is extinguished to the extent that the RP's have asked Bonneville to purchase such energy as IRE. Bonneville may, however, preempt such energy pursuant to the terms of section 18, hereof, until such time as Bonneville provides such Industries with a Confirmation Notice for such energy.**
- (C) In responding to the IRE Availability Notice, the RP shall select IRE exclusively from those suppliers listed in Category C and/or E. Such Industry may also indicate which suppliers in Categories A, B, and D have energy which it would like to acquire as IRE if Bonneville decides not to purchase such energy for its own account.**
- (D) Upon receipt of the Purchase Notice, Bonneville shall determine which of the energy suppliers in Categories A and B have energy that the RP may want to purchase as IRE. With respect to only such selected suppliers, Bonneville shall decide,**

within one (1) working day during a restriction and 5 working days at all other times, whether Bonneville intends to pursue acquisition of such energy for its own account. If Bonneville decides not to pursue the purchase of any such energy, Bonneville shall so inform the RP and shall promptly make reasonable efforts to obtain such energy as IRE for such Industry in accordance with the provisions of this section and sections 10(c) and 10(d), herein.

- (E) If Bonneville decides to attempt, or continue attempting, to purchase a particular block of Category A or B energy for its own use, Bonneville shall have an additional five (5) working days to conclude the purchase (culminating in an oral or signed contract) during an actual restriction and 20 working days at all other times. Notwithstanding such 5- or 20-day periods, Bonneville shall attempt to conclude such arrangements expeditiously. If, at any time during said 5- or 20-day period, Bonneville purchases such energy, Bonneville shall so notify the RP.

- (F) If Bonneville imposes a restriction during the 5-day decision period or the 20-day acquisition period, respectively, Bonneville shall comply with the shorter of the following two timelines in making its purchase decision:
 - (i) The timeline permitted for purchases during a restriction; provided, however, that Bonneville shall respond hereunder as if the Purchase Notice had been delivered to Bonneville on the date that the restriction was actually imposed (as opposed to the date on which the Purchase Notice was actually received); or

- (ii) The number of days remaining in the decision/acquisition period based on the date of the original Purchase Notice.

- (G) If Bonneville does not purchase such energy in section 10(a)(2)(A) (Categories A and B) within the time periods stated in section 10(a)(2)(D) and 10(a)(2)(E), Bonneville shall so notify the RP, and such Industry shall determine if it is still interested in acquiring such energy as IRE. If so, Bonneville shall immediately attempt to purchase such energy as IRE for such Industry. If not, Bonneville may elect to continue its negotiations to purchase the energy for its own account.

- (H) As requested by the RP, Bonneville will actively attempt to obtain an offer to sell IRE from potential sources identified as Category D. As soon as reasonably practicable following receipt of information that allows Bonneville to reclassify Category D energy into one of the other categories, Bonneville shall issue a revised Availability Notice, therein indicating the appropriate category for such energy. Once a revised Availability Notice is issued reflecting an actual offer for energy previously in Category D, then the appropriate timeline shall apply.

- (I) In responding to the IRE Availability Notice, the RP may direct Bonneville to postpone some or all purchases pursuant to the Purchase Notice until Bonneville has determined its proposed course of action with respect to the energy in Categories A and B. If such Industry chooses this course of action, it may elect to serve its load in the meantime with short-term purchases from Category C or to have Bonneville make Spot-Market Purchases of IRE on its behalf pursuant to the provisions of section 11

herein until such time as Bonneville makes its purchase decision regarding such energy supplies.

(b) Purchase Notice

(1) The RP will promptly deliver to Bonneville (by any means including, but not limited to, personal delivery or telecopies) a Purchase Notice stating, for each individual supplier of IRE, the amount and any limitation of amounts (expressed in MWh), and/or of price, regarding IRE that such participating Industry desires Bonneville to acquire for its account.

(2) The RP's Purchase Notice to Bonneville shall be a binding commitment by such Industry to purchase its share of IRE, as allocated by Bonneville, provided, that such Industry may withdraw or modify its response to the IRE Availability Notice prior to the earlier of:

(A) The date on which Bonneville has received responses from all the RP's; or

(B) The deadline date for responding to such Availability Notice.

(3) If the sum of the Purchase Notices exceeds the IRE available at a particular price, BPA will prorate such purchases based on respective Purchase Notice requests.

(c) Bonneville's Response to a Purchase Notice

(1) **Obligation to Attempt to Acquire Energy as IRE**
Bonneville shall attempt to acquire the energy identified in the Purchase Notice, if still available, and deliver it as IRE in accordance

with the terms of the RP's Purchase Notice, this Agreement, and, if applicable, the Prior Agreement.

(2) **Bonneville's Actions in the Event of a Price Increase Relative to the Price Listed in the IRE Availability Notice**

In the event that the RP has directed Bonneville to acquire IRE from a particular source and the actual price for such energy has increased relative to the price specified in the Availability Notice, Bonneville shall be authorized to acquire said energy as IRE pursuant to the Purchase Notice only if the price of such energy is no more than 3 mills per kWh higher than the price reported in the Availability Notice.

If the price is more than 3 mills per kWh higher than reported in the IRE Availability Notice, Bonneville shall consult with the RP's and if requested purchase such energy, otherwise submit a new IRE Availability Notice to the RP, reflecting the actual price of such energy in such new notice. In the event of such price increase, Bonneville may purchase said energy for its own account pursuant to the provisions of section 10(a)(2), just as if no Purchase Notice had been issued.

(3) **Substitution of Lower Cost Energy for Energy Requested by the RP in the Purchase Notice**

Whenever it is possible for Bonneville to substitute lower-priced energy for energy that the RP had authorized Bonneville to acquire on its behalf, Bonneville shall do so, provided such lower-priced energy has comparable or more favorable terms and conditions relative to those associated with the higher-cost purchase. Bonneville shall prorate any such available, less expensive energy among such Industries based on their respective Purchase Notice requests.

(4) Confirmation Notice

After concluding contractual arrangements for the acquisition of IRE, Bonneville shall promptly prepare a Confirmation Notice and shall provide said notice to the RP as soon as possible, but in no event later than two (2) working days after the acquisition has been made, unless otherwise agreed. Bonneville shall not delay or withhold delivery of the Confirmation Notice in order to preserve its preemption rights. In the Confirmation Notice, Bonneville shall separately identify, for each individual acquisition of IRE, the final terms and conditions of sale and the amount of IRE purchased by each such Industry.

(d) Commitment to Pay for IRE Acquisitions

The acquisition, as reflected in the Confirmation Notice, shall constitute a binding commitment by the RP to pay for its share of IRE deliveries.

Whenever the parties are adhering to the standard IRE acquisition procedures (section 10), the Confirmation Notice shall serve to record such Industry's contractual obligation to pay for energy acquired as IRE. Such Industry's obligation to pay for such energy shall not, however, be extinguished by Bonneville's failure to issue, or such Industry's failure to receive, a timely Confirmation Notice.

11. PROCEDURES FOR SPOT-MARKET PURCHASES

Bonneville shall provide services for the IP's purchases and deliveries of spot-market energy pursuant to Exhibit I.

Bonneville shall apprise the RP of the prospective availability of and approximate quantities and price of spot-market energy potentially available.

- (a)** During a restriction and if requested, Bonneville shall notify the RP by 2:00 p.m. each Tuesday and Thursday of the approximate quantities and price of spot-market energy potentially available.

- (b) At any time during a restriction, the RP may request Bonneville to make a Spot-Market Purchase. Such Industry will request Bonneville to make a Spot-Market Purchase for the RP's account by notifying Bonneville of the quantity of energy and the highest price it is willing to pay for spot-market energy by 3:00 p.m. two (2) working days prior to the day it requires delivery of such energy. Bonneville shall attempt to preschedule the requested Spot-Market Purchase(s) as requested on the following workday. For example, for energy to be delivered on Friday, such Industry must notify Bonneville by 3:00 p.m. on the previous Wednesday. Notwithstanding the foregoing, Spot-Market Purchases cannot be used to displace a Price Averaged IRE Obligated Amount.
- (c) Bonneville shall secure the requested Spot-Market Purchase(s), provided it is available, up to and including the highest price the RP is willing to pay. If Bonneville is unable to purchase the requested energy at less than or equal to such Industry's highest price for spot-market energy requested, Bonneville will notify such Industry as soon as possible of the situation but no later than 11:00 a.m. the day before the Preschedule Day. Otherwise, Bonneville shall notify the RP by 5:00 p.m. on the Preschedule Day of the quantity and price of the Spot-Market Purchase(s) scheduled to be delivered for the following day(s).
- (d) In the event that the deliveries of a Spot-Market Purchase cannot be delivered from the supplier as needed to meet the Industry's restricted load, Bonneville shall attempt to purchase additional energy on real-time up to the RP's stated highest price for spot-market energy to replace such undeliverable energy. These real-time purchases shall be made after Bonneville has purchased energy on the spot-market for its own needs as set forth in section 9.

12. AMOUNT AND SHAPE OF IRE

(a) IRE Deliveries in Shape of Restricted Load

An Industry may purchase IRE in an amount and shape equal to its restricted load during all hours (RP's are subject to sections 9 and 13). The Industry shall make reasonable efforts to purchase to meet its restricted load unless otherwise agreed with Bonneville. Bonneville shall deliver IRE in such amount and shape to the Industry's restricted load. (IP's are subject to Exhibit I).

(b) Operating Level Submittal(s)

During periods of restriction, the Industry shall continue to give Bonneville its best estimate of the Industry's operating level(s) each month including its restricted load. Such operating level(s) shall become the basis for determining the Industry's Billing Demand after the Industry is returned to Direct Service unless revised within 3 working days after notice from Bonneville of returning to Direct Service.

(c) Availability of Federal Storage

As requested, Bonneville shall apprise the Broker, the IP, and the RP of the prospective availability of protected and unprotected Federal storage.

(d) Storage Return/Loaned IRE Account Services

Subject to section 12(g) Bonneville shall provide the Industry with Storage Return/Loaned IRE services to facilitate the Industry's efforts to meet its restricted load with deliveries of IRE. Such services include Storage Return, Loaned IRE, and Unauthorized Increase, which are collectively referred to herein as Storage Return/Loaned IRE Account services.

(1) IRE Deliveries in Excess of Restricted Load

The Industry may deliver energy in excess of its restricted load when agreed to by Bonneville. Such agreement shall not indicate a waiver

of Storage Return/Loaned IRE service fees unless otherwise agreed. If any such deliveries are agreed to between the parties to this Agreement, the Industry shall pay Bonneville for Storage Return/Loaned IRE service fees pursuant to section 19(a)(5) or as otherwise agreed.

- (2) **Provision of Storage Return/Loaned IRE Account Services**
Storage Return/Loaned IRE Account services shall be provided to the Industry pursuant to this section 12(d)(2), and charged pursuant to section 19(a)(5). The Industry's Storage Return/Loaned IRE Account services shall be provided by Bonneville on a firm basis subject to the availability of generation and transmission capacity on the Federal System. To the extent the Industry has curtailed its load at or below its firm level (75 percent of Operating Demand), it shall not use Storage Return, Loaned IRE, or purchase to avoid being assessed the Unauthorized Increase fee pursuant to section 19(a)(6).

(A) **Storage Return/Loaned IRE Account**

Bonneville shall account for the use of Stored Energy, Storage Return and Loaned IRE in the Industry's Storage Return/Loaned IRE Account. Bonneville shall credit the Industry's Storage Return/Loaned IRE Account for deliveries of IRE in excess of the Industry's restricted load, and debit the Industry's Storage Return/Loaned IRE Account for Storage Return or Loaned IRE delivered or advanced from such account to the Industry's restricted load on a monthly basis for an Industry exclusively purchasing Price Averaged IRE, and for other IRE, on an hourly basis for the IP's and on a daily basis for the RP's, as follows:

- (i) The Industry's Storage Return/Loaned IRE Account shall be:
- (I) credited, in kWh, by:
 - [A] Purchases in excess of the Industry's restricted load (Stored Energy);
 - [B] Transfers from protected storage; and
 - [C] Transfers from another Industry.
 - (II) and debited, in kWh, by:
 - [A] Stored Energy used to serve the Industry's restricted load (Storage Return);
 - [B] Spill of Stored Energy;
 - [C] Transfers to protected storage;
 - [D] Disposal of excess Stored Energy from the Industry's Storage Return/Loaned IRE Account; and
 - [E] Advances of energy (Loaned IRE).
- (ii) If, pursuant to section 19(a)(6), the Industry pays for Unauthorized Increase, the Storage Return/Loaned IRE Account shall be reinitialized to zero.

(B) Storage Return/Loaned IRE Fee Account

The Industry shall attempt to maintain its IRE deliveries within 3 percent of its restricted load. To the extent such deliveries are less than the restricted load by more than 3 percent, the Industry shall be assessed a fee pursuant to section 19(a)(5). Bonneville shall account for the energy subject to the fee in the Storage Return/Loaned IRE Fee Account on a monthly basis for an Industry exclusively purchasing Price Averaged IRE, and for other IRE, on an hourly basis for the IP's and a daily basis for the RP's as follows:

- (i) the Storage/Loaned IRE Fee Account shall be credited, in kWh, by the amount of energy the IRE deliveries are less than 97 percent of the restricted load; and
- (ii) each month, the Storage Return/Loaned IRE Fee Account shall be initialized to zero and the previous month's balance shall be billed pursuant to section 19(a)(5).

(e) Preschedule Information

Bonneville shall provide the Broker and the RP, on each Preschedule Day, with the amount and shape of IRE scheduled for delivery by IRE suppliers through the next Preschedule Day.

(f) Notice of Spill

Bonneville shall make best efforts to give the Industry as much notice as possible of impending spill of any of the Industry's Stored Energy.

(g) **Notice of Federal System Generating Capability**

Bonneville shall make best efforts to give the Industry as much notice as possible of the limitations on generating capacity or transmission on the FCRPS. Such capability may impact the delivery of IRE, Loaned IRE, or Storage Return.

13. PRICING OF IRE

When Bonneville is purchasing for itself and others, including purchases of IRE, all such purchases shall be allocated in the following order beginning with the lowest price purchases:

(a) **Purchases to meet Bonneville's Firm Obligations and operational obligations at Federal projects, excluding purchases:**

(1) for flow augmentation; and

(2) to provide Price Averaged IRE service, to the extent applicable under section 14.

(b) **Purchases for IRE and flow augmentation, irrespective of whether such purchases are for the account of Bonneville or another utility.**

(c) **All other purchases including new purchases by Bonneville to displace Federal resources that were not displaced prior to the restriction.**

14. PRICE AVERAGED IRE

(a) **Offer of Price Averaged IRE**

Bonneville shall make Price Averaged IRE available to the Industry during any restriction of the Industry's load, and concurrently notify both the Broker and the RP of the estimated Price Averaged IRE rate in Bonneville's offer of

such IRE service. Price Averaged IRE shall be offered by Bonneville to the Industry for the length of:

- (1) the Binding Duration;
- (2) the Arctic Binding Duration; or
- (3) the provision of backup IRE pursuant to section 15.

(b) Notice of Participation and Extension of the Period of Industry Commitment

The Industry may elect to be served with Price Averaged IRE by submitting a notice of participation to Bonneville. Such notice of participation shall be submitted 30 days before the period of Bonneville's offer of Price Averaged IRE commences unless the total of all Industries' restricted loads is two hundred (200) MW or less, in which case the notice shall be 15 days. If the Notice of Restriction does not allow the Industry at least 5 days within which to respond to an offer of Price Averaged IRE, the Industry shall have 5 working days after receipt of the Notice of Restriction to submit its notice of participation.

The Industry's minimum period of commitment to take delivery of Price Averaged IRE shall be equal to the lesser of:

- (1) the period of the offer of Price Averaged IRE by Bonneville in section 14(a); or
- (2) one (1) calendar month.

The Industry's notice of participation shall state the period of commitment and its Obligated Amount.

If Bonneville issues a new or revised Notice of Restriction which establishes a new Best Estimate or extends the current Best Estimate, then the Industry, if it has previously committed to take delivery of Price Averaged IRE, may submit a revised notice of participation within 5 working days of the Notice of Restriction to extend its participation in taking delivery of Price Averaged IRE.

(c) Combination of IRE

The Industry may participate in Price Averaged IRE purchases in conjunction with block IRE purchases, Spot-Market IRE Purchases, or independent IRE purchases. All Price Averaged IRE shall be used to serve the Industry's restricted load before any block IRE purchases, Spot-Market IRE purchases, or independent IRE purchases. For the purposes of this section 14(c), the Industry's Price Averaged Purchase Amount shall be deemed to be delivered at a uniform hourly rate for 1 calendar month or less during the Industry's period of commitment to take delivery of Price Averaged IRE.

(d) Obligated Amount; Return to Direct Service, and Uncontrollable Force

The Industry shall be required to purchase Price Averaged IRE up to its Obligated Amount as adjusted pursuant to this section 14(d). Any adjustments made pursuant to this section 14(d), to determine the Industry's Obligated Amount, shall determine its Price Averaged Purchase Amount.

- (1) The Industry's Price Averaged Purchase Amount shall be determined, at the end of each month, as follows:**

$$PA = (RL - P)$$

where: PA = the Price Averaged Purchase Amount,

RL = the actual restricted load, and

P = Non-Price Averaged IRE purchases during the month designated by the Industry for delivery to load rather than to Storage Return/Loaned IRE Account

(A) **provided further, that Industry shall elect before the first of each month either as:**

(i) **a Price Average First User; or**

(ii) **a Storage First User.**

(B) **provided further, that if PA under section 14(d)(1) is more than 103 percent of the Obligated Amount (OA), then:**

(i) **for an industry electing the option under section 14(d)(1)(A)(i) (Price Average First User), the Price Average Purchase Amount shall equal 1.03 OA and an amount equal to:**

$$1.03 \text{ OA} - (\text{RL} - \text{P})$$

shall be added to the Industry Storage Return/Loaned IRE Account;

(ii) **for an industry electing the option under section 14(d)(1)(A)(ii) (Storage First User), the Price Average Purchase Amount shall equal the OA and an amount equal to:**

$$\text{OA} - (\text{RL} - \text{P})$$

shall be added to the Industry Storage Return/Loaned IRE Account;

- (C) **provided**, that if PA as calculated under section 14(d)(1) is less than 97 percent of the OA, then the Price Average Purchase Amount shall be 0.97 OA and an amount equal to:

$$0.97 \text{ OA} - (\text{RL} - \text{P})$$

shall be added to the Industry's Storage Return/Loaned IRE Account.

- (2) If, during a period of commitment, Bonneville interrupts deliveries of Price Averaged IRE service for forced outage and stability reasons pursuant to section 7(b) of the Industry's Power Sales Contract or confiscates Price Averaged IRE pursuant to section 18(b), Bonneville shall waive the Industry's obligation to pay for the Obligated Amount. The Industry shall pay for Price Averaged IRE service during that period of commitment for the amount of energy delivered to the restricted load during such period. The Price Average Purchase Amount shall be the Industry's restricted load minus other IRE purchases during the period of commitment as adjusted pursuant to section 14(e). Use of storage during a month in which there is an interruption or confiscation will be handled on a case-by-case basis.
- (3) If, during a period of commitment, Bonneville restores Direct Service to the Industry's restricted load, Bonneville shall waive the Industry's obligation to pay for the Obligated Amount. The Industry shall pay for Price Averaged IRE service during that period of commitment for the amount of energy actually delivered to the restricted load during such period. The Price Average Purchase Amount shall be the

Industry's restricted load minus other IRE during the period prior to service with Direct Service.

- (4) If, during a period of commitment, the Industry suffers an Uncontrollable Force within the meaning of section I.A.1(j) of Exhibit C, Bonneville shall waive the Industry's obligation to pay for the Obligated Amount to the extent Bonneville can do so without incurring material cost. In the event of a full waiver, the Industry shall pay for Price Averaged IRE service during that period of commitment for the amount of energy delivered to the restricted load during such period. Also in the event of such full waiver, the Price Average Purchase Amount shall be the Industry's restricted load minus other IRE purchases during the period of commitment. Any partial waiver would be pro-rated.

(e) Bonneville's Obligation to Deliver Price Averaged IRE

Upon receipt of Industry's notice of participation, Bonneville shall provide Price Averaged IRE to the Industry's restricted load for the Industry's period of commitment to take delivery of Price Averaged IRE; **provided**, that Bonneville may:

- (1) interrupt Price Averaged IRE service for forced outage and stability reasons pursuant to section 7(b) of the Industry's Power Sales Contract and,
- (2) confiscate Price Averaged IRE pursuant to section 18(b).

Bonneville shall not pay the Industry any confiscation charge for interrupting Price Averaged IRE service pursuant to section 14(e)(1). However, Bonneville shall waive, at the Industry's request, its Obligated Amount to the extent Bonneville interrupts such amounts.

(f) Price

The price of Bonneville's offer of Price Averaged IRE Service shall be the sum of:

- (1) The average price of all Bonneville purchases, delivered within a period of Industry's minimum period of commitment to take delivery of Price Averaged IRE, excluding only purchases to provide non-Price Averaged IRE, purchases of more than 1 year in duration, exchanges, purchases included by Bonneville in PNCA planning, and Bonneville joint ventures;
- (2) A surcharge of 2.0 mills per kWh in December and January and 1.0 mills per kWh in all other months; and
- (3) Applicable transmission charges pursuant to section 19(a)(3).

(g) Surrogate Price Averaged IRE Price

In the absence of Bonneville purchases for Price Averaged IRE under section 14(f)(1) during a period of Price Averaged IRE commitment, the price for Price Averaged IRE service shall be the average of IRE deliveries to the total Industries restricted load other than Price Averaged IRE service (including any associated transmission fees). If no IRE deliveries were made, the Price Averaged IRE price shall be the average of all Bonneville:

- (1) delivered purchases not normally included in Bonneville's Price Averaged IRE calculation which for Operating Year 1994/95 are purchases from TransAlta Electric and Basin Electric Cooperative; and
- (2) applicable transmission charges pursuant to section 19.

(h) **Arctic Price Averaged IRE**

The price of Arctic Price Averaged IRE shall be calculated, in the manner stated in section 14(f), as:

- (1) the average of all Bonneville purchases made for its own use as well as the Industry that are made as the result of an Arctic Outbreak,
- (2) related transmission charges for such purchases and deliveries, and
- (3) a 2.0 mills per kWh adder.

15. BACKUP ACQUISITION PROCEDURES

The provisions of this section apply whenever there is insufficient time for Bonneville to adhere to the standard acquisition IRE procedures or the Broker to provide IRE to the IP and still provide, or attempt to provide, continuous electric service to the Industry's restricted load.

(a) **Regular IRE Purchaser (RP)**

In the event that, prior to the RP's return of a Purchase Notice, Bonneville has implemented a restriction and IRE service is not arranged pursuant to section 10 herein, the RP shall take delivery of Price Averaged IRE service for the lesser of 5 working days after the implementation of the restriction or the time it takes Bonneville to complete and arrange to deliver the purchase in response to the RP's Purchase Notice.

The price of Price Averaged IRE during the period of IRE service pursuant to this section 15(a) shall be determined under section 14(f). This Agreement shall constitute a firm commitment by the RP to pay for its Price Averaged IRE deliveries arranged pursuant to this section 15(a).

(b) Independent IRE Purchaser (IP)

In the event that the Broker is unable to provide the IP with IRE prior to a restriction, Bonneville will offer and provide Price Averaged IRE service for the lesser of 5 working days after the implementation of the restriction or the time it takes the Broker to complete and arrange to deliver the purchase to the IP.

The price of Price Averaged IRE during the period of IRE service pursuant to this section 15(b) shall be determined under section 14(f). This Agreement shall constitute a firm commitment by the IP to pay for its Price Averaged IRE deliveries arranged pursuant to this section 15(b).

16. INADEQUACY OF IRE SUPPLIES

Bonneville shall direct the RP to shed load in amounts that will ensure that such Industry is in compliance with its obligations under its Power Sales Contract for the following reasons:

- (a) If IRE supplies are inadequate to serve the RP's restricted load for any reason including, but not limited to, an actual lack of energy or an inability to acquire sufficient amounts of IRE at a price that such Industry is willing to pay; or
- (b) if Bonneville does not receive a timely Purchase Notice for IRE to be acquired subsequent to an emergency purchase pursuant to section 15.

17. DISPOSAL OF IRE

Bonneville shall act as the agent in disposing of the RP's IRE that such Industry deems to be surplus to its restricted load needs. Any surplus RP IRE shall be offered first to other IP's and RP's, second to Bonneville, and third to all other entities. Following are the procedures for disposing of RP IRE.

(a) **Disposal of IRE to Other Industries**

In the event the Industry determines that IRE it had previously acquired is surplus to its future needs, it may notify Bonneville that such surplus is available for disposal to other Industries. Such notice shall come within 5 working days of Bonneville providing final load and resource data (not to exceed 40 days from the end of the billing month). Any such surplus IRE shall be offered by Bonneville, for the account of the Industry, both through the Broker to the IP's and directly to the other RP's. IRE disposed of under this section to one or more of the Industries shall be treated as an IRE acquisition subject to the terms of such acquiring Industry's IRE Agreement and the terms of the disposal. Charges for services provided by Bonneville shall be assessed in accordance with the provisions of section 19(b).

(b) **Disposal of IRE to Bonneville**

If the Industry is disposing of IRE that is excess to its needs and if Bonneville is interested in acquiring such IRE, the Industry and Bonneville may agree to the disposal of such IRE to Bonneville with terms and conditions to be agreed upon by Bonneville and the Industry at the time of disposal.

(c) **Disposal of IRE to a Third Party**

(1) **Disposal when Bonneville is Not Selling Nonfirm Energy on a Daily Basis**

When Bonneville is not selling nonfirm energy on a daily basis, and the Industry is interested in disposing of IRE to a third party or to Bonneville for subsequent sale to a third party, Bonneville shall provide marketing and transmission services for the Industry's surplus IRE if:

- (A) Such services will not conflict with Bonneville's other contractual and operational obligations; and

- (B) Bonneville determines that sufficient transmission capacity is available for such use.

The Industry shall specify the price it wishes to obtain for IRE to be disposed. The price actually paid by the third party purchaser for such IRE shall be equal to the price specified by the Industry plus associated Bonneville charges as identified in section 19(a) and (b).

(2) **Disposal when Bonneville is Selling Nonfirm Energy on a Daily Basis**

Every workday when Bonneville is selling nonfirm energy on a daily basis, and at the Industry's specific request, Bonneville shall take disposal of IRE from the Industry through the following workday in amounts up to the maximum amounts determined daily according to the terms of this section. Bonneville shall pay for the IRE disposals by crediting the Industry at Bonneville's average daily sales price, when Bonneville is selling nonfirm energy on a daily basis, for any nonfirm energy sales (including any sales of assigned IRE). Bonneville will reduce the Industry's Storage Return/Loaned IRE account to reflect such disposals of Stored Energy. Bonneville's total daily acquisitions of IRE from all of the Industries shall not exceed the amounts determined by the following table, unless otherwise mutually agreed. Each Industry's individual disposal to Bonneville shall not exceed its pro rata share of the amounts shown in sections 17(2)(A) through 17(2)(G). Such pro rata share is obtained by dividing the amount of each Industry's Storage Return/Loaned IRE Account by the total amount of Stored Energy in Storage Return/Loaned IRE Accounts for all the Industries which are disposing of excess IRE.

Bonneville will accept disposals of IRE for the respective accounts of the Industries up to the following limits, unless otherwise agreed:

- (A) 25 percent of the actual daily average sales (excluding disposals of IRE) if Bonneville's daily average sales are 600 average megawatts (aMW) or less;
- (B) 200 aMW if Bonneville's actual daily average sales (excluding disposals of IRE) are more than 600 aMW, but less than 1000 aMW;
- (C) 250 aMW if Bonneville's actual daily average sales (excluding disposals of IRE) are 1000 aMW or more, but less than 1500 aMW;
- (D) 300 aMW if Bonneville's actual daily average sales (excluding disposals of IRE) are 1500 aMW or more, but less than 3000 aMW;
- (E) 400 aMW if Bonneville's actual daily average sales (excluding disposals of IRE) are 3000 aMW or more, but less than 4000 aMW;
- (F) 500 aMW if Bonneville's actual daily average sales (excluding disposals of IRE) are 4000 aMW or more, but less than 5000 aMW; or
- (G) 600 aMW if Bonneville's actual daily average sales (excluding disposals of IRE) are 5000 aMW or more.

At the Industry's specific request, disposals of stored IRE in excess of the amounts specified in sections 17(2)(A) through 17(2)(G) may be made if, in Bonneville's sole determination, such disposals would not interfere with Bonneville's marketing activities.

18. PREEMPTION AND CONFISCATION OF RP POWER

The provisions of this section do not apply to IP Energy as defined in Exhibit I.

(a) Preemption

Bonneville may preempt an RP's IRE only to meet its needs as expressed in section 9(a) only if energy is not otherwise available to Bonneville to meet these needs. Bonneville's preemption right is extinguished when Bonneville provides the RP with a Confirmation Notice pursuant to section 10 acknowledging the purchase of said energy for use as IRE or when, pursuant to section 15, the energy is delivered to such Industry for use in its load. Bonneville shall not preempt IRE solely for economic reasons. Bonneville shall pay the power supplier for preempted IRE and hold such Industry harmless from paying for all IRE that Bonneville preempts.

(b) Confiscation

Bonneville may confiscate an RP's IRE only if Bonneville requires such energy (in addition to any preempted energy) to meet its needs as defined in section 9(a), and only if energy is not otherwise available to Bonneville to meet those needs. Bonneville shall not confiscate IRE solely for economic reasons. Bonneville shall pay such Industry for confiscated IRE at the higher of the following two rates:

- (1) 104.3 mills/kWh, pursuant to page 1 of Exhibit D to the Share-the-Shortage Agreement; or
- (2) The Delivered Cost that such Industry paid for the confiscated energy.

19. PAYMENT

All charges and fees assessed to the IP or the RP under this Agreement shall be billed on a monthly basis and finalized within 45 days from the end of each month. In the event that Bonneville is unable to finalize the Industry's bill within 45 days for reasons including but not limited to faulty metering data, Bonneville shall

finalize the Industry's bill within a reasonable period of time from the end of each month.

(a) Payments for Services

(1) Billing Procedures

Storage Return/Loaned IRE Account services, and transmission fees shall be calculated and billed for the Industry pursuant to sections 19(a)(3), and 19(a)(5).

(A) Unallocated Hourly IRE Energy Deliveries

Each Thursday of a month, Bonneville shall provide the Broker with all hourly schedules of IRE deliveries from the beginning of the month through the latest Wednesday. All IRE energy deliveries through the last day of a month shall be forwarded to the Broker on the third working day following the end of a month. The hourly schedules of IRE deliveries provided by Bonneville shall include information by IRE supplier, which includes the wheeling charges and transmission loss factors.

By the third working day of a month, Bonneville shall provide the Broker with all Industry load data and unallocated hourly schedules of actual IRE energy deliveries to such Industries for the preceding month and an explanation of the deviation between the amount delivered and the amount purchased/contracted for during the preceding month.

(B) Allocated Hourly IRE Energy Deliveries

Within 2 working days after receiving the month-end information in section 19(a)(1)(A), the Broker shall provide Bonneville with the final allocation of IRE among the RP's as set forth in the Purchase Notices and among the IP's.

Bonneville shall subsequently allow a reallocation of any Industry's IRE deliveries only when the accuracy of any IRE purchasing Industry's metered load data is less than 97 percent.

If the Broker does not provide Bonneville with the allocation of IRE purchased by the Industries within 2 working days after receiving the information in section 19(a)(1)(A), Bonneville will invoice each Industry by FAX, based on the Confirmation Notice for RP's and based on the metered load data pursuant to section 19(a)(1)(A), requesting payment for the IRE delivered the preceding month.

(2) IRE Invoice and Acquisition Costs

Bonneville shall prepare and submit a final IRE invoice including Price Averaged IRE to the Industry within 45 working days after the end of the month in which the energy was delivered. Such invoice shall contain for each purchase:

- (A) the Industry's billed amount of IRE in kWh;**
- (B) the rate at which the Industry is being billed; and**
- (C) the total cost for the IRE, or, if revised, the original costs and associated amount(s) in kWh and the revised costs and associated amount(s) in kWh of IRE deliveries.**

In addition, the invoice shall contain supporting data including, where appropriate:

- (D) a statement of IRE purchases by individual purchase, as determined in kWh from the information provided by the Broker;
- (E) actual deliveries of IRE;
- (F) disposals by the Industry of excess IRE for the period covered by the invoice; and
- (G) information on the deviation between the amount delivered and the amount purchased/contracted for during the preceding month.

If Bonneville submits an estimated invoice for IRE and IRE services to the Industry, Bonneville shall make any necessary corrections and reflect such corrections on a subsequent invoice.

The price that the Industry shall pay for IRE acquisitions shall be the price Bonneville pays to the seller for such IRE unless the Industry is purchasing Price Averaged IRE service pursuant to the provisions of section 14. In this case, Bonneville shall charge the Industry for Price Averaged IRE based on the Price Averaged Purchase Amount.

The Industry shall pay Bonneville any amount owed for IRE by close of business on the tenth calendar day after the date of the FAX invoice. Such payment shall be by direct wire transfer to the bank designated by Bonneville or by other means that ensures receipt of funds by Bonneville within 10 calendar days. Invoices for amounts due Bonneville of fifty thousand dollars (\$50,000) or more must be paid by direct wire transfer. Bills for amounts due Bonneville under fifty thousand dollars (\$50,000) may be paid by direct wire transfer or mailed to:

The Bonneville Power Administration
Financial Services Group
P.O. Box 6040
Portland, OR 97228-6040

The procedures to be followed in making direct wire transfers will be provided by the Bonneville Financial Services Group and updated as necessary.

Invoices not paid in full on or before the close of business on the due date shall be subject to a penalty charge of 25 dollars. In addition, an interest charge of 0.05 percent shall be applied each day to the sum of the unpaid amount and the penalty charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charges are paid in full. Other provisions related to payment of bills specified in the then-current General Rate Schedule Provisions shall apply. If the Industry fails to make any such payment in the 10 calendar day period, Bonneville may require the Industry to have funds or a letter of credit on deposit with Bonneville equal to such required payment, or equal to the estimated cost of any subsequent acquisition of IRE, before making such acquisition for the account of the Industry.

(3) Transmission of IRE Acquisitions

The Industry shall pay Bonneville at the ET-93 rate or its successor rate for transmission of IRE to the Industry or to Bonneville for storage. There shall be no additional transmission charge for delivery of IRE from the Industry's Storage Return/Loaned IRE Account. The Industry shall also pay the appropriate transmission charge for use of the Interties for any extraregional purchases and all losses on the Federal System unless Bonneville interrupts IRE service for forced outage or stability reasons pursuant to section 7(b) of the Power Sales Contract, or confiscates RP IRE pursuant to section 18(b).

Bonneville's loss factors for transmission have been determined and may be modified or updated by Bonneville as needed, as follows:

- (A) 1.6 percent for network transactions (e.g., for a 100 MW delivery the Industry must buy 101.6 MW, which is the product of 100.0 MW and a 1.016 loss factor);
- (B) 0.3 percent for Northern Intertie transactions (e.g., for a 100 MW delivery the Industry must buy 101.9048 MW, which is the product of 101.6 MW and a 1.003 loss factor);
- (C) 3.0 percent for Southern Intertie transactions (e.g., for a 100 MW delivery the Industry must buy 104.648 MW, which is the product of 101.6 MW and a 1.03 loss factor); and
- (D) The percent for Eastern Intertie transactions, which is based on actual hourly loss calculations under the applicable wheeling agreement(s) between Bonneville and the utility selling IRE (e.g., for a 100 MW delivery the Industry must buy the product of 101.6 MW and the appropriate loss factor).

The Industry shall also pay Bonneville in full for any losses and transmission charges that Bonneville has paid to other entities for wheeling IRE purchases to the Federal System. Transmission charges for Industries electing Price Averaged IRE service shall be the average cost of transmission (1993 Energy Transmission rate (Exhibit H), Intertie, and transmission charges and losses paid by Bonneville to other utilities for transmission to the Federal System) of all Bonneville purchases delivered within the applicable period of Price Averaged IRE commitment, pursuant to section 14.

(4) Transmission of IRE Disposed of by the Industry

Bonneville will assess the Industry transmission charges and losses on any IRE which the Industry sells to another party other than Bonneville. Transfer from one Industry Storage Return/Loaned IRE Account to another Industry's Storage Return/Loaned IRE Account will not be subject to transmission charges and losses.

Transmission charges shall be calculated by applying the ET-93 rate or its successor rate to such energy, except for disposals to Bonneville. Any sales to extraregional entities shall also be assessed the appropriate Intertie transmission charge pursuant to Bonneville's 1993 Wholesale Power and Transmission Rate Schedules.

(5) Storage Return/Loaned IRE Account Service Fees

Bonneville shall assess the Industry for Storage Return/Loaned IRE Account service based on the amount of energy in the Storage Return/Loaned IRE Fee Account. The fee for this service shall be the product of 3.0 mills per kWh and the kWh total in the Industry's Storage Return/Loaned IRE Fee Account. Additionally, Bonneville shall assess the Industry for Storage Return/Loaned IRE Account service when the Industry disposes of IRE, pursuant to section 17 or Exhibit I, from the Storage Return/Loaned IRE Account. The fee for this service shall be the product of 3.0 mills per kWh and the kWh disposed of from the Storage Return/Loaned IRE Account. As specified in section 12(a), Bonneville and the Industry may, from time to time, make special arrangements which deviate from the provisions for Storage Return/Loaned IRE Account services pursuant to section 12(d). If IRE is transferred from unprotected storage to Protected Storage, the payment provisions of the Protected Storage Agreement shall apply.

(6) **Unauthorized Increase**

At the end of each period defined below, Bonneville shall assess the Industry for Unauthorized Increase based upon a negative balance in the Industry's Storage Return/Loaned IRE Account. The Unauthorized Increase fee shall be assessed pursuant to section IV, page 7 (IP-93 Rate) or section VI, page 13 (VI-91 Rate) of the 1993 Wholesale Power and Transmission Rate Schedules and section III, page 39 of the 1993 General Rate Schedule Provisions, or their successors minus 3 mills per kWh, to account for any payments previously made for Storage Return/Loaned IRE Account service.

Periods subject to the fee are:

- (A) from the beginning of the restriction on an after July 1, through November 30;
- (B) from December 1 through January 31, if a restriction applies; and
- (C) from February 1 through the end of a restriction.

- (b) **Payments to Bonneville for RP IRE Sold to Third Party Purchasers**
Bonneville shall bill any third party purchaser for any energy disposed of on behalf of the RP and shall credit such RP by the total of the product(s) of the number of kWh and the established price(s) per kWh obtained for such energy. In the event that the third party defaults on its payment to Bonneville, Bonneville shall bill the RP. If Bonneville has previously credited such Industry for the IRE disposed of to Bonneville and resold to such third party or directly assigned to a third party, Bonneville shall bill such Industry for the amount so credited.

20. ACCOUNTING

(a) Maintenance of IRE Accounts

Bonneville and the Broker shall maintain records of IRE transactions for all the Industries. The IRE account shall contain the following information:

- (1) The hourly amount of IRE acquired for the Industry at each price;
- (2) The amount of IRE transmission losses;
- (3) The amount of IRE used in load to date, calculated as the remainder obtained by subtracting the sum of deliveries under the Power Sales Contract and any other energy delivered by Bonneville to the Industry other than IRE from the total amount of energy delivered by Bonneville to the Industry. Any IRE acquired by Bonneville on behalf of the Industry and not delivered to such Industry shall be deemed stored if storage is available, and spilled if storage is not available;
- (4) The amount of IRE stored in the Federal System;
- (5) The amount of IRE disposed of pursuant to section 17, herein;
- (6) The amount of IRE spilled, with Bonneville determining the amount of IRE spill which, in Bonneville's sole determination, results in a fair distribution of spill among all affected Northwest entities; and
- (7) The balance in the Industry's IRE accounts.

(b) Accounting for Disposal of IRE

If the Industry disposes of IRE pursuant to section 17, the balance in the Industry's IRE Account shall be adjusted accordingly and, as appropriate, Bonneville shall arrange for the related payments, credits, and billings.

(c) **Electronic Mail Link**

Bonneville and the Industry shall continue to utilize, at the Industry's expense, an electronic mail link to exchange information directly with Bonneville or through the Broker regarding IRE purchases and certain spot-market information.

Additionally, such direct electronic mail link will allow the RP to access and retrieve daily, or more frequently as necessary, the information contained in the IRE Availability Notice. Such electronic mail link will allow the Broker



Department of Energy
Bonneville Power Administration
P.O. Box 491
Vancouver, WA 98666

JUN 29 1995

Amendatory Agreement #1
Contract No. DE-MS79-94BP94446

Mr. Gene Spina
Regional Manufacturing Manager
ELF Atochem North America
P.O. Box 4102
Portland, OR 97208

Dear Mr. Spina:

The Bonneville Power Administration (BPA) is offering to extend your current Industrial Replacement Energy (IRE) Agreement until the earlier of:

- (a) July 1, 1996; or
- (b) The Effective Date of a new IRE Agreement,

with the following replacement for the first paragraph in Section 6:

The Industry shall notify BPA in writing by close of business August 1, 1995, of its commitment to become an Industrial Firm Power (IP) as of July 1, 1995, through November 30, 1995. The Industry shall notify BPA in writing by November 15, 1995, of its commitment to become an IP for the period December 1, 1995, through the term of this Agreement. If BPA is not notified of the IP's commitment by the foregoing dates, it shall be deemed to be a Reserve Power (RP) for such periods.

If the terms of this amendment are acceptable to you, please indicate your agreement by signing three originals of this amendment letter and returning two originals to BPA. The remaining original is for your files.

Sincerely,

Edward L. Bleifuss
Edward L. Bleifuss
Manager, Short-Term Contracts

ACCEPTED:

ELF Atochem North America

By: *Gene Spina*

Title: *Manufacturing Mgr.*

Date: *7-24-95*