13~~2~~. SIGNATURES

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

~~«FULL NAME OF CUSTOMER»~~
PACIFICORP

By _____ Name
_____ *(Print / Type)* Title
_____ Date
_____

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____
Account Executive

Name _____
(Print / Type)

Date _____

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Exhibit A
RESIDENTIAL LOAD DEFINITION

1. ~~«Customer Name»~~PacifiCorp's Residential Load means the sum of the loads within the Pacific Northwest eligible for the Residential Exchange Program under the tariff schedules described below. If BPA determines that any action changes ~~«Customer Name»~~PacifiCorp's general tariffs or service schedules in a manner which would allow loads other than Residential Loads, as defined in the Northwest Power Act, to be included under these tariff schedules, or that the original general tariffs or service schedules include loads other than Residential Loads, such nonresidential loads shall be excluded from this Agreement.

Such tariff schedules as presently effective include:

(a) for all schedules listed below, include the amount, expressed in kilowatthours, of Residential Load supplied by ~~«Customer Name»~~PacifiCorp under:

(1) ***[schedule]***

(2) ***[schedule]***

(3) ***[schedule]***

(b) a portion of the Residential Load as determined pursuant to section 2 of this Exhibit B, supplied by the utility under the Northwest Power Act, section 5(c).

2. Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

Irrigation/Pumping Load = 400 × 0.746 × days in billing period × 24

provided, however, that this amount shall not exceed that farm's measured energy for the same billing period.

where:

400	is equal to the horsepower limit defined in the Northwest Power Act,
0.746	is the factor for converting horsepower to kW,
days in billing period	is determined in accordance with prudent and normal utility business practices, and
24	is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.

4. For purposes of this Agreement, a farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

   Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels as determined by BPA.

   Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to ~~«Customer Name»~~PacifiCorp which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

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

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

6. The operator of a farm is required to certify to ~~«Customer Name»~~PacifiCorp all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide ~~«Customer Name»~~PacifiCorp and BPA all documentation requested to assist in the farm determination.

7. This Exhibit A shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.

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Confidential and Privilged Settleent Draft- Not reviewed or approved by any Party

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

Contract No. 00PB-«#####»
DRAFT PL04/25/01revised 4/30/01

[Cash Settlement – REP Program]

SETTLEMENT AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
PACIFICORP

Table of Contents

Section		Page
1.	Term	
2.	Definitions	
3.	Satisfaction of Section 5(c) Obligations	
4.	Settlement Benefits	
5.	Passthrough of Benefits	
6.	Audit Rights	
7.	Assignment	
8.	Conservation and Renewable Discount	
9.	Governing Law and Dispute Resolution	
10.	Notice Provided to Residential and Small Farm Customers	
11.	Standard Provisions	
12.	Termination of Agreement	
13.	Signatures	

Exhibit A Residential Load Definition

This SETTLEMENT AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and PACIFICORP (PacifiCorp). PacifiCorp is a corporation organized under the laws of the State ofOregon. BPA and PacifiCorp are sometimes referred to in the singular as "Party" or in the plural as "Parties."

RECITALS

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

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

BPA and PacifiCorp desire to enter into this Agreement in order to settle the Parties' rights and obligations for the Residential Exchange Program for the term of this Agreement.

The Parties agree:

1. TERM

This Agreement takes effect on the date signed by the Parties. Performance of this Agreement by the Parties shall begin on July 1, 2001, and shall continue through September 30, «2006» (Expiration Date), unless terminated earlier pursuant to section 12 below.

2. DEFINITIONS

(a) "Contract Year" means each period during the term of this Agreement that begins each October 1 and which ends the following September 30. For instance, Contract Year 2002 begins October 1, 2001, and continues through September 30, 2002.

(b) "Litigation" [Definition to be inserted]

(c) "Lowest PF Rate" means the lowest applicable cost-based power rate provided under the applicable PF rate schedule as applied to purchases of Firm Power at 100 percent annual load factor by BPA's preference customers. The applicable power rate shall be the PF rate for the same period as the RL Rate for the period that Monetary Benefits are provided under this Agreement.

(d) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501.

(e) "Qualified Entity" means an entity authorized under state law or by order of the applicable state regulatory authority to serve all or a portion ofPacifiCorp's Residential Load.

(f) "RL Rate" means the then-current applicable Residential Load Firm Power rate schedule.

(g) "Residential Exchange Program" means the program established under section 5(c) of the Northwest Power Act.

(h) "Residential Load" means the load eligible to receive benefits under this Agreement, as such load is defined in Exhibit A.

(i) "Residential Purchase and Sale Agreement," or "RPSA," means an agreement between BPA and a Pacific Northwest utility that implements the Residential Exchange Program.

3. SATISFACTION OF SECTION 5(c) OBLIGATIONS

(a) **Satisfaction of Section 5(c) Obligations**
BPA shall, in full and complete satisfaction of all of its obligations during the period from October 1, 2001, through September 30, 2006 [or 2011], under or arising out of section 5(c) of the Northwest Power Act, provide to PacifiCorp: (1) cash payments for the period that begins October 1, 2001, and ends on September 30, 200~~1~~6, pursuant to section 4 of this Agreement; and (2) beginning October 1, 2001, cash payments, pursuant to section 4 of this Agreement. [Clarify?] PacifiCorp agrees that the cash payments provided under this Agreement satisfy all of BPA's obligations during the period from October 1, 2001, through September 30, 2006, under or arising out of section 5(c) of the Northwest Power Act.

(b) **Invalidity**
In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that this Agreement (or payments under section 4 of this Agreement) is unlawful, void, or unenforceable, then the provisions of section 3(a) above shall be of no further force or effect, and the Parties intend and agree that: (1) the cash payments pursuant to section 4 provided prior to such final determination shall be retained by PacifiCorp; and (2) the satisfaction of BPA's obligations to PacifiCorp under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law. This section 3(b) shall survive notwithstanding any determination that any other provision of this Agreement is unlawful, void, or unenforceable.

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

4. SETTLEMENT BENEFITS

Payments by BPA for the Period Beginning October 1, 2001, and Continuing through September 30, 2006

(a) For the one-year period that begins October 1, 2001, and continues through September 30, 2002, BPA shall pay PacifiCorp an amount equal to $_____plus (the market price established in the June 2002 WP-02 ROD for calculation of monetary benefits under the Residential Exchange Program settlement minus the RL base rate times 225 aMW).

(b) For the four-year period that begins October 1,2002, and continues through September 30, 2006, BPA shall pay PacifiCorp $_____plus (the market price established in the June 2002 WP-02 ROD for calculation of monetary benefits under the Residential Exchange Program settlement minus the RL base rate times 225 aMW). If PacifiCorp has entered a binding settlement of Litigation *[to be defined]* by December 1, 2001, the monthly payment for the four-year period referenced above shall be $_____.

(c) Payment for each of these calendar months shall be in equal amounts of $_____for the first year and $____for each of the next four years. Payment shall be paid on or before the last business day of each such month. BPA shall pay by electronic funds transfer using PacifiCorp's established procedures.

(d) [insert adjustment for SN CRAC and DDC]

5. PASSTHROUGH OF BENEFITS

(a) Except as otherwise provided in this Agreement, Monetary Benefit amounts received by PacifiCorp from BPA under this Agreement shall be passed through, in full, to each residential and small farm consumer, as either: (1) monetary payments; or (2) as otherwise directed by the applicable State regulatory authority.

(b) Monetary payments shall be distributed to the Residential Load in a timely manner, as set forth in this section 5(b). The amount of benefits held in the account described in section 5(c) below at any time shall not exceed the expected receipt of monetary payments from BPA under this Agreement over the next 180 days. If the annual monetary payment is less than $600,000, then PacifiCorp may distribute benefits on a less frequent basis provided that distributions are made at least once each Contract Year.

(c) Benefits shall be passed through consistent with procedures developed by PacifiCorp's State regulatory authority(s). Monetary Benefits shall be identified on PacifiCorp's books of account. Funds shall be held in an

interest bearing account, and shall be maintained as restricted funds, unavailable for the operating or working capital needs of PacifiCorp. Benefits shall not be pooled with other monies of PacifiCorp for short-term investment purposes.

6. AUDIT RIGHTS

BPA retains the right to audit PacifiCorp at BPA's expense to determine whether the benefits provided to PacifiCorp under this Agreement were provided only to PacifiCorp's eligible Residential Load. BPA retains the right to take action consistent with the results of such audit to require the passthrough of such benefits to eligible Residential Load. BPA's right to conduct such audits of PacifiCorp with respect to a Contract Year shall expire 60 months after the end of such Contract Year. As long as BPA has the right to audit PacifiCorp pursuant to this Agreement, PacifiCorp agrees to maintain records and documents showing all transactions and other activities pertaining to the terms of this Agreement with respect to which BPA has audit rights.

7. ASSIGNMENT

(a) PacifiCorp shall be required to assign benefits under this section 7 to BPA if another Qualified Entity: (i) serves Residential Load formerly served by PacifiCorp unless BPA has approved an agency agreement for such Qualified Entity under section 7(c); or (ii) BPA has approved a state program for the passthrough of benefits by a distribution utility under section 7(c).

(b) This Agreement is binding on any successors and assigns of the Parties. BPA may assign this Agreement to another Federal agency to which BPA's statutory duties have been transferred. Neither Party may otherwise transfer or assign this Agreement without the other Party's written consent. Such consent shall not be unreasonably withheld; **provided, however,** that PacifiCorp agrees it shall assign benefits under this Agreement subject to the following terms and conditions:

(1) PacifiCorp shall quantify an amount of Residential Load each month served by Qualified Entities that would have been eligible to receive benefits if served by PacifiCorp, and provide written notice to BPA of such amount no later than five days prior to the beginning of a month. Such amount shall be determined in account months based on the amounts served by PacifiCorp and Qualified Entities in the last full calendar month prior to such written notice to BPA. An account month is the number of days of service to a Residential Load account during a month, divided by the number of days in such month.

(2) Based on the determination in section 7(b)(1) above, PacifiCorp shall assign to BPA during the month following such notice a share of the total benefits specified in section 4 above. Such share shall be the account months of Residential Load served by Qualified Entities divided by the account months of Residential Load of PacifiCorp that

would be eligible to receive benefits, whether or not PacifiCorp continues to serve such Residential Load. For purposes of section 7(b)(1) and this section 7(b)(2), the Residential Load of PacifiCorp shall not include Residential Load receiving benefits over a new distribution system under section 7(d).

(3) If the passthrough of benefits is made to consumers under section 7(c) below, then PacifiCorp shall retain the Monetary Benefits assigned to BPA under this section 7(b). PacifiCorp shall use such Monetary Benefits to provide benefits to individual residential and small farm consumers under section 7(c) below.

(c) PacifiCorp may continue to pass through benefits to individual residential and small: (i) [location of (i)?] farm consumers under this Agreement not served by PacifiCorp if (i) PacifiCorp is acting as the agent under an agreement entered into between PacifiCorp and a Qualified Entity which has been approved by PacifiCorp's applicable state regulatory authority and BPA; or (ii) BPA has approved a program developed by the applicable state regulatory authority providing for the passthrough of benefits received by PacifiCorp under this Agreement to all its residential and small farm consumers acting in its capacity as a distribution utility. PacifiCorp may continue to act as an agent for a Qualified Entity until an RPSA is signed by BPA and the Qualified Entity. Such benefits shall be equal to each such consumer's share of the Qualified Entity's share of the Residential Load, as calculated under section 7(b) above. PacifiCorp may distribute such benefits on a less frequent basis than monthly, provided that distributions are made at least once each Contract Year.

(d) If a Qualified Entity eligible to purchase firm power under section 5(b) of the Northwest Power Act acquires all or a portion of the distribution system serving the Residential Load of PacifiCorp, PacifiCorp shall assign to BPA for the remaining term of this Agreement a share of the total benefits specified in section 4 above. Such share shall be based on the amount of Residential Load that would have been eligible to receive benefits from the new Qualified Entity for the 12-month period prior to the date of assignment divided by the total of Residential Load of PacifiCorp that would have been eligible to receive benefits during that same 12-month period regardless of who served such Residential Load. All provisions of this section 7, other than section 7(b)(2), shall apply to assignments under this section 7(d).

8. CONSERVATION AND RENEWABLE DISCOUNT

Subject to the terms specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, BPA shall pay PacifiCorp an amount equal to the Conservation and Renewables Discount for 476 aMW for each Contract Year during the period October 1, 2001 through September 30, 2006, unless PacifiCorp has notified PBL before August 1, 2001, that it will not participate in the Conservation and Renewable Discount. Payments shall be made in twelve equal monthly installments, subject to the payment provisions set forth in section 4.

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

Cash payments under section 4 above shall be treated in the same manner as 476 aMW of firm power under section 5(b) of the Northwest Power Act for purposes of any Conservation and Renewable Discount program or similar program based on firm power purchases. PacifiCorp shall be eligible for the Conservation and Renewable Discount, or any similar program based on firm power purchases under section 5(b) of the Northwest Power Act that BPA decides to establish through a section 7(i) hearing for the period that begins October 1, 2006, and ends on September 30, 2011.

9. GOVERNING LAW AND DISPUTE RESOLUTION

(a) This Agreement shall be interpreted consistent with and governed by Federal law. Final actions subject to section 9(e) of the Northwest Power Act are not subject to binding arbitration and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals. Any dispute regarding any rights of the Parties under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. PacifiCorp reserves the right to seek judicial resolution of any dispute arising under this Agreement that is not subject to arbitration under this section 10. For purposes of this section 10, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application, or makes a determination under an applicable statute. If either Party asserts that a dispute is excluded from arbitration under this section 10, either Party may apply to the Federal court having jurisdiction for an order determining whether such dispute is subject to arbitration under this section 10.

(b) Any contract dispute or contract issue between the Parties arising out of this Agreement, except for disputes that are excluded through section 10(a) above, shall be subject to binding arbitration. The Parties shall make a good faith effort to resolve such disputes before initiating arbitration proceedings. During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.

(c) Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The CPR Institute for Dispute Resolution's arbitration procedures for commercial arbitration, Non-Administered Arbitration Rules (CPR Rules), shall be used for each dispute; **provided, however,** that: (1) the Parties shall have the discovery rights provided in the Federal Rules of Civil Procedure unless the Parties agree otherwise; and (2) for claims of

$1 million or more, each arbitration shall be conducted by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a list containing the names of 15 qualified individuals supplied by the CPR Institute for Dispute Resolution. If the Parties cannot agree upon three arbitrators on the list within 20 business days, they shall take turns striking names from the list of proposed arbitrators. The Party initiating the arbitration shall take the first strike. This process shall be repeated until three arbitrators remain on the list, and those individuals shall be designated as the arbitrators. For disputes involving less than $1 million, a single neutral arbitrator shall be selected consistent with section 6 of the CPR Rules.

(d) Except for arbitration awards which declare the rights and duties of the Parties under the Agreement, the payment of monies shall be the exclusive remedy available in any arbitration proceeding. Under no circumstances shall specific performance be an available remedy against BPA. The arbitration award shall be final and binding on both Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

(e) Each Party shall be responsible for its own costs of arbitration, including legal fees. The arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as they deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

10. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CUSTOMERS

PacifiCorp will ensure that any entity that issues customer bills to PacifiCorp's residential and small farm consumers shall provide written notice on such customer bills that their benefits are "Federal Columbia River Benefits supplied by BPA."

11. STANDARD PROVISIONS

(a) **Amendments**

No oral or written amendment, rescission, waiver, modification or other change of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

(b) **Information Exchange and Confidentiality**

The Parties shall provide each other with any information that is reasonably required, and requested by either Party in writing, to operate under and administer this Agreement, including information needed to resolve payment disputes, or information that is not otherwise available to the requesting Party. Such information shall be provided in a timely manner. Information may be exchanged by any means agreed to by the Parties. If such

information is subject to a privilege of confidentiality, a confidentiality agreement or statutory restriction under state or Federal law on its disclosure by a Party to this Agreement, then that Party shall endeavor to obtain whatever consents, releases or agreements are necessary from the person holding the privilege to provide such information while asserting the confidentiality over the information. Information provided to PBL which is subject to a privilege of confidentiality or nondisclosure shall be clearly marked as such and PBL shall not disclose such information without obtaining the consent of the person or Party asserting the privilege, consistent with BPA's obligation under the Freedom of Information Act. PBL shall only disclose information received under this provision to PBL employees who need the information for purposes of this Agreement.

(c) **Entire Agreement**
This Agreement, including all provisions, exhibits incorporated as part of this Agreement, and documents incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

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

(e) **No Third-Party Beneficiaries**
This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.

(f) **Waivers**
Any waiver at any time by either Party to this Agreement of its rights with respect to any default or any other matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.

(g) [insert PacifiCorp's opt out (and reversion to the October 31, 2000 agreement) after WP-02 rates established]

12. SIGNATURES

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

PACIFICORP

By _____ Name

_____ *(Print / Type)* Title

_____ Date

_____

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UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____
Account Executive

Name _____
(Print / Type)

Date _____

Exhibit A
RESIDENTIAL LOAD DEFINITION

1. PacifiCorp's Residential Load means the sum of the loads within the Pacific Northwest eligible for the Residential Exchange Program under the tariff schedules described below. If BPA determines that any action changesPacifiCorp's general tariffs or service schedules in a manner which would allow loads other than Residential Loads, as defined in the Northwest Power Act, to be included under these tariff schedules, or that the original general tariffs or service schedules include loads other than Residential Loads, such nonresidential loads shall be excluded from this Agreement.

Such tariff schedules as presently effective include:

(a) for all schedules listed below, include the amount, expressed in kilowatthours, of Residential Load supplied by PacifiCorp under:

(1) ***[schedule]***

(2) ***[schedule]***

(3) ***[schedule]***

(b) a portion of the Residential Load as determined pursuant to section 2 of this Exhibit B, supplied by the utility under the Northwest Power Act, section 5(c).

2. Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

Irrigation/Pumping Load = 400 × 0.746 × days in billing period × 24

provided, however, that this amount shall not exceed that farm's measured energy for the same billing period.

where:

400	is equal to the horsepower limit defined in the Northwest Power Act,
0.746	is the factor for converting horsepower to kW,
days in billing period	is determined in accordance with prudent and normal utility business practices, and
24	is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.

4. For purposes of this Agreement, a farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

   Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels as determined by BPA.

   Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to PacifiCorp which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

   - use
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   - distance between parcels

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

6. The operator of a farm is required to certify to PacifiCorp all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide PacifiCorp and BPA all documentation requested to assist in the farm determination.

7. This Exhibit A shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.

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FINAL (5)

~~Draft~~

May ~~3~~ 10, 2001

Underlying Principles of a Financial Settlement of PacifiCorp's October 31, 2000, Settlement Agreement

1. **The Parties Are Bonneville Power Administration (BPA) a~~A~~nd PacifiCorp.**

2. **Settlement Agreement a~~A~~nd Firm Power Block Power Sales Agreement Are Amended.** The Firm Power Block Power Sales Agreement is amended to remove BPA's obligations to sell firm power as defined therein during the October 1, 2001, through September 30, 2006, time period, and those provisions are replaced by an agreement providing for a cash settlement of PacifiCorp's Residential Exchange Program (REP) (the Financial Settlement Agreement). The Financial Settlement Agreement will provide a single cash payment monthly during the period from October 1, 2001, through September 30, 2006, in satisfaction of PacifiCorp's REP rights.

3. **BPA Pays a~~A~~ Monthly Payment To Cash Out Its Obligations To Sell PacifiCorp Power and Pay Defined Monetary Benefits under the October 31, 2000, Settlement Agreement.**

   a. From October 1, 2001, through September 30, 2002, BPA shall provide PacifiCorp with monthly cash payments equal to:
      - ($38/MWh x 226 aMW x 8760 hrs ~~[8784 hrs in leap years]~~) / 12mo, or $6,269,240 per month, plus
      - the amount set forth in Principle 4 below, and,

   b. From October 1, 2002, through September 30, 2006, BPA shall provide PacifiCorp with monthly cash payments equal to:
      - ($38/MWh x 251 aMW x 8760 hrs [8784 hrs in leap years]~~)~~) / 12mo, or $6,962,740 per month, plus
      - the amount set forth in c. below.

   c. Unless the condition set forth below in Principle 5 occurs, BPA shall increase its payment in an amount equal to (($7.49/MWh x 251 aMW x 8760 hrs [8784 hrs in leap years]) / 12mo) + (($7.49/MWh x 226 aMW x 8760 hrs) / 48mo), or $1,681,318 each month from October 1, 2002, through September 30, 2006.

   d. The monthly payment is subject to adjustments in an amount equal to the mills/kWh increase in the Financial Based Cost Recovery Adjustment Clause (FB-CRAC) adjustment charge in the event of the imposition of Safety Net Cost Recovery Adjustment Clause (SN-CRAC) multiplied by 226 aMW in FY 2002 and 251 aMW in each year of FY 2003-2006. In calculating the adjustment charge resulting from the

imposition of the SN-CRAC for any month, the Parties will assume that the FB-CRAC has triggered to the maximum extent allowed by the WP-02 rates as confirmed and approved by FERC.

monthly

2 balancing accts.

e. The parties' intent is that any Dividend Distribution Clause (DDC) payout that would have been available during the entire 5-year period is used to offset any prior or subsequent adjustments based on the SN-CRAC. Any adjustments made to monthly payments as a result of the imposition of the SN-CRAC will be reimbursed up to the amount of dollars payable to power purchasers of 226 aMW in FY 2002 and 251 aMW in each year FY 2003-2006 as a result of the triggering of the DDC through September 30, 2006. Payment is adjusted for SN CRAC. Any payments for SN CRAC go into a balancing account. No adjustment on payments for DDC

4. **BPA Pays Additional Monthly Payment in Year-One (FY 2002).**

   a. From October 1, 2001, through September 30, 2002, BPA shall provide PacifiCorp with monthly payments equal to ($20/mWh x 25 aMW x 8760 hrs) / 12mo, or $365,000.
   b. This transaction represents 10% of PacifiCorp's firm power benefits for year-one and is consistent with anticipated contributions made by other customers.
   c. For the period October 1, 2001, through September 30, 2002, if it is determined that other customers have not contributed sufficient reductions to the 10% reduction in firm power demands on BPA, Principle 4.a. above will be waived and the 226 aMW in Principles 3.a. and c. above will be increased by 25 aMW.

5. **Contingent Price Reduction.**
   If PacifiCorp has entered a settlement agreement by December 1, 2001, with publicly-owned utilities and cooperatives resulting in the waiver and dismissal of such entities' legal challenges to ~~its~~ PacifiCorp's Settlement Agreement dated October 31, 2000~~1~~, ~~Supplement~~ the Financial Settlement Agreement that will incorporate these principles, ~~[~~the RPSA ROD,~~]~~ the Subscription RODs, ~~-~~the REP Settlement Agreement ROD, and the application of the 7(b)(2) surcharge to WP-02 rates, then BPA shall not make the additional payment described in Principle 3.c.

Need to add

6. **No Other Adjustments To Cash Payouts.**
   Except as provided in Principles 3 through 5 above, payments under the Financial Settlement Agreement are not subject to adjustment. For example, cash payments under this Financial Settlement Agreement will not be subject to the Load Based Cost Recovery Adjustment Clause (LB-CRAC) nor the ~~Financial Based Cost Recovery Adjustment Clause (~~FB-CRAC~~),~~ provided ~~for~~ in the GRSPs~~S~~, which are incorporated into the October 31, 2000, Settlement Agreement.

7. **Unwind Provision.**
   If BPA does not adopt the Partial Stipulation and Settlement Agreement in the WP-02 W~~w~~holesale P~~p~~ower R~~r~~ate proceeding, PacifiCorp shall have the option of unwinding the

Financial Settlement Agreement and taking benefits set forth in its October 31, 2000, Settlement Agreement.

Need to Add

8. **Irrigation Buy-Down.**
Payments made pursuant to this financial settlement (to be incorporated in the Financial Settlement Agreement) may be used to buy-down irrigation load.

9. **Conservation and Renewable Discount.**
The Financial Settlement Agreement shall include provisions for the Conservation and Renewable (C&R) Discount. PacifiCorp will be eligible for the C&R Discount as part of the Financial Settlement based on 251 aMW for the period October 1, 2001, through September 30, 2006, subject to PacifiCorp undertaking qualifying conservation and renewable measures.

10. **Effect on October 31, 2000, Settlement Agreement**
Except as provided in these Principles, the October 31, 2000, Settlement Agreement, as amended, will remain in full force and effect.

(6)

FINANCIAL SETTLEMENT AGREEMENT AND AMENDMENT TO RESIDENTIAL EXCHANGE PROGRAM SETTLEMENT AGREEMENT WITH PACIFICORP

RECORD OF DECISION

Bonneville Power Administration
U.S. Department of Energy

May 23, 2001

Record of Decision

Financial Settlement Agreement and Amendment to Residential Exchange Program Settlement Agreement With PacifiCorp

INTRODUCTION **1**

BACKGROUND **1**

A. THE RESIDENTIAL EXCHANGE PROGRAM (REP) 2
B. THE COMPREHENSIVE REVIEW OF THE NORTHWEST ENERGY SYSTEM 3
C. BPA'S POWER SUBSCRIPTION STRATEGY 6
D. POWER SUBSCRIPTION STRATEGY SUPPLEMENTAL ROD 12
1. Total Amount of IOU Settlement Benefits 12
2. Allocation of Settlement Benefits Among IOUs 13
E. BPA'S SECTION 5(B)/9(C) POLICY 15
F. IOU SETTLEMENT AGREEMENTS 15
G. BPA'S 2002 WHOLESALE POWER RATE CASE 18
H. ADMINISTRATOR'S CALL FOR RATE MITIGATION EFFORTS 20

I. AMENDMENT TO PACIFICORP'S REP SETTLEMENT AGREEMENT **27**

A. EFFECTIVE DATE 27
B. AMENDMENT OF SETTLEMENT AGREEMENT 27
1. Satisfaction of Section 5(c) Obligations 27
2. Invalidity 28
(a) Invalidity of the Settlement Agreement 28
(b) Invalidity of the Financial Settlement Agreement 29
(c) Negotiation of New Agreement if this Agreement Held Invalid 29
3. Settlement Benefits 30
4. Termination of Amendment No. 1 30

II. FINANCIAL BENEFITS SETTLEMENT **30**

A. TERM 31
B. DEFINITIONS 31
C. SATISFACTION OF SECTION 5(C) OBLIGATIONS 31
1 Satisfaction of Section 5(c) Obligations 31
2 Invalidity 32
D. CASH PAYMENTS 33
1. Cash Payment Adjustments Due to Application of Safety Net Cost Recovery Adjustment Clause (SN CRAC) and Dividend Distribution Clause (DDC) to BPA Firm Power Sales 34
(a) Adjustment to Cash Payments Resulting from SN CRAC and SN CRAC Balancing Account 34
(b) DDC Balancing Account 34

(c) Adjustment to Cash Payments Resulting from Amounts in SN CRAC Account and DDC Account 35
2. Payment Provisions 35
3. Load Reduction Contingency 35
4. No Other Adjustments to Cash Payments 37

E. PASSTHROUGH OF BENEFITS 37
F. AUDIT RIGHTS 38
G. ASSIGNMENT 38
H. CONSERVATION AND RENEWABLES DISCOUNT 39
I. GOVERNING LAW AND DISPUTE RESOLUTION 39
J. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CUSTOMERS 40
K. STANDARD PROVISIONS 40
L. TERMINATION OF AGREEMENT 40
M. SIGNATURES 40

CONCLUSION 41

INTRODUCTION

This Record of Decision addresses the development of an amendment to the Residential Exchange Program Settlement Agreement between PacifiCorp and the Bonneville Power Administration (BPA), Contract No. 01PB-12229, executed in October 2000, and the coincident development of a separate Financial Benefits Agreement, in order to provide financial benefits to the residential and small farm consumers of PacifiCorp through a settlement of PacifiCorp's participation in the Residential Exchange Program (REP) for the period from July 1, 2001, through September 30, 2006. 16 U.S.C. § 839c(c). In order to fully understand the proposed amendment and financial agreement with PacifiCorp, it is helpful to understand BPA's initial development of the REP Settlements with regional investor-owned utilities (IOUs). A review of such development follows.

BACKGROUND

BPA was created in 1937 to market electric power generated at Bonneville Dam, and to construct and operate facilities for the transmission of power. 16 U.S.C. § 832-832l (1994 & Supp. III 1997). Since that time, Congress has directed BPA to market power generated at additional facilities. *Id.* § 838f. Currently, BPA markets power generated at thirty Federal hydroelectric projects, and several non-Federal projects. BPA also owns and operates approximately 80 percent of the Pacific Northwest's high-voltage transmission system. In 1974, BPA became a self-financed agency that no longer receives annual appropriations. *Id.* § 838i. BPA's rates must therefore produce sufficient revenues repay all Federal investments in the power and transmission systems, and to carry out BPA's additional statutory objectives. *See id.* §§ 832f, 838g, 838i, and 839e(a).

In the 1970's, threats of insufficient resources to meet the region's electricity demands led to passage of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). 16 U.S.C. § 839, *et seq.* (1994 & Supp. III 1997). In that Act, Congress, among other things, directed BPA to offer new power sales contracts to its customers. *Id.* §§ 839c, 839c(g). While Congress provided that BPA's public agency customers (preference customers) and investor-owned utility customers (IOUs) had a statutory right for service from BPA to meet their net requirements loads, Congress did not provide such a right to BPA's direct service industrial customers (DSIs). BPA was provided the authority, but not the obligation, to serve the DSIs' firm loads after the expiration of their power sales contracts in 2001. *See id.* §§ 839c(b)(1), 839d. Congress also established the Residential Exchange Program, which, as discussed in greater detail below, provides Pacific Northwest utilities a form of access to the benefits of low-cost Federal power. *Id.* § 839c(c).

A. The Residential Exchange Program (REP)

Section 5(c) of the Northwest Power Act established the REP. *Id.* § 839c(c). Under the REP, a Pacific Northwest electric utility (either a publicly owned utility, an IOU or other entity authorized by state law to serve residential and small farm loads) may offer to sell power to BPA at the utility's average system cost (ASC). *Id.* § 839c(c)(1). BPA purchases such power and, in exchange, sells an equivalent amount of power to the utility at BPA's PF Exchange rate. *Id.* The amount of the power exchanged equals the utility's residential and small farm load. *Id.* In past practice, no actual power sales have taken place. Instead, BPA provided monetary benefits to the utility based on the difference between the utility's ASC and the applicable PF Exchange rate multiplied by the utility's residential load. These monetary benefits must be passed through directly to the utility's residential and small farm consumers. *Id.* § 839c(c)(3). While REP benefits have previously been monetary, the Northwest Power Act also provides for the sale of actual power to exchanging utilities in specific circumstances. Pursuant to section 5(c)(5) of the Northwest Power Act, in lieu of purchasing any amount of electric power offered by an exchanging utility, the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to the utility as part of an exchange sale. *Id.* § 839c(c)(5). However, the cost of the acquisition must be less than the cost of purchasing the electric power offered by the utility. *Id.* In these circumstances, BPA acquires power from an in lieu resource and sells actual power to the exchanging utility.

Each exchanging utility's ASC is determined by the Administrator according to the 1984 ASC Methodology, an administrative rule developed by BPA in consultation with its customers and other regional parties. A utility's ASC is the sum of a utility's production and transmission-related costs (Contract System Costs) divided by the utility's system load (Contract System Load). A utility's system load is the firm energy load used to establish retail rates. BPA's current ASC Methodology was established in 1984. BPA has recognized, however, that the ASC Methodology can be revised. BPA's current ASC Methodology uses a "jurisdictional approach" in determining utilities' ASCs, which relies upon cost data approved by state public utility commissions (in the case of IOUs) and utility governing bodies (in the case of public utilities) for retail ratemaking. These data provide the starting point for BPA's determination of the ASC of each utility participating in the REP. Costs that have not been approved for retail rates are not considered for inclusion in Contract System Costs.

The schedule for filing and reviewing a utility's ASC is established in the 1984 ASC Methodology, which provides that "not later than five working days after filing for a jurisdictional rate change or otherwise commencing a rate change proceeding, the utility shall file a preliminary Appendix 1, setting forth the costs proposed by the utility and shall deliver to BPA all information initially provided to the state commission." The filing includes all testimony and exhibits filed in the retail rate proceeding. Not later than 20 days following the effective date of new rate schedules in a jurisdiction, the utility must file a revised Appendix 1 reflecting costs as approved by the state commission or utility governing body. BPA then has 210 days to review the filing and issue a report

signed by the Administrator. During this review process, BPA ensures that the costs and loads conform to the rules and requirements of the ASC Methodology, as well as the applicable provisions of the Northwest Power Act. BPA makes adjustments as necessary.

The REP has traditionally been implemented through Residential Purchase and Sale Agreements (RPSAs), which were executed in 1981. Between 1981 and the present, Residential Exchange Termination Agreements have been negotiated with all of the previously active exchanging utilities except Montana Power Company (MPC). MPC continues to be in "deemer" status. When a utility's ASC is less than the PF Exchange Program rate, the utility may elect to deem its ASC equal to the PF Exchange Program rate. By doing so, it avoids making actual monetary payments to BPA. The amount that the utility would otherwise pay BPA is tracked in a "deemer account." At such time as the utility's ASC is higher than BPA's PF Exchange rate, benefits that would otherwise be paid to the utility act as a credit against the negative "deemer balance." Only after the "positive benefits" have completely offset the "negative balance," bringing the negative "deemer account" to zero, would the utility again receive actual monetary payments from BPA under an existing or new RPSA. The issue of deemer balances with IOUs is currently in dispute. Regional utilities are eligible to participate in the REP again beginning July 1, 2001, except for those utilities that have previously executed settlement agreements for terms extending beyond July 1, 2001.

B. The Comprehensive Review of the Northwest Energy System

In early 1996, the governors of Idaho, Montana, Oregon and Washington convened the Comprehensive Review of the Northwest Energy System to seize opportunities and moderate risks presented by the transition of the region's power system to a more competitive electricity market. *See* Comprehensive Review of the Northwest Energy System, Final Report, December 12, 1996 (Final Report). The governors appointed a 20-member Steering Committee that was broadly representative of the various stakeholders in the power system to study that system and make recommendations about its transformation. *Id.* Each governor had a representative on the Steering Committee to make certain the public was educated about and involved in the Comprehensive Review. *Id.* In establishing the review, the governors stated:

The goal of this review is to develop, through a public process, recommendations for changes in the institutional structure of the region's electric utility industry. These changes should be designed to protect the region's natural resources and distribute equitably the costs and benefits of a more competitive marketplace, while at the same tine assuring the region of an adequate, efficient, economical and reliable power system.

Id. In 1996, the Steering Committee held 30 daylong meetings. *Id.* In addition, almost 400 people were involved in more than 100 meetings of various work groups reporting to the Steering Committee. *Id.* Hundreds of citizens attended the 10 public hearings that were held throughout the region on the Committee's draft report. *Id.* More than 700 written comments were received. *Id.* The Final Report was the product of that work. *Id.*

The Final Report noted that the electricity industry in the United States is in the midst of significant restructuring. *Id.* This restructuring is the product of many factors, including national policy to promote a competitive electricity generation market and state initiatives in California, New York, New England, Wisconsin and elsewhere to open retail electricity markets to competition. *Id.* This transformation is moving the industry away from the regulated monopoly structure of the past 75 years. *Id.* Today the region is served by individual utilities, many of which control everything from the power plant to the delivery of power to the region's homes or businesses. *Id.* In the future, the region may have a choice among power suppliers that deliver their product over transmission and distribution systems that are operated independently as common carriers. *Id.* There is much to be gained in this transition. *Id.* Broad competition in the electricity industry that extends to all consumers could result in lower prices and more choices about the sources, variety and quality of their electrical service. *Id.*

The Final Report also noted that there are risks inherent in the transition to more competitive electricity services. *Id.* Merely declaring that a market should become competitive will not necessarily achieve the full benefits of competition or ensure that they will be broadly shared. *Id.* It is entirely possible to have deregulation without true competition. *Id.* Similarly, the reliability of the region's power supply could be compromised if care is not taken to ensure that competitive pressures do not override the incentives for reliable operation. *Id.* How competition is structured is important. *Id.* It is also important to recognize the limitations of competition. *Id.* Competitive markets respond to consumer demands, but they do not necessarily accomplish other important public policy objectives. *Id.* The Northwest has a long tradition of energy policies that support environmental protection, energy-efficiency, renewable resources, affordable services to rural and low-income consumers, and fish and wildlife restoration. *Id.* These public policy objectives remain important and relevant. *Id.* The Final Report states that given the enormous economic and environmental implications of energy, these public policy objectives need to be incorporated in the rules and structures of a competitive energy market. *Id.*

The Final Report stated that, in some respects, the transition to a competitive electricity industry is more complicated in the Northwest because of the presence of BPA. *Id.* BPA is a major factor in the region's power industry, supplying, on average, 40 percent of the power sold in the region and controlling more than half the region's high-voltage transmission. *Id.* BPA benefits from the fact that it markets most of the region's low-cost hydroelectric power. *Id.* It is hampered by the fact that it has high fixed costs, including the cost of past investments in nuclear power and the majority of the costs for salmon recovery. *Id.* As a wholesale power supplier, BPA is already fully exposed to competition and is struggling to reduce its costs so that it can compete in the market. *Id.* The transition to a competitive electricity industry raises many issues for the BPA and the region. *Id.* In the near term, how can BPA continue to meet its financial and environmental obligations in the face of intense competitive pressure? *Id.* In the longer-term, when market prices rise and some of BPA's debt obligations have been retired, how can the Northwest retain the economic benefits of its low-cost hydroelectric power when

the rest of the country is paying market prices? *Id.* And finally, what is the appropriate role of a Federal agency in a competitive market? *Id.*

The Final Report noted that while participants on the Comprehensive Review Steering Committee represented, by design, many divergent interests, they were fundamentally interconnected through one unifying value. *Id.* Collectively, they share an abiding interest in the stewardship of a great regional resource -- the Columbia River and its tributaries. *Id.* The river is the link that brought all the parties together and unites them in a single, overriding goal. *Id.* That goal is to protect and enhance the assets of this great natural resource for the people of the Pacific Northwest. *Id.*

The Final Report stated that the Federal power system in the Pacific Northwest has conferred significant benefits on the region for more than 50 years. *Id.* The availability of inexpensive electricity at cost has supported strong economic growth and helped provide for other uses of the Columbia River, such as irrigation, flood control and navigation. *Id.* The renewable and non-polluting hydropower system has helped maintain a high quality environment in the region. *Id.* But while the power system has produced significant benefits, these benefits came at a substantial cost to the fish and wildlife resources of the Columbia River basin. *Id.* Salmon and steelhead populations had been reduced to historic lows, and many runs were about to be listed under the Federal Endangered Species Act. *Id.* Resident fish and wildlife populations had also been affected. *Id.* Native Americans and fishery-dependent communities, businesses and recreationists had suffered substantial losses due in significant part to construction and operation of the power system. *Id.* The region's ability to sustain its core industries, support conservation and renewable resources, and restore salmon runs would be clearly threatened if the region cannot reach a consensus regional position to bring to the national electricity restructuring debate. *Id.* Without a sustainable and financially healthy power system, funding for fish and wildlife restoration could be jeopardized. *Id.*

The Final Report noted that the Governors of Idaho, Montana, Oregon and Washington, in their charge to the Comprehensive Review, and the Steering Committee in their deliberations, recognized that the electricity industry is changing, whether the region likes it or not. *Id.* The Comprehensive Review was not an initiation of change, but a response to change. *Id.* It was an effort to shape that change, to the extent shaping is possible, to ensure that the potential benefits of competition are achieved and equitably shared, environmental goals are met, and the benefits of the hydroelectric system are preserved for the Northwest. *Id.* The region's ability to shape the change in the Northwest electricity industry depends on its ability to develop a regional consensus. *Id.* If the Comprehensive Review failed to result in a consensus for regional action, the electricity industry would still be restructured. *Id.* A return to the historical industry structure is not an option. *Id.* Many of the comments received during the public hearing process on the Steering Committee's draft recommendations made it clear that this was not a widely appreciated fact. *Id.*

The Final Report summarized the Steering Committee's goals and proposals. The Steering Committee's goals for Federal power marketing were to: (1) align the benefits

and risks of access to existing Federal power; (2) ensure repayment of the debt to the U.S. Treasury with a greater probability than currently exists while not compromising the security or tax-exempt status of BPA's third-party debt; and (3) retain the long-term benefits of the system for the region. *Id.* The recommendation was also intended to be consistent with emerging competitive markets and regional transmission solutions. *Id.* The mechanism proposed to accomplish these goals was a subscription system for purchasing specified amounts of power at cost with incentives for customers to take longer-term subscriptions. *Id.* Public utility customers with small loads would be able to subscribe under contracts that would accommodate minor load growth. *Id.* Subscriptions would be available first to regional customers a specified multiparty priority order, starting with preference customers, then the DSIs and the residential and small farm customers of the IOUs participating in the REP, followed by other regional customers. *Id.* Non-regional customers could subscribe after in-region customers. *Id.* Within each phase of the subscription process, longer-term contracts would have priority over shorter-term contracts if the system were oversubscribed. *Id.*

With regard to the REP, the Final Report noted that as a result of the Northwest Power Act, Northwest utilities have the right to sell to BPA an amount of power equal to that required to serve their residential and small farm customers at the utilities' average system costs and receive an equal amount of power at BPA's average system cost. *Id.* In reality, this is an accounting transaction. *Id.* No power is actually delivered. *Id.* This was intended to be a mechanism to share the benefits of the low-cost Federal hydropower system with the residential and small farm customers of the region's IOUs. *Id.* As a result of decisions made by BPA in its 1996 rate case, those benefits were reduced. *Id.* The Steering Committee acknowledged that the residential and small farm consumers of exchanging IOUs would be adversely affected by the reduction of exchange benefits. *Id.* Congress intervened for one year to stabilize the exchange benefits. *Id.* However, on October 1, 1997, there would be rate increases to the residential and small farm customers of the exchanging utilities. *Id.* The Steering Committee encouraged the parties to continue settlement discussions and to explore other paths to ensure that residential and small farm loads receive an equitable share of Federal benefits. *Id.*

C. BPA's Power Subscription Strategy

The concept of power subscription came from the Comprehensive Review of the Northwest Energy System, which, as noted above, was convened by the governors of Idaho, Montana, Oregon, and Washington to assist the Northwest through the transition to competitive electricity markets. The goal of the review was to develop recommendations for changes in the region's electric utility industry through an open public process involving a broad cross-section of regional interests. In December 1996, after over a year of intense study, as noted above, the Comprehensive Review Steering Committee released its Final Report. The Final Report recommended that BPA capture and deliver the low-cost benefits of the Federal hydropower system to Northwest energy customers through a subscription-based power sales approach. In early 1997, the

Governor's representatives formed a Transition Board to monitor, guide, and evaluate progress on these recommendations.

Public process is integral to BPA's decisionmaking. With the changing marketplace for electric power, there is considerable regional interest in defining how and to whom the region's Federal power should be sold. The public was involved at several levels during the development of BPA's Power Subscription Strategy. In addition to the public meetings held specifically on Subscription, BPA sought input from a wide range of interested and affected groups and individuals. BPA collaborated with Northwest Tribes, interest groups, Congressional members, the Department of Energy (DOE), the Administration, and BPA's customers to resolve issues, understand commercial interests, and develop strong business relationships.

In early 1997, BPA and the Pacific Northwest Utilities Conference Committee (PNUCC) invited 2800 interested parties throughout the Pacific Northwest to help further define Subscription. The collaborative effort to design a Subscription contract process began with a public kickoff meeting on March 11, 1997. At this meeting, a BPA/customer design team presented a proposed work plan, including a description of the environmental coverage for Subscription. An important element of the work plan was the formation of a Subscription Work Group. The Work Group, which normally met in Portland twice a month from March 1997 through September 1998, was open to the public. On average, 40-45 participants--representing customers, customer associations, Tribes, State governments, public interest groups, and BPA--attended. Three subgroups formed to more intensely pursue the resolution of issues involving business relationships, products and services, and implementation.

Over 18 months, BPA, its customers and other interested parties discussed and clarified many Subscription issues. During this time, BPA and the public confirmed goals, defined issues, developed an implementation process for offering Subscription, and developed proposed product and pricing principles. The following is a chronology of events.

On March 11, 1997, a public meeting was held in Portland to kick off the Federal Power Marketing Subscription development process. The following topics were discussed at this meeting: the role of the Regional Review Transition Board in the Subscription process; the Draft Work Plan that was developed to guide the development process; the issues that relate to the Subscription process that need to be addressed; and the National Environmental Policy Act (NEPA) strategy for this effort. The Work Plan identified a "self-selected" work group to lead this effort (anyone eligible to participate).

On March 18, 1997, a "Federal Power Marketing Subscription" web site was established at BPA to help disseminate information about the Subscription Process.

On March 19, 1997, the Federal Power Subscription Work Group held its first meeting in Portland, Oregon. The Work Group held a total of 33 meetings (approximately two per month), ending on September 22, 1998.

On September 9, 1997, a Progress Report was presented to the Transition Board.

On November 25, 1997, an update meeting for stakeholders was held in Spokane to discuss progress to date and next steps. A summary of the meeting, along with the meeting handout/slide presentation and concerns/issues raised, was posted to the web site.

In January 1998, an article entitled "*Subscription Process Underway*" was published in the BPA Journal, (January 1998).

On April 30, 1998, BPA's Power Business Line (PBL) established a web site to disseminate information about a customer group's Slice of the System Proposal. The Subscription Work Group evaluated the Slice proposal, and the proposal as modified by BPA continued to be developed in a subgroup through January 1999. BPA's pricing of the Slice product was part of BPA's initial power rate proposal and was also included in BPA's 2002 Final Power Rate Proposal, Administrator's Record of Decision (ROD), WP-02-A-02.

In June 1998, as part of the Issues '98 process, BPA published Issues '98 Fact Sheet #3: Power Markets, Revenues, and Subscription. Issues '98 (June/Oct. 1998). The fact sheet discussed implementation approaches being considered by the Subscription Work Group so participants in the Issues '98 process could comment. As part of Issues '98 BPA conducted a series of meetings around the region. Issues related to Subscription were key topics in the discussions at those meetings. The public comment period for Issues '98 closed June 26, 1998.

On June 8, 1998, BPA's PBL established a web site to disseminate information about development of the power rates that would be used in the Subscription contracts beginning October 1, 2001. Preliminary discussions regarding development of the power rates occurred in a series of informal public meetings and continued in workshops before BPA's initial proposal was published in early 1999.

On June 18, 1998, the third Subscription public meeting was held in Spokane to present, discuss, and collect comments on the various components related to Subscription. The meeting slide presentation and summary of the meeting were posted to the web site.

On September 18, 1998, BPA released its Power Subscription Strategy Proposal for public comment. Accompanying the proposal was a press release entitled "Spreading Federal Power Benefits" and a Keeping Current publication entitled "Getting Power to the People of the Northwest, BPA's Power Subscription Proposal for the 21st Century." Keeping Current (Sept. 1998). On September 25th, an electronic version of the BPA Power Product Catalog was posted to the web site.

On September 22, 1998, the Federal Power Subscription Work Group held its final meeting in Portland, Oregon.

Subscription issues were discussed at the "Columbia River Power and Benefits" conference on September 29, 1998, in Portland, Oregon. Over 250 people attended. Conference notes were posted to BPA's web site.

On September 30, 1998, BPA's Energy Efficiency organization established a web site to help disseminate information on the proposal for a Conservation and Renewable Discount. Development of the discount continued in a series of meetings through January 1999. Development of the discount was part of BPA's initial power rate proposal and was also included in BPA's 2002 Final Power Rate Proposal, Administrator's ROD, WP-02-A-02.

The public was invited to participate in two comment meetings on the Subscription Proposal; one in Spokane, Washington, on October 8, 1998; the other in Portland, Oregon, on October 14.

BPA developed the Power Subscription Strategy Proposal after considering the efforts of the Subscription Work Group, public comments on Subscription, and the broad information from Issues '98. The Proposal incorporated the information received from customers, Tribes, fish and wildlife interest groups, industries and other constituents. It laid out BPA's strategy for retaining the benefits of the Federal Columbia River Power System (FCRPS) for the Pacific Northwest after 2001. The comment period on the proposal closed October 23, 1998, although all comments received after that date were considered in the Power Subscription Strategy ROD and the NEPA ROD.

During the spring and summer of 1998, BPA conducted extensive public meetings with all interested parties regarding the development of BPA's Power Subscription Strategy. At the conclusion of these lengthy discussions, on September 18, 1998, BPA released a Power Subscription Strategy Proposal for public review. During the comment period BPA received nearly 200 responses to the proposal comprising nearly 600 pages of comments. After review and analysis of these comments, BPA published its final Power Subscription Strategy on December 21, 1998. *See* Power Subscription Strategy, and Power Subscription Strategy, Administrator's ROD. At the same time, the Administrator published a National Environmental Policy Act (NEPA) ROD that contained an environmental analysis for the Power Subscription Strategy. This NEPA ROD was tiered to BPA's Business Plan ROD (August 15, 1995) for the Business Plan Environmental Impact Statement (DOE/EIS-0183, June 1995). The purpose of the Subscription Strategy is to enable the people of the Pacific Northwest to share the benefits of the FCRPS after 2001 while retaining those benefits within the region for future generations.

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

purpose to provide public benefits to the Northwest through commercially successful businesses.

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

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

The Power Subscription Strategy describes BPA decisions on a number of issues. These include the availability of Federal power, the approach BPA will use in selling power by contract with its customers, the products from which customers can choose, and frameworks for pricing and contracts. The Power Subscription Strategy discussed some issues that would not be finally decided in the Strategy. Most of these issues were decided in BPA's 2002 power rate case, although some were decided in other forums, such as the transmission rate case, which concluded recently. For example, while the Strategy documents BPA's intention to implement a rate discount for conservation and renewable resources, the final design of that discount was developed in BPA's 2002 power rate case. Other issues to be decided in the 2002 power rate case include the design and application of the CRAC, which rates apply to which sales, and the design of the Low Density Discount (LDD). Customers raised issues regarding the application of other customers' non-Federal resources to serve regional load. These resource issues involve factual determinations under section 3(d) of the Act of August 31, 1964, P.L. 88-552 (Regional Preference Act), and section 9(c) of the Northwest Power Act, 16 U.S.C. § 839f(c) (1994 & Supp. III 1997), which BPA could not address in the Power Subscription Strategy and which were not made a part of the decisions in the Subscription Strategy ROD.

While BPA's Power Subscription Strategy did not establish any rates or rate designs, rate design approaches identified in the Power Subscription Strategy were part of BPA's initial power rate proposal, which was published in 1999. The comments received during the Subscription public process regarding the various rate-related issues were addressed in BPA's 2002 power rate case, which included extensive opportunities for public involvement.

BPA's Power Subscription Strategy provided a framework for the 2002 power rate case and Subscription power sales contract negotiations. The Subscription window was to remain open 120 days after the 2002 Final Power Rate Proposal, Administrator's ROD, was signed by the BPA Administrator, providing relatively certain information to potential purchasers regarding rates.

One element the Power Subscription Strategy proposal was a settlement of the REP for regional IOUs for the post-2001 period. The Power Subscription Strategy proposed that IOUs may agree to a settlement of the REP in which they would be able to receive benefits equivalent to a purchase of a specified amount of power under Subscription for their residential and small farm consumers at a rate expected to be approximately equivalent to the PF Preference rate. Under the proposed settlement, residential and small farm loads of the IOUs would be assured access to the equivalent of 1,800 aMW of Federal power for the FY 2002-2006 period and 2,200 aMW of Federal power for the FY 2007-2011 period.

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

The Power Subscription Strategy proposed that BPA would offer five-year and 10-year Subscription settlement contracts for the IOUs. Under both contracts, the Subscription Strategy proposed that BPA would offer and guarantee 1,800 aMW of power and/or financial benefits for the FY 2002-2006 period. At least 1,000 aMW would be met with actual BPA power deliveries. The remainder could be provided through either a financial arrangement or additional power deliveries, depending on which approach was most cost-effective for BPA. The IOUs' settlement of rights to request REP benefits under section 5(c) of the Northwest Power Act would be in effect until the end of the contract term. *See* 16 U.S.C. § 839c(c) (1994 & Supp. III 1997).

Under the 10-year settlement contract, in addition to the benefits provided during the first five years, BPA proposed to offer and guarantee 2,200 aMW of power or financial benefits for the FY2007-2011 period. BPA intended for this 2,200 aMW to be comprised solely of power deliveries. The IOUs' settlement of rights to request REP benefits under section 5(c) would be in effect until the end of the 10-year term of the contract. In the event of reduction of Federal system capability and/or the recall of power to serve its public preference customers during the terms of the five-year and 10-year contracts, BPA would either provide monetary compensation or purchase power to guarantee power deliveries.

In summary, residential and small farm loads of the IOUs could receive benefits from the Federal system through one of two ways. An IOU could participate in the established

REP or it could participate in a settlement of the REP through Subscription. If an IOU chose to request REP benefits under section 5(c), then the Subscription settlement amount for all the IOUs would be reduced by the amount that would have gone to the exchanging utility.

D. Power Subscription Strategy Supplemental ROD

As noted above, on December 21, 1998, the BPA Administrator issued a Power Subscription Strategy and accompanying ROD, which set the agency's PBL on a course to establish power rates and offer power sales contracts in anticipation of the expiration of current contracts and rates on September 30, 2001. The Strategy and ROD were the culmination of many public processes that came together to form the framework to equitably distribute in the Pacific Northwest the electric power generated by the FCRPS.

BPA's 1998 Power Subscription Strategy served to guide BPA in accomplishing its goals. After adoption of the Strategy, however, developments occurred that prompted BPA to seek, in some instances, additional comment from customers and constituents on new issues. The Strategy contemplated further public processes to implement its goals. BPA's 2002 power rate case, ongoing since August 1999, was completed on May 8, 2000. BPA and its customers continued discussions on power products and power sales contract prototypes, and the Slice of System product was further defined. In a December 2, 1999, letter, BPA sought comment from customers and constituents on some of these new issues, specifically, the length of the Subscription window for power sales contract offers, the actions required of new small utilities during this window to qualify for firm power service, and new developments with respect to General Transfer Agreements. Other issues arose independently, such as new large single loads (NLSL) under the Northwest Power Act, duration of the new power sales contracts, and a new contract clause regarding corporate citizenship. BPA also undertook a comment process on the amount and allocation of power and financial benefits to provide the IOUs on behalf of their residential and small farm consumers. On November 17, 1999, BPA sent a letter to all interested parties requesting comments on two specific issues: (1) whether the amount of the proposed IOU settlement should be increased by 100 aMW from 1800 aMW to 1900 aMW for the FY 2002-2006 period; and (2) the manner in which the settlement amount should be allocated among the individual IOUs.

1. Total Amount of IOU Settlement Benefits

BPA's intent in the Power Subscription Strategy was to spread the benefits of the FCRPS as broadly as possible, with special attention given to the residential and rural customers of the region. The Subscription Strategy enabled the benefits of the FCRPS to flow throughout the region, whether currently served by publicly owned or privately owned utilities.

The Power Subscription Strategy provided that residential and small farm loads of the IOUs, through settlement of the REP, would be provided access to the equivalent of 1800 aMW of Federal power for the FY 2002-2006 period. At least 1000 aMW of the 1800 aMW would be served with actual BPA power deliveries. The remainder would be provided through either a financial arrangement or additional power deliveries depending on which approach was most cost-effective for BPA.

The four Pacific Northwest state utility commissions (Commissions), in a letter dated July 23, 1999, requested that BPA increase the amount of the settlement from 1800 aMW to 1900 aMW for the FY 2002-2006 period. This request was made in order for the Commissions to arrive at a joint recommendation for allocating the settlement benefits among the IOUs for both the FY 2002-2006 and FY 2007-2011 periods. Many parties supported this increase for many reasons, including: (1) the increase is a wise policy decision and it helps to ensure that the regional interest in the system and preserving the system as a valuable benefit in the Northwest will be shared as broadly as possible among the region's voters; (2) the increase is appropriate in order for BPA to achieve the stated Subscription Strategy goal to "spread the benefits of the Federal Columbia River Power System as broadly as possible, with special attention given to the residential and rural customers of the region," *see* Power Subscription Strategy at 5; (3) the increase creates a fair and reasonable settlement to the REP for the IOUs; (4) the increase to the settlement staves off contentious issues surrounding the traditional REP as well as provides a fair allocation of power to the IOUs; and (5) the increase will help ensure an appropriate sharing of benefits of Federal power among the residential ratepayers in the Northwest.

After review of the comments, BPA found the arguments for increasing the IOU settlement amount by 100 aMW to be compelling. BPA determined that the conditions surrounding the proposed increase to the proposed Subscription settlement of the REP were expected to be met. Therefore, BPA increased the amount of total benefits for the proposed settlements of the REP with regional IOUs from 1800 aMW to 1900 aMW.

2. Allocation of Settlement Benefits Among IOUs

In the Power Subscription Strategy, BPA noted its intent to request comments from interested parties regarding the amounts of Subscription settlement benefits that should be provided to individual IOUs. BPA also noted that the Commissions indicated that they would collaborate on an allocation recommendation. After review of all comments, BPA would determine the appropriate amounts to be allocated to the individual IOUs.

BPA solicited the Commissions' views on the proposed allocation of settlement benefits. This was appropriate because the Commissions have traditionally been responsible for establishing retail electric rates for residential consumers of the regional IOUs, including the credit applied to those rates to reflect benefits of the REP as determined by BPA. The Commissions also have a statutory responsibility to the residential consumers of the IOUs in their particular state jurisdiction. Furthermore, because of these responsibilities, a joint recommendation by the Commissions would likely reflect a fair allocation of benefits

among the residential consumers of the Northwest states and would enhance the likelihood of BPA delivering the benefits in a way that would work for each state and its consumers.

The Commissions collaborated and submitted a joint recommendation on the proposed allocation of the settlement benefits. They noted that their recommendation reflects many different considerations, including the amount of residential and small farm load eligible for the REP, the historical provision of REP benefits, the REP benefits received in the last five-year period ending June 30, 2001, rate impacts on qualifying customers, and the individual needs and objectives of each state. BPA reviewed the Commissions' recommendation and determined that this proposal was a reasonable approach upon which to take public comment.

Virtually all commenters supported the allocation recommended by the Commissions and proposed by BPA. The reasons for such support included: (1) it is appropriate for BPA to weigh heavily the Commissions' joint recommendation concerning the allocation of benefits; (2) the Commissions are the best arbiters of the settlement among the IOUs; and (3) the proposed allocation establishes access to a level of benefits that recognizes changed market conditions while at the same time addresses the needs and issues important to each of the four states. It is worthy of note that BPA's allocation has received support from diverse customer and interest groups: publicly owned utilities, IOUs, the Commissions, state agencies, and a city commission. BPA concluded that the following allocation amounts would be incorporated into the proposed settlement contracts with the individual IOUs that choose to settle the REP:

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

1/ BPA also concluded that the allocation of benefits among the states served by these multi-state utilities would be based on the forecasts of the respective state residential and small farm loads at the time the IOU signs its Settlement Agreement.

E. BPA's Section 5(b)/9(c) Policy

As BPA recognized that its existing long-term power sales contracts would soon expire, BPA proposed to establish a policy to guide the agency in making determinations of the net requirements of its utility customers in order to offer Federal power under new contracts. (For the most part, existing power sales contracts expire by October 1, 2001.) A net requirements policy is an important component to BPA's execution and implementation of new power sales contracts. Under section 5(b)(1) of the Northwest Power Act, BPA is obligated to offer a contract to each requesting public body, cooperative, and investor-owned utility to meet each utility's regional firm load net of the resources used by the utility to serve its firm power consumer load. 16 U.S.C. § 839c(b)(1) (1994 & Supp. III 1997). In making this determination, BPA has a corresponding duty to apply the provisions of section 9(c) of the Northwest Power Act, 16 U.S.C. § 839f(c) (1994 & Supp. III 1997), and section 3(d) of the Regional Preference Act, 16 U.S.C. § 837b(d) (1994 & Supp. III 1997).

BPA provided two opportunities for public review and comment in developing its proposed policy. On May 6, 1999, BPA published its initial policy proposal, entitled "Opportunity for Public Comment Regarding Bonneville Power Administration's Subscription Power Sales to Customers and Customer's Sale of Firm Resources," 64 Fed. Reg. 24,376 (1999). BPA held two public meetings to discuss this policy. The first meeting was held on May 27, 1999, in Spokane, Washington. The second meeting was held on June 2, 1999, in Portland, Oregon. On June 3, 1999, the thirty-day comment period was extended by BPA through June 30, 1999.

After reviewing and considering the comments received on the initial policy proposal, particularly those that requested that BPA provide a second round of review and comment, BPA issued a revised policy proposal on October 28, 1999, entitled "Revised Draft Policy Proposal Regarding Subscription Power Sales to Customers and Customer's Sales of Firm Resources," 64 Fed. Reg. 58,039 (1999). BPA reviewed and considered the comments received on the revised policy. On May 24, 2000, BPA issued its final "Policy on Determining Net Requirements of Pacific Northwest Utility Customers under Sections 5(b)(1) and 9(c) of the Northwest Power Act," also called BPA's "Section 5(b)/9(c) Policy." BPA also issued a Section 5(b)/9(c) Policy Record of Decision.

F. IOU Settlement Agreements

After completion of the Administrator's Supplemental ROD, BPA began the development of a prototype Residential Purchase and Sale Agreement (RPSA) and a prototype Settlement Agreement. On May 5, 2000, BPA sent a letter to all interested parties requesting comments on the proposed agreements. BPA's letter included a background document describing the two agreements. BPA also enclosed copies of the draft RPSA and Settlement Agreement. BPA's letter and attachment noted that BPA's Power Subscription Strategy proposed comprehensive settlements of the REP with

participating regional IOUs and that IOUs would also have the option of entering into contracts to participate in the REP. The Power Subscription Strategy also noted that public agency customers were eligible to enter RPSAs under the REP.

BPA's letter noted that BPA had prepared a prototype RPSA to implement the REP and that this prototype would be used as the basis for contracting with all eligible parties to apply for benefits under the REP. BPA requested public comment on the following issues: (1) which entities are eligible utilities to request benefits under section 5(c) of the Northwest Power Act; (2) BPA's proposal to implement the in lieu provisions of section 5(c)(5) of the Northwest Power Act through wholesale market purchases; (3) any exceptions to the limitations of section 5(c)(6) that preclude the restriction of exchange sales under section 5(c) below the amounts of power acquired from, or on behalf of, the utility pursuant to section 5(c); and (4) any comments on the terms and conditions of the prototype RPSA agreement.

BPA's letter also described BPA's proposal for comprehensive settlement of the rights of regional IOUs eligible for benefits under the REP. BPA noted that it had prepared a prototype Settlement Agreement for implementing the Subscription Strategy. The prototype provided power sales pursuant to a contract offered under section 5(b) of the Northwest Power Act. The prototype also provided for the payment of monetary benefits. BPA requested public comment on all relevant issues, including the following issues: (1) any comments on the terms and conditions of the prototype Settlement Agreement; and (2) whether the total amount of benefits and the proposed terms and conditions for settling the rights of regional IOUs to request benefits under the REP were reasonable.

BPA's letter noted that BPA's Power Subscription Strategy proposed an allocation of benefits to the region's IOUs that included both physical and monetary components. It further noted that the Administrator's Supplemental ROD for the Power Subscription Strategy proposed to offer the IOUs the equivalent of 1900 aMW of Federal power for the FY 2002-2006 period. Of this amount, at least 1000 aMW would be provided in physical power deliveries. BPA requested that each IOU notify BPA by July 21, 2000, whether they wished to participate in BPA's REP. The IOUs were not required to make an election whether to accept a settlement offer or participate in the REP through an RPSA at that time. Based on each IOU's request to participate in the REP, BPA would prepare a settlement offer for their consideration prior to October 1, 2000. At the time each IOU requested to participate in the REP in July, BPA's letter asked that each IOU identify (1) its preferred mix of physical deliveries and financial settlement; and (2) whether it would prefer a five-year or 10-year offer. BPA would only make a settlement offer including net requirements physical deliveries if the IOU could establish a net requirement for the amount of power requested.

BPA's letter requested public comment on two issues regarding the offer of physical power and financial benefits in settlement of REP rights: (1) whether BPA should require IOUs to take additional power if the combined requests of all the companies for physical deliveries are less than 1000 aMW; and (2) how BPA should limit physical deliveries to

each IOU if the companies requested physical deliveries of more than 1000 aMW and such deliveries were more power than BPA was willing to offer.

Comments on all of the issues regarding the prototype agreements were to be submitted through close of business on Friday, June 9, 2000. BPA's letter noted that after receiving public comment on the proposed prototype agreements, BPA would prepare final draft prototypes based on the public comments. These draft prototypes will be published to allow IOUs to determine whether they wish to participate in the REP pursuant to an RPSA or through a settlement offer based on physical or monetary benefits. Once BPA received each IOU's request to participate in the REP, BPA would prepare a settlement offer and an RPSA for each IOU in accordance with the choices made. BPA prepared a ROD addressing the public comments on the proposed REP Settlement Agreements. A separate ROD was also issued which addressed the public comments on the proposed RPSA. BPA offered both an RPSA and a Settlement Agreement to each IOU. .

On July 28, 2000, BPA sent a letter to interested parties regarding a request by Montana Power Company (MPC) to be offered a Settlement Agreement in which the power component would be made under section 5(c) of the Northwest Power Act instead of a sale of requirements power under section 5(b) of the Act. BPA's letter noted that on May 5, 2000, BPA asked for public comment on BPA's proposed contracts for implementing the REP, including a request for comments on a proposed IOU Settlement Agreement. The Settlement Agreement BPA offered for comment on May 5 contained benefits that were comprised of proposed power sales and monetary payments. The power sales proposed under the Settlement Agreement were sales under section 5(b) of the Northwest Power Act. *See* 16 U.S.C. § 839c(c) (1994 & Supp. III 1997). However, as BPA stated in its Power Subscription Strategy, released on December 21, 1998, power sales in its proposal for settling the REP could be based either under section 5(b) or 5(c) of the Northwest Power Act. In the background document included with BPA's May 5 letter, BPA noted that it had not prepared a prototype Settlement Agreement based on a power sale under section 5(c) of the Northwest Power Act, but that it would consider such proposals if they were made.

In a letter dated July 27, 2000, MPC requested that BPA provide a settlement offer including firm power benefits under section 5(c) of the Northwest Power Act. BPA prepared a draft Settlement Agreement reflecting a section 5(c) power sale. The proposed settlement, attached to BPA's July 28, 2000, letter, was very similar to the proposed agreement that BPA issued for public comment with BPA's May 5, 2000, letter. Instead of providing an IOU Firm Power Block Sales Agreement (Block Sales Agreement) for a specified amount of firm power under section 5(b) of the Northwest Power Act, this proposed section 5(c) prototype agreement provided a specified amount of firm power under a Negotiated In Lieu Agreement.

On October 4, 2000, the BPA Administrator issued a decision document entitled "Residential Exchange Program Settlement Agreements With Pacific Northwest Investor-Owned Utilities, Administrator's Record of Decision," which concluded that it was appropriate to offer the REP Settlement Agreements to regional IOUs. The REP

Settlement Agreements were then executed the same month. One of the regional IOUs executing a settlement agreement was PacifiCorp.

G. BPA's 2002 Wholesale Power Rate Case

On August 13, 1999, BPA published a notice of BPA's *2002 Proposed Wholesale Power Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment.* 64 Fed. Reg. 44,318 (1999). This began a lengthy and complex hearing process that concluded with BPA's *2002 Final Power Rate Proposal, Administrator's Record of Decision*, in May 2000 (May Proposal). 16 U.S.C. § 839e(i). In July 2000, BPA filed its proposed 2002 wholesale power rates with the Federal Energy Regulatory Commission (FERC) for confirmation and approval. 16 U.S.C. § 839e(a)(2). Subsequent to that time, however, during the late spring and summer months, the West Coast power markets suffered price increases and volatility that had not been seen before. By August, it was clear that these market prices were not a short-term phenomenon. This meant that BPA's cost-based rates, which were already below the original market forecast, were even more attractive. Thus, BPA assumed that additional load would be placed on BPA, and BPA would need to purchase additional power to augment the Federal Columbia River Power System (FCRPS) supply. BPA determined that the implications for cost recovery were so serious that a stay of the rate proceeding at FERC was requested. This enabled BPA to review the events that had occurred during the summer months and to determine whether the escalating prices and increased volatility would require remedial action.

Escalating and more volatile market prices had two related effects. First, the specter of higher prices and continued unpredictability caused customers to place as much load as possible on BPA. Second, to meet this increased load obligation, BPA would need to make substantially greater power purchases at substantially higher and more uncertain prices than anticipated in the May Proposal. BPA concluded that the May Proposal, as filed with the FERC, was not adequate to deal with the added costs and financial risks that the high and volatile market prices created for BPA.

During the initial phase of the rate case, BPA's load forecast exceeded BPA's forecast of generation resources by 1,732 average megawatts (aMW). Due to escalating and volatile market prices, BPA estimated that expected loads would exceed the original rate case forecast by an additional 1,518 aMW. Inasmuch as the generating capability of FCRPS was already inadequate to meet the earlier load forecast, BPA would have to purchase to further augment its inventory to serve these additional loads. The cost of power to serve these unanticipated loads was not included in revenue requirements.

The combination of an unanticipated increase in loads and purchase requirements, with higher and more uncertain market prices, greatly diminished the probability that rates proposed in the May Proposal would fully recover generation function costs. Absent a change to the May Proposal, Treasury Payment Probability (TPP) would be reduced to below 70 percent, a level that would fall well short of specific goals and targets. In its

judgment, BPA had a serious cost recovery problem that it was obliged to address by reason of statute and Administration policy.

BPA's Amended Proposal rate case was a continuation of the WP-02 rate proceeding. It was being conducted for the discrete purpose of resolving a cost recovery problem brought about by market price trends and load placement changes occurring since the record was closed in the first phase of the proceeding. During the consideration of the Amended Proposal, however, BPA concluded that it was necessary to make additional changes to ensure BPA's cost recovery. BPA then filed a Supplemental Proposal. There were three reasons BPA filed a Supplemental Proposal. First, BPA's forecast for starting rate period reserves had dropped very substantially since the forecast in its Amended Proposal. Second, market prices available for power during the first two years of the rate period were significantly higher than BPA had forecast in the Amended Proposal. Regardless, BPA would have prepared an update to the Amended Proposal to show the impact of these revised forecasts on BPA's proposed rates. The third reason was that, as a result of discussions with the rate case parties, BPA reached a Partial Settlement Agreement with many of those parties. Part of that agreement was that BPA would file a Supplemental Proposal reflecting the Partial Settlement Agreement.

Since BPA filed its Amended Proposal in December 2000, forecasts for run-off for the water year had declined substantially. Water Year forecasts in BPA's 2002 Final Power Rate Proposal (May Proposal) and Amended Proposal assumed average water for both this FY 2001 and for the next five years of the rate period – 102.4 million acre feet (MAF). By contrast, the current year could be the second lowest runoff year on record, with current runoff forecasted at under 60 MAF. These conditions would require BPA to purchase much more power this year than expected to meet loads, at extremely high prices, and to reduce the amount of surplus energy BPA can sell this year. As BPA described in its Amended Proposal, prices in the wholesale electricity market had been extremely volatile and high. BPA had seen these increased market prices during this year. In fact, during one week in January alone, BPA purchased over $50 million in power to meet load. This was putting tremendous pressure on BPA's end-of-year reserves. End-of-year reserves translate into starting rate period reserves. In BPA's May Proposal, starting reserves were estimated to be $842 million on an expected value basis. In BPA's Amended Proposal, starting reserves expected value estimates had increased to $929 million. Then, the expected value of BPA's starting reserves estimate dropped to $309 million. There is still a significant range of uncertainty surrounding this estimation of starting reserves. This is driven by some unknown factors for the rest of this fiscal year around hydro operations related to fish requirements, run-off levels, and the volatility in market prices.

Starting reserves are a key risk mitigation tool in BPA's Supplemental Proposal. A significant drop in starting reserve levels, without other adjustments, reduces Treasury Payment Probability (TPP) for the five-year rate period. Therefore, in order to offset this decline, and maintain a TPP level within the acceptable range, adjustments to other tools need to be made.

Market prices during the rate period are higher in the first years of the rate period, ranging from $200/megawatthour (MWh) to $240/MWh for FY 2002, and then dropping during the last years of the rate period, to a range between $40/MWh and $60/MWh in FY 2006. This compares with a risk-adjusted expected price forecast in the Amended Proposal for the five-year rate period around $48/MWh, where expected prices for individual years did not vary by more than $5/MWh from the $48/MWh average.

Because BPA will be in the market purchasing power to serve load during the next five years, BPA's purchase power costs will fluctuate as market prices change. Because the potential levels of power purchases and prices are so great, BPA needs to concern itself not only with annual or rate period totals, but with the seasonal and semi-annual timing of costs and revenues. In order to maintain TPP at an allowable level, all other things being equal, the expected value for the average rate over the five years will be higher with an average flat rate than with a rate shaped to match the expected market. Therefore, BPA revised the LB CRAC so that its expected revenues closely match the shape of its augmentation costs. In summary, BPA's Supplemental Proposal suggested that BPA's customers could see much higher prices during the October 1, 2001, to September 30, 2006, rate period.

H. Administrator's Call for Rate Mitigation Efforts

On April 9, 2001, the BPA Administrator delivered a speech to the citizens of the Pacific Northwest regarding the potential impact of BPA's proposed rate increase and possible ways to reduce the impact of the increase. The text of the speech follows:

> Last January, I sent out a letter to Northwest citizens that caused some shock waves. That was my intent. I believe it is important to warn of bad news while there is still time to take actions that can lessen the impact. At the time, I said that, if certain conditions persisted, BPA's customers--Pacific Northwest utilities and direct-service industries--could face a significant rate increase for the wholesale power they buy from the Bonneville Power Administration. The figures I cited then were for an average rate increase of 60 percent over the five-year rate period that starts this coming October. I cautioned that the increase could be as high as 90 percent in the first year.
>
> Unfortunately, the situation has worsened. It now appears possible that, without the kinds of action that I am about to call for today, the first-year increase could be 250 percent or more. If that were to occur, it likely would translate into doubling the retail rates in many utility service areas.
>
> An increase of this magnitude would have widespread economic consequences. Already, we are seeing some businesses curtail operations or even close as a result of high energy prices. With such an increase, we'd surely see more businesses close and more job losses, with people

with lower incomes suffering disproportionately. In addition, a weak economy frequently translates into less public support for environmental protection.

I don't believe these consequences are acceptable. More importantly, I don't believe they are inevitable. That's why I am here today to call for some very specific actions and to call on all stakeholders in the Pacific Northwest to own part of the process that will help us avert an economic blow to our region. I believe we can get the rate increase down to a manageable level, but we need to make some tough decisions, and we have little more than 60 days to do this. BPA's rates, which will go into effect in October, should be submitted to the Federal Energy Regulatory Commission in June.

First, let me review what has led us to this point. Some of it you already know. We are experiencing the second worst water year in 72 years of record-keeping. According to a report released by the Northwest Power Planning Council, if the drought persists, the hydropower generating capability in the Northwest from March through August will be 4,700 megawatts below normal over those months--the equivalent power consumed by four Seattles. The implications are ominous since the Northwest relies on hydropower for nearly three-quarters of its electricity.

But the summer drought is only the immediate crisis. We are becoming increasingly concerned about power supply for the coming winter. Canadian reservoirs, which store half the system's water, are extremely low this year, which means we could start next year with less than a full tank. If that were to happen, and especially if we have a second dry year in a row, electricity reliability wouldn't be the only thing at risk. Low reservoir levels also raise concerns for salmon and steelhead next year.

Low water combined with a tight wholesale power market and skyrocketing power prices is a devastating combination. The fiasco in California has helped drive wholesale electricity prices to unprecedented levels. When we completed our new Subscription power contracts last fall, BPA's contractual obligations added up to approximately 11,000 megawatts--about 3,000 megawatts more than our current generating resources can provide on a firm basis. The only way we can meet our obligations is to buy the vast majority of the additional power in a wholesale power market where supplies are tight and prices are sky high. This is what is driving rates up.

This year, due to the high power prices, BPA has not been able to purchase sufficient power to ensure system reliability. Consequently, we have periodically declared power system emergencies. These emergency declarations have allowed us to increase power generation from the river

and reduce operations that offer benefits to migrating juvenile fish. The increased generation has reduced the amount of water that is normally stored at this time of year so that it can be used to augment spring and summer river flows. While there may be some impact on fish, by far the major impact on fish is the drought itself, not the emergency power operations. We are continuing to implement all other aspects of the federal measures for fish recovery.

Currently, we are operating the river on an emergency basis, and we can continue some fish spill or flow augmentation only as long as water volume does not dip much below current estimates. The record low runoff is a water volume of 53 million-acre feet. As of last week, the volume forecasts had dropped to 56 million-acre feet, which is 53 percent of the normal runoff. This severely limits our flexibility to do much more than meet power needs.

Beyond the current drought, high power prices are expected to continue until significant new generation and additional conservation measures are put in place. This will take a couple of years at best. And, we can't expect much help from Canada, which also is suffering drought, nor any help from California, which is in the throes of an electricity restructuring crisis.

We must focus instead on what we can control if we expect to minimize the size of the coming wholesale rate increase. The most immediate and direct way to decrease the size of next year's rate increase is quite simply to decrease the amount of power BPA has to buy in the market.

We already have taken a number of extraordinary steps in this direction. We have promoted conservation aggressively and sought voluntary curtailments in power use. We have begun to purchase curtailments from our direct service industrial customers and from irrigators who are served by our utility customers. We have offered innovative incentives for development of conservation and renewables, and we have engaged in beneficial 2-for-1 power exchanges with California. We also are continuing to collaborate with the Corps of Engineers and Bureau of Reclamation to increase the productive capability of the federal power system.

But even these extraordinary measures haven't been enough in the face of the triple whammy of historic low water conditions, an extremely tight power market and enormous volatility in power prices. We now need to up the ante if we are to get the rate increase for the next year down to a manageable level.

We literally are at a crossroads, and the region has essentially two options. Path A is to wait and see where market prices settle in June. Under this scenario, we'd rely on cost recovery mechanisms to kick up rates if prices remain high. We would take no special actions and we wouldn't push or negotiate with our customer groups to secure load reductions. The risk is that, if market prices stay the same, we could expect to see a first year rate increase in the 200 to 300 percent range, and possibly greater.

Then there's Path B, which calls for aggressive and immediate steps to reduce the size of the rate increase by reducing the amount of electricity demand put on BPA. Under this scenario, BPA would not have to buy as large an amount of power in a very expensive wholesale power market. It's a strategy that calls on our customers and other stakeholders to share a sacrifice by reducing their demands for power. It requires significant, and I mean significant, contributions from all customer groups. It could keep the first-year rate increase below 100 percent. I believe Path B is the course we must choose, so let me lay out some of the actions that will move us along this path.

As I discuss this path, let me outline the principles I believe are key to reducing rates. First, rates must be set to cover costs if we are to avoid creating a credit problem, which could lead to refusals to sell to us in the future. We must also cover our costs to ensure we preserve the benefits of the federal hydropower system over the long term, which is essentially the bottom line.

Second, the situation is urgent. We must act quickly because rates must be in effect this coming October 1. As I said earlier, our rate proposal is due in to the Federal Energy Regulatory Commission in June.

Third, our problem is caused by a significant exposure to a volatile market in the first one-to-two years of the rate period. If we are to manage a reduction in the rate increase, we must reduce our exposure to that market by reducing demand for energy, increasing our supply and minimizing the short and long-term damage to the region's economy.

Fourth, contributions to the solution are needed from all customers. We can't play a game a chicken where each party waits for the other to step forward. If that happens, no one will step forward. Each group must contribute if we are to preserve an equitable distribution of the benefits of our hydropower resource.

...

Given those principles, let me outline the actions we as a region need to take. We need a three-pronged approach that includes curtailment of

power use, conservation--or more efficient use of power--and power buybacks. This needs to happen across all four states, across public and private power, and across all sectors of energy use--industrial, commercial, agricultural and residential. It will take all of us working together if we are to avoid severe economic hardships for the region. Let me be clear; what I am about to suggest requires a great deal of sacrifice, but the alternative is to suffer far more serious consequences. We are beginning negotiations now with our customers. If people don't come to the table with reductions in their demand for electricity, a very large and very damaging rate increase is inevitable.

First, we are calling on our public utility customers to make a contribution to the solution. We need every utility customer to reduce its Subscription purchases from BPA by 5 to 10 percent. BPA's rate increases will spur some of this reduction, but more focused efforts are needed if we are going to achieve significant savings. We are willing to make modest incentive payments to help achieve this, but the incentive payments cannot be large or they will defeat the intended effect.

We are running several demand-side management initiatives including a conservation and renewables discount, a conservation augmentation program and a demand exchange program. In addition, we now are discussing the potential for new programs to provide incentives to our public utility customers to adopt innovative retail rate structures that encourage their consumers to conserve energy.

Second, we are calling on investor-owned utilities to make a contribution. When our new rates go into effect this October, investor-owned utilities--or IOUs--will receive sizable benefits from BPA for their residential and small farm customers as a result of a the residential exchange. Under this program, as it is set out in the Subscription period, 1,900 average megawatts of financial and power benefits are scheduled to go to the IOUs. But, because of dramatic changes in market prices, the estimated value of these benefits has increased enormously since they were negotiated a year ago. By 2002, the value will be 10 times higher than the negotiations intended to capture. As a result, IOUs are in a position to reduce their Subscription demand significantly and still enjoy benefits in excess of anything they have experienced in the 20-year history of the residential exchange.

Third, we are asking our direct service industries--or DSIs--to agree not to take power from us for up to the first two years of the rate period in return for certain limited compensation to the companies and their workers. It is our expectation that the companies would not be able to operate given a potential tripling of our rates anyway. Coming to an agreement now that

the plants will not operate would allow BPA to avoid making power purchases, thereby decreasing our rates for all remaining customers.

It is not our intention to drive the aluminum industry out of the region, but we are continuing to encourage the industry to move off of BPA power supplies after the 2006 rate period because we do not have a statutory obligation to continue to serve them. The customers we are obligated to serve--the region's retail electric utilities--need more than our current generation resources can produce. We will work with these companies to help them find a means to operate profitably in the long run without relying on BPA.

Almost all of the DSIs are already shut down until this fall, and their power is being remarketed to support Northwest needs during the current drought. These buydowns played a key role in keeping the lights on this winter and in maintaining reservoir levels higher than they otherwise would have been.

Fourth, I am urging all citizens of the Northwest to heed the call of our governors to reduce electricity consumption by 10 percent through eliminating waste and using electricity more efficiently. There are a number of common sense measures we can all take, and one good place to start right now is to go out and replace conventional light bulbs with compact fluorescents, which consume about 20 percent of the electricity used by regular bulbs for the same amount of light.

These four sets of actions that I have described are urgently needed between now and June if we are to avert grave near-term economic consequences. These are difficult actions. But, with hindsight, we can learn from the problems California experienced and seek to avoid them. We need to do everything we can to avoid power purchases in this incredibly expensive market. We also need to make sure we set rates high enough so we can cover our costs to assure generators get paid when they deliver power on a contractual basis so we don't put our credit at risk.

We also are looking to longer-term solutions that will help lead to lowering the incredible wholesale power supply prices we are currently experiencing. The fundamental problem is supply and demand being out of balance. Prompt infrastructure investments are needed in generating resources, especially gas-fired and wind-powered generation; gas pipeline capacity and storage; electric power transmission facilities; and energy conservation measures.

BPA's [proposed] rates [might] now be set on a six-month basis based on our actual costs. If wholesale power prices can be brought down quickly, through infrastructure investments and other actions, then our rates will

come down in the future. The faster these actions can be taken, the quicker our rates can come down.

We already have begun plans to shore up the transmission infrastructure, and we are negotiating to purchase the output from combustion turbines and new renewable resources. We also are increasing our efforts to encourage and procure energy efficiency. We are working to implement these actions quickly, but at best, some actions, such as securing more generation, will take one-to-two years.

That's why I am calling for cooperation and sacrifices for the next two years from all parties BPA serves. If the region cannot or will not take the actions necessary to reduce the rate hike, we have no recourse but to set our rates to recover our costs. BPA does not receive subsidies from taxpayers. We must wholly cover our costs with revenues we receive from sales of power and transmission. We are obligated to repay, with interest, all capital investments that have been made by the federal government in the facilities that are part of the Northwest's federal power system. Already, we have drawn on our financial reserves heavily this winter, and more of the same still may be ahead of us.

Some have suggested that we can simply fail to pay one of our largest creditors--the U.S. Treasury--rather than declare power emergencies or raise rates sharply. While there is no absolute guarantee we will make our full Treasury payment this October, I believe we should use all management tools available to do so. Our ability to pay our debt in full and on time is the best protection the Northwest has to preserve the benefits of the Columbia River hydropower system for the region. There are interests outside the region that want to see the benefits of this system directed toward other purposes. They could take great political advantage of the opportunity that would be presented if BPA did not cover its costs. One consequence could be the loss of cost-based rates for power from the federal system. We have seen how exorbitant market rates can be. If that were to happen, the region would be looking at far higher rate increases than we are now facing.

So, in closing, let me underscore the message. We are on a trajectory that poses grave consequences for the Pacific Northwest, primarily due to extraordinary conditions beyond our control--extremely low water, an extremely tight power supply and extremely high wholesale power prices. We believe the only alternative to a huge rate hike is to reduce our exposure to the market in the first two years of the next five-year rate period by reducing the Subscription demand on BPA. It will take major contributions from all our customers if we are to prevent a triple digit rate increase. And, we will need to make these very difficult decisions very quickly.

> Finally, we believe this proposal, while not an easy one to achieve, fairly balances the sacrifices the region needs and does not unfairly hit one customer group or one state over others. I know putting these proposals into place will be tough, but I believe the consequences of not taking this path will even be tougher.

Thus, the Administrator asked the regional IOUs to contribute to the mitigation of BPA's potentially difficult rate increases. The Administrator's reasoning regarding the amendment to PacifiCorp's REP Settlement Agreement and the separate Financial Settlement Agreement, which help to address this concern, is addressed below.

I. AMENDMENT TO PACIFICORP'S REP SETTLEMENT AGREEMENT

BPA and PacifiCorp have negotiated a letter agreement (Amendment No. 1), which constitutes an amendment to PacifiCorp's Residential Exchange Program Settlement Agreement, Contract No. 01PB-12229 (Settlement Agreement), executed by BPA and PacifiCorp. Since the time of execution of the Parties' Settlement Agreement, BPA and PacifiCorp have agreed that BPA will, rather than deliver firm power to PacifiCorp for the first five years of the Settlement Agreement, make cash payments during the period that begins October 1, 2001, and ends on September 30, 2006. These cash payments will be made under a Financial Settlement Agreement, Contract No. 01PB-10854. Amendment No. 1 removes BPA's obligation to deliver firm power for the first five years of the Settlement Agreement. BPA and PacifiCorp intend to execute Amendment No. 1 and the Financial Settlement Agreement simultaneously.

A number of issues arose during the negotiation of Amendment No. 1 and the Financial Settlement Agreement. The reasoning supporting the resolution of these issues is addressed below.

A. EFFECTIVE DATE

Section 1 of Amendment No. 1 provides that it will take effect on the date signed by the Parties. This allows the amendment to take effect at the beginning of the contract period.

B. AMENDMENT OF SETTLEMENT AGREEMENT

1. Satisfaction of Section 5(c) Obligations

Section 2 of Amendment No. 1 describes a number of changes to the Settlement Agreement. Section 3(a) of the Settlement Agreement is replaced by language providing that BPA, in full and complete satisfaction of its obligations under or arising out of

section 5(c) of the Northwest Power Act during the period from July 1, 2001, through September 30, 2011,will provide PacifiCorp three things. First, BPA will provide cash payments for the period from July 1, 2001, through September 30, 2001, pursuant to section 3(d) of the Settlement Agreement. Second, BPA will provide, beginning October 1, 2001, and continuing through September 30, 2006, cash payments under the Financial Settlement Agreement in lieu of firm power deliveries under the Settlement Agreement, plus Monetary Benefit payments under the Settlement Agreement. Third, BPA will provide, beginning October 1, 2006, firm power or Monetary Benefit payments, or both, pursuant to sections 4 and 5 of the Settlement Agreement. Similarly, PacifiCorp agrees that the cash payments, Firm Power or Monetary Benefits, or both, provided under the Settlement Agreement, and the cash payments provided under the Financial Settlement Agreement, satisfy BPA's obligations under section 5(c) of the Northwest Power Act during the period from July 1, 2001, through September 30, 2011. This provision incorporates the substitution of benefits under the Financial Settlement Agreement for the reduction of firm power deliveries under the Settlement Agreement into the satisfaction of BPA's section 5(c) obligation to PacifiCorp.

2. Invalidity

(a) Invalidity of the Settlement Agreement

The Parties have worked diligently to ensure that Amendment No. 1 and the Settlement Agreement are legally sound and will be effective for their respective terms. Some BPA customers, however, have been extremely litigious regarding the implementation of BPA's Power Subscription Strategy. Given this environment, an invalidity provision addresses the possibility, hopefully slight, that a challenge might render the agreements invalid. Section 3(b) of the Settlement Agreement is replaced by new language. This language provides that if the United States Court of Appeals for the Ninth Circuit finally determines that the Settlement Agreement (or payments under section 4 of the Settlement Agreement) is invalid, then PacifiCorp has two options. First, PacifiCorp can provide written notice to BPA within 30 calendar days that the cash payments provided under the Financial Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act for the period following the court's final determination through September 30, 2006. Second, if PacifiCorp provides no notice, BPA and PacifiCorp agree that the provisions of section 3(a), which establish the satisfaction of BPA's section 5(c) obligations, will be of no further force or effect.

A new section 3(b)(1) of the Settlement Agreement also provides that in the event of the court's above-noted final determination, the Parties intend that the cash payments pursuant to section 3(d) and the Monetary Benefits provided prior to the court's final determination should be retained by PacifiCorp, to the maximum extent permitted by law. Also, the satisfaction of BPA's obligations to PacifiCorp under section 5(c) of the Northwest Power Act prior to the court's final determination should be preserved, to the maximum extent permitted by law. This would avoid a difficult and complicated process of determining a new agreement and retroactively implementing changes to the benefits

for that period. Additional difficulties would lie in the ability of PacifiCorp and the state public utility commissions to implement such changes without creating potential economic harm to consumers. In addition, section 3(b)(1) provides that it is severable and would continue in effect in the event that any other provision of the Agreement was found invalid.

(b) Invalidity of the Financial Settlement Agreement

A new section 3(b)(2) of the Settlement Agreement provides that in the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that the Financial Settlement Agreement (or cash payments under the Financial Settlement Agreement) is invalid, then PacifiCorp has two options. First, PacifiCorp can provide written notice to BPA within 30 calendar days that the Monetary Benefits provided under section 4 of the Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act for the period following the court's final determination through September 30, 2006. Second, if PacifiCorp provides no notice, BPA and PacifiCorp agree that the provisions of section 3(a), which establish the satisfaction of BPA's section 5(c) obligations, will be of no further force or effect. Section 3(b)(2) also provides that in the event of the court's above-noted final determination, the Parties intend that the cash payments pursuant the Financial Settlement Agreement and the Monetary Benefits provided under the Settlement Agreement provided prior to such final determination will be retained by PacifiCorp, to the maximum extent permitted by law. Also, the satisfaction of BPA's obligations to PacifiCorp under section 5(c) of the Northwest Power Act prior to the court's final determination should be preserved, to the maximum extent permitted by law. As noted previously, this would avoid a difficult and complicated process of determining a new agreement and retroactively implementing changes to the benefits for that period. Also, additional difficulties would lie in the ability of PacifiCorp and the state public utility commissions to implement such changes without creating potential economic harm to consumers.

(c) Negotiation of New Agreement if this Agreement Held Invalid

Section 3(c) of the Settlement Agreement is replaced by new language. This language provides that if the Settlement Agreement (or section 4(a), section 4(c), or section 5 of that Agreement) is finally determined to be invalid and PacifiCorp does not notify BPA that the cash payments under Financial Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act as described in section 3(b)(1), then both Parties agree to negotiate in good faith a new, mutually acceptable agreement that would, until the end of its term, be in satisfaction of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act. The term of the new agreement would continue for the remaining term of the Settlement Agreement.

3. Settlement Benefits

A new section 4(a)(1) of the Settlement Agreement eliminates BPA's obligation to provide firm power to PacifiCorp during the period from October 1, 2001, through September 30, 2006. This section reduces BPA's obligation to purchase 251 annual average MW of firm power in the wholesale market for a period of five years. BPA has substituted an obligation to make cash payments under the Financial Settlement Agreement. Sections 4(b)(1)(A), 4(b)(1)(B), and 4(b)(1)(C), which related to firm power deliveries under the Settlement Agreement from October 1, 2001, through September 30, 2006, were deleted.

Section 4(a) of Exhibit A of the Settlement Agreement (Contract No. 01PB-12230) is amended to eliminate BPA's obligation to make firm power available to PacifiCorp under its Firm Block Power Sales Agreement during the period from October 1, 2001, through September 30, 2006.

4. Termination of Amendment No. 1

Section 3 of Amendment No. 1 provides that if BPA does not adopt the Partial Stipulation and Settlement Agreement in BPA's WP-02 Wholesale Power Rate proceeding, then PacifiCorp may, upon written notice to BPA prior to September 1, 2001, terminate both Amendment No. 1 and the Financial Settlement Agreement. This provision addresses PacifiCorp's concern that BPA's proposed wholesale power rates may not turn out consistent with a settlement agreement that BPA staff and many customers agreed to in BPA's Supplemental Proposal. In such case, PacifiCorp would not be willing to agree to the terms of Amendment No. 1 and the Financial Settlement Agreement.

II. FINANCIAL BENEFITS SETTLEMENT

The Northwest Power Act establishes a Residential Exchange Program to provide benefits to residential and small farm consumers of Pacific Northwest utilities. Also, BPA implements the REP through the offer, when requested, of a Residential Purchase and Sale Agreement. On October 31, 2000, BPA and PacifiCorp entered into Contract No. 01PB-12229 (the "Settlement Agreement"), which provides, among other things, for BPA to provide PacifiCorp with Firm Power and Monetary Benefits to settle the REP. The term of the Settlement Agreement continues through September 30, 2011. Since the execution of the Settlement Agreement, BPA and PacifiCorp have agreed that BPA will, rather than deliver firm power to PacifiCorp for the first 5 years of the Settlement Agreement, make cash payments to PacifiCorp during the period that begins October 1, 2001, and ends on September 30, 2006. The cash payments in lieu of firm power deliveries under the Settlement Agreement will be as provided for under the Financial Settlement Agreement. The Parties will also simultaneously execute an amendment to

the Settlement Agreement that removes BPA's obligation to deliver Firm Power during the first 5 years of the Settlement Agreement.

A number of issues arose during the negotiation of the Financial Benefits Agreement. The reasoning supporting the resolution of these issues is addressed below.

A. TERM

As noted previously, the intent of the Agreement is to provide PacifiCorp cash payments in lieu of firm power deliveries under the Settlement Agreement for the first five years of that agreement. Therefore, the Agreement takes effect on the date signed by the Parties. Performance of the Agreement begins on July 1, 2001, and continues through September 30, 2006, unless terminated prior to that date. Even though cash payments under the Agreement do not start until October 1, 2001, the parties recognized that PacifiCorp may start implementation of the passthrough requirements of the Agreement as early as July 1, 2001.

B. DEFINITIONS

The Parties agreed to certain defined terms in order to implement the Agreement. These terms are generally consistent with the defined terms in the Settlement Agreement.

C. SATISFACTION OF SECTION 5(c) OBLIGATIONS

1. Satisfaction of Section 5(c) Obligations

The purpose of the Agreement is to provide PacifiCorp with financial benefits in order to settle PacifiCorp's rights to participate in the REP during the period from October 1, 2001, through September 30, 2006. Part of the financial benefits are provided in lieu of power under the Settlement Agreement, and part of the financial benefits are the Monetary Benefits PacifiCorp receives under the Settlement Agreement. Therefore, the Agreement provides that BPA will provide PacifiCorp: (1) cash payments for that period (as discussed in greater detail below regarding section 4 of the Agreement); and (2) Monetary Benefit payments during that period under the Settlement Agreement, as amended. These payments will comprise full and complete satisfaction of all of BPA's obligations during the above-noted period under or arising out of the REP, which is established in section 5(c) of the Northwest Power Act. PacifiCorp, in turn, agrees that the foregoing payments and benefits provided under the Agreement and the Settlement Agreement satisfy all of BPA's obligations regarding the REP for the noted period.

2. Invalidity

The Parties have worked diligently to ensure that the Settlement Agreement and this Agreement are legally sound and will be effective for their respective terms. Some BPA customers, however, have been extremely litigious regarding the implementation of BPA's Power Subscription Strategy. Given this environment, an invalidity provision addresses the possibility, hopefully slight, that a challenge might render the agreements invalid. Section 3(b)(1) of the Agreement provides that in such an event, PacifiCorp can make an election. First, PacifiCorp can provide written notice to BPA within 30 days that the Monetary Benefits provided under the Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act during the period following the court's ruling through September 30, 2006. Alternatively, if PacifiCorp provides no notice, BPA and PacifiCorp agree that the provisions of section 3(a), which establish the satisfaction of BPA's section 5(c) obligations, will be of no further force or effect.

Section 3(b)(1) also provides that in the event of the court's above-noted final determination, the Parties intend that the cash payments pursuant to section 4, and the Monetary Benefits provided prior to the court's such final determination, should be retained by PacifiCorp, to the maximum extent permitted by law. Also, the satisfaction of BPA's obligations to PacifiCorp under section 5(c) of the Northwest Power Act prior to the court's final determination should be preserved, to the maximum extent permitted by law. This would avoid a difficult and complicated process of determining a new agreement and retroactively implementing changes to the benefits for that period. Additional difficulties would lie in the ability of PacifiCorp and the state public utility commissions to implement such changes without creating potential economic harm to consumers. In addition, section 3(b)(1) provides that it is severable and would continue in effect in the event that any other provision of the Agreement was found invalid.

Section 3(b)(2) of the Agreement addresses the potential invalidity of the Settlement Agreement. This provision is very similar to section 3(b)(1). In the event the court finally determined that the Settlement Agreement (or the payment of Monetary Benefits under the Settlement Agreement) was void, then PacifiCorp has two options. First, PacifiCorp could provide written notice to BPA within 30 calendar days that the cash payments provided under section 4 of this Agreement satisfy all of BPA's obligations under section 5(c) of the Northwest Power Act during the period following the court's final determination through September 30, 2006. Alternatively, if PacifiCorp provides no notice, BPA and PacifiCorp agree that the provisions of section 3(a) of the Agreement would be of no further force or effect. Section 3(b)(2) also includes the same provisions noted in the preceding paragraph.

Section 3(b)(3) of the Agreement provides that if the Agreement (or payment under section 4 of the Agreement) were finally determined to be unlawful, void, or unenforceable, and PacifiCorp did not notify BPA that the Monetary Benefits provided under the Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act as described in section 3(b)(1), then both Parties

agree to negotiate in good faith a new, mutually acceptable agreement that would, until the end of its term, be in satisfaction of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act. The term of such new agreement would continue for the remaining term of the Agreement.

D. CASH PAYMENTS

BPA has negotiated cash payments to PacifiCorp for two different time periods. During the first year of the Agreement, from October 1, 2001, through September 30, 2002, BPA has negotiated a cash payment based on two different principles. Under the first principle, PacifiCorp has agreed to reduce BPA's obligation to deliver firm power by 10% (or 25 annual aMW) in exchange for a cash payment of $20 per MWh. This payment is substantially below the market value for a one-year purchase of firm power from the wholesale market and represents PacifiCorp's contribution to the regional effort to reduce BPA's wholesale rate increase. This reduced payment is contingent on BPA's other customers contributing to the regional effort as further described below in the section on load reduction contingency. If the contingencies in the load reduction provisions occur, this payment will increase to $38 per MWh.

The balance of the first year payment for the remaining 226 annual aMW of firm power and the payments for the remaining four years for 251 annual aMW is based on a cash payment of either $38 or $45.49 per MWh depending on the results of settlement discussions among PacifiCorp and BPA's public agency customers. This payment reflects the value to BPA of avoiding a purchase of wholesale firm power for a five-year period.

During the one-month period of negotiation of this Agreement, the market price for five-year purchases of firm power has varied between $100 per MWh and $75 per MWh, reflecting the current high and volatile market prices. If BPA had supplied firm power to PacifiCorp, BPA forecasts that the rate paid by PacifiCorp would average between $28-$38 per MWh depending on market prices and assumptions made about BPA's success in reducing its wholesale rates through the current regional effort. BPA believes that the payment to PacifiCorp is a reasonable payment by BPA to avoid a purchase in the wholesale market and a subsequent sale by BPA to PacifiCorp.

A number of BPA's customers have filed legal challenges of BPA's Settlement Agreements with investor-owned utilities. PacifiCorp has agreed in this Financial Settlement Agreement that it will agree to a reduction in its cash payment to $38 per MWh if any of BPA's publicly-owned and cooperative customers enter into a settlement agreement regarding challenges to the BPA actions that provide benefits to the residential and small farm customers of PacifiCorp. PacifiCorp may choose which customers and which claims it will settle, but agrees to reduce the cash payments from BPA if it settles any claim with any publicly-owned or cooperative customer to any of the following: (1) the Settlement Agreement; (2) this Agreement; (3) the Residential Purchase and Sale Agreement Record of Decision (ROD); (4) the Power Subscription Strategy RODs,

including the Residential Exchange Program Settlement ROD; and (5) the application of the 7(b)(2) surcharge to BPA's WP-02 rates.

1. Cash Payment Adjustments Due to Application of Safety Net Cost Recovery Adjustment Clause (SN CRAC) and Dividend Distribution Clause (DDC) to BPA Firm Power Sales

BPA has negotiated one exception to the cash payment it makes to PacifiCorp under this Agreement. BPA's wholesale power rates include an SN CRAC. The SN CRAC is designed to ensure that BPA can cover its costs as soon as possible if BPA fails to meet one of its Treasury payments. If BPA is in a situation where it must impose the SN CRAC under its wholesale power rates, BPA will reduce its monthly payments to PacifiCorp under this Agreement. BPA's monthly payments would be reduced in the same amount as the increase in rates to BPA's preference customers under the SN CRAC for the amount of firm power that BPA has converted to cash payments under the Agreement. This provision ensures that PacifiCorp's residential and small farm customers share in the resolution of any emergency that threatens BPA's ability to recover its costs.

BPA's wholesale rates also include a DDC. The DDC is designed to return money to BPA's wholesale power customers if market and other conditions result in BPA's cash reserves reaching certain levels. BPA has agreed that it will make an offsetting adjustment to PacifiCorp's monthly payments if BPA has made payments to its firm power customers under the DDC. These increased payments are only made after DDC payments made to firm power customers and are limited to the amount of any reduction in payments due to imposition of the SN CRAC.

(a) Adjustment to Cash Payments Resulting from SN CRAC and SN CRAC Balancing Account

This section of the Agreement calculates the reduction in the monthly payment to PacifiCorp under the Agreement in the event that BPA imposes an SN CRAC on its firm power customers. BPA records the amount of any such reductions in an SN CRAC Account.

(b) DDC Balancing Account

This section determines if BPA has made DDC payments to its firm power customers. BPA records the amount it would have paid a preference customer for 226 aMW of power in Contract Year 2002 and 251 aMW in each year of Contract Years 2003-2006. BPA records such amount in a DDC Account.

(c) Adjustment to Cash Payments Resulting from Amounts in SN CRAC Account and DDC Account

There are three situations where BPA increases the monthly payment to PacifiCorp to reflect reduced payments from imposition of an SN CRAC. The first situation occurs when BPA has imposed an SN CRAC and then makes a DDC payment at a later date. BPA has agreed that it will increase the cash payment under this Agreement within nine months of the first DDC payment for a period of six months. The increased payments are designed to return any reduction in payments recorded in the SN CRAC account up to the amounts recorded in the DDC Account.

The second situation occurs when BPA imposes an SN CRAC after BPA has made DDC payments at an earlier date. BPA has agreed that it will increase the cash payment under this Agreement within nine months of the SN CRAC reduction for a period of six months. The increased payments are designed to return any reduction in payments recorded in the SN CRAC Account up to the amounts recorded in the DDC Account.

The third situation occurs when BPA has increased PacifiCorp's payment for a six-month period. BPA agrees to increase the monthly payments for the next six month period as necessary to bring the balance in the SN CRAC Account or the DDC Account to zero, whichever is smaller. BPA agrees that it will make payments for the remainder of any six-month period that extends beyond the end of the Agreement, if necessary.

2. Payment Provisions

This section of the Agreement provides that BPA will pay PacifiCorp the monthly cash payments as determined in sections 4(a), 4(b), and 4(c) within 30 days of the end of the calendar month for which cash payments are due (Due Date). After the Due Date, a late payment charge is calculated at a prescribed rate. This section also provides that BPA will pay by electronic funds transfer using PacifiCorp's established procedures.

3. Load Reduction Contingency

When BPA proposed that its customers all contribute to BPA's rate reduction efforts, a number of customers and other interested stakeholders requested that BPA include a provision that ensured that any single customer would not be the only customer modifying its contract to reduce its obligation on BPA. BPA agreed to include a load reduction contingency provision that operated to terminate the customer's obligation to BPA if certain contingencies occurred. BPA has offered to include this provision in all of its rate reduction contracts where customers are taking actions that are valued below their market value. Under the Financial Settlement Agreement, BPA's payment to PacifiCorp will increase from $20 to $38 per MWh if any of the contingencies occur on the effective date for the particular contingency. These contingency provisions only apply to payments during the period from October 1, 2001, until September 30, 2002. Any

contingencies that are effective after that date will have no effect on payments to PacifiCorp.

The first contingency is whether BPA adopts the proposed rate case settlement entered into by the Joint Customer Group and BPA staff. If the Administrator elects to not adopt that settlement in his final decisions in Docket No. WP-02, the load reduction contingency occurs and the payments to PacifiCorp will increase effective October 1, 2001. Under such settlement proposal, BPA would implement a Load Based Cost Recovery Adjustment Clause (LB CRAC) that assumes that BPA will purchase from the wholesale market any remaining amounts of power needed to augment BPA's system to serve its Subscription obligations.

The second contingency is whether BPA achieves a sufficient amount of rate reduction agreements with its public agency, investor-owned utility and direct service industrial customers during the first six-month period of the LB CRAC calculation. The second contingency measures the amount of purchases BPA makes from the market in the LB CRAC calculation excluding purchases from BPA's public agency, investor-owned utility and direct service industrial customers during the period from April 10, 2001, through the calculation of the LB CRAC in late June. If BPA does not achieve approximately 1450 aMW over the initial six-month period in reductions of market purchases, the load reduction contingency occurs and payments to PacifiCorp will increase effective on October 1. This provision assures any individual customer that they are not the only customer participating.

The third contingency is whether BPA achieves a sufficient amount of rate reduction agreements with its public agency, investor-owned utility and direct service industrial customers during the second six-month period of the LB CRAC calculation. The third contingency measures the amount of purchases BPA makes from the market in the LB CRAC calculation excluding purchases from BPA's public agency, investor-owned utility and direct service industrial customers during the period from April 10, 2001, through the calculation of the LB CRAC in late June and extensions of purchases with such customers entered into prior to April 10, 2001. If BPA does not achieve approximately 1250 aMW over the second six-month period in reductions of market purchases, the load reduction contingency occurs and payments to PacifiCorp will increase effective on April 1. This provision assures any individual customer that they are not the only customer participating during this period.

The fourth contingency measures the end of the load reduction emergency by examining the amount of direct service industrial load BPA forecasts to serve in its calculation of the LB CRAC. If the forecast amount of direct service industrial load exceeds 400 aMW per month over the six month period of a LB CRAC calculation, the load reduction contingency occurs and payments to PacifiCorp will increase at the start of the six month period included in the calculation of the LB CRAC.

The fifth contingency measures the end of the load reduction emergency by examining the actual amount of direct service industrial load served by BPA. Once BPA starts

serving more than 400 aMW per month during any six-month period, the load reduction contingency occurs and payments to PacifiCorp will increase at the start of the month following the determination.

4. No Other Adjustments to Cash Payments

Section 4(f) of the Agreement clarifies that except as provided in sections 4(a), 4(b), 4(c), and 4(e), there are no other adjustments to the cash payment amounts under the Agreement.

E. PASSTHROUGH OF BENEFITS

Section 5(c)(3) of the Northwest Power Act provides that the benefits of the REP are to be passed through directly to a utility's residential loads within a State. 16 U.S.C. § 839c(c)(3). Similarly, the Parties provide that the benefits from the Settlement Agreement and the Agreement be passed through in such a manner. Section 5 of the Agreement therefore provides that, except as otherwise provided in the Agreement, cash payment amounts received by PacifiCorp from BPA under the Agreement must be passed through, in full, to each residential and small farm consumer, as either (1) monetary payments, or (2) as otherwise directed by the applicable State regulatory authority. BPA has audit rights, as provided in section 6 of the Agreement to ensure that, even if benefits are passed through as directed by the applicable state regulatory authority, BPA can require that benefits only be passed through to eligible Residential Load. Section 5(b) of the Agreement ensures that cash benefits under the Agreement must be distributed to PacifiCorp's Residential Load in a timely manner. This is accomplished by providing that the amount of benefits held in an account will not exceed the expected receipt of monetary payments from BPA under the Agreement over the next 180 days. If the annual monetary payment is less than $600,000, section 5(b) permits PacifiCorp to distribute benefits on a less frequent basis provided that distributions are made at least once each contract year. Section 5(c) of the Agreement provides that the benefits will be passed through consistent with procedures developed by PacifiCorp's State regulatory authority(s). Cash payments under the Agreement will be identified on PacifiCorp's books of account in order that such benefits can be easily tracked. In addition, funds will be held in an interest bearing account, and will be maintained as restricted funds, unavailable for the operating or working capital needs of PacifiCorp. Also, benefits will not be pooled with other monies of PacifiCorp for short-term investment purposes. These provisions ensure that benefits will be provided only to PacifiCorp's residential and small farm consumers. Section 5(d) provides that cash benefits under this Agreement can be used for the buydown of residential and small farm loads. This allows PacifiCorp's residential and small farm consumers to receive the benefits of the Settlement and also allows PacifiCorp to assist the region in reducing its market purchases that lead to higher rates.

F. AUDIT RIGHTS

Section 6 of the Agreement establishes audit rights that are virtual identical to the audit rights in the Settlement Agreement. Basically, BPA retains the right to audit PacifiCorp at BPA's expense to determine whether the benefits provided to PacifiCorp under the Agreement were provided only to PacifiCorp's eligible Residential Load. BPA retains the right to take action consistent with the results of the audit to require the passthrough of benefits to eligible Residential Load. BPA's right to conduct audits of PacifiCorp with respect to a Contract Year expires 60 months after the end of the Contract Year. As long as BPA has the right to audit PacifiCorp under the Agreement, PacifiCorp will maintain all relevant records.

G. ASSIGNMENT

Section 7 of the Agreement addresses the assignment of the benefits of the Agreement. This section reflects the need for flexibility in the provision of benefits to PacifiCorp's residential and small farm customers in light of the uncertainty of the energy industry regarding deregulation or other efforts that could restructure state retail electric service. These provisions are virtually identical to the assignment provisions in the Settlement Agreement. Section 7(a) requires PacifiCorp to assign benefits to BPA if a Qualified Entity serves Residential Load formerly served by PacifiCorp (unless BPA has approved an agency agreement for such Qualified Entity), or BPA has approved a state program for the passthrough of benefits by a distribution utility.

Section 7(b) of the Agreement provides that the Agreement is binding on any successors and assigns of the Parties, but that neither Party may otherwise transfer or assign this Agreement without the other Party's written consent. Such consent cannot be unreasonably withheld, provided that PacifiCorp agrees it will assign benefits under this Agreement subject to the following terms and conditions: (1) PacifiCorp will quantify an amount of Residential Load each month served by Qualified Entities that would have been eligible to receive benefits if served by PacifiCorp, and provide written notice of such amount to BPA; (2) PacifiCorp will assign to BPA during the month following such notice a share of the total benefits, whether or not PacifiCorp continues to serve such Residential Load. The Residential Load of PacifiCorp will not include Residential Load receiving benefits over a new distribution system; (3) If the passthrough of benefits is made to consumers with PacifiCorp acting as agent, then PacifiCorp will retain the cash payments assigned to BPA and use such cash payments to provide benefits to individual residential and small farm consumers.

Section 7(c) of the Agreement provides that PacifiCorp may continue to pass through benefits to individual residential and small farm consumers under this Agreement not served by PacifiCorp if (i) PacifiCorp is acting as the agent under an agreement entered into between PacifiCorp and a Qualified Entity which has been approved by PacifiCorp's applicable state regulatory authority and BPA; or (ii) BPA has approved a program developed by the applicable state regulatory authority providing for the passthrough of

benefits received by PacifiCorp under the Agreement to all its residential and small farm consumers acting in its capacity as a distribution utility.

Section 7(d) of the Agreement provides that if a Qualified Entity eligible to purchase firm power under section 5(b) of the Northwest Power Act acquires all or a portion of the distribution system serving the Residential Load of PacifiCorp, PacifiCorp will assign a share of the total benefits to BPA for the remaining term of the Agreement.

H. CONSERVATION AND RENEWABLES DISCOUNT

The rates contained in BPA's May Proposal include a Conservation and Renewables Discount (C&R Discount). The C&R Discount is designed to encourage the development of conservation and renewable energy resources. Section 8 of the Agreement addresses how the C&R Discount will apply to the cash benefits provided to PacifiCorp. Subject to the terms specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, BPA will pay PacifiCorp an amount equal to the C&R Discount for 251 aMW for each Contract Year during the October 1, 2001, through September 30, 2006, period, unless PacifiCorp has notified BPA's Power Business Line (PBL) before August 1, 2001, that it will not participate in the C&R Discount. This is to ensure that PacifiCorp's residential and small farm consumers will retain the benefits they would have received if PacifiCorp had provided power benefits instead of cash benefits. Where PacifiCorp is willing to assist BPA's rate mitigation efforts by receiving cash benefits instead of power, PacifiCorp should not be penalized for such actions.

To retain the full amount of the C&R Discount, PacifiCorp must satisfy all obligations associated with the C&R Discount as specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, and the C&R Discount implementation manual. PacifiCorp will reimburse BPA for any amount it received but for which it did not satisfy such obligations.

I. GOVERNING LAW AND DISPUTE RESOLUTION

Section 9 of the Agreement addresses the law governing the Agreement and the manner in which disputes under the Agreement will be resolved. This section is virtually identical to the governing law and dispute resolution section of the Settlement Agreement. In summary, the Agreement will be interpreted consistent with and governed by Federal law. Final actions subject to section 9(e) of the Northwest Power Act are not subject to binding arbitration and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals. Any dispute regarding any rights of the Parties under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. Other contract disputes or contract issues between the Parties arising out of this Agreement will be subject to binding arbitration. The Parties will make a good faith effort to resolve such disputes before initiating arbitration proceedings. During arbitration, the Parties will continue performance under

this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.

J. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CUSTOMERS

Section 10 of the Agreement provides that PacifiCorp will ensure that any entity that issues customer bills to PacifiCorp's residential and small farm consumers will provide written notice on such customer bills that their benefits are "Federal Columbia River Benefits supplied by BPA."

K. STANDARD PROVISIONS

Section 11 of the Agreement includes a number of standard contract provisions. These provisions are virtually identical to those in the Settlement Agreement. These provisions include a requirement for a written instrument to amend the Agreement; conditions governing the exchange of information and the confidentiality of such information; a provision that Agreement constitutes the entire agreement between the Parties; a provision that incorporates the exhibits into the Agreement by reference; a provision that no other person is a direct or indirect legal beneficiary of, or has any direct or indirect cause of action or claim in connection with the Agreement; and a provision providing that any waiver at any time by either Party to the Agreement of its rights under the Agreement will with respect to any default or any other matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.

L. TERMINATION OF AGREEMENT

Section 12 of the Agreement address termination of the Agreement. Basically, if BPA does not adopt the Partial Stipulation and Settlement Agreement in the WP-02 Wholesale Power Rate proceeding, then PacifiCorp may, prior to September 1, 2001, and upon written notice to BPA, terminate the Agreement and Amendment No. 1 to the Settlement Agreement.

M. SIGNATURES

Section 13 provides that each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party for whom he or she signs.

CONCLUSION

The BPA Administrator has delegated the authority to execute Amendment No. 1 to the Settlement Agreement, and the Financial Settlement Agreement, to the BPA Account Executives for the respective investor-owned utilities. I have reviewed and evaluated the record compiled by BPA on the foregoing issues regarding BPA's Amendment No. 1 to the Settlement Agreement, and the Financial Settlement Agreement. Based upon the record compiled in this proceeding, the decisions expressed herein, and all requirements of law, I hereby adopt Amendment No. 1 to the Settlement Agreement, and the Financial Settlement Agreement. The evaluations and decisions used in the development of Amendment No. 1 to the Settlement Agreement, and the Financial Settlement Agreement, are consistent with the environmental analysis conducted for BPA's 1998 Power Subscription Strategy, BPA's Power Subscription Strategy NEPA ROD, BPA's Business Plan EIS and BPA's Business Plan ROD.

Issued at Portland, Oregon, this 23rd day of May, 2001.

Mark E. Gaile

Account Executive

7

Insley, Gary - PTS-5

From: Hanlon, Doug - PTS-5
Sent: Thursday, May 24, 2001 10:17 AM
To: Klippstein, Janet - PTS-5
Cc: Insley, Gary - PTS-5
Subject: PACIFICORP AGREEMENTS

10854.doc 12229aa1.doc

Janet -- Here they are.

Contract No. 01PB-10854

FINANCIAL SETTLEMENT AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
PACIFICORP

Table of Contents

Section		Page
1.	Term	2
2.	Definitions	2
3.	Satisfaction of Section 5(c) Obligations	3
4.	Cash Payments	5
5.	Passthrough of Benefits	9
6.	Audit Rights	10
7.	Assignment	10
8.	Conservation and Renewable Discount	12
9.	Governing Law and Dispute Resolution	12
10.	Notice Provided to Residential and Small Farm Customers	13
11.	Standard Provisions	14
12.	Termination of Agreement	15
13.	Signatures	15

Exhibit A Residential Load Definition

This FINANCIAL SETTLEMENT AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and PACIFICORP (PacifiCorp). PacifiCorp is a corporation organized under the laws of the State of Oregon. BPA and PacifiCorp are sometimes referred to in the singular as "Party" or in the plural as "Parties."

RECITALS

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

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

On October 31, 2000, BPA and PacifiCorp entered into Contract No. 01PB-12229 (the "Settlement Agreement"), which provides, among other things, for BPA to provide PacifiCorp with Firm Power and Monetary Benefits to settle the Residential Exchange Program.

The term of the Settlement Agreement continues through September 30, 2011.

Since the execution of the Settlement Agreement, BPA and PacifiCorp have agreed that BPA will, rather than deliver Firm Power to PacifiCorp for the first 5 years of the Settlement Agreement, make cash payments to PacifiCorp during the period that begins October 1, 2001, and ends on September 30, 2006. BPA plans to use the Firm Power not sold to PacifiCorp to meet deficits in resources necessary to meet loads of publicly owned and cooperative customers in its firm load obligations in the Pacific Northwest.

The cash payments in lieu of Firm Power deliveries under the Settlement Agreement will be as provided for under this Agreement.

The Parties will also simultaneously execute an amendment to the Settlement Agreement that removes BPA's obligation to deliver Firm Power during the first 5 years of the Settlement Agreement.

The Parties agree:

1. TERM

This Agreement takes effect on the date signed by the Parties. Performance of this Agreement by the Parties shall begin on July 1, 2001, and shall continue through September 30, 2006 (Expiration Date), unless terminated earlier pursuant to section 12 below.

2. DEFINITIONS

Capitalized terms not defined below shall be as defined in the Settlement Agreement or the WP-02 General Rate Schedule Provisions.

(a) "Contract Year" means each period during the term of this Agreement that begins each October 1 and which ends the following September 30. For instance, Contract Year 2002 begins October 1, 2001, and continues through September 30, 2002.

(b) "Lowest PF Rate" means the lowest applicable cost-based power rate provided under the applicable PF rate schedule as applied to purchases of

Firm Power at 100 percent annual load factor by BPA's preference customers. The applicable power rate shall be the PF rate for the same period as the adjustment to monthly cash payments or credit to balancing accounts under this Agreement.

(c) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501.

(d) "Qualified Entity" means an entity authorized under state law or by order of the applicable state regulatory authority to serve all or a portion of PacifiCorp's Residential Load.

(e) "Residential Exchange Program" means the program established under section 5(c) of the Northwest Power Act.

(f) "Residential Load" means the load eligible to receive benefits under this Agreement, as such load is defined in Exhibit A.

(g) "Residential Purchase and Sale Agreement," or "RPSA," means an agreement between BPA and a Pacific Northwest utility that implements the Residential Exchange Program.

3. SATISFACTION OF SECTION 5(c) OBLIGATIONS

(a) **Satisfaction of Section 5(c) Obligations**
BPA shall, in full and complete satisfaction of all of its obligations during the period from October 1, 2001, through September 30, 2006, under or arising out of section 5(c) of the Northwest Power Act, provide to PacifiCorp:
(1) cash payments for the period that begins October 1, 2001, and ends on September 30, 2006, pursuant to section 4 of this Agreement; and
(2) Monetary Benefit payments during such period under the Settlement Agreement, as amended. PacifiCorp agrees that the cash payments provided under this Agreement and the Monetary Benefits provided under the Settlement Agreement satisfy all of BPA's obligations during the period from October 1, 2001, through September 30, 2006, under or arising out of section 5(c) of the Northwest Power Act.

(b) **Invalidity**

(1) **Invalidity of this Agreement**
In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that this Agreement (or payments under section 4 of this Agreement) is unlawful, void, or unenforceable, then: (A) PacifiCorp may provide written notice to BPA within 30 calendar days that the Monetary Benefits provided under the Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act during the period following such final determination

through September 30, 2006; or if no such notice is provided, (B) the Parties hereby agree that the provisions of section 3(a) above shall be of no further force or effect. In the event of the court's final determination, the Parties intend and agree that: (1) the cash payments pursuant to section 4 and the Monetary Benefits provided prior to such final determination shall be retained by PacifiCorp; and (2) the satisfaction of BPA's obligations to PacifiCorp under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law. This section 3(b)(1) shall survive notwithstanding any determination that any other provision of this Agreement is unlawful, void, or unenforceable.

(2) **Invalidity of the Settlement Agreement**
In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that the Settlement Agreement (or payment of Monetary Benefits under the Settlement Agreement) is unlawful, void, or unenforceable, then: (A) PacifiCorp may provide written notice to BPA within 30 calendar days that the cash payments provided under section 4 of this Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act during the period following such final determination through September 30, 2006; or if no such notice is provided, (B) the Parties hereby agree that the provisions of section 3(a) above shall be of no further force or effect. In the event of the court's final determination, the Parties intend and agree that: (1) the cash payments pursuant to section 4 of this Agreement and the Monetary Benefits provided under the Settlement Agreement provided prior to such final determination shall be retained by PacifiCorp; and (2) the satisfaction of BPA's obligations to PacifiCorp under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law.

(c) **Negotiation of New Agreement if this Agreement Held Invalid**
If this Agreement (or payment under section 4 of this Agreement) is finally determined to be unlawful, void, or unenforceable and PacifiCorp does not notify BPA that the Monetary Benefits provided under the Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act as described in section 3(b)(1) above, then both Parties agree to negotiate in good faith a new, mutually acceptable agreement that would, until the end of its term, be in satisfaction of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act. The term of such new agreement would continue for the remaining term of this Agreement.

4. CASH PAYMENTS

BPA shall make monthly cash payments to PacifiCorp as follows:

(a) **October 1, 2001, through September 30, 2002**

During the period that begins October 1, 2001, and continues through September 30, 2002, BPA shall pay PacifiCorp monthly amounts equal to:

Payment Type	Monthly Amount ($)
Total Payment	$6,634,240*/

*/If it is determined that one or more load reduction contingency provisions under sections 4(e)(1), 4(e)(2), 4(e)(3), 4(e)(4), and 4(e)(5) have occurred, then this total monthly payment shall be increased to $6,962,740 on the earliest date specified in an applicable section.

(b) **October 1, 2002, through September 30, 2006**

During the period that begins October 1, 2002, and continues through September 30, 2006, BPA shall pay PacifiCorp monthly amounts equal to:

Payment Type	Monthly Amount ($)
Base Payment	$8,644,058 1/
Reduction of Risk Discount	$1,681,318
Net Payment:	$6,962,740 2/

1/This amount shall be equal to $8,667,740 during a leap year.
2/If, by December 1, 2001, PacifiCorp has entered into a settlement agreement with any of BPA's publicly-owned utility and cooperative customers that waives and dismisses legal challenges to any of the following: (1) the Settlement Agreement; (2) this Agreement; (3) the Residential Purchase and Sale Agreement Record of Decision (ROD); (4) the Power Subscription Strategy RODs, including the Residential Exchange Program Settlement ROD; and (5) the application of the 7(b)(2) surcharge to BPA's WP-02 rates, then this payment shall be reduced to $6,962,740 ($6,981,876 during a leap year).

(c) **Cash Payment Adjustments Due to Application of Safety-Net Cost Recovery Adjustment Clause (SN CRAC) and Dividend Distribution Clause (DDC) to BPA Firm Power Sales**

(1) **Adjustment to Cash Payments Resulting from SN CRAC and SN CRAC Balancing Account**

In the event of imposition of the SN CRAC to BPA's firm power sales, BPA shall reduce the monthly payment to PacifiCorp in section 4(a) or section 4(b) above by an amount equal to the hours in the month times the mills/kilowatthour (kWh) increase in the Lowest PF Rate at 100 percent load factor above the maximum millage amount allowed for the Lowest PF Rate for such month under the Financial-Based CRAC, times 226 average megawatts (aMW) in Contract Year 2002 and 251 aMW in each year of Contract Years 2003-2006. BPA shall record the amounts of reduction in such monthly payments in a SN CRAC balancing account (the "SN CRAC Account").

(2) **DDC Balancing Account**
If BPA makes a monthly DDC payment as established in the WP-02 rate case, BPA shall calculate the amount BPA would have paid to a purchaser of 226 aMW of power in Contract Year 2002 and 251 aMW in each year of Contract Years 2003-2006 at the Lowest PF Rate at 100 percent load factor. BPA shall record each such monthly amount in a DDC balancing account (the "DDC Account").

(3) **Adjustment to Cash Payments Resulting from Amounts in SN CRAC Account and DDC Account**

(A) If there is an existing balance in the SN CRAC Account at the time BPA makes an addition to the DDC Account, BPA shall, within 9 months of the initial addition to the DDC Account, increase the monthly payment to PacifiCorp in section 4(b) above for a period of six months in an amount equal to one-sixth of the lesser of the balance in the SN CRAC Account or the projected balance of the DDC Account at the end of the six-month period, assuming no payments under this section are considered when calculating the projected balance. BPA shall record the amounts of such increases in monthly payments as reductions to the balances of the SN CRAC Account and the DDC Account.

(B) If there is no balance in the SN CRAC Account at the time BPA makes an addition to the DDC Account, BPA shall, within 9 months of an initial addition to the SN CRAC Account, increase the monthly payment to PacifiCorp in section 4(b) above for a period of six months in an amount equal to one sixth of the lesser of the projected balance in the SN CRAC Account at the end of the six-month period or the projected balance of the DDC Account at the end of the six-month period, assuming no payments under this section are considered when calculating the projected balance. BPA shall record the amounts of such increases in monthly payments as reductions to the balances of the SN CRAC Account and the DDC Account.

(C) Following any six-month period where BPA adjusts the monthly payment to PacifiCorp under section 4(c)(3)(A), 4(c)(3)(B), or this section 4(c)(3)(C), BPA shall increase the monthly payment to PacifiCorp for the next six months in an amount equal to one-sixth of the lesser of the projected balance in the SN CRAC Account, if any, at the end of such six-month period, or the projected balance of the DDC Account, if any, at the end of such six-month period, assuming no payments under this section are considered when calculating the projected balance. BPA shall record the amounts of such

increases in monthly payments as reductions to the balances of the SN CRAC Account and the DDC Account.

(D) If there are fewer than six months remaining in the rate period from a date on which BPA increases monthly payments to PacifiCorp as a result of an addition to the DDC Account, then the amount of such monthly increase shall continue to be paid in monthly installments after September 30, 2006, until the six monthly payments are completed and the balance in either the DDC Account or SN CRAC Account is zero.

(d) **Payment Provisions**

BPA shall pay "PacifiCorp" the monthly cash payments as determined in sections 4(a), 4(b) and 4(c). BPA shall pay PacifiCorp within 30 days of the end of the calendar month for which cash payments are due (Due Date). After the Due Date, a late payment charge is calculated at a daily, simple interest rate determined by dividing the Prime Rate for Large Banks, as reported in the Wall Street Journal, plus 4 percent, by 365. The applicable Prime Rate for Large Banks shall be the rate reported on the first day of the month in which payment was received. BPA shall pay by electronic funds transfer using PacifiCorp's established procedures.

(e) **Load Reduction Contingency**

(1) As of the execution date of this Agreement, the BPA Administrator has not issued any final rate decisions in Docket No. WP-02. In the event that the Load-Based Cost Recovery Clause (LB CRAC), materially consistent with the Joint Customer Group and BPA staff proposal is not adopted in the Administrator's Final Supplemental Record of Decision, the load reduction contingency in this section 4(e)(1) has occurred and the payments under section 4(a) of this Agreement will increase effective October 1, 2001.

(2) If, in calculating the LB CRAC (excluding true-ups) applicable for the period October 1, 2001, through March 31, 2002, pursuant to section F(1) of the General Rate Schedule Provisions (GRSPs), BPA is able to meet either: criterion (A) below (through contracts executed no later than 7 calendar days prior to the final workshop explaining the calculation of the LB CRAC for the period from October 1, 2001, through March 31, 2002), or criterion (B) below, then the load reduction contingency has not occurred and the payments under section 4(a) of this Agreement will not increase. If BPA is unable to meet both criterion (A) and criterion (B) below, then the load reduction contingency has occurred and the payments under section 4(a) of this Agreement will increase October 1, 2001.

(A) BPA includes in the calculation of the LB CRAC (excluding true-ups) no more than 2,200 aMW (including all purchases

made by BPA prior to April 10, 2001), per month of market power purchases for meeting LB CRAC augmentation on average for the period October 1, 2001, to March 31, 2002, where market power purchases for purposes of calculating the application of this contingency clause do not include (i) power buy-backs of public agency and cooperative customers, investor-owned utilities (IOUs), or direct service industrial customers (DSIs); or, (ii) power purchases from public agency and cooperative customers, IOUs, or DSIs to the extent such buy-backs and purchases were executed between April 10, 2001, and the final date for execution of contracts used in the calculation of the LB CRAC for the period from October 1, 2001, through March 31, 2002.

(B) The rate after application of the LB CRAC (excluding all true-ups) is no more than 1.87 times the PF, RL, and IP-TAC rates.

In the event that contracts executed between April 10, 2001, and the final date for execution of contracts used in the calculation of the LB CRAC (excluding true-ups) for the period from October 1, 2001, through March 31, 2002, exceed the amount necessary to reduce market power purchases below 2,200 aMW per month in criterion 1, such additional load reductions shall be used to reduce the level of the LB CRAC.

(3) If, in calculating the LB CRAC (excluding true-ups) applicable for the period April 1, 2002, through September 30, 2002, pursuant to section F(1) of the General Rate Schedule Provisions (GRSPs), BPA is able to meet either: criterion (A) below (through contracts executed no later than 7 calendar days prior to the final workshop explaining the calculation of the LB CRAC for the period from October 1, 2001, through March 31, 2002), or criterion (B) below, then the load reduction contingency has not occurred and the payments under section 4(a) of this Agreement will not increase. If BPA is unable to meet both criterion (A) and criterion (B) below, then the load reduction contingency has occurred and the payments under section 4(a) of this Agreement will increase effective April 1, 2002.

(A) BPA includes in the calculation of the LB CRAC (excluding true-ups) no more than 2,200 aMW (including all purchases made by BPA prior to April 10, 2001), per month of market power purchases for meeting LB CRAC augmentation on average for the period April 1, 2002, to September 30, 2002, where market power purchases for purposes of calculating the application of this contingency clause do not include (i) power buy-backs of public agency and cooperative customers, IOUs, or DSIs; or, (ii) power purchases from public agency and cooperative customers, IOUs, or DSIs to the extent such

buy-backs and purchases were executed between April 10, 2001, and the final date for execution of contracts used in the calculation of the LB CRAC for the period from October 1, 2001, through March 31, 2002, or are extensions of such buy-backs or purchases that were executed prior to April 10, 2001, and are extended prior to calculation of the LB CRAC for the period from April 1, 2002, through September 30, 2002.

(B) The rate after application of the LB CRAC (excluding all true-ups) is no more than 1.87 times the PF, RL, and IP-TAC rates.

In the event that contracts executed between April 10, 2001, and the final date for execution of contracts used in the calculation of the LB CRAC (excluding true-ups) for the period from October 1, 2001, through March 31, 2002, or extensions of buy-backs or purchases that were executed prior to April 10, 2001, and are extended prior to calculation of the LB CRAC for the period from April 1, 2002, through September 30, 2002, exceed the amount necessary to reduce market power purchases below 2,200 aMW per month in criterion 1, such additional load reductions shall be used to reduce the level of the LB CRAC.

(4) If, during the period October 1, 2001, through September 30, 2002, the amount of power forecast to be delivered by BPA to the DSIs in the calculation of the LB CRAC (excluding true-ups) exceeds 400 aMW per month on average for any six month period used in calculating the LB CRAC, then the load reduction contingency has occurred and the payments under section 4(a) of this Agreement will increase effective on the first day of such six month period used in the calculation of the LB CRAC.

(5) If the amount of power actually delivered to the DSIs exceeds 400 aMW per month on average for any six month period as determined by BPA through written notice to its customers or during the true-up of the LB CRAC, then the payments under section 4(a) of this Agreement will increase effective on the first day of the month following such determination.

(f) **No Other Adjustments to Cash Payments**
Except as provided for in sections 4(a), 4(b), 4(c), and 4(e) above, there shall be no other adjustments to the cash payment amounts under this Agreement.

5. PASSTHROUGH OF BENEFITS

(a) Except as otherwise provided in this Agreement, cash payment amounts received by PacifiCorp from BPA under this Agreement shall be passed through, in full, to each residential and small farm consumer, as either:

(1) cash payments; or (2) as otherwise directed by the applicable State regulatory authority.

(b) Cash payments shall be distributed to the Residential Load in a timely manner, as set forth in this section 5(b). The amount of benefits held in the account described in section 5(c) below at any time shall not exceed the expected receipt of cash payments from BPA under this Agreement over the next 180 days. If the annual monetary payment is less than $600,000, then PacifiCorp may distribute benefits on a less frequent basis provided that distributions are made at least once each Contract Year.

(c) Benefits shall be passed through consistent with procedures developed by PacifiCorp's State regulatory authority(s). Cash payments under this Agreement shall be identified on PacifiCorp's books of account. Funds shall be held in an interest bearing account, and shall be maintained as restricted funds, unavailable for the operating or working capital needs of PacifiCorp. Benefits shall not be pooled with other monies of PacifiCorp for short-term investment purposes.

(d) Cash payments may be passed through to residential and small consumers that curtail Residential Load but would otherwise operate pursuant to a program approved by an applicable State regulatory authority.

6. AUDIT RIGHTS

BPA retains the right to audit PacifiCorp at BPA's expense to determine whether the benefits provided to PacifiCorp under this Agreement were provided only to PacifiCorp's eligible Residential Load. BPA retains the right to take action consistent with the results of such audit to require the passthrough of such benefits to eligible Residential Load. BPA's right to conduct such audits of PacifiCorp with respect to a Contract Year shall expire 60 months after the end of such Contract Year. As long as BPA has the right to audit PacifiCorp pursuant to this Agreement, PacifiCorp agrees to maintain records and documents showing all transactions and other activities pertaining to the terms of this Agreement with respect to which BPA has audit rights.

7. ASSIGNMENT

(a) PacifiCorp shall be required to assign benefits under this section 7 to BPA if another Qualified Entity: (i) serves Residential Load formerly served by PacifiCorp unless BPA has approved an agency agreement for such Qualified Entity under section 7(c); or (ii) BPA has approved a state program for the passthrough of benefits by a distribution utility under section 7(c).

(b) This Agreement is binding on any successors and assigns of the Parties. BPA may assign this Agreement to another Federal agency to which BPA's statutory duties have been transferred. Neither Party may otherwise transfer or assign this Agreement without the other Party's written consent. Such consent shall not be unreasonably withheld; provided, however, that

PacifiCorp agrees it shall assign benefits under this Agreement subject to the following terms and conditions:

(1) PacifiCorp shall quantify an amount of Residential Load each month served by Qualified Entities that would have been eligible to receive benefits if served by PacifiCorp, and provide written notice to BPA of such amount no later than five days prior to the beginning of a month. Such amount shall be determined in account months based on the amounts served by PacifiCorp and Qualified Entities in the last full calendar month prior to such written notice to BPA. An account month is the number of days of service to a Residential Load account during a month, divided by the number of days in such month.

(2) Based on the determination in section 7(b)(1) above, PacifiCorp shall assign to BPA during the month following such notice a share of the total benefits specified in section 4 above. Such share shall be the account months of Residential Load served by Qualified Entities divided by the account months of Residential Load of PacifiCorp that would be eligible to receive benefits, whether or not PacifiCorp continues to serve such Residential Load. For purposes of section 7(b)(1) and this section 7(b)(2), the Residential Load of PacifiCorp shall not include Residential Load receiving benefits over a new distribution system under section 7(d).

(3) If the passthrough of benefits is made to consumers under section 7(c) below, then PacifiCorp shall retain the cash payments assigned to BPA under this section 7(b). PacifiCorp shall use such cash payments to provide benefits to individual residential and small farm consumers under section 7(c) below.

(c) PacifiCorp may continue to pass through benefits to individual residential and small farm consumers under this Agreement not served by PacifiCorp if: (i) PacifiCorp is acting as the agent under an agreement entered into between PacifiCorp and a Qualified Entity which has been approved by PacifiCorp's applicable state regulatory authority and BPA; or (ii) BPA has approved a program developed by the applicable state regulatory authority providing for the passthrough of benefits received by PacifiCorp under this Agreement to all its residential and small farm consumers acting in its capacity as a distribution utility. PacifiCorp may continue to act as an agent for a Qualified Entity until an RPSA is signed by BPA and the Qualified Entity. Such benefits shall be equal to each such consumer's share of the Qualified Entity's share of the Residential Load, as calculated under section 7(b) above. PacifiCorp may distribute such benefits on a less frequent basis than monthly, provided that distributions are made at least once each Contract Year.

(d) If a Qualified Entity eligible to purchase firm power under section 5(b) of the Northwest Power Act acquires all or a portion of the distribution system

serving the Residential Load of PacifiCorp, PacifiCorp shall assign to BPA for the remaining term of this Agreement a share of the total benefits specified in section 4 above. Such share shall be based on the amount of Residential Load that would have been eligible to receive benefits from the new Qualified Entity for the 12-month period prior to the date of assignment divided by the total of Residential Load of PacifiCorp that would have been eligible to receive benefits during that same 12-month period regardless of who served such Residential Load. All provisions of this section 7, other than section 7(b)(2), shall apply to assignments under this section 7(d).

8. CONSERVATION AND RENEWABLE DISCOUNT

Subject to the terms specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, BPA shall pay PacifiCorp an amount equal to the Conservation and Renewables Discount for 251 aMW for each Contract Year during the October 1, 2001, through September 30, 2006, period, unless PacifiCorp has notified PBL before August 1, 2001, that it will not participate in the Conservation and Renewable Discount. Payments shall be made in 12 equal monthly installments, subject to the payment provisions set forth in section 4(d).

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

9. GOVERNING LAW AND DISPUTE RESOLUTION

(a) This Agreement shall be interpreted consistent with and governed by Federal law. Final actions subject to section 9(e) of the Northwest Power Act are not subject to binding arbitration and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals. Any dispute regarding any rights of the Parties under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. PacifiCorp reserves the right to seek judicial resolution of any dispute arising under this Agreement that is not subject to arbitration under this section 9. For purposes of this section 9, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application, or makes a determination under an applicable statute. If either Party asserts that a dispute is excluded from arbitration under this section 9, either Party may apply to the Federal court having jurisdiction for an order determining whether such dispute is subject to arbitration under this section 9.

(b) Any contract dispute or contract issue between the Parties arising out of this Agreement, except for disputes that are excluded through section 9(a) above, shall be subject to binding arbitration. The Parties shall make a good faith effort to resolve such disputes before initiating arbitration proceedings.

During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.

(c) Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The CPR Institute for Dispute Resolution's arbitration procedures for commercial arbitration, Non-Administered Arbitration Rules (CPR Rules), shall be used for each dispute; provided, however, that: (1) the Parties shall have the discovery rights provided in the Federal Rules of Civil Procedure unless the Parties agree otherwise; and (2) for claims of $1 million or more, each arbitration shall be conducted by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a list containing the names of 15 qualified individuals supplied by the CPR Institute for Dispute Resolution. If the Parties cannot agree upon three arbitrators on the list within 20 business days, they shall take turns striking names from the list of proposed arbitrators. The Party initiating the arbitration shall take the first strike. This process shall be repeated until three arbitrators remain on the list, and those individuals shall be designated as the arbitrators. For disputes involving less than $1 million, a single neutral arbitrator shall be selected consistent with section 6 of the CPR Rules.

(d) Except for arbitration awards which declare the rights and duties of the Parties under the Agreement, the payment of monies shall be the exclusive remedy available in any arbitration proceeding. Under no circumstances shall specific performance be an available remedy against BPA. The arbitration award shall be final and binding on both Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

(e) Each Party shall be responsible for its own costs of arbitration, including legal fees. The arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as they deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

10. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CUSTOMERS

PacifiCorp will ensure that any entity that issues customer bills to PacifiCorp's residential and small farm consumers shall provide written notice on such customer bills that their benefits are "Federal Columbia River Benefits supplied by BPA."

11. STANDARD PROVISIONS

(a) **Amendments**

No oral or written amendment, rescission, waiver, modification or other change of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

(b) **Information Exchange and Confidentiality**
The Parties shall provide each other with any information that is reasonably required, and requested by either Party in writing, to operate under and administer this Agreement, including information needed to resolve payment disputes, or information that is not otherwise available to the requesting Party. Such information shall be provided in a timely manner. Information may be exchanged by any means agreed to by the Parties. If such information is subject to a privilege of confidentiality, a confidentiality agreement or statutory restriction under state or Federal law on its disclosure by a Party to this Agreement, then that Party shall endeavor to obtain whatever consents, releases or agreements are necessary from the person holding the privilege to provide such information while asserting the confidentiality over the information. Information provided to PBL which is subject to a privilege of confidentiality or nondisclosure shall be clearly marked as such and PBL shall not disclose such information without obtaining the consent of the person or Party asserting the privilege, consistent with BPA's obligation under the Freedom of Information Act. PBL shall only disclose information received under this provision to PBL employees who need the information for purposes of this Agreement.

(c) **Entire Agreement**
This Agreement, including all provisions, exhibits incorporated as part of this Agreement, and documents incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

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

(e) **No Third-Party Beneficiaries**
This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.

(f) **Waivers**
Any waiver at any time by either Party to this Agreement of its rights with respect to any default or any other matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.

12. TERMINATION OF AGREEMENT

If BPA does not adopt the Partial Stipulation and Settlement Agreement in the WP-02 Wholesale Power Rate proceeding, then PacifiCorp may, prior to September 1, 2001, and upon written notice to BPA, terminate both this Agreement and Amendment No. 1 to the Settlement Agreement.

13. SIGNATURES

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

PACIFICORP

By _____

Name _____
(Print / Type)

Title _____

Date _____

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____
Account Executive

Name Mark E. Miller
(Print / Type)

Date _____

(PBLLAN_PSB-5_W:\PSC\PM\CT\10854.doc) May 23, 2001

Exhibit A
RESIDENTIAL LOAD DEFINITION

1. PacifiCorp's Residential Load means the sum of the loads within the Pacific Northwest eligible for the Residential Exchange Program under the tariff schedules described below. If BPA determines that any action changes PacifiCorp's general tariffs or service schedules in a manner which would allow loads other than Residential Loads, as defined in the Northwest Power Act, to be included under these tariff schedules, or that the original general tariffs or service schedules include loads other than Residential Loads, such nonresidential loads shall be excluded from this Agreement.

Such tariff schedules as presently effective include:

(a) for all schedules listed below, include the amount, expressed in kilowatthours, of Residential Load supplied by PacifiCorp under:

(1) Oregon

Schedule 4	Residential
Schedule 14	Outdoor Area Lighting
Schedule 24	General Service
Schedule 26	Large General Service Less Than 1,000 KW
Schedule 41	Agricultural Pumping
Schedule 44T	Large General Service – Agricultural Pumping
Schedule 45T	Large General Service – Domestic and Farm

(2) Washington

Schedule 13	Outdoor Area Lighting
Schedule 16	Residential
Schedule 25	General Service
Schedule 35	Large General Service Less Than 1,000 KW
Schedule 40	Agricultural Pumping
Schedule 42	Controlled General Heating
Schedule 44T	Large General Service – Agricultural Pumping

(3) Idaho

Schedule 1	Residential
Schedule 6A	General Service – Large Power – Residential & Farm
Schedule 7A	Security Area Lighting – Residential and Farm
Schedule 10	Agricultural Pumping
Schedule 23A	General Service – Residential and Farm
Schedule 36	Residential – Optional Time-of-Day
Schedule 36	Residential – Optional Time-of-Day

(b) a portion of the Residential Load as determined pursuant to section 2 of this Exhibit A, supplied by the Utility under the Northwest Power Act, section 5(c).

None.

2. Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

Irrigation/Pumping Load = 400 × 0.746 × days in billing period × 24

provided, however, that this amount shall not exceed that farm's measured energy for the same billing period (except as provided for in section 5(b) of the body of this agreement.)

where:

400	is equal to the horsepower limit defined in the Northwest Power Act,
0.746	is the factor for converting horsepower to kW,
days in billing period	is determined in accordance with prudent and normal utility business practices, and
24	is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.

4. For purposes of this Agreement, a farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels as determined by BPA.

Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a

separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to PacifiCorp which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

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

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

6. The operator of a farm is required to certify to PacifiCorp all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide PacifiCorp and BPA all documentation requested to assist in the farm determination.

7. This Exhibit A shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.

(PBLLAN_PSB-5_W:\PSC\PM\CT\10854.doc) May 23, 2001

Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

POWER BUSINESS LINE

May 23, 2001

In reply refer to: PTS

Amendment No. 1
Contract No. 01PB-12229
SETTLEMENT AGREEMENT

Mr. Matthew Wright
Senior Vice President
PacifiCorp
825 NE. Multnomah Street
Portland, OR 97232

Dear Mr. Wright:

This letter agreement (Amendment No. 1) constitutes an amendment to Contract No. 01PB-12229 (Settlement Agreement) between the Bonneville Power Administration (BPA) and PACIFICORP (PacifiCorp). Since the execution of the Settlement Agreement, BPA and PacifiCorp have agreed that BPA will, rather than deliver Firm Power to PacifiCorp for the first 5 years of the Settlement Agreement, make cash payments during the period that begins October 1, 2001, and ends on September 30, 2006. These cash payments will be made under Contract No. 01PB-10854 (Financial Settlement Agreement). This Amendment No. 1 removes BPA's obligation to deliver Firm Power for the first 5 years of the Settlement Agreement. BPA and PacifiCorp intend to execute this Amendment No. 1 and the Financial Settlement Agreement simultaneously.

The Parties agree:

1. EFFECTIVE DATE. This Amendment No. 1 takes effect on the date signed by the Parties.

2. AMENDMENT OF SETTLEMENT AGREEMENT. The Settlement Agreement is amended as follows:

(a) Section 3(a) is deleted and replaced by the following:

"(a) **Satisfaction of Section 5(c) Obligations**
BPA shall, in full and complete satisfaction of all of its obligations during the period from July 1, 2001, through September 30, 2011, under or arising out of section 5(c) of the Northwest Power Act, provide to PacifiCorp: (1) cash payments for the period that begins July 1, 2001, and ends on September 30, 2001, pursuant to section 3(d) of this

Agreement; (2) beginning October 1, 2001, and continuing through September 30, 2006, cash payments under the Financial Settlement Agreement in lieu of Firm Power deliveries under this Agreement, plus Monetary Benefit payments under this Agreement; and (3) beginning October 1, 2006, Firm Power or Monetary Benefit payments, or both, pursuant to sections 4 and 5 of this Agreement. PacifiCorp agrees that the cash payments, Firm Power or Monetary Benefits, or both, provided under this Agreement, and the cash payments provided under the Financial Settlement Agreement satisfy all of BPA's obligations during the period from July 1, 2001, through September 30, 2011, under or arising out of section 5(c) of the Northwest Power Act."

(b) Section 3(b) is deleted and replaced by the following:

"(b) **Invalidity**

(1) **Invalidity of this Agreement**
In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that this Agreement (or payments under section 4 of this Agreement) is unlawful, void, or unenforceable, then: (A) PacifiCorp may provide written notice to BPA within 30 calendar days that the cash payments provided under the Financial Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act during the period following such final determination through September 30, 2006; or, if no such notice is provided, (B) the Parties hereby agree that the provisions of section 3(a) above shall be of no further force or effect. In the event of the court's final determination, the Parties intend and agree that: (1) the cash payments pursuant to section 3(d), the cash payments pursuant to the Financial Settlement Agreement, and the Monetary Benefits provided prior to such final determination shall be retained by PacifiCorp; and (2) the satisfaction of BPA's obligations to PacifiCorp under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law. This section 3(b)(1) shall survive notwithstanding any determination that any other provision of this Agreement is unlawful, void, or unenforceable.

(2) **Invalidity of the Financial Settlement Agreement**
In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that the Financial Settlement Agreement (or cash payments under the Financial Settlement Agreement) is unlawful, void, or unenforceable, then: (A) PacifiCorp may provide written notice to BPA within 30 calendar days that the Monetary Benefits provided under section 4 of this Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act during the period following such final determination through September 30, 2006; or, if no such notice is provided, (B) the Parties hereby agree that the provisions of section 3(a) above shall be of no further force or effect. In the event of the court's final determination, the Parties intend and agree that:
(1) the cash payments pursuant to section 3(d), the cash payments pursuant to the Financial Settlement Agreement and the Monetary Benefits provided under this Agreement provided prior to such final determination shall be retained by PacifiCorp; and
(2) the satisfaction of BPA's obligations to PacifiCorp under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law."

(c) Section 3(c) is deleted and replaced by the following:

"(c) **Negotiation of New Agreement if this Agreement Held Invalid**
If this Agreement (or section 4(a), section 4(c), or section 5 of this Agreement) is finally determined to be unlawful, void, or unenforceable and PacifiCorp does not notify BPA that the cash payments under Financial Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act as described in section 3(b)(1) above, then both Parties agree to negotiate in good faith a new, mutually acceptable agreement that would, until the end of its term, be in satisfaction of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act. The term of such new agreement would continue for the remaining term of this Agreement."

(d) Section 4(a)(1) is deleted and replaced by the following:

"(a) **Total Benefits**

(1) **October 1, 2001, through September 30, 2006** BPA shall provide to PacifiCorp a Monetary Benefit expressed in annual average megawatts (aMW). This benefit is as follows:

Period of Time	Monetary Benefit for PacifiCorp (annual aMW)	Oregon (annual aMW)	Washington (annual aMW)	Idaho (annual aMW)
10/1/01 through 9/30/06	225	121	38	66

(e) Sections 4(b)(1)(A), 4(b)(1)(B), and 4(b)(1)(C) are deleted in their entirety.

(f) Section 4(a) of Exhibit A (Contract No. 01PB-12230) is deleted and replaced by the following:

"(a) **RL Product for Contract Years 2002 Through 2006** PBL shall sell and make available and PacifiCorp shall purchase under the applicable RL rate zero (0) megawatts (MW) each hour of Contract Years 2002 through 2006."

3. TERMINATION OF THIS AMENDMENT NO. 1. If BPA does not adopt the Partial Stipulation and Settlement Agreement in the WP-02 Wholesale Power Rate proceeding, then PacifiCorp may, upon written notice to BPA prior to September 1, 2001, terminate both this Amendment No. 1 and the Financial Settlement Agreement.

If the foregoing terms are acceptable, please sign both originals and return one original of this Amendment No. 1 to me. The remaining original is for your files.

Sincerely,

Account Executive

Name _____
(Print / Type)

ACCEPTED:

PACIFICORP

By _____

Name _____
(Print / Type)

Title _____

Date _____

(PBLLAN-PTS-W:\PSC\PM\CT\12229AA1.DOC)

8a

Insley, Gary - PTS-5

From: Insley, Gary - PTS-5
Sent: Tuesday, May 29, 2001 9:21 AM
To: Hanlon, Doug - PTS-5; Kitchen, Larry - PT-5; Miller, Mark - PT-5; Boling, Rodney - DFF-2
Subject: Text for PSE's Revised Exhibit C, Ten Years

PSE 12168 AA1 10 yr Exh C.doc

Rod and I are fixing the Excel data tables that will be inserted in this text.

Question for Table 1a2, the block sale amount -- are we showing the 368 and then using the amendment to make it zero, or making it zero in Exhibit C by adding a new contract that sells the 368 to BPA?

Exhibit C
NET REQUIREMENTS

1. ESTABLISHING NET REQUIREMENT

(a) Initial Net Requirement

(1) Total Retail Load Forecast

The tables below shows the PBL approved forecast of PUGET SOUND ENERGY's Total Retail Load. The Parties agree that this forecast shall not be subject to arbitration under section 14 of the body of this Agreement.

(2) **Initial Net Requirement**

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

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year 2002												
Total MWa	**368**	**368**	**368**	**368**	**368**	**368**	**368**	**368**	**368**	**368**	**368**	**368**
Peak MW	**368**	**368**	**368**	**368**	**368**	**368**	**368**	**368**	**368**	**368**	**368**	**368**

(b) **Annual Update of Net Requirement**

(1) **Updated Forecast of Total Retail Load**

At least 60 days prior to the start of each Contract Year, PUGET SOUND ENERGY shall provide PBL an updated monthly forecast of PUGET SOUND ENERGY's Total Retail Load in sufficient detail to fill in the table below. Up to 30 days before the start of the Contract Year PBL may notify PUGET SOUND ENERGY that PBL has determined that the forecast submitted when considered as a whole is not reasonable and that PBL will substitute a forecast of Total Retail Load that it considers reasonable to fill in the table below. The only issue arising under this section 1(b)(1) that is subject to arbitration under section 14 of body of this Agreement is whether PBL's forecast when considered as a whole was reasonable. Such arbitration shall not include the interpretation or application of BPA's policies to such load forecast. However, the Parties may mutually agree to mediate disputes regarding PBL's forecast. Prior to the start of the Contract Year this exhibit shall be revised to update the forecast in the table below.

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

(2) **Review of Net Requirements Amounts**

PUGET SOUND ENERGY's updated net requirement amounts are derived by taking the PUGET SOUND ENERGY forecast of Total Retail Load established in section 1(b)(1) above and subtracting from it the resource amounts that are committed to serve PUGET SOUND ENERGY's Total Retail Load under section 2(c) and the amount of load served by known non-PUGET SOUND ENERGY resources, if any, as established in section 3 of this exhibit. The updated net requirement amounts shall be shown in the table below.

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

2. CUSTOMER RESOURCES

The amounts listed in the tables in this section are only for determining PUGET SOUND ENERGY's net requirement under this Agreement and do not imply any specific resource operation, nor are the amounts intended to interfere with PUGET SOUND ENERGY's decisions on how to operate its specific resources.

(a) **Declared Output of Specific PUGET SOUND ENERGY Resources**

PUGET SOUND ENERGY commits the firm output from the following resources (or an equivalent amount from another source) to serve its Total Retail Load.

(b) **Unspecified Resource Amounts Committed To Serve Total Retail Load**

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

(1) **Unspecified Resources for Balancing Net Requirements**

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

(2) **Specific Amounts Committed for Contract Term**
In addition to the resource amounts established in 2(a) above, PUGET SOUND ENERGY agrees to serve its Total Retail Load with unspecified resources in the amounts listed in the table below.

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year 2002												
Total MWh	0	0	0	0	0	0	0	0	0	0	0	0
Peak MW	0	0	0	0	0	0	0	0	0	0	0	0

(3) **Amounts Committed for 9(c) Decrements**
Below are the amounts of unspecified resources added consistent with BPA's 9(c) Policy and the requirements of section 4(c) of this exhibit.

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year 2002												
Total MWh	0	0	0	0	0	0	0	0	0	0	0	0
Peak MW	0	0	0	0	0	0	0	0	0	0	0	0

(c) **Total Resource Amounts Committed to Serve Total Retail Load**
PUGET SOUND ENERGY commits the resources listed in sections 2(a) and 2(b) above to serve Total Retail Load amounts served by PUGET SOUND ENERGY and not served with Contracted Power through this Agreement. The total amount of PUGET SOUND ENERGY's resources are shown in the table below. These amounts shall be updated whenever sections 2(a) or 2(b) above are modified, consistent with section 4 of this exhibit.

(d) **PUGET SOUND ENERGY Resources Not Used to Serve Total Retail Load**

3. NON-PUGET SOUND ENERGY GENERATING RESOURCES

Known non-PUGET SOUND ENERGY resources, if any, greater than 1 MW that provide power to serve PUGET SOUND ENERGY's Total Retail Load or such resources that otherwise connect to PUGET SOUND ENERGY's distribution system are listed below.

Generating Resource Name	Resource Type	Nameplate Capability
None At This Time.		***0 MW***

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

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Contract Year 2002												
Total MWh	0	0	0	0	0	0	0	0	0	0	0	0
Peak MW	0	0	0	0	0	0	0	0	0	0	0	0

4. CHANGES TO RESOURCE AMOUNTS

(a) **Annual Right to Add New Renewable Resources**

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

(b) **Resource Additions for a BPA Insufficiency Notice**

In lieu of the unspecified resource amounts established in 2(b)(1), PUGET SOUND ENERGY shall add resources to section 2(a) or 2(b)(2) to replace amounts of Contracted Power BPA notifies PUGET SOUND ENERGY will not be provided due to a notice under section 14(b) of the body of this Agreement.

(c) **Decrements for 9(c) Export**
PBL may determine consistent with BPA's policy implementing section 9(c) of the Northwest Power Act and section 3(d) of P.L. 88-552 (9(c) Policy) that an export of a PUGET SOUND ENERGY resource requires a reduction in the amount of Federal power that PBL sells under this Agreement. If PBL determines such a reduction is required it will notify PUGET SOUND ENERGY of the amount and duration of the reduction. PBL shall revise this exhibit to include such amounts as unspecified resources for the duration of the export requiring such reduction under section 2(b)(3). Determinations by PBL to reduce the amount of Federal power sold are not subject to arbitration under section 14 of the body of this Agreement. When a decrement under the BPA 9(c) Policy occurs within the Contract Year: (1) the monthly amounts in section 1(b)(2) shall be reduced by how much the monthly amounts added to section 2(b)(3) exceed the corresponding monthly amounts in section 2(b)(1); and (2) the Contracted Power provided by PBL shall also be reduced within the Contract Year consistent with such changes in section 1(b)(2), through the terms of section 5 below.

(d) **Permanent Resource Removal**
The resource amounts established in section 2 of this exhibit may be removed permanently by PUGET SOUND ENERGY consistent with statutory discontinuance for permanent removal in BPA's policy on net requirements under section 5(b) of the Northwest Power Act. If PBL determines PUGET SOUND ENERGY has met PBL's standards for a permanent removal, the exhibit will be revised to show the agreed resource changes. Determinations by PBL on the permanent removal of a resource are not subject to arbitration under section 13 of the body of this Agreement.

(e) **Changes to Non-PUGET SOUND ENERGY Resources**
PUGET SOUND ENERGY shall annually update the information established for non-PUGET SOUND ENERGY resources in section 3 at least 60 days before the start of each Contract Year, if circumstances reasonably warrant such a change. Subject to agreement of the Parties, the exhibit shall be revised to show the updated information prior to the start of the applicable Contract Year.

(f) **Annual Retail Load Loss and Resource Removal**
PUGET SOUND ENERGY may reduce the resource amounts established in sections 2(a) and 2(b) above by up to the amount of load loss PUGET SOUND ENERGY reasonably expects in the upcoming Contract Year consistent with the requirements of this section. PUGET SOUND ENERGY shall notify PBL at least 60 days prior to the applicable Contract Year, identifying the total monthly MWh amounts of load loss. Reductions in resource amounts shall apply first to unspecified resources established in sections 2(b)(1) and 2(b)(2) of this exhibit. Additional reductions shall apply to specific resources in section 2(a) of this exhibit identified by PUGET SOUND ENERGY in the notice. The Parties shall revise this exhibit prior to the start of the Contract

Year to make the changes in the resources and shall establish those changes in tables below which shall identify the specific changes that were made to the resources. The resource changes shall only apply for one Contract Year. Prior to the start of the subsequent Contract Year this exhibit shall be revised to add back the resources shown in tables below to the applicable provisions in section 2 of this exhibit, except for amounts PUGET SOUND ENERGY requests to remove under this provision for the following Contract Year. Resources removed under this provision continue to be subject to the 9(c) Policy.

(g) **Revisions for Changes in Resource Output**
Up to 60 days prior to the start of a Contract Year PUGET SOUND ENERGY may request changes to the monthly distribution of the capabilities of specific resources listed in section 2 of this exhibit. PUGET SOUND ENERGY must demonstrate to PBL's satisfaction that an adjustment is appropriate. When PBL decides to grant a request to revise resource amounts PBL shall revise section 2 of this exhibit to show the changes to the resource. PBL shall approve changes to monthly distributions when the changes to resources included in the Pacific Northwest Coordination Agreement (PNCA) are due to operational changes reflected in PNCA planning. PBL shall revise section 2 of this exhibit to show such changes to the resource.

5. REDUCTION OF BLOCK PURCHASE AMOUNTS

The hourly amounts of power provided under this Agreement shall be reduced in any Contract Year when the sum of the monthly net requirement amounts established in section 1(b)(2) above is less than 8,760 hours (8,784 in leap years) multiplied by the corresponding hourly amount established in section 4 of the body of this Agreement. The reduction shall be made by reducing the hourly amount provided in each hour of the Contract Year. The hourly amounts shall also be reduced when resource amounts not already used to calculate the monthly values in section 1(b)(2) are added pursuant to section 4(c) above during the Contract Year. Reduced amounts are subject to payments as established in section 5 of the body of this Agreement. If such a reduction occurs this exhibit will be revised to include a table below with the updated values. When a table is included below it shall supersede the table in section 4 of the body of this Agreement.

6. RESOURCE DECLARATIONS

The resource capabilities set forth in sections 2(a) and (b) of this exhibit are dedicated to serving PUGET SOUND ENERGY's firm load pursuant to section 5(b) of the Northwest Power Act. In addition to the resource capabilities set forth in such sections that may be removed pursuant to other sections of this Agreement, BPA consents that the resource capabilities set forth in sections 2(b)(1) and 2(b)(2) above may be discontinued from use in serving PUGET SOUND ENERGY's firm load upon the termination or expiration of this Agreement. The resources established in sections 2(d) and 3 above are not used to serve PUGET SOUND ENERGY's firm load under section 5(b) of the Northwest Power Act and will not be required to be so used after the termination or expiration of this Agreement.

7. REVISIONS

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

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(8b)

Insley, Gary - PTS-5

From: Insley, Gary - PTS-5
Sent: Tuesday, May 29, 2001 10:23 AM
To: Hanlon, Doug - PTS-5; Kitchen, Larry - PT-5; Miller, Mark - PT-5; Boling, Rodney - DFF-2
Subject: Puget's ten year net requirements exhibit, second shot

PSE 12168 AA1 10 yr Exh C.doc

I made the net requirement zero, and moved the 368MWa to 2b2 Specific Amounts Committed for Contract Term. I guess it also could go in 2b1. Which is more correct?