

Comparison of Standard Clauses

4/11/08

Language that is identical in both the PF Block contracts and the RPSA contract are shown without redlines.

“Deletions” indicate language that is in the PF Block contract, but not in the RPSA contracts.

“Additions” indicate language that is in the RPSA contracts but not PF Block contracts.

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8.13. BILLING AND PAYMENT (04/03/08)

~~(a)~~ **Billing** (03/27/08 Version)

- (a) «Customer Name» BPA shall submit to BPA each month an accounting invoice that documents the amount of Residential Load Eligible for Monetary Benefits. Such documentation shall include the kilowatt-hours of energy which «Customer Name» billed to the Residential Load Eligible for Monetary Benefits. Although subject to adjustment pursuant to section 9 below, this amount shall be deemed to be equal to the amount of Residential Load Eligible for Monetary Benefits.

The monthly amounts of In-Lieu PF Power billed under this Agreement shall be the monthly amounts specified in the in-lieu notice and made available for delivery.

(b) **Billing** (02/28/08 Version revised for RPSA)

Within 30 days following the receipt of each monthly invoice from «Customer Name» subject to section 9 below, BPA shall verify the invoice, compute the net amount due «Customer Name» from the sale under section 5 and the amount due BPA from the sale under section 6, compute the amount, if any, due BPA for a sale of In-Lieu PF Power under section 7, and either pay or bill «Customer Name» for the difference, as appropriate.

~~monthly for any products and services provided during the preceding month(s).~~ BPA may send «Customer Name» an estimated bill followed by a final bill if amounts are due BPA for a month. BPA shall send all bills on the bill's issue date. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

(c)(b) **Payment** (3/26/08)(03/26/08 Version)

«Customer Name» shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the issue date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, the Due Date is the next business day. If «Customer Name» has made payment on an estimated bill then:

- (1) if the amount of the final bill exceeds the amount of the estimated bill, «Customer Name» shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; and
- (2) if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay «Customer Name» the difference between the estimated bill and final bill by the 20th day after the final bill's issue date. If the 20th day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next business day.

~~(d)~~(e) **Late Payments** *(03/26/08 Version)*

After the Due Date, a late payment charge equal to the higher of:

- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

~~(d)~~ **Termination** *(03/26/08 Version)*

~~If «Customer Name» is more than 45 days late from the Due Date in paying its bills under this Agreement, BPA may require additional forms of payment assurance acceptable to BPA. If «Customer Name» does not provide such payment assurance and BPA determines in its sole discretion that «Customer Name» is unable to make the payments owed, BPA may terminate this Agreement.~~

(e) **Disputed Bills** *(3/26/08 Version, Revised for RPSA)(03/26/08 Version)*

If «Customer Name» disputes any portion of a bill, «Customer Name» shall provide notice to BPA with a copy of the bill noting the disputed amounts. If any portion of the bill is in dispute, «Customer Name» shall pay the entire bill by the Due Date. Unpaid bills (including both disputed and undisputed amounts) are subject to ~~the~~ late payment charges provided above. If the Parties agree, or if it is determined after dispute resolution, that «Customer Name» is entitled to a refund or additional payment for~~of~~ any portion of the disputed amount, BPA shall make such refund or provide such additional payment with ~~with~~ simple interest computed from the date of receipt of the disputed payment to the date the refund or additional payment is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

~~(f)~~ BPA may require that «Customer Name» supply BPA with commercially reasonable credit information. In the event that «Customer Name» does not satisfy BPA's credit test based on the information provided, BPA may, at its option, require «Customer Name» to deposit payments received from BPA into an escrow account.

20.14. INFORMATION EXCHANGE AND CONFIDENTIALITY (02/25/08

(a) — General Requirements (03/30/08 Version revised for RPSA)

(a) Information Exchange

Each Party shall provide the other Party with any information that is necessary to administer this ~~Agreement, Agreement, and to forecast~~ «Customer Name»'s Total Retail Load, forecast BPA system load, comply with NERC reliability standards, prepare power bills, resolve billing disputes, administer transfer service, and to otherwise implement this Agreement. This obligation includes ~~transmission and power scheduling information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.).~~

(b)

(b) — Reports, Meter Data, and Load Data (03/30/08 Version)

(1) — Reports

(A) — ~~Within 30 days after final approval by the «Customer Name»'s governing body, «Customer Name» shall provide BPA with its annual financial report and statements.~~

(B) — ~~Within 30 days after their submittal to the Energy Information Administration, «Customer Name» shall provide BPA with a copy of its Annual Form EIA-861 Reports. If «Customer Name» is not otherwise required to submit such reports to the EIA, then this requirement does not apply.~~

(2) — Meter Data (04/04/08 Version)

(A) — ~~In accordance with section 12(c), Metering, and Exhibit E, Metering, «Customer Name» shall notify BPA of any changes to Points of Delivery, Points of Metering, Interchange Points and related information for which it is responsible. «Customer Name» shall ensure BPA has access to all data from load and resource meters that BPA determines is necessary to forecast, plan, schedule, and bill. Access to this data shall be on a schedule determined by BPA. Meter data shall be in hourly increments for all meters that record hourly data. Meter data includes, but is not limited to: «Customer Name»'s actual amounts of energy used or expended for loads and resources, and the physical attributes of «Customer Name»'s meters.~~

(B) — ~~«Customer Name» consents to allow Power Services to receive the following information from Transmission Services or BPA's~~

metering function: i) «Customer Name»'s meter data, as specified above in section 14(b)(2)(A), section 12(c), Metering, and Exhibit E, Metering, and ii) notification of outages or load shifts.

(C) — ~~At least 15 calendar days in advance, «Customer Name» shall e-mail BPA at: (i) mdm@bpa.gov and (ii) the contact shown in section 17, Notices and Contact Information, when the following events are planned to occur on «Customer Name»'s system: (i) installation of a new meter, (ii) changes or updates to an existing meter not owned by BPA, (iii) any planned line or meter outages, and (iv) any planned load shifts.~~

(D) — ~~If an unplanned load shift or outage occurs, «Customer Name» shall e-mail BPA at: (i) mdm@bpa.gov, and (ii) the contact shown in section 17, Notices and Contact Information, within 72 hours after the event.~~

(3) — ~~**Data for Determining CHWM and CDQ (03/27/08 Version)**
Upon request, «Customer Name» shall provide to BPA any load and resource information that BPA deems necessary to determine «Customer Name»'s CHWM and CDQ. This may include historical load data not otherwise available to BPA and other data necessary to allow BPA to adjust for weather normalization.~~

Reviewer's Note: Except for the highlighted portion below, the language is identical to the language above in section (4) for the Load Following customers that were Block or Block/Slice customers during Subscription.

(4) — ~~**Hourly Total Retail Load Data (03/27/08 Version)**
Reviewer's Note: The data required below will be used by BPA for purposes of determining each customer's Net Requirement.
Unless BPA notifies «Customer Name» in writing that BPA has adequate hourly meter data to calculate «Customer Name»'s Total Retail Load, «Customer Name» shall provide the following hourly data electronically to BPA. «Customer Name» shall submit such data in a comma-separated value (csv) format with the time/date stamp in one column and load amounts, with units of measurement specified, in another column.~~

(A) — ~~By December 31, 2009, «Customer Name» shall send to BPA «Customer Name»'s actual hourly Total Retail Load data for Fiscal Year 2002 through Fiscal Year 2009.~~

(B) — ~~By December 31, 2010, «Customer Name» shall send to BPA, «Customer Name»'s actual hourly Total Retail Load data for each for Point of Delivery for Fiscal Year 2010.~~

(C) — ~~By December 31, 2011, and by December 31 of each year thereafter, «Customer Name» shall send BPA «Customer~~

~~Name's actual hourly Total Retail Load data for the immediately preceding Fiscal Year.~~

~~(5) **Total Retail Load Forecast (03/28/08 Version)**~~

~~*Reviewer's Note: The data required below will be used by BPA for purposes of calculating Net Requirements and meeting WECC data reporting requirements.*~~

~~By June 30, 2011, and by June 30 of each year thereafter, «Customer Name» shall provide BPA a forecast of «Customer Name's monthly energy and «Customer Name's system coincidental peak of «Customer Name's Total Retail Load for the upcoming 10 Fiscal Years.~~

~~«Customer Name» shall send the forecast to BPA electronically, in a comma separated value (csv) format. «Customer Name» shall send the csv file with the following data elements in separate columns:~~

~~(A) four digit calendar year,~~

~~(B) three character month identifier,~~

~~(C) monthly energy forecast,~~

~~(D) unit measurement of monthly energy forecast,~~

~~(E) monthly «Customer Name» system coincidental peak forecast, and~~

~~(F) unit measurement of monthly «Customer Name» system coincidental peak forecast.~~

~~(e) **Transparency of Net Requirements and Load Forecast Processes (04/04/08 Version)**~~

~~*Reviewer's Note: This section is based on the Regional Dialogue Policy (page 52, section XI, Dispute Resolution.) Public release of Net Requirements information will apply ONLY to Block and Slice/Block because the amount of power they receive is based on the Net Requirement forecast so the accuracy of the Net Requirement forecast has financial implications for both the specific customer and all preference customers. It does not apply to Load Following customers. Load Following customers do not have their power amounts set based on forecast but receive all the power they need to meet their actual Net Requirement load each year.*~~

~~(1) **Transparency for Net Requirements**~~

~~By July 31, 2011, and by July 31 every year thereafter, BPA shall make the following information publicly available to «Customer Name» and all other BPA regional utility customers with a CHWM:~~

~~(A) For each customer with a Block or Slice/Block purchase obligation, the customer's measured Total Retail Load data for~~

~~the previous Fiscal Year in monthly LLH and HLH energy amounts and monthly customer system peak amounts;~~

~~(B) For each customer with a Block or Slice/Block purchase obligation, BPA's forecast of the customer's Total Retail Load, for the upcoming Fiscal Year, in monthly LLH and HLH energy amounts and monthly customer system peak amounts, and~~

~~(C) For each customer with a Block or Slice/Block purchase obligation, the dedicated monthly energy and peaking amounts for the upcoming Fiscal Year of the customer's non-federal resources listed in section 3 of Exhibit A, Net Requirements.~~

~~(2) **Transparency for Above RHWL Load Forecast Amounts**~~

~~At least 60 days prior to each general rate case subject to the TRM, BPA will publish draft amounts for the above RHWL load forecast for each customer with a CHWM that BPA intends to use in the upcoming rate case.~~

~~«Customer Name» waives all claims of confidentiality regarding this data. «Customer Name» may provide comments regarding the published data to BPA within 14 days after notification. If the due date is a Saturday, Sunday, or a federal holiday, the due date is the next business day. After reviewing any comments and no later than 60 days from the date BPA originally releases such data BPA shall make available a final set of data and an explanation of any changes to «Customer Name» and all other customers with a CHWM.~~

~~(d) **Confidentiality (01/17/08 Version)**~~

~~Before «Customer Name» provides information that is subject to a privilege of confidentiality or nondisclosure to BPA, «Customer Name» shall clearly mark such information as confidential. BPA shall notify «Customer Name» as soon as practicable of any request received under the Freedom of Information Act (FOIA), or under any other federal law or court or administrative order, for any confidential information. BPA shall only release such confidential information to comply with FOIA or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of confidential information within BPA to employees who need it for purposes of administering this Agreement.~~

13.

17.

NOTICES AND CONTACT INFORMATION (03/30/08 Version)

Any notice required under this Agreement shall be in writing and shall be delivered in person or with proof of receipt by a nationally recognized delivery service, by United States Certified Mail, or by another method agreed to by the Parties. Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

(Drafter's Note: Check BPA address and phone number prefix to ensure it is applicable.)

If to «Customer Name»:

«Utility Name»
«Street Address»
«P.O. Box»
«City, State, Zip»
Attn: ~~«Contract Name»~~
~~«Contract Title»~~
Phone: «###-###-####»
FAX: «###-###-####»
E-Mail: «E-Mail Address»~~E-mail address»~~

If to BPA:

Bonneville Power Administration
«Street Address»
«P.O. Box»
«City, State, Zip»
Attn: «AE Name - Routing»
Account Executive
Phone: «###-###-####»
FAX: «###-###-####»
E-Mail: «E-Mail Address»~~E-mail address»~~

15.

18. UNCONTROLLABLE FORCES *(09/04/07(04/02/07 Version, Revised for RPSA)Version)*

- (a) The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. “Uncontrollable Force” means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party’s reasonable diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:
- (1) any unplanned curtailment or interruption of firm transmission service used to deliver ~~power~~~~Firm Requirements Power~~ sold under this Agreement to «Customer Name»;
 - (2) any planned curtailment or interruption of long-term firm transmission service used to deliver ~~power~~~~Firm Requirements Power~~ sold under this Agreement to «Customer Name» if such curtailment or interruption occurs on BPA's or a third party's transmission system~~Third Party's Transmission System~~;
 - (3) any failure of «Customer Name»'s distribution or transmission facilities that prevents «Customer Name» from delivering power to end-users;
 - (4) strikes or work stoppage;
 - (5) floods, earthquakes, or other natural disasters; and
 - (6) orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed,

suspended, or set aside pending review by a court of competent subject matter jurisdiction.

- (b) Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.
- (c) If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall:
 - (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable;
 - (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable;
 - (3) keep the other Party apprised of such efforts on an ongoing basis; and
 - (4) provide written notice of the resumption of performance.

Written notices sent under this section must comply with section ~~13,17~~, Notices and Contact Information.

16.19. GOVERNING LAW AND DISPUTE RESOLUTION *(04/07/08 version revised for RPSA)*

This Agreement shall be interpreted consistent with and governed by federal law. The Parties shall identify issue(s) in dispute and make a good faith effort to negotiate a resolution of disputes before either Party may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. During a contract dispute or contract issue between the Parties arising out of this Agreement, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable. The Parties reserve their rights to seek judicial resolution of any dispute arising under this Agreement.

(a) Judicial Resolution

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals. Such final actions include, but are not limited to, the establishment and implementation of rates and rate methodologies. 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. For purposes of this section ~~16.19~~, 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 ~~16.19~~, then both Parties shall apply to the federal court having jurisdiction for an order determining whether such dispute is subject to arbitration under this section ~~16.19~~.

(b) **Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section ~~16(a)19(a)~~ above, shall be subject to arbitration. During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.

To resolve disputes that Parties agree are strictly issues of fact, binding arbitration may be used consistent with BPA's Binding Arbitration Policy or its successor. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy, and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

(c) **Arbitration Procedure**

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

(d) **Arbitration Remedies**

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.

(e) **Finality**

(1) In binding arbitration, 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.

(2) In non-binding arbitration, the arbitration award is not binding on the Parties. Subsequent to non-binding arbitration, Parties may seek judicial resolution of the dispute.

(f) **Arbitration Costs**

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 the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

14.20. NO WARRANTY (3/26/08(03/26/08 Version)

Reviewer's Note: This section is based on the Regional Dialogue Policy (page 52, section XI, Dispute Resolution)

Nothing in this Agreement, or any dispute arising out of this Agreement, shall limit the Administrator's responsibility to establish rates to recover costs and timely repay the U.S. Treasury or to take actions that are effectively required by a court order. It is the Parties' intent to structure a durable commercial relationship that is based on existing statutory requirements and to provide «Customer Name» with protection against change to those guiding statutes as is reasonably possible. However, BPA does not warrant or represent that this Agreement is immune from costs imposed by court order or agency regulations of a general and public nature or is immune from subsequently enacted legislation.

17.21. STATUTORY PROVISIONS

(a) Retail Rate Schedules (09/04/07 Version)

«Customer Name» shall provide BPA with its retail rate schedules, as required by section 5(a) of the Bonneville Project Act, P.L. 75-329, within 30 days of each of «Customer Name»'s retail rate schedule effective dates.

~~(b)(b) Insufficiency and Allocations (04/04/08 Version)~~

~~If BPA determines, consistent with section 5(b) of the Northwest Power Act and other applicable statutes, that it will not have sufficient resources on a planning basis to serve its loads after taking all actions required by applicable laws then BPA shall give «Customer Name» a written notice that BPA may restrict service to «Customer Name». Such notice shall be consistent with BPA's insufficiency and allocations methodology, published in the Federal Register on March 20, 1996, and shall state the effective date of the restriction, the amount of «Customer Name»'s load to be restricted and the expected duration of the restriction. BPA shall not change that methodology without the written agreement of all public body, cooperative, federal agency and investor owned utility customers in the Region purchasing federal power from BPA under section 5(b) of the Northwest Power Act. Such restriction shall take effect no sooner than five years after BPA provides notice to «Customer Name». If BPA imposes a restriction under this provision then the amount of Firm Requirements Power that «Customer Name» is obligated to purchase pursuant to section 3 and Exhibit C of this Agreement shall be reduced to the amounts available under such allocation methodology for restricted service.~~

(e) New Large Single Loads

(1) Determination of an NLSL (04/06/08 revised for RPSA) Version)

In accordance with BPA's NLSL Policy, BPA may determine that a load is an NLSL as follows:

- (A) BPA shall determine an increase in production load to be an NLSL if the energy consumption of the end-use consumer's load associated with a single new facility, an existing facility, or expansion of an existing facility during the immediately past consecutive twelve months equals or exceeds by 10 aMW (87,600,000 kilowatt hours) the greater of:
 - (i) the end-use consumer's energy consumption for such facility for the consecutive twelve months one year earlier, or
 - (ii) the amount of the contracted for, or committed to (CF/CT) load of the end-use consumer as of September 1, 1979; or
- (B) The Parties may agree that the installed production equipment at a facility will exceed 10 aMW consumption over any twelve consecutive months and such agreement shall constitute a binding NLSL determination.

(2) **Determination of a Facility** *(09/04/07 Version)*

BPA shall make a written determination as to what constitutes a single facility, for the purpose of identifying an NLSL, based on the following criteria:

- (A) whether the load is operated by a single end-use consumer;
- (B) whether the load is in a single location;
- (C) whether the load serves a manufacturing process which produces a single product or type of product;
- (D) whether separable portions of the load are interdependent;
- (E) whether the load is contracted for, served or billed as a single load under «Customer Name»'s customary billing and service policy;
- (F) consideration of the facts from previous similar situations; and
- (G) any other factors the Parties determine to be relevant.

(3) **Administrative Obligations and Rights** *(4/06/08 Version, Revised for RPSA Version)*

Drafter's Note: If customer has a new or existing NLSL or CF/CT, include details of the NLSL or CF/CT and the manner of service in Exhibit D, Additional Products and Special Provisions.

- (A) «Customer Name»'s NLSLs and CF/CT loads are listed in Exhibit C, New Large Single Loads, ~~D, Additional Products and Special Provisions~~.
- (B) «Customer Name» shall provide reasonable notice to BPA of any expected increase in a single load that may qualify as an NLSL. The Parties shall list any such potential NLSLs in Exhibit C, New Large Single Loads, ~~D, Additional Products and Special Provisions~~. If BPA determines that any load associated with a single facility that is capable of growing 10 aMW or more in a consecutive twelve-month period, then such load shall be subject to monitoring by BPA.
- (C) When BPA makes a request, «Customer Name» shall provide physical access to its substations and other service locations where BPA needs to perform inspections or gather information for purposes of implementing section 3(13) of the Northwest Power Act, including but not limited to making a final NLSL, facility, or CF/CT determination. «Customer Name» shall also require the end-use consumer to provide BPA physical access to inspect any facility for these purposes.
- (D) Unless the Parties agree pursuant to section 17(b)(1)(B) ~~21(e)(1)(B)~~ above, BPA shall unilaterally determine whether a new load or an increase in existing load at a facility is an NLSL. If BPA determines that the load is an NLSL, BPA shall notify «Customer Name» and the Parties shall add the NLSL to Exhibit C, New Large Single Loads, ~~D, Additional Products and Special Provisions~~.

- (4) **Metering an NLSL** *(4/06/08 Version) (03/30/08 Version)*
For any loads that are monitored by BPA for an NLSL determination, and at any facility that is determined by BPA to be an NLSL, «Customer Name» agrees to either consent to BPA installing BPA owned meters or «Customer Name» shall install meters meeting the exact specification BPA provides to «Customer Name». «Customer Name» and BPA shall enter into a separate agreement for the location, ownership, cost responsibility, access, maintenance, testing, replacement and liability of the Parties with respect to such meters. «Customer Name» shall arrange for metering locations that allow accurate measurement of the facility's load. «Customer Name» shall arrange for BPA to have physical access to such meters and «Customer Name» shall ensure BPA has access to all NLSL meter data that BPA determines is necessary to forecast, plan, schedule, and bill for power
- (5) **Undetermined NLSLs** *(04/06/08 Version, Revised for RPSA) Version)*

~~If BPA does not determine at the outset that an increase in load is an NLSL, then the Parties shall install metering equipment as required by section 21(e)(4), above, and BPA shall bill «Customer Name» for the increase in load at the applicable PF Rate during any consecutive twelve-month monitoring period. If BPA later determines that the increase in load is an NLSL, then BPA shall revise «Customer Name»'s bill to reflect the difference between the applicable PF rate and the applicable NR rate in effect for the monitoring period in which the increase takes place. «Customer Name» shall pay that bill with simple interest computed from the start of the monitoring period to the date the payment is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which the monitoring period began) divided by 365.~~

If BPA concludes in its sole judgment that «Customer Name» has not fulfilled its obligations under sections ~~17(b)(3)21(e)(3)~~ and ~~17(b)(4),21(e)(4)~~, BPA may determine any load subject to NLSL monitoring to be an NLSL. Such NLSL determination shall be final unless «Customer Name» proves to BPA's satisfaction that the applicable load did not exceed 10 aMW in any twelve month monitoring period.

- ~~(6)~~ **Service Elections for an NLSL (02/28/08 Version)**
«Customer Name» shall serve all NLSLs with non-federal firm resources that are not already dedicated and declared in Exhibit A, Net Requirements and Exhibit D, Additional Products and Special Provisions, to serve «Customer Name»'s Total Retail Load in the region. «Customer Name» agrees to provide such dedicated firm resources on a continuous basis as identified in Exhibit A, Net Requirements. Under no circumstances shall BPA be required to acquire firm power for service to such NLSLs.
- ~~(7)~~ **Renewable Resource/Cogeneration Exception (4/6/08 Version)**
An end-use consumer served by «Customer Name», with a facility whose load is a NLSL, may reduce its NLSL to less than 10 average megawatts by applying an on-site renewable resource or on-site cogeneration behind the customer's meter to its facility load. «Customer Name» shall ensure that such resource is continuously applied to serve the NLSL, consistent with BPA's "Renewables and On-Site Cogeneration Option under the NLSL Policy" portion of its Policy for Power Supply Role for Fiscal Years 2007-2011, adopted February 4, 2005, and the NLSL policy included in BPA's Long Term Regional Dialogue Final Policy, July 2007, as amended or replaced. If the NLSL end-use consumer meets the qualification for the exception, the Parties shall amend Exhibit D, Additional Products and Special Provisions to add the on-site renewable resource or cogeneration facility and the requirements for such service.

- ~~(d) — **Priority of Pacific Northwest Customers** (09/04/07 Version)
The provisions of sections 9(c) and (d) of the Northwest Power Act and the provisions of P.L. 88-552 as amended by the Northwest Power Act are incorporated into this Agreement by reference. «Customer Name», together with other customers in the Region, shall have priority to BPA power consistent with such provisions.~~
- ~~(e) — **Prohibition on Resale** (09/04/07 Version)
«Customer Name» shall not resell Firm Requirements Power except to serve «Customer Name»'s Total Retail Load or as otherwise permitted by federal law.~~
- ~~(f) — **Use of Regional Resources** (02/28/08 Version)~~
- ~~(1) — Within 60 days prior to the start of each Fiscal Year, «Customer Name» shall provide notice to BPA of any firm power from a Generating Resource, or a Contract Resource during its term, that has been used to serve firm consumer load in the Region and that «Customer Name» plans to export for sale outside the Region in the next Fiscal Year. BPA may request additional information on «Customer Name»'s sales and dispositions of non-federal resources if BPA has information that «Customer Name» may have made such an export and not notified BPA. BPA may request and «Customer Name» shall provide within 30 days of such request, information on the planned use of any or all of «Customer Name» Generating and Contract Resources.~~
- ~~(2) — «Customer Name» shall be responsible for monitoring any firm power from Generating Resources and Contract Resources it sells in the Region to ensure such firm power is planned to be used to serve firm consumer load in the Region.~~
- ~~(3) — If «Customer Name» fails to report to BPA in accordance with section 21(f)(1), above, any of its planned exports for sale outside the Region of firm power from a Generating Resource or a Contract Resource that has been used to serve firm consumer load in the Region, and BPA makes a finding that an export which was not reported was made, BPA shall decrement the amount of its Firm Requirements Power sold under this Agreement by the amount of the export that was not reported, for the duration of the export. When applicable such decrements shall be identified in section 7(b) of Exhibit A, Net Requirements.~~
- ~~(4) — For purposes of this section, an export for sale outside the Region means a contract for the sale or disposition of firm power from a Generating Resource, or a Contract Resource during its term, that has been used to serve firm consumer load in the Region in a manner that such output is no longer used or not planned to be used solely to serve~~

~~firm consumer load in the Region. Delivery of firm power outside the Region under a seasonal exchange agreement that is made consistent with BPA's section 9(c) policy will not be considered an export. Firm power from a Generating Resource or a Contract Resource used to serve firm consumer load in the Region means the firm generating or load carrying capability of a Generating Resource or a Contract Resource as established under Pacific Northwest Coordination Agreement resource planning criteria, or other resource planning criteria generally used for such purposes within the Region.~~

~~(g)~~ **BPA Appropriations Refinancing (09/04/07 Version)**

The Parties agree that the Bonneville Power Administration Refinancing section of the Omnibus Consolidated Recissions and Appropriations Act of 1996 (~~The~~ BPA Refinancing Act), P.L. ~~No.~~ 104-134, 110 Stat. 1321, 350, as stated in the United States Code on the date this Agreement is signed by the Parties, is incorporated by reference and is a material term of this Agreement.

~~18.22-~~ **STANDARD PROVISIONS (revised for RPSA)**

(a) **Amendments (09/04/07 Version)**

Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or exhibit, no amendment 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) **Entire Agreement and Order of Precedence (09/26/07 Version)**

This Agreement, including documents expressly 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. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

(c) **Assignment (09/04/07(03/28/08 Version, Revised for RPSA)Version)**
~~(Reviewer's Note: Subparagraph ii is based on the Regional Dialogues Policy pages 17-18, section II, Service to Public Utilities.)~~

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld. ~~Without limiting the foregoing,~~ BPA's refusal to consent to assignment shall not be considered unreasonable if, ~~in BPA's sole discretion:~~ (i) the sale of power by BPA to the assignee would violate any applicable ~~statute, statute,~~ or (ii) such sale might adversely affect the tax-exempt status of bonds issued as part of an issue that finances or refinances the Columbia Generating Station or that such sale might limit the ability to issue future tax-exempt bonds to finance or refinance the Columbia Generating Station. «Customer Name» may not transfer or assign this Agreement to any of its retail consumers.

- (d) **No ~~Third-Party~~Third-Party Beneficiaries** *(10/01/07 Version)*
This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.
- (e) **Waivers** *(10/01/07 Version)*
No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.
- (f) **BPA Policies** *(09/04/07 Version)*
Any reference in this Agreement to BPA policies, including any revisions, does not constitute agreement of «Customer Name» to such policy by execution of this Agreement, nor shall it be construed to be a waiver of the right of «Customer Name» to seek judicial review of any such policy.

Exhibit C-D
NEW LARGE SINGLE LOADS
ADDITIONAL PRODUCTS AND SPECIAL PROVISIONS

1. NEW LARGE SINGLE LOADS (12/27/07 Version)

[BEGIN Potential NLSL Options

Option 1: Include the following if customer DOES NOT have a POTENTIAL NLSL.

- (a) **Potential NLSLs**
«Customer Name» has no potential NLSLs.

End Option 1

Option 2: Include the following if customer has a POTENTIAL NLSL.

- (a) **Potential NLSLs**
«Customer Name» has identified the following potential NLSL(s):

End-use consumer name: « _____ »
Facility location: « _____ »
Potential load size and date anticipated: « _____ »
Description of potential NLSL: « _____ »

END Potential NLSL Options]

End Option 2

- (b) List of NLSLs and CF/CTs

[BEGIN NLSL OPTIONS

Option 1:1a: Include the following if customer has no existing NLSLs.

- (1) **NLSLs**
«Customer Name» has no NLSLs.

Option 2:1b: Include the following if customer has an existing NLSL.

- (1) **NLSLs**

Include in BLOCK and SLICE/BLOCK templates:

«Customer Name» has an NLSL and agrees to serve the NLSL with a firm resource that is not already dedicated to serve its other firm end-use consumer loads. ~~The Parties shall list such firm resource in Exhibit A, Net Requirements.~~

End-use consumer name: « _____ »
Facility location: « _____ »
Date load determined as an NLSL: « _____ »
Description of NLSL: « _____ »
Manner of service: « _____ »

END BLOCK and SLICE/BLOCK templates.

[BEGIN Renewable/Cogen Exception Options

Option 1:2a: Include the following if customer has no onsite renewable or cogeneration facilities to apply to an NLSL:

04/07/08—Draft Block Template

- (2) **Renewable Resource/Cogeneration Exception**
«Customer Name»'s end-use consumer is not applying an on-site renewable resource or cogeneration facility to an NLSL.

Option 2:2b: Include the following if customer has an onsite renewable or cogeneration facility to apply to an NLSL.

- (2) **Renewable Resource/Cogeneration Exception**
Drafter's Note: Use Revision 5 to Exhibit D under Flathead's Subscription Contract 00PB-12172 as a template and coordinate with the NLSL expert and general counsel to add specific renewable or cogeneration resource information.

END Renewable/Cogen Exception Options]

[/BEGIN CF/CT OPTIONS

Option 1:3a: Include the following if customer has no CF/CT loads.

- (3) **CF/CT Loads**
«Customer Name» has no loads that were contracted for, or committed to (CF/CT), as of September 1, 1979, as defined in ~~section~~Section 3(13)(A) of the Northwest Power Act.

Option 2:3b: Include the following if customer has CF/CT loads.

- (3) **CF/CT Loads**
The Administrator has determined that the following loads were contracted for, or committed to be served (CF/CT), as of September 1, 1979, as defined in ~~section~~Section 3(13)(A) of the Northwest Power Act, and are subject to the applicable cost-based rate for the rest of «Customer Name»'s load:

End-use consumer's name: « _____ »

Amount of firm energy (megawatts at 100 percent load factor)
contracted for, or committed to, as of September 1, 1979: « _____ »

Facility location and description: « _____ »

END CF/CT OPTIONS]

Drafter's Note: Include the following for customers who are eligible to receive irrigation rate mitigation

04/07/08 Draft Block Template

**EXHIBIT F
SCHEDULING**

~~Reviewer's Note: BPA will provide a draft scheduling exhibit for Block customers when the Slice/Block template is released for comment.~~

NOTE: The Scheduling Exhibit was not ready for customer review when the PF block template was released on 4/7/07. The version on the next page will apply to both PF block and NR block.

(PS«X/LOC»- «File Name with Path».DOC) «mm/dd/yy» *{Drafter's Note: Insert date of finalized contract here}*

EXHIBIT E
SCHEDULING (4/9/08 Version)

1. SCHEDULING FEDERAL RESOURCES

«Customer Name» is responsible for creating Electronic Tags for all deliveries of federal power purchased under this Agreement. “Electronic Tags” or “e-Tags” means a document describing a physical interchange transaction and its associated participants and is the result of one or more requests, or its successor definition as established by NERC.

2. SCHEDULING NON-FEDERAL RESOURCES

Reviewer’s Note: The following section will be expanded to consider the rights and obligations associated with Block customers who purchase RSS products.

«Customer Name» shall electrically copy Power Services on all preschedule and real-time e-Tags associated with the delivery of «Customer Name»’s non-federal resources, if any, as listed in Exhibit A, Net Requirements.

3. AFTER THE FACT

BPA and «Customer Name» agree to reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). BPA and «Customer Name» will verify all transactions per this Agreement, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

4. REVISIONS

BPA may unilaterally revise this exhibit: (i) to implement changes that BPA determines are necessary to allow it to meet its power and scheduling obligations under this Agreement or (ii) to comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to «Customer Name» unless, in BPA’s sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.