

**SETTLEMENT AGREEMENT**  
**executed by the**  
**BONNEVILLE POWER ADMINISTRATION**  
**and**  
**MONTANA POWER COMPANY**

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	<b>Exhibit A Negotiated In-Lieu Power Sales Agreement</b> <b>(Contract No. 00PB-12165)</b>	
	<b>Exhibit B Residential Load Definition</b>	

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 **MONTANA POWER COMPANY (MPC)**. MPC is a corporation organized under the laws of the State of Montana. BPA and MPC 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 MPC desire to enter into this Agreement in order to settle the Parties' rights and obligations for the Residential Exchange Program for the term of this Agreement.

The Parties agree:

### 1. **TERM**

This Agreement takes effect on the date signed by the Parties. Performance of this Agreement by the Parties shall begin on October 1, 2001, and shall continue through September 30, 2011 (Expiration Date), unless terminated earlier pursuant to section 14 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) "Deemer Account" means the separate account established pursuant to section 10 of the 1981 Residential Purchase and Sale Agreement between MPC and BPA that identifies a monetary payment plus interest that would have been owed to BPA by MPC if MPC had not "deemed" its Average System Cost equal to the PF Exchange rate.
- (c) "Firm Power" means electric power that PBL will make continuously available to MPC under the Negotiated In-Lieu Power Sales Agreement.
- (d) "Negotiated In-Lieu Power Sales Agreement" means Contract No. 00PB-12165, attached to this Agreement as Exhibit A.
- (e) "Forward Flat-Block Price Forecast" means BPA's forecast of the wholesale market price for the purchase of additional amounts of power at 100 percent annual load factor established in the same BPA power rate case as that which established the RL rate and for the period of the RL Rate established in a BPA power rate case Record of Decision (ROD) as finally approved by the Federal Energy Regulatory Commission and affirmed, if appealed, by the United States Court of Appeals for the Ninth Circuit.
- (f) "Lowest PF Rate" means the lowest applicable cost-based power rate provided under the applicable PF rate schedule as applied to purchases of

Firm Power by BPA's preference customers at 100 percent annual load factor. The applicable power rate shall be the PF rate for the same period as the RL Rate for the Firm Power purchases provided under the Firm Power Block Power Sales Agreement.

- (g) "Monetary Benefit" means the monetary settlement benefits provided under this Agreement as determined pursuant to the methodology described in section 4(c) below.
- (h) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501.
- (i) "PF Exchange Subscription Rate," or "PFXS," means the then-current applicable PF Exchange Subscription rate under the PF rate schedule.
- (j) "Qualified Entity" means an entity authorized under state law or by order of the applicable state regulatory authority to serve all or a portion of MPC's Residential Load.
- (k) "Residential Exchange Program" means the program established under section 5(c) of the Northwest Power Act.
- (l) "Residential Load" means the load eligible to receive benefits under this Agreement, as such load is defined in Exhibit B.
- (m) "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, 2011, under or arising out of section 5(c) of the Northwest Power Act, provide to MPC Firm Power or Monetary Benefit payments, or both, pursuant to this Agreement. MPC agrees that the Firm Power and Monetary Benefits provided under this Agreement satisfy all of BPA's obligations during the period from October 1, 2001, through September 30, 2011], under or arising out of section 5(c) of the Northwest Power Act.
- (b) **Invalidity**

In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that this Agreement (or section 4(a), section 4(c), or section 5 of this Agreement) is unlawful, void, or unenforceable, then the provisions of section 3(a) above shall be of no further force or effect, and the Parties intend and agree that: (1) the Firm Power and Monetary Benefits provided prior to such final determination shall be retained by MPC; and (2) the satisfaction of BPA's obligations to MPC under section 5(c) of the

Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law. This section 3(b) shall survive notwithstanding any determination that any other provision of this Agreement (or the exhibits) is unlawful, void, or unenforceable.

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

#### 4. SETTLEMENT BENEFITS

- (a) **Total Benefits**  
BPA shall provide to MPC a total benefit comprised of Firm Power and Monetary Benefit, both of which are expressed in annual average megawatts (aMW). This total benefit is as follows:

<u>Period of Time</u>	<u>Total of Firm Power and Monetary Benefit for MPC (annual aMW)</u>
10/1/01 through 9/30/06	<u>24.0</u>
10/1/06 through 9/30/11	<u>28.0</u>

The allocation and disposition of this total benefit between Firm Power and Monetary Benefit is described in sections 4(b) and 4(c) below.

- (b) **Firm Power Sale Portion of Total Benefits**
- (1) **October 1, 2001, through September 30, 2006**
- (A) Subject to the terms of this Agreement, BPA shall make available and sell, and MPC shall purchase, Firm Power at a "flat" rate of delivery (100 percent annual load factor) during every hour under the PF Exchange Subscription Rate. The terms and conditions for this sale shall be as provided for in the Negotiated In-Lieu Power Sales

Agreement, attached hereto as Exhibit A. The annual amounts of Firm Power are as follows:

<u>Period of Time</u>	<u>Firm Power (annual aMW)</u>
10/1/01 through 9/30/06	<u>13.0</u>

- (B) If MPC terminates the Negotiated In-Lieu Block Power Sales Agreement pursuant to section 16 of such agreement, BPA shall convert the Firm Power sale to Monetary Benefits and provide Monetary Benefits in the amount of the Firm Power sale, pursuant to section 4(c) below (except as provided in section 5(a)(3) below), from the effective date of such termination through September 30, 2006.
- (C) If an investor-owned utility signs an agreement settling the rights of such utility under the Residential Exchange Program and that utility takes Monetary Benefits instead of the Firm Power offered by BPA, BPA shall offer to amend MPC's Settlement Agreement to substitute Firm Power for Monetary Benefits. The amount of Firm Power offered by BPA shall be MPC's share of the amounts of Firm Power not taken by an investor-owned utility, based on the allocation methodology described in the Administrator's Record of Decision issued with agreements offered to settle the rights of investor-owned utilities under the Residential Exchange Program. BPA shall determine whether such amounts of Firm Power are available as soon as possible after the expiration of the termination right in section 14 of such agreements offered to settle the rights under the Residential Exchange Program. MPC shall have 30 days to accept the offer.

(2) **October 1, 2006, through September 30, 2011**

- (A) Subject to the terms of this Agreement, BPA shall, no later than October 1, 2005, notify MPC in writing of the amount of Firm Power in annual aMW that will be provided to MPC during the period that begins October 1, 2006, and ends on September 30, 2011. The terms and conditions for this sale shall also be as provided for in the Negotiated In-Lieu Power Sales Agreement, and such agreement shall be amended by the Parties to reflect the amount of Firm Power to be sold during such period. BPA shall not offer an amount of Firm Power that exceeds BPA's determination of the availability of In-Lieu Power at the time of the notice issued pursuant to this section. Prior to issuing such notice, BPA shall consult with MPC regarding its desire for Firm Power or Monetary Benefits.

(B) If the PF Exchange Subscription Rate calculated at 100 percent annual load factor for the period from October 1, 2006, through September 30, 2011, exceeds the Lowest PF Rate for the same 100 percent annual load factor during such period, MPC may, by written notice to BPA within 30 days after BPA published its power rate case ROD, notify BPA that it will convert its entire Firm Power purchase under the Negotiated In-Lieu Power Sales Agreement to Monetary Benefits, pursuant to section 4(c) below (except as provided in section 5(a)(3) below), for the remaining term of this Agreement.

(c) **Monetary Benefit Portion of Total Benefits**

(1) **Amount of Monetary Benefit**

(A) **October 1, 2001, through September 30, 2006**  
 BPA shall provide the following Monetary Benefits expressed in annual aMW to MPC for the period that begins October 1, 2001, and continues through September 30, 2006.

<u>Period of Time</u>	<u>Monetary Benefit</u> <u>(annual aMW)</u>
10/1/01 through 9/30/06	_____ <u>11.0</u> _____

(B) **October 1, 2006, through September 30, 2011**  
 BPA shall, no later than October 1, 2005, notify MPC in writing of the amount of Monetary Benefit expressed in annual aMW, for which payments will be made to MPC during the period that begins October 1, 2006, and continues through September 30, 2011.

(2) **Determination of Monetary Benefit Monthly Payment Amounts**

(A) **October 1, 2001, through September 30, 2006**  
 The Monetary Benefit monthly payment amounts shall be determined in accordance with the following formula:

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

Where:

MP = Monthly Payment Amount

FBPF = Forward Flat-Block Price Forecast established in the same BPA power rate case as that which established the PF Exchange Subscription Rate during the period beginning October 1, 2001, through September 30, 2006.

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

MB = Monetary Benefit amount in annual aMW.

(B) **October 1, 2006, through September 30, 2011**

The Monetary Benefit monthly payment amounts shall be determined in accordance with the following formula:

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

Where:

MP = Monthly Payment Amount

FBPF = Forward Flat-Block Price Forecast established in the same BPA power rate case as that which established the PF Exchange Subscription Rate during for the period beginning October 1, 2006, through September 30, 2011.

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

MB = Monetary Benefit amount in annual aMW.

(C) **Exception to Use of PF Exchange Subscription Rate in Sections 4(c)(2)(A) and 4(c)(2)(B)**

If, for the purposes of the formulas shown in sections 4(c)(2)(A) and 4(c)(2)(B) above, there is: (i) no PFXS Rate in effect; or (ii) the PFXS Rate exceeds the Lowest PF Rate, then the Lowest PF Rate shall replace the PFXS Rate in such formulas. Use of the Lowest PF Rate in such event shall apply to Monetary Benefits provided in accordance with sections 4(b)(1)(B), 4(b)(2)(C), and 4(c)(1).

(3) **Payment Provisions**

BPA shall pay “MPC” the monthly Monetary Benefit as determined in section 4(c)(2). The monthly Monetary Benefit shall be netted against the monthly payment amounts MPC owes BPA for Firm Power

purchased in accordance with section 4(b). If the monthly Monetary Benefit exceeds the monthly amount MPC owes BPA, then BPA shall pay MPC either: (A) on the due date of the bill issued under Exhibit A; or (B) if MPC is not purchasing power under the Firm Power Block Power Sales Agreement within 30 days of the end of the calendar month for which Monetary Benefits are paid (Due Date). After the Due Date, and for the purposes of section 4(c)(3)(B), a late payment charge is calculated at a daily, simple interest rate determined by dividing the Prime Rate for Large Banks, as reported in the Wall Street Journal, plus 4 percent, by 365. The applicable Prime Rate for Large Banks shall be the rate reported on the first day of the month in which payment was received. BPA shall pay by electronic funds transfer using MPC's established procedures.

## **5. CASH PAYMENTS IF FIRM POWER NOT DELIVERED**

### **(a) Conditions Under Which Firm Power Not Delivered**

#### **(1) Firm Power Not Delivered Pursuant to Section 8(b)**

If, pursuant to section 8(b) below, monthly amounts of Firm Power cannot be delivered, then such amounts of Firm Power shall be converted to cash payments as provided for in section 5(b) below.

#### **(2) Firm Power Not Delivered Due to a Monthly Purchase Deficiency**

If, for any month, there is a Monthly Purchase Deficiency, as that term is defined in section 5 of the Negotiated In-Lieu Power Sales Agreement, then such amount(s) of Monthly Purchase Deficiency shall be converted to cash payments as provided in section 5(b) below.

#### **(3) Termination of Negotiated In-Lieu Power Sales Agreement**

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

#### **(4) Negotiated In-Lieu Power Sales Agreement Held Invalid**

If any or all power deliveries under the Negotiated In-Lieu Power Sales Agreement are restricted due to such agreement being unlawful, void, or unenforceable, then such restricted amounts shall be converted to cash payments as provided in section 5(b) below.

(b) **Determination of Cash Payment Amounts**

(1) **Default Payment Option**

Cash payments pursuant to this section shall be made monthly according to the following formula:

$$FBNDP = (MIDC - WC - PFXS) \times MWH$$

Where:

FBNDP = Monthly Cash Payment Amount for Firm Power in MWh not delivered under sections 5(a)(1) through 5(a)(4) above.

MIDC = The average price for the month of the Dow Jones daily firm On-Peak index price at the Mid-C for HLH, and the Dow Jones daily firm Off-Peak index price at the Mid-C for LLH based on volume weighted amounts not delivered to MPC under Exhibit A. If, in the future, the Mid-C index is no longer available, or does not accurately reflect the value of daily firm energy, then it will be replaced with another prevailing index (or indices) that best represents the market price for firm power traded in eastern Washington.

WC = Wheeling Charge from Federal system generators to the Mid-C point of delivery based on the posted Point-to-Point tariff of BPA's transmission business or its successor over unconstrained paths plus any mandatory posted ancillary service charges and transmission losses for scheduled power under such tariff. If, in the future, the Point-to-Point tariff is no longer available, or does not accurately reflect the cost of wheeling power from Federal system generators to the Mid-C point of delivery, then it will be replaced with a tariff that best represents the cost of wheeling fixed amounts of power between known points over unconstrained transmission paths.

PFXS = The monthly PF Exchange Subscription Rate calculated at 100 percent load factor for HLH and LLH periods.

MWH = Monthly amount of power that cannot be delivered, expressed in megawatthours for HLH and LLH periods.

(2) **MPC Offer of Put Right to BPA**

Rather than receive payments under the default option described in section 5(b)(1) above, MPC may elect to offer BPA a put right for amounts of power not delivered pursuant to section 5(a)(1), section 5(a)(3), and section 5(a)(4) subject to the following terms:

- (A) No later than 10 days prior to the start of a month, MPC shall notify BPA if it desires to provide BPA with a put right for such month. Such put right shall provide BPA the right to sell the amount of power determined in section 5(a)(1), section 5(a)(3), and section 5(a)(4) above at the Mid-C index price as specified in section 5(b)(2)(C) below for the applicable delivery period, and at the point of delivery described in section 5(b)(2)(D) below.
- (B) If BPA chooses to exercise the put, it must do so prior to 2 p.m. on the later of: (i) three business days prior to the end of the month; or (ii) the day prior to the last day of trading for that month on the New York Mercantile Exchange futures market, or the put right expires for that month.
- (C) If MPC offers BPA the put right for a given month, then BPA shall pay MPC a cash payment according to the following formula:

$$PRP = (MIDC - PFXS) \times MWH$$

Where:

PRP = Monthly Cash Payment Amount for Firm Power in MWh not delivered under section 5(a)(1), section 5(a)(3), and section 5(a)(4).

MIDC = The average price for the month of the Dow Jones daily firm On-Peak index price at the Mid-C for HLH, and the Dow Jones daily firm Off-Peak index price at the Mid-C for LLH based on volume weighted amounts not delivered to MPC under Exhibit A. If, in the future, the Mid-C index is no longer available, or does not accurately reflect the value of daily firm energy, then it will be replaced with another prevailing index (or indices) that best represents the market price for firm power traded in eastern Washington.

PFXS = The monthly PF Exchange Subscription Rate calculated at 100 percent load factor.

MWH = Monthly amount of power that is offered by MPC as a put right, expressed in megawatthours.

(D) The point of delivery for power that is put to MPC will be the same point where BPA makes Firm Power available to MPC in the Negotiated In-Lieu Power Sales Agreement to wheel to its load.

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

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

(4) **Payment Provisions**

If the monthly payment amount determined pursuant to the formulas in sections 5(b)(1) and 5(b)(2) is positive, then BPA shall pay MPC such amount; if any such amount is negative, then MPC shall pay BPA such amount. Monthly payment obligations under this section 5 shall appear as adjustments to BPA's payments or MPC's payments under section 4(c)(3) above.

## 6. PASSTHROUGH OF BENEFITS

- (a) Except as otherwise provided in this Agreement, Firm Power and Monetary Benefit amounts received by MPC from BPA under this Agreement shall be passed through, in full, to each residential and small farm consumer, as either: (1) an adjustment in applicable retail rates; (2) monetary payments; or (3) as otherwise directed by the applicable State regulatory authority.
- (b) Monetary payments shall be distributed to the Residential Load in a timely manner, as set forth in this section 6(b). The amount of benefits held in the account described in section 6(c) below at any time shall not exceed the expected receipt of monetary payments from BPA under this Agreement over the next 180 days. If the annual monetary payment is less than \$600,000, then MPC 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 MPC's State regulatory authority(s). Monetary Benefits and any cash benefits under section 5 shall be identified on MPC'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 MPC. Benefits shall not be pooled with other monies of MPC for short-term investment purposes. Firm Power shall be delivered monthly, and only to Residential Load.

- (d) Nothing in this Agreement shall require that any power be delivered on an unbundled basis to residential and small farm customers of MPC or that MPC provide retail wheeling of such power.

## 7. AUDIT RIGHTS

BPA retains the right to audit MPC at BPA's expense to determine whether the benefits provided to MPC under this Agreement were provided only to MPC'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 MPC 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 MPC pursuant to this Agreement, MPC agrees to maintain records and documents showing all transactions and other activities pertaining to the terms of this Agreement with respect to which BPA has audit rights.

## 8. ASSIGNMENT

- (a) MPC shall be required to assign benefits under this section 8 to BPA if another Qualified Entity serves Residential Load formerly served by MPC unless: (i) BPA has approved an agency agreement for such Qualified Entity under section 8(c); or (ii) BPA has approved a state program for the passthrough of benefits by a distribution utility under section 8(c).
- (b) This Agreement is binding on any successors and assigns of the Parties. BPA may assign this Agreement to another Federal agency to which BPA's statutory duties have been transferred. Neither Party may otherwise transfer or assign this Agreement without the other Party's written consent. Such consent shall not be unreasonably withheld; **provided, however**, that MPC agrees it shall assign benefits under this Agreement subject to the following terms and conditions:
  - (1) MPC shall quantify an amount of Residential Load each month served by Qualified Entities that would have been eligible to receive benefits if served by MPC, 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 MPC and Qualified Entities in the last full calendar month prior to such written notice to BPA. An account month is the number of days of service to a Residential Load account during a month, divided by the number of days in such month.

- (2) Based on the determination in section 8(b)(1) above, MPC shall assign to BPA during the month following such notice a share of the total benefits specified in section 4(a) above. Such share shall be the account months of Residential Load served by Qualified Entities divided by the account months of Residential Load of MPC that would be eligible to receive benefits, whether or not MPC continues to serve such Residential Load. For purposes of section 8(b)(1) and this section 8(b)(2), the Residential Load of MPC shall not include Residential Load receiving benefits over a new distribution system under section 8(d).
  - (3) The amounts of Firm Power and Monetary Benefit assigned to BPA shall be in the same proportion as MPC receives under this Agreement.
  - (4) If the passthrough of benefits is made to consumers under section 8(c) below, then MPC shall retain the Monetary Benefits assigned to BPA under this section 8(b) and the amount of Firm Power determined under this section 8(b) to be assigned to BPA shall be retained by BPA and converted to dollars pursuant to section 5 above. MPC shall use such amount of dollars plus the Monetary Benefits to provide benefits to individual residential and small farm consumers under section 8(c) below.
- (c) MPC may continue to pass through benefits to individual residential and small farm consumers under this Agreement not served by MPC: (i) if MPC is acting as the agent under an agreement entered into between MPC and a Qualified Entity which has been approved by MPC'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 MPC under this Agreement to all its residential and small farm consumers acting in its capacity as a distribution utility. MPC may continue to act as an agent for a Qualified Entity until an RPSA is signed by BPA and the Qualified Entity. Such benefits shall be equal to each such consumer's share of the Qualified Entity's share of the Residential Load, as calculated under section 8(b) above. MPC may distribute such benefits on a less frequent basis than monthly, provided that distributions are made at least once each Contract Year.
- (d) If a Qualified Entity eligible to purchase Firm Power acquires all or a portion of the distribution system serving the Residential Load of MPC, MPC shall assign to BPA for the remaining term of this Agreement a share of the total benefits specified in section 4(a) above. Such share shall be based on the amount of Residential Load that would have been eligible to receive benefits from the new Qualified Entity for the 12-month period prior to the date of assignment divided by the total of Residential Load of MPC that would have been eligible to receive benefits during that same 12-month period regardless

of who served such Residential Load. All provisions of this section 8, other than section 8(b)(2), shall apply to assignments under this section 8(d).

**9. DEEMER ACCOUNT BALANCE**

As a result of entering this Agreement, neither BPA nor MPC has prejudiced its right, if any, to assert that a Deemer Account balance, if any, from the 1981-2001 Residential Purchase and Sale Agreement between BPA and MPC is required to be carried over to any subsequent agreement offered by BPA pursuant to section 5(c) of P.L. 96-501. BPA and MPC agree that the Deemer Account balance shall not apply to the Negotiated In-Lieu Power Sales Agreement.

**10. CONSERVATION AND RENEWABLE DISCOUNT**

Subject to the terms specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, BPA shall apply the Conservation and Renewables Discount to MPC's Monetary Benefits and Firm Power Sale as established in section 4 of this Agreement, unless MPC has notified PBL before August 1, 2001, that it will not participate in the Conservation and Renewable Discount. For purposes of establishing Monetary Benefits and Firm Power amounts eligible for this discount, MPC shall provide PBL a reasonable forecast of its Monetary Benefits and amounts of Firm Power provided pursuant to the Firm Power Block Power Sales Agreement through Contract Year 2006 by no later than August 1, 2001.

If, during any Contract Year, MPC has significant change in the total amount of Monetary Benefits or Firm Power provided pursuant to the Firm Power Block Power Sales Agreement, the Parties may, by no later than August 31 prior to the succeeding Contract Year, revise the forecast used to calculate the Conservation and Renewables Discount. If the revised forecast is less than 95 percent of, or greater than 105 percent of, the forecast used to calculate the existing Conservation and Renewables Discount, the revised forecast shall be used to recalculate the Conservation and Renewables Discount for the succeeding Contract Years.

To retain the full amount of the Conservation and Renewable Discount MPC 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. MPC shall reimburse BPA for any amount it received but for which it did not satisfy such obligations.

Monetary Benefits shall be treated in the same manner as Firm Power for purposes of any Conservation and Renewable Discount program or similar program based on Firm Power purchases. MPC shall be eligible for the Conservation and Renewable Discount, or any similar program based on purchases of negotiated amounts of in-lieu power under section 5(c) of the Northwest Power Act that BPA decides to establish through a section 7(i) hearing for the period that begins October 1, 2006, and ends on September 30, 2011.

## 11. GOVERNING LAW AND DISPUTE RESOLUTION

- (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. MPC reserves the right to seek judicial resolution of any dispute arising under this Agreement that is not subject to arbitration under this section 11. For purposes of this section 11, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application, or makes a determination under an applicable statute. If either Party asserts that a dispute is excluded from arbitration under this section 11, either Party may apply to the Federal court having jurisdiction for an order determining whether such dispute is subject to arbitration under this section 11.
- (b) Any contract dispute or contract issue between the Parties arising out of this Agreement, except for disputes that are excluded through section 11(a) above, shall be subject to binding arbitration. The Parties shall make a good faith effort to resolve such disputes before initiating arbitration proceedings. During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.
- (c) Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The CPR Institute for Dispute Resolution's arbitration procedures for commercial arbitration, Non-Administered Arbitration Rules (CPR Rules), shall be used for each dispute; **provided, however,** that: (1) the Parties shall have the discovery rights provided in the Federal Rules of Civil Procedure unless the Parties agree otherwise; and (2) for claims of \$1 million or more, each arbitration shall be conducted by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a list containing the names of 15 qualified individuals supplied by the CPR Institute for Dispute Resolution. If the Parties cannot agree upon three arbitrators on the list within 20 business days, they shall take turns striking names from the list of proposed arbitrators. The Party initiating the arbitration shall take the first strike. This process shall be repeated until three arbitrators remain on the list, and those individuals shall be designated as the arbitrators. For disputes involving less than \$1 million, a single neutral arbitrator shall be selected consistent with section 6 of the CPR Rules.
- (d) Except for arbitration awards which declare the rights and duties of the Parties under the Agreement, the payment of monies shall be the exclusive remedy available in any arbitration proceeding. Under no circumstances shall specific performance be an available remedy against BPA. The arbitration award shall be final and binding on both Parties, except that

either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

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

**12. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CUSTOMERS**

MPC will ensure that any entity that issues customer bills to MPC residential and small farm consumers shall provide written notice on such customer bills that a portion of their power and associated benefits is “Federal Columbia River Benefits supplied by BPA.”

**13. STANDARD PROVISIONS**

(a) **Amendments**

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 load forecasts for planning purposes, information needed to resolve billing disputes, scheduling and metering information reasonably necessary to prepare power bills that is not otherwise available to the requesting Party. Such information shall be provided in a timely manner. Information may be exchanged by any means agreed to by the Parties. If such information is subject to a privilege of confidentiality, a confidentiality agreement or statutory restriction under state or Federal law on its disclosure by a Party to this Agreement, then that Party shall endeavor to obtain whatever consents, releases or agreements are necessary from the person holding the privilege to provide such information while asserting the confidentiality over the information. Information provided to PBL which is subject to a privilege of confidentiality or nondisclosure shall be clearly marked as such and PBL shall not disclose such information without obtaining the consent of the person or Party asserting the privilege, consistent with BPA’s obligation under the Freedom of Information Act. PBL may use such information as necessary to provide service or timely bill for service under this Agreement. PBL shall only disclose information received under this provision to PBL employees who need the information for purposes of this Agreement.

- (c) **Entire Agreement**

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) **Severability**

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

#### **14. TERMINATION OF AGREEMENT**

- (a) **MPC** may terminate this Agreement through a written notice up to 30 days after FERC grants interim approval for BPA's wholesale power rates that are effective October 1, 2001.
- (b) If BPA does not use BPA's then-current rate case Forward Flat-Block Price Forecast for all estimates of the cost of purchases of flat blocks of power in any such rate case, which are made in advance of the period of delivery and which are made for the rate period established in such rate case that occurs between October 1, 2006, and September 30, 2011, **MPC** may terminate this Agreement through a written notice up to 30 days after FERC grants interim approval for BPA's wholesale power rates effective during such period occurring between October 1, 2006, and September 30, 2011. Unless BPA uses its Forward Flat-Block Price Forecast for purposes of: (1) pricing its firm power for augmentation purchases; and (2) estimating the cost of

augmentation purchases in any or all demonstrations in the rate case of its ability to meet its obligations to the U.S. Treasury, MPC shall have the termination right specified in this section 14(b). In determining whether this section 14(b) applies, the price of any purchases of firm power for augmentation purposes that are not forecasted to be made on a flat annual basis shall be adjusted to a flat annual price. BPA shall adjust the forecasted price of a shaped augmentation purchase by multiplying such price by the ratio of the forecasted long-run marginal cost for a flat annual purchase to the forecast of the long-run marginal cost for a purchase in the same shape as the shaped augmentation purchase. Although BPA may use its long-run marginal cost of power as its Forward Flat-Block Price Forecast, establishing a Forward Flat-Block Price Forecast that is different than its long-run marginal cost of power shall not be considered a different estimate of the cost of purchases of flat blocks of power under this section 14(b).

**15. 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.

**MONTANA POWER COMPANY**

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

By **/S/ JOHN D. HAFFEY**

By **/S/ LARRY E. KITCHEN**  
Account Executive

Name John D. Haffey  
*(Print/Type)*

Name Larry E. Kitchen  
*(Print/Type)*

Title Executive Vice President and  
Chief Operating Officer

Date **10/31/00**

Date **10/26/00**

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

**Exhibit B  
RESIDENTIAL LOAD DEFINITION**

1. MPC’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 MPC’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 MPC under:

	<u>Tariff Schedule</u>	<u>Amount (kWh)</u>
(1)	Residential R-1	_____
(2)	Residential Lighting YL –1	_____
(3)	Residential Lighting PL-1	_____
(4)	General Service GS-1	_____
(5)	Irrigation and Drainage Pumping IS-1	_____

- (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:

$$\text{Irrigation/Pumping Load} = 400 \times 0.746 \times \text{days in billing period} \times 24$$

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

where:

400 is equal to the horsepower limit defined in the Northwest Power Act,

0.746 is the factor for converting horsepower to kW,

days in billing period is determined in accordance with prudent and normal utility business practices, and

24 is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.
4. For purposes of this Agreement, a farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

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

Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to MPC 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 MPC all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide MPC and BPA all documentation requested to assist in the farm determination.
  7. This Exhibit B shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.

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