

IOU INITIAL COMMENTS IN RESPONSE TO BPA DRAFT POST-2028 RESIDENTIAL PURCHASE AND SALE AGREEMENT

Submitted to REP2028@bpa.gov

November 25, 2025

Avista Corporation, Idaho Power Company, NorthWestern Energy, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. (together, the “IOUs”) offer the following initial comments in response to BPA’s preliminary draft Post-2028 Residential Purchase and Sale Agreement (“Draft RPSA”).¹ These initial comments include the attached IOU initial revisions to the Draft RPSA (in annotated, redline form) (“Revised Draft RPSA”), provided as Appendix A.

As discussed below, these initial comments outline core concepts regarding the implementation of a physical exchange of power and associated attributes that the IOUs would like to see reflected in a revised Draft RPSA. These initial comments are preliminary and may be supplemented and revised in the formal comments to be submitted during the formal comment period.² To ensure a complete record, the IOUs request that BPA provide revisions and responses to these initial comments in conjunction with BPA’s release of its next draft version of the Post-2028 RPSA.³

A. Section 5 of the Draft RPSA should be revised to permit utilities to opt for physical delivery of electric power.

Section 5.3 of the Draft RPSA provides that “[n]o physical delivery of electric power shall occur” as part of a NWPA §5(c)(1) exchange. This restriction does not comport with the plain language of the Northwest Power Act (“NWPA”) and should be removed. Section 5(c)(1) of the NWPA expressly provides for a physical exchange of power between a utility and BPA:

Whenever a Pacific Northwest electric utility **offers to sell** electric power to the Administrator at the average system cost of that utility’s resources in each year, the Administrator shall **acquire by purchase** such power and shall offer, in exchange, **to sell** an equivalent amount of electric power to such utility for resale to that utility’s residential users within the region.

(Emphasis added.) By NWPA §5(c)(1)’s terms, if an electric utility offers to sell power to BPA, BPA must purchase that power and sell an equivalent amount of Federal resource system power

¹ Preliminary Draft Residential Purchase and Sale Agreement (Oct. 22, 2025), available at <https://www.bpa.gov/energy-and-services/power/residential-exchange-program/post-2028-rep>.

² These comments are targeted towards addressing the Draft RPSA’s treatment of Environmental Attributes and physical delivery requirements. The IOUs reserve their right to modify or supplement these comments and to address additional issues during the formal comment period. By not commenting on or modifying any particular provision of the Draft RPSA at this time, the IOUs are not accepting such provisions and do not waive the right of all IOUs or any individual IOU to comment on such provisions in the future.

³ Based on correspondence posted by BPA on November 25, we understand that BPA intends to release a full RPSA draft for formal comment on December 9, 2025, with formal comments due by January 21, 2026.

back to the utility. The ordinary meanings of both “purchase” and “sell” indicate that this exchange is necessarily physical—a “purchase” is a transaction where power is “obtain[ed] by paying money,”⁴ and a “sale” is a transaction where power is “deliver[ed]” or “give[n] up.”⁵

The statutory language does not limit the transaction to solely being an accounting or bookkeeping exercise. While historically, the requirement in NWP §5(c)(1) for physical exchange has been implemented (through settlement or not) by agreement of the parties, these agreements in effect waived by mutual agreement the need for physical exchange deliveries for the agreement period. Just as past REP agreements in effect waived certain statutory rights during the applicable agreement period but not outside of the agreement period, these prior waivers of the right to delivery of physical exchange do not waive any rights available under the REP after expiration of the current REP settlement agreement, including the right to a physical exchange of power.

BPA asserts that a “‘bookkeeping’ transaction” (paying monetary benefits based on the amount by which Average System Costs exceed the PF Exchange rate) “would meet the purpose and intent of the section 5(c).”⁶ This assertion is erroneous in light of the plain statutory language, to the extent that a bookkeeping transaction defined in that way alone would fail to provide the Environmental Attributes that would be provided under a physical exchange contemplated by section 5(c).⁷

BPA also asserts in general terms that a physical exchange would be difficult or impractical due to various purported logistical or administrative challenges with implementing physical deliveries of power under an exchange. But such general assertions fail to demonstrate that (i) NWP §5(c)(1) does not provide for a physical exchange, or (ii) a physical exchange should not be an option for an exchanging utility if and to the extent the exchanging utility chooses to pursue a physical exchange. The Draft RPSA artificially restricts purchase and exchange sales to financial transactions without providing even the *option* for utilities to participate via a physical delivery.

Further, BPA is taking inconsistent positions: under Section 5 of the Draft RPSA, BPA denies physical deliveries under NWP §5(c)(1), but Section 9 of the Draft RPSA provides for physical deliveries under NWP §5(c)(1) if BPA acquires power under NWP §5(c)(5).⁸ In

⁴ MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/purchase>.

⁵ MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/sell>.

⁶ BPA, *Post-2028 Residential Exchange Program Residential Purchase and Sale Agreement Workshop 1*, 35 (Sep. 11, 2025), <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/20250911-rep-phase-2-post-2028-rpsa-workshop.pdf> (“September 11 Workshop”) at page 44.

⁷ As discussed below, the Post-2028 Residential Purchase and Sale Agreement should provide an option to elect physical delivery of power (including Environmental Attributes) for those exchanging utilities that need and desire physical delivery, but also provide an option to elect deemed delivery of power (including Environmental Attributes).

⁸ As discussed below, BPA misconstrues NWP §5(c)(5). Under the statute, in-lieu power is not purchased for sale to the exchanging utility but rather to replace power sold to the exchanging utility.

other words, BPA claims that a physical exchange is difficult or impractical, but concedes that physical delivery of In Lieu Power is feasible.

An actual physical delivery of power may not be necessary in all instances to implement the residential exchange for each utility, but, consistent with the statute, each utility should have the ability to elect whether to engage in a physical delivery or receive the benefits of the exchange for its residential and small farm consumers. The Revised Draft RPSA (attached as Appendix A) includes proposed revisions, including primarily in Section 5.2a., to provide for a physical delivery of power if the exchanging utility so elects.

B. The Draft RPSA should be revised to include inherent cost and non-cost benefits, such as Environmental Attributes, in the benefits to be provided under NWPA §5(c)(1).

A fundamental purpose of the NWPA is to allow the residential and small farm customers served by the region's IOUs to share in the benefits of lower-cost Federal power to be sold by BPA under NWPA §5(c)(1); these inherent benefits include, but are not limited to, the value of carbon intensity and other Environmental Attributes⁹ of Federal power. NWPA §5(c)(1) requires BPA to offer a sale of Federal power to the IOUs. This Federal power includes the cost and non-cost benefits, including Environmental Attributes.¹⁰

The regulatory landscape for Pacific Northwest utilities has been fundamentally altered since the 2012 Residential Exchange Program settlement, with states implementing carbon reduction and clean energy standards that impose significant additional cost burdens on customers.¹¹ The regulatory landscape may yet change more during the 16-year life of this RPSA, particularly in light of further regionalization and market development efforts. As a result, at this time, it is particularly important that the inherent cost and non-cost benefits, including Environmental Attributes, of Federal power be included in the sales of Federal power under NWPA §5(c)(1). BPA's Draft RPSA fails to implement the intent of the residential exchange when it excludes associated Environmental Attributes and other inherent benefits from the REP Benefits transferred through sales of Federal power.

BPA does not dispute that where electric power is physically delivered, Environmental Attributes would be conveyed as a benefit of that transaction. The Draft RPSA conveys Environmental Attributes for in-lieu transactions under Section 9.6. Similarly, BPA's Post-2028 Provider of Choice contract specifically provides for the conveyance of Environmental Attributes associated with a utility's purchase of power under NWPA §5(b).¹²

⁹ See Section 2.13 of the Draft RPSA, which defines "Environmental Attributes."

¹⁰ The IOUs are proposing revisions to Section 2.30 ("REP Benefits") to align the Draft RPSA with this statutory principle and to include both Environmental Attributes and other cost or non-cost benefits that arise during the term of the RPSA as described therein. See Appendix A.

¹¹ For example, electric utilities in Oregon must comply with HB 2021 (ORS 469A.400 *et seq.*), and electric utilities in Washington must comply with both the Clean Energy Transformation Act and the Climate Commitment Act.

¹² BPA, *PROVIDER OF CHOICE FINAL MASTER CONTRACT TEMPLATE*, Exhibit H (Aug. 14, 2025), available at: <https://www.bpa.gov/energy-and-services/power/provider-of-choice>.

BPA sales of power, such as a sale pursuant to NWPA §5(b)(1) or NWPA §5(c)(1), are system sales.¹³ Environmental Attributes, such as carbon intensity, are inherent in BPA's power sales, including those under NWPA §5(b)(1) and §5(c)(1). Just as the COUs enjoy the Environmental Attributes and other inherent benefits of the Federal power they purchase under NWPA §5(b)(1), so should the IOUs when BPA sells power to the IOUs in an exchange under NWPA §5(c)(1).

As noted previously, an actual physical delivery of power may not be necessary in all instances to implement the residential exchange for each utility, depending on state-specific requirements for meeting compliance obligations. Each utility should have the ability to elect whether to engage in a physical exchange to account for these state-specific requirements. The IOUs have incorporated into the Revised Draft RPSA an option to elect physical delivery of power (including Environmental Attributes) for those exchanging utilities that need and desire physical delivery, as well as an option to elect deemed delivery of power (including Environmental Attributes) if actual physical delivery of power is not necessary. *See, e.g.*, Revised Draft RPSA, Section 5.2a.

C. The Draft RPSA's treatment of in lieu transactions disregards the statutory language.

The Draft RPSA's application of NWPA §5(c)(5) is contrary to the statutory language. Under NWPA §5(c)(5),

in lieu of purchasing any amount of electric power offered by a utility under paragraph (1) of this subsection, the Administrator may acquire an equivalent amount of electric power from other sources to **replace power sold to such utility** as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility

(Emphasis added.)

Section 2.17 of the Draft RPSA erroneously construes this transaction as a ***purchase*** for sale and delivery by BPA to the exchanging utility, rather than a replacement tied to the residential exchange:

“The In-Lieu Power is then sold by BPA to «Customer Name» in an In-Lieu transaction at the applicable PF Exchange Rate, or its successor.”

Under the NWPA, the in-lieu power is purchased by BPA to ***replace*** power sold by BPA under the residential exchange—it is not to be purchased by BPA for sale to the exchanging utility. In other words, BPA's obligation to *sell* system power to the IOUs is unchanged by the In-Lieu provisions of the NWPA. This is consistent with a fundamental intent behind the NWPA to

¹³ Appendix B (BPA Whitepaper for “Provider of Choice” Contract Discussions: Why BPA is Required to Sell From a Pooled System of Resources (available at <https://www.bpa.gov/-/media/Aep/power/provider-of-choice/bpa-whitepaper-on-system-sales.pdf>)) (“Appendix B, BPA Whitepaper”). Appendix B, BPA Whitepaper is attached hereto and incorporated herein by reference.

allow a regional IOU's residential and small farm customers to share in the benefits of lower-cost Federal power to be sold by BPA. In contrast, the above-quoted excerpt from Draft RPSA Section 2.17 could enable BPA to bypass its system entirely and simply act as a broker between an exchanging utility and a third-party seller. That is, Section 2.17 could enable BPA to simply sell and deliver a third-party's power (along with any attributes), thereby depriving the IOU of the benefit of receiving BPA system power. BPA's erroneous construction is also inconsistent with BPA's reasoning and conclusion that its sales of power are system sales.¹⁴ A purported sale of specific power from a third-party, such as an in-lieu purchase, would, by definition, not be a system sale. BPA should delete this sentence and correct the Draft RPSA to adhere to the statutory language, as provided for in revised Section 2.17 in the attached Revised Draft RPSA and other modifications to Section 9.

The IOUs appreciate BPA's consideration of these comments and request that BPA provide revisions and responses to these comments and the Revised Draft RPSA.

¹⁴ See Appendix B, BPA Whitepaper.

APPENDIX A:

Preliminary Draft Post-2028 RPSA Template with Preliminary Draft IOU Revisions

PRELIMINARY DRAFT POST-2028 RPSA TEMPLATE WITH PRELIMINARY DRAFT IOU REVISIONS

Contract No. PS-«#####»

**PRELIMINARY DRAFT IOU
REVISIONS 11/25/2025**

RESIDENTIAL PURCHASE AND SALE AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

«FULL NAME OF CUSTOMER»

Table of Contents

[To be updated based on proposed IOU edits below]

Section	Page
1. Term	
2. Definitions	
3. Applicable PF Exchange Rate	
4. Establishment of ASC to Activate Purchase and Exchange Sales....	
5. Purchase and Exchange Sales by «Customer Name» and BPA	
6. Invoicing for Cost Benefits	
7. Accounting and Review	
8. Adjustments to Cost Benefits	
9. In-Lieu Transactions.....	
10. Pass-Through of Benefits	
11. Termination and Suspension of Agreement	
12. Notices and Contact Information	
13. Uncontrollable Forces	
14. Governing Law and Dispute Resolution	
15. Statutory Provisions	
16. Standard Provisions	
17. Information Exchange and Confidentiality	
18. Signatures	
Exhibit A Residential Load Definition	
Exhibit B CF/CT and New Large Single Loads	
Exhibit C Average System Cost Methodology	
Exhibit D <u>In-Lieu</u> BPA System Power Scheduling and Settlements	
Exhibit E Compliance Program	
<u>Exhibit F</u> Reserved	

Exhibit G Reserved
Exhibit H Renewable Energy Certificates and Environmental
Attributes

This RESIDENTIAL PURCHASE AND SALE AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and «FULL NAME OF CUSTOMER» («Customer Name»), hereinafter individually referred to as “Party” and collectively referred to as the “Parties.” «Customer Name» is an Investor-Owned Utility organized and authorized under the laws of the State of «_____» to purchase and distribute electric power to serve retail consumers from its distribution system within its service area.

RECITALS

Section 5(c) of the Northwest Power Act provides that a Regional electric utility may offer to sell electric power to BPA, and BPA shall purchase such electric power at the Average System Cost (ASC) of that utility’s resources, and in exchange BPA shall offer to sell in return an equivalent amount of electric power to such utility, and such utility shall purchase such electric power at the Priority Firm Power Exchange (PF Exchange) rate. The Cost Benefits of such purchase and exchange sale attributable to a utility’s residential load within a state shall be passed directly through to that utility’s residential load within such state.

The Parties agree:

1. TERM

This Agreement shall take effect on the latter of

- (1) the date signed by the Parties, or
- (2) if applicable, the effective date specified by the Federal Energy Regulatory Commission in its acceptance for filing of this Agreement, provided the Federal Energy Regulatory Commission has not conditioned acceptance upon any change or condition unacceptable to either Party.

This Agreement shall expire on September 30, 2044, unless terminated earlier pursuant to section 11 below. All obligations and liabilities accrued under this Agreement are preserved until satisfied.

2. DEFINITIONS

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used or, if not so defined, shall have the meaning stated in BPA’s applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions (GRSPs), or the ASC Methodology.

- 2.1 “Appendix 1” means the electronic form on which «Customer Name» reports its Contract System Costs and other necessary data to BPA for the calculation of «Customer Name»’s Base Period ASC pursuant to the ASC Methodology.
- 2.2 “Average System Cost” or “ASC” means the rate charged by «Customer Name» to BPA for BPA’s purchase of power from «Customer Name» under Section 5(c) of the Northwest Power Act for each Exchange Period and is the quotient obtained by dividing Contract System Costs by Contract System Load, all in accordance with the ASC Methodology.
- 2.3 “ASC Methodology” or “ASCM” means the methodology, as may be amended or superseded, used to determine ASC, as developed by BPA pursuant to Section 5(c)(7) of the Northwest Power Act. Exhibit C contains a website link to the current version of the ASC Methodology. This Agreement is subject to the ASC Methodology, but such ASC Methodology is not incorporated as part of this Agreement.
- 2.4 “ASC Review Process” means the administrative proceeding conducted by BPA and concurrent with BPA’s rate case proceedings to determine a utility’s ASC, as further defined in the ASCM.
- 2.5 “Base Period” means the calendar year of the most recent FERC Form 1 data at the commencement of the ASC Review Period, as further defined in the ASCM.
- 2.6 “Base Period ASC” means the ASC determined in the ASC Review Period using «Customer Name»’s Base Period data, in accordance with the ASCM.
- 2.6a “BPA System Power” means the quantities of energy, peaking energy, storage, and ramping capabilities available from Federal resources, including the resources listed on Table 3-1 of the PRDM, as updated for any new resources and Federal purchases of non-Federally owned resources. For purposes of this Agreement, BPA delivers BPA System Power to «Customer Name» pursuant to, as applicable, section 5.1 of this Agreement as a result of a BPA In- Lieu power purchase or section 5.2a for power deliveries (or deemed power deliveries).
- 2.7 “Business Day(s)” means every Monday through Friday except federal holidays.
- 2.8 “Contract System Costs” means «Customer Name»’s costs includable in and subject to the provisions of Appendix 1, all in accordance with the ASCM. Under no circumstances shall Contract System Costs include costs excluded from the ASC by Section 5(c)(7) of the Northwest Power Act.
- 2.9 “Contract System Load” means: the total Regional retail load included in the FERC Form 1, in accordance with the ASCM.

- 2.10 “Cost Benefits” means monetary benefit payments made to «Customer Name» as determined pursuant to section 5 of this Agreement for pass-through to «Customer Name»’s Residential Load pursuant to section 10.
- 2.11 “Due Date” shall have the meaning as described in section 9.8.2.
- 2.12 “Effective Date” means the effective date of this Agreement, as determined pursuant to section 1 above.
- 2.13 “Environmental Attributes” means the environmental and non-power characteristics of power, however defined or titled and arising under any federal, state, or local law or regulation, including but not limited to current or future certificates, credits, benefits, and avoided emissions attributable to the generation of energy from a resource, as defined in Exhibit H ~~of the Provider of Choice contract.~~ Environmental Attributes do not include the tax credits associated with such resource. One megawatt hour of energy generation from a resource is associated with one megawatt hour of Environmental Attributes.
- 2.14 “Exchange Period” means the period during which «Customer Name»’s ASC is effective for the calculation of «Customer Name»’s Cost Benefits under this Agreement. Each Exchange Period shall be the period of time concurrent with the duration of each BPA wholesale power rate period.
- 2.15 “Fiscal Year” or “FY” means the period beginning each October 1 and ending the following September 30.
- 2.16 “FERC Form 1” means the annual filing submitted to the Federal Energy Regulatory Commission required by 18 CFR §141.1, as specified in the ASCM.
- 2.17 “In-Lieu Power” means firm power acquired by BPA from a source(s) other than «Customer Name» at a cost less than «Customer Name»’s ASC as provided in Section 5(c)(5) of the Northwest Power Act. ~~The In-Lieu BPA then delivers the same quantity of BPA System Power is then sold by BPA to «Customer Name» in an In-Lieu transaction at the applicable PF Exchange Rate, or its successor.~~
- 2.18 “Informational Filing” means the ASC filings after the final published ASC reports for an ASC Review Process and before the start of the subsequent ASC Review Process.
- 2.19 “Issue Date” shall have the meaning as described in section 9.8.1.
- 2.20 “Jurisdiction” means the service territory of «Customer Name» within which a particular Regulatory Body has authority to approve «Customer Name»’s retail rates. Jurisdictions must be within the Region.

- 2.21 “New Large Single Load” or “NLSL” has the meaning specified in Section 3(13) of the Northwest Power Act and in BPA’s NLSL Policy.
- 2.22 “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §839, Public Law No. 96-501, as amended.
- 2.23 “PF Exchange Rate” or “PFx” means the rate for exchange power established by BPA in a proceeding pursuant to Section 7(i) of the Northwest Power Act, or its successor.
- 2.24 “Potential NLSL” means a load at a facility that BPA determines is capable of growing ten average megawatts or more in a consecutive 12-month monitoring period that may qualify as an NLSL.
- 2.24a “PRDM” means the 2029 Public Rate Design Methodology, PRDM-26-A-03, as amended or revised.
- 2.25 “Purchase and Exchange Sales” shall have the meaning as described in sections 5.1 and 5.2 of the body of this Agreement.
- 2.26 “Rate Period” means the period of time during which a specific set of rates established by BPA pursuant to the PRDM is intended to remain in effect.
- 2.27 “Region” or “Regional” means the Pacific Northwest as defined in Section 3(14) of the Northwest Power Act.
- 2.28 “Regulatory Body” means a state commission or consumer-owned utility governing body, or other entity authorized to establish retail electric rates in a Jurisdiction.
- 2.29 “Residential Exchange Program” or “REP” means the program implemented under this Agreement and established by Section 5(c) of the Northwest Power Act.
- 2.30 “REP Benefits” means (i) monetary payments made to «Customer Name» that are Cost Benefits as defined in 2.10 above and, (ii) Environmental Attributes benefits resulting from In-Lieu power deliveries (or deemed power deliveries) pursuant to section 5.2a, (iii) Environmental Attributes benefits resulting from BPA System Power deliveries for pass-through to «Customer Name»’s Residential Load pursuant to section 10, and (iv) any additional Cost Benefits or other benefits that arise during the term of this Agreement through federal, state, or local law or regulation or applicable organized wholesale electricity market rules, and that are attributable to BPA’s System Power and delivered (or deemed delivered) to «Customer Name» resulting from power deliveries (or deemed power deliveries) pursuant to section 5.2a or from BPA System Power deliveries for pass-through to «Customer Name»’s Residential Load pursuant to section 10.

- 2.31 “Residential Load” means the «Customer Name»’s exchangeable load, as defined in the Northwest Power Act and clarified in Exhibit A.
- 2.32 “Review Period” means the period of time during which «Customer Name»’s ASC Appendix 1 is under review by BPA pursuant to the ASCM.
- 2.33 “Third Party Transmission Provider” means a transmission provider other than BPA that provides transmission service to serve «Customer Name»’s load.
- 2.34 “Uncontrollable Force” shall have the meaning specified in section 13.

3. APPLICABLE PF EXCHANGE RATE

Purchases by «Customer Name» under this Agreement are pursuant to the applicable PF Exchange rate and applicable GRSPs, or their successors, established by BPA in a proceeding pursuant to Section 7(i) of the Northwest Power Act, or its successor. Section 5 below establishes purchases subject to the applicable PF Exchange rate schedule.

4. ESTABLISHMENT OF ASC TO ACTIVATE PURCHASE AND EXCHANGE SALES

4.1 Prerequisite

As a prerequisite to activate the Purchase and Exchange Sales under section 5 of this Agreement, «Customer Name» must file an Informational Filing Appendix 1 pursuant to the ASCM in the calendar year prior to the ASC Review Process for the Exchange Period when the Purchase and Exchange Sales will occur. For example, «Customer Name» must file an Informational Filing by June 1, 2026 (or such other date as determined by BPA pursuant to the ASCM) to (1) participate in the ASC Review Process that begins in 2027, and (2) activate purchase and exchange sales for the Fiscal Years 2029-2030 Exchange Period.

4.2 Activation of the Purchase and Exchange Sales

The first Exchange Period, during which «Customer Name» may activate the Purchase and Exchange Sales under section 5 of this Agreement, shall commence on October 1, 2028. Once «Customer Name» files an Appendix 1, «Customer Name» shall continue to file a new Appendix 1 pursuant to the effective ASCM, unless and until this Agreement terminates pursuant to section 11 below.

5. PURCHASE AND EXCHANGE SALES BY «CUSTOMER NAME» AND BPA

5.1 Offer by «Customer Name» and Purchase by BPA

Beginning with the first month of the initial Exchange Period established under section 4 above, «Customer Name» shall offer and BPA shall purchase

an amount of electric power up to or equal to «Customer Name»'s Residential Load for each month of the Exchange Period.

«Customer Name» may only sell an amount of electric power under this section 5 that is up to or equivalent to the Residential Load that «Customer Name» is authorized under state law or by order of the applicable state regulatory authority to serve. The rate for such power sale to BPA shall be equal to «Customer Name»'s ASC, as determined by BPA using the ASC Methodology.

5.2 Offer by BPA and Purchase by «Customer Name»

Simultaneous with the offer by «Customer Name» and purchase by BPA, BPA shall offer and «Customer Name» shall purchase each month an amount of ~~electric~~BPA System Power equal to the amount that «Customer Name» offers and BPA purchases each month pursuant to section 5.1 above. The rate for such power sale to «Customer Name» shall be equal to BPA's applicable PF Exchange rate.

5.2a Election by «Customer Name» for Physical Delivery

Not later than _____ months prior to the beginning of each Exchange Period, by written notice to BPA, «Customer Name» may elect, for such Exchange Period, physical delivery of all or some portion of the amount of electric power to be sold to BPA pursuant to section 5.1 above and a like amount to be sold to «Customer Name» pursuant to section 5.2 above. (Unless otherwise specified, any reference to months in this Agreement is a reference to full calendar months.) Any amount of electric power purchased and sold pursuant to section 5.1 or 5.2 above for which «Customer Name» does not make such election for physical delivery shall be deemed delivered to the purchasing Party by the selling Party. Any Environmental Attributes and other REP Benefits of any power physically delivered pursuant to a purchase and sale under section 5.1 or 5.2 above shall be conveyed by the selling Party to the purchasing Party; and any Environmental Attributes and other REP Benefits of any power deemed delivered pursuant to a purchase and sale under section 5.1 or 5.2 above will be deemed conveyed by the selling Party to the purchasing Party. The power to be physically delivered pursuant to sections 5.1 or 5.2 shall be a firm sale of BPA System Power delivered to the scheduling POD for such delivery as defined in Exhibit D of this Agreement. The power deemed pursuant to this section 5.2a to be delivered pursuant to sections 5.1 or 5.2 shall be deemed to be a firm sale of BPA System Power delivered to the scheduling POD for such delivery as defined in Exhibit D of this Agreement. BPA shall make reasonable efforts to provide «Customer Name» with documentation or other verification of such physically delivered or deemed delivered sales under sections 5.1, 5.2, and 5.2a that are sufficient to satisfy federal, state, or local regulation requiring such documentation or other verification.

5.3 Calculation of Cost Benefits

The Purchase and Exchange Sales described in sections 5.1 and 5.2 above shall be simultaneous ~~and offsetting. No physical delivery of electric power~~

~~shall occur.~~ The Cost Benefits to «Customer Name» shall be determined using the following formula:

(«Customer Name»'s Average System Cost (ASC) – BPA's applicable PF Exchange rate) x «Customer Name»'s Residential Load = «Customer Name»'s Cost Benefits.

If the calculation results in a positive Cost Benefit, then «Customer Name» shall receive financial payments pursuant to section 6. If the calculation results in a negative Cost Benefit, then this Agreement shall suspend pursuant to section 11.2.

6. INVOICING FOR COST BENEFITS

6.1 Rate Case Billing Determinant

The rate case billing determinant for the Purchase and Exchange Sale pursuant to section 5 above for any month of a Rate Period shall be equal to the average of «Customer Name»'s Residential Load for

- a) the same month in the “Base Period” (as that term is defined in BPA's ASC Methodology) applicable to such Rate Period, and
- b) the same month in the 12 months following such Base Period.

6.2 Invoicing for Residential Load

6.2.1 Through the customer portal or successor, «Customer Name» shall submit to BPA an invoice no later than the 15th of each month that includes the amount of «Customer Name»'s Residential Load for the prior month pursuant to section 6.1. Each such invoice shall be subject to adjustment pursuant to sections 7, 8 and 10 below.

6.2.2 Within 30 calendar days following BPA's receipt of each monthly invoice from «Customer Name», and subject to sections 7, 8 and 10 below, BPA shall verify the invoice and pay such invoice electronically in accordance with instructions on each such invoice. If the 30th calendar day is a Saturday, Sunday, or federal holiday, BPA shall pay such invoice electronically the next Business Day.

6.2.3 Additionally, «Customer Name» shall submit the sum of «Customer Name»'s Residential Load for such month. Each submittal shall be subject to adjustment pursuant to sections 7, 8 and 10 below.

6.3 For purposes of calculating «Customer Name»'s Cost Benefits in Section 5.3, BPA's applicable PF Exchange rate will not be subject to mid-Rate Period risk adjustments (for example, the Power Cost Recovery Adjustment Clause, the Power Reserves Distribution Clause, and the Financial Reserves Policy Surcharge). Additionally, for purposes of calculating «Customer Name»'s Cost Benefits in Section 5.3, «Customer Name»'s ASC will not be subject to mid-

Rate Period adjustments, pursuant to the ASCM, for major resource additions or reductions, NLSLs, or changes to service territory.

6.4 **Late Payments**

BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund 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.

6.5 **Residential Load Net of In-LieuBPA System Power**

«Customer Name»'s Residential Load will be adjusted to reflect the net amount of Residential Load amount less the In-Lieu Power amount pursuant to section 9.10.

6.6 **Disputed Invoices or Bills**

6.6.1 If «Customer Name» disputes any portion of a charge or credit on «Customer Name»'s estimated or final bills, «Customer Name» shall provide written notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, «Customer Name» shall pay the entire bill by the Due Date. This section 6.5.1 does not allow «Customer Name» to challenge the validity of any BPA rate or «Customer Name» ASC.

6.6.2 Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

6.6.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 15, «Customer Name» is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund 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.

7. **ACCOUNTING AND REVIEW**

7.1 **Accounting Records Requirements**

«Customer Name» shall keep up-to-date records, accounts, and related documents that pertain to this Agreement. These records, accounts, and documents shall contain information that supports:

- (1) «Customer Name»'s ASC as determined pursuant to the ASC Methodology;

- (2) identification of the consumers that comprise «Customer Name»'s Residential Load;
- (3) the amount of Residential Load invoiced to BPA;
- (4) In-Lieu Power delivery schedules and records; and
- (5) evidence that the REP Benefits have been passed through to consumers that comprise «Customer Name»'s Residential Load, as provided for in section 10 below.

BPA retains the right to review or inspect «Customer Name»'s records, accounts, and related documents pertaining to this Agreement for any Fiscal Year consistent with the provisions of sections 7, 8, 10, 17 and Exhibit E of this Agreement.

7.2 Duty to Retain Records

«Customer Name» shall retain records pursuant to section 7.1 for any Fiscal Year up to 60 months after the end of such Fiscal Year.

7.3 Compliance Review Program

The REP's Compliance Review Program provides reasonable assurance the REP Benefits, as determined pursuant to section 5 and 9 of this Agreement, paid to «Customer Name» are passed-through to «Customer Name»'s Residential Load as required under the Section 5(c) of the Northwest Power Act. The REP Compliance Review Program encompasses three processes to monitor payments of REP Benefits and verify «Customer Name»'s Residential Load.

«Customer Name» shall fully cooperate in good faith with any such reviews or inspections pursuant to this section 7.3. BPA retains the right to take action consistent with the results of such reviews or inspections to require the pass-through of such benefits to «Customer Name»'s Residential Load.

7.3.1 End-of-Year REP ~~Benefit~~Benefits Certification

Following the conclusion of each Fiscal Year, BPA shall conduct an annual compliance review process to certify the REP Benefits paid to «Customer Name» are passed-through to «Customer Name»'s Residential Load in accordance with sections 10.1, 10.2 and 10.3 of this Agreement.

7.3.2 Biennial AUP Compliance Review

BPA may, at its expense, elect to engage «Customer Name»'s certified public accountant (CPA) pursuant to Exhibit E to assist in performing the requirements of this section 7.3.2.

7.3.3 Residential Load Reviews

BPA may, from time to time, perform an eligibility validation review, consistent with the provisions of section 17.1 and Exhibit A of this Agreement, of «Customer Name»'s Residential Loads.

8. ADJUSTMENTS TO REP BENEFITS

The REP Benefits provided to «Customer Name» under this Agreement shall be subject to adjustments by BPA to account for the overpayment or underpayment of REP Benefits, if any, for the period October 1, 2028, through September 30, 2044, made to «Customer Name» under this Agreement.

8.1 True-Up of Underpayments and Overpayments

If BPA determines that «Customer Name» has received REP Benefits for ineligible load, including an NLSL, or that other errors have occurred in implementing this Agreement that result in an overpayment, then any such overpayment shall be returned to BPA within 30 days of BPA's determination, or BPA may adjust future REP ~~Benefit~~Benefits payments to «Customer Name». If BPA determines that «Customer Name» has not received REP Benefits owed to «Customer Name» due to errors in implementing this Agreement that result in an underpayment, then BPA shall pay «Customer Name» such REP Benefits within 30 days of BPA's determination that such benefits were not received.

8.2 Adjustments to Payments Related to Remedies

If BPA makes an adjustment to REP Benefits pursuant to section 14.2, any such adjustments shall be limited to those established by BPA in its power rate adjustment proceedings or other forums established by BPA for the determination of the amount of underpayment or overpayment to be recovered and the associated recovery period; provided however, that any such adjustment is subject to the resolution of all administrative or judicial review thereof.

8.3 Adjustments to REP Benefits Arising from Participation in an Organized Wholesale Electric Market

To the extent any REP Benefits are determined pursuant to rules applicable to an organized wholesale electric market in which BPA or «Customer Name» are participating, or any federal, state, or local program to which BPA or «Customer Name» are subject, any adjustments to such REP Benefits made by BPA shall be pursuant to the applicable tariffs, laws, and regulations governing such organized wholesale electric markets or federal, state, or local program. In the event that BPA and «Customer Name» are participating in different organized wholesale electric markets or federal, state, or local program, BPA shall adjust the REP Benefits to align with the applicable tariffs, laws, and regulations governing the organized wholesale electric market or federal, state, or local program in which «Customer Name» is participating. As used in this Agreement "organized wholesale electric market" means an existing, new or emerging organized energy market including, but not limited to, a day-ahead energy market.

9. IN-LIEU TRANSACTIONS

All written notices sent by either Party under this section 9 shall be pursuant to section 12.

9.1 BPA's Right to In-Lieu

In lieu of purchasing all or a portion of the electric power offered to BPA pursuant to section 5.1 by «Customer Name» at its ASC, BPA may acquire ~~or make arrangements to acquire~~ In-Lieu Power from other sources to replace power sold to «Customer Name» pursuant to section 5.1 if the cost of such power is less than «Customer Name»'s ASC. If and to the extent BPA acquires In-Lieu Power, a like amount of BPA System Power sold to «Customer Name» pursuant to section 5.1 will be physically delivered to «Customer Name» as BPA System Power. Such delivery shall be at the scheduling POD as defined in Exhibit D of this Agreement.

9.2 In-Lieu Notice(s)

BPA shall provide written notice to «Customer Name» of its election to acquire In-Lieu Power pursuant to section 9.1 no less than 10 months prior to implementing an In-Lieu Power transaction. Issuance of this notice starts the 30-calendar day opt out window described in section 9.3 below. BPA shall, in each written In-Lieu notice, provide the following:

(1) Amount of In-Lieu Power.

The amount of In-Lieu Power in monthly increments and expressed in megawatts and megawatt hours. The amount of In-Lieu Power will not exceed «Customer Name»'s Residential Load determined pursuant to section 6.1.

(2) BPA's Cost of Acquiring In-Lieu Power.

The cost of the In-Lieu Power inclusive of transmission costs to deliver such In-Lieu Power to ~~«Customer Name»'s~~ BPA's Point of Delivery (POD).

(3) Duration of the In-Lieu Power ~~Sale~~ Acquisition.

The anticipated start and end date of the In-Lieu Power ~~sale~~ acquired.

(4) Source of In-Lieu Power.

The purchasing entity from which BPA will purchase the In-Lieu Power. The In-Lieu Power will be firm power.

(5) Customer's Point of Delivery of ~~In-Lieu~~ BPA System Power.

The scheduling POD to which BPA shall deliver the ~~In-Lieu~~ BPA System Power to «Customer Name» as defined in Exhibit D of this Agreement.

9.3 In-Lieu Power Opt Out Election

«Customer Name» may, within 30 calendar days after receipt of an In-Lieu Power notice, elect to opt out of the ~~In-Lieu~~ BPA System Power delivery. In

lieu of receiving the ~~In-Lieu~~BPA System Power delivery, «Customer Name» may elect to lower «Customer Name»'s ASC pursuant to this section. In such instance, BPA shall reduce «Customer Name»'s ASC to the weighted average of the In-Lieu Power at BPA's acquisition cost for In-Lieu Power and the ~~remaining~~ Residential Load reduced by BPA System Power at «Customer Name»'s ASC. Payments would be made pursuant to section 6.

For example, if «Customer Name»'s Residential Load is 200 MWh and BPA proposes to implement an In-Lieu Power ~~sale~~acquisition for 100 MWh, «Customer Name» would exchange 200 MWhs at the weighted average ASC.

- a) Residential Load of 200MWh at \$80/MWh ASC,
- b) In-lieu Power of 100MWh at \$70/MWh BPA's acquisition cost,
- c) Under this election, the full 200MWh will be sold to BPA at the weighted average ASC \$75/MWh,
- d) BPA will make payments at $(\$75/\text{MWh} - \text{applicable PFx rate}) \times 200 \text{ MWh} = \text{«Customer Name»'s Cost Benefits adjusted for In-Lieu Power.}$

If the resulting Cost Benefit is negative, the Purchase and Exchange Sales would suspend pursuant to section 11.2.

9.4 Price of ~~In-Lieu~~BPA System Power

BPA shall sell ~~In-Lieu~~BPA System Power to «Customer Name» at the applicable PF Exchange Rate and applicable GRSPs, or their successors, established by BPA in a proceeding pursuant to Section 7(i) of the Northwest Power Act, or its successor.

9.5 ~~In-Lieu~~ Scheduling of BPA System Power

BPA shall schedule BPA System Power in accordance with Exhibit D.

9.6 ~~In-Lieu~~ Conveyance of Environmental Attributes and other REP Benefits of BPA System Power

Any Environmental Attributes and other REP Benefits of physically delivered ~~In-Lieu~~BPA System Power will be conveyed to «Customer Name». For the avoidance of doubt, such Environmental Attributes and other REP Benefits conveyed to «Customer Name» under section 9 of this Agreement shall reflect the Environmental Attributes and other REP Benefits attributable to the BPA System Power delivered to or deemed delivered to «Customer Name».

9.7 Residential Load Net of ~~In-Lieu~~BPA System Power

In the event «Customer Name» has elected to take physical delivery of ~~In-Lieu~~BPA System Power, for purposes of the Cost Benefit calculation in section 5.3, «Customer Name»'s Residential Load will be adjusted to reflect the net amount of Residential Load amount less the ~~In-Lieu~~BPA System Power amount.

9.8 Billing and Payment for ~~In-Lieu~~BPA System Power

9.8.1 Billing

BPA shall electronically bill «Customer Name» monthly for physical deliveries of ~~In-Lieu~~BPA System Power under this Agreement, and all products and services, including any charges and credits incurred, provided during the preceding month(s). However, if electronic transmittal of the bill is not possible, then BPA shall mail a physical copy of the bill to «Customer Name». BPA may send «Customer Name» an estimated bill prior to a final bill and may send subsequent revisions if needed. The Issue Date is the date BPA sends the bill to «Customer Name».

9.8.2 Payment

«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, then 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, then «Customer Name» shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or
- (2) if the amount of the final bill is less than the amount of the estimated bill, then 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, then BPA shall pay the difference by the next Business Day.

9.9 Late Payments

If «Customer Name» has not paid its bill in full by the Due Date, BPA shall apply a daily interest charge to any unpaid balance 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 four percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365.

9.10 Disputed Bills

Disputes of any portion of a charge or credit on «Customer Name»'s estimated or final bills under this section shall be addressed pursuant to section 6.5/6 above.

10. PASS-THROUGH OF REP BENEFITS

10.1 All REP ~~Benefit~~Benefits amounts, pursuant to sections 5, 6, and 9 above, shall be passed through to «Customer Name»'s Residential Load. The form of such pass-through shall be: (1) a separately stated credit to applicable retail rates on «Customer Name»'s consumers' monthly electric bills; (2) monetary payments; or (3) another form as directed by the applicable Regulatory Body(ies).

10.2 REP Benefits shall be passed through in full by «Customer Name» on a monthly basis. Distributions of REP Benefits for the Residential Load may be made by «Customer Name» in advance of its receipt of any such REP Benefits from BPA and ~~that~~ such REP Benefits may be used to set off distributions to the Residential Load made by «Customer Name» after October 1, 2028.

If the amount of REP Benefits held by «Customer Name» is less than \$1,000,000, then «Customer Name» may distribute REP Benefits on a less frequent basis, provided that distributions are made at least once each Fiscal Year.

Any remaining REP Benefits held shall be distributed to «Customer Name»'s Residential Load no later than twelve months following the earlier of: (a) the end of the term of this Agreement; or (b) termination or suspension of this Agreement.

10.3 REP Benefits shall be passed through consistent with any procedures developed by «Customer Name»'s Regulatory Body(ies) that are not otherwise inconsistent with this Agreement, the Northwest Power Act, or other applicable federal law. Until «Customer Name» has passed through such REP Benefits pursuant to section 10.1 above, REP Benefits received by «Customer Name» shall be identified on «Customer Name»'s books of account and shall accrue interest at the rate(s) established by «Customer Name»'s Regulatory Body(ies).

10.4 Customer Bill Credit Notice

«Customer Name» will ensure that any entity that issues customer bills to «Customer Name»'s residential and farm consumers shall provide written notice on such customer bills that the benefits of this Agreement are "BPA REP Credit" or such other as approved by BPA.

11. TERMINATION AND SUSPENSION OF AGREEMENT

All written notices sent by either Party under this section 11 shall be pursuant to section 12.

11.1 Termination of Agreement

11.1.1 «Customer Name» may terminate this Agreement by providing BPA with written notice within 30 calendar days following BPA's issuance of a power rate proceeding Final Record of Decision in which the supplemental rate charge provided for in Section 7(b)(3) of the Northwest Power Act is applied and causes the PF Exchange rate charged «Customer Name» to exceed «Customer Name»'s ASC. In such instance, termination of this Agreement shall become effective on the effective date for the PF Exchange rate as stated in FERC's interim approval.

11.1.2 «Customer Name» may terminate this Agreement for any other reason than stated in section 11.1.1 by providing BPA with written notice within 30 days following the issuance of a power rate proceeding Final Record of Decision. Such termination of the Agreement shall become effective on the effective date for the PF Exchange Rate as stated in FERC's interim approval.

11.1.3 Upon termination of this Agreement pursuant to section 11.1.1 or 11.1.2, «Customer Name» shall not participate in the Residential Exchange Program established in Section 5(c) of the Northwest Power Act until the following two conditions are met:

- (1) «Customer Name» executes a new Residential Purchase and Sale Agreement (RPSA) with BPA; and
- (2) «Customer Name» files an Informational Filing Appendix 1 pursuant to the ASCM in the year prior to the ASC Review Process for the Exchange Period when the Purchase and Exchange Sales will occur.

This section 11.1.3 will survive termination of this Agreement.

11.2 Suspension of Performance

The Purchase and Exchange Sale under this Agreement will automatically suspend whenever the applicable PF Exchange Rate equals or exceeds «Customer Name»'s Average System Cost. Such suspension shall suspend the rights and obligations of both Parties to pay or receive Cost Benefits for the Exchange Period pursuant to section 5, and to engage in In-Lieu power sales pursuant to section 9.

Under such a suspension, all other obligations under this Agreement shall remain in effect. «Customer Name» shall continue to participate in all RPSA

administrative activities during the suspended Exchange Period, including filing Informational Filing ASCs and audits.

12. NOTICES AND CONTACT INFORMATION

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically; or
- (5) by another method agreed to by the Parties.

Notices are effective when received. Either Party shall notify the other Party of changes to their contact information. After such notice, BPA may unilaterally amend this section to reflect such changes to the Parties' contact information.

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»
«PO Box »
«City, State Zip»
Attn: «Contact Name»
«Contact Title»
Phone: «###-###-####»
FAX: «###-###-####»
E-Mail: «E-mail address»

If to BPA:

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

13. UNCONTROLLABLE FORCES

13.1 A Party shall not be in breach of an obligation under this Agreement to the extent its failure to fulfill the obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control, and without the fault or negligence, of the Party claiming the Uncontrollable Force, that prevents that Party from performing its obligations under this Agreement and which that Party could not have avoided by the exercise of reasonable care, diligence, and foresight. Uncontrollable Forces include each event listed below, to the extent it satisfies the foregoing criteria, but are not limited to these listed events:

- (1) ~~except as provided in Exhibit D Section 3.2 (Failure to Deliver),~~
any curtailment or interruption of firm transmission service on BPA's
or a Third Party Transmission Provider's System that prevents
delivery of ~~In-Lieu~~ BPA System Power sold under this Agreement to
«Customer Name»;
- (2) any failure of «Customer Name»'s distribution or transmission
facilities that prevents «Customer Name» from delivering power to
end-users;
- (3) strikes, work stoppage, or terrorist acts;
- (4) floods, earthquakes, other natural disasters, epidemics, or pandemics;
and
- (5) final orders or injunctions issued by a court or regulatory body having
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 having subject
matter jurisdiction.

13.2 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.

13.3 If an Uncontrollable Force prevents a Party from performing any of its
obligations under this Agreement, such Party shall:

- (1) promptly 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 commercially reasonable 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 12.

14. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law.
«Customer Name» and BPA shall identify issue(s) in dispute arising out of this

Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 14, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

14.1 **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 Court of Appeals for the Ninth Circuit. Such final actions may include, but are not limited to, (1) the establishment or the implementation of rates and rate methodologies, (2) the establishment or implementation of the Average System Cost Methodology; (3) NLSL calculations and determinations, and (3) the establishment or implementation of a BPA policy. Any dispute regarding any rights or obligations of «Customer Name» or BPA under such final action shall not be subject to arbitration under this Agreement. For purposes of this section 14, "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 or regulation. If BPA determines that a dispute is excluded from arbitration under this section 14, then «Customer Name» may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 14.

14.2 **Remedies**

If the Federal Energy Regulatory Commission (FERC) or a court of competent jurisdiction remands, reverses, or otherwise finds unlawful a BPA final decision or decisions that affect «Customer Name's» REP Benefits under this Agreement or the implementation of this Agreement under section 5(c) of the Northwest Power Act, then BPA will review and determine the rights and obligations of the Parties through additional administrative action(s) as necessary to respond to such regulatory or court decisions.

14.3 **Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 14.1 above, shall be subject to arbitration, as set forth below.

«Customer Name» may request that BPA engage in binding arbitration to resolve any dispute. If «Customer Name» requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 14.3 and sections 14.4 and 14.5

are met. BPA may request that «Customer Name» engage in binding arbitration to resolve any dispute. In response to BPA's request, «Customer Name» may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 14.3 and sections 14.4 and 14.5 are met. 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.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 14.1 above and is not resolved via binding arbitration, unless «Customer Name» notifies BPA that it does not wish to proceed with nonbinding arbitration.

14.4 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.

14.5 Arbitration Remedies

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 14. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

14.6 Finality

14.6.1 In binding arbitration, the arbitration award shall be final and binding on the 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 arbitrator(s) may be entered by any court having jurisdiction thereof.

14.6.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

14.7 Arbitration Costs

Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, 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.

15. STATUTORY PROVISIONS

15.1 Restrictions on Exchange Sales

Pursuant to Section 5(c)(6) of the Northwest Power Act, exchange sales to «Customer Name» under this Agreement shall not be restricted below the amounts of electric power acquired by BPA from, or on behalf of, such «Customer Name».

15.2 New Large Single Loads and CF/CTs

15.2.1 Customer Notice of Large Loads and Determination of an NLSL

«Customer Name» shall provide reasonable notice to BPA of any expected increase in a single load that may qualify as a Potential NLSL or NLSL.

Pursuant to this section 15.2, BPA shall determine if any load associated with a single facility that is capable of growing ten Average Megawatts or more in a consecutive 12 month period is a Potential NLSL or an NLSL.

«Customer Name»'s Potential NLSLs and NLSLs shall be subject to monitoring as determined necessary by BPA. For the purposes of this section 15.2, and section 1 of Exhibit B, ten Average Megawatts in a consecutive 12-month monitoring period equates to 87,600,000 kilowatt-hours in any consecutive 12-month period with 365 days and 87,840,000 kilowatt-hours for any consecutive 12-month period with 366 days.

In accordance with BPA's NLSL Policy and the terms of this section 15.2, BPA may determine that a load is an NLSL as follows:

15.2.1.1 Pursuant to Section 3(13) of the Northwest Power Act, BPA shall determine an increase in production load to be an NLSL if any load associated with a new facility, an existing facility, or an expansion of an existing facility, which is not Contracted For, or Committed To (CF/CT), as determined by the Administrator, by a public body, cooperative, investor-owned utility, or federal agency customer prior to September 1, 1979, and which will result in an increase in power requirements of such customer of ten Average Megawatts or more in any consecutive 12-month period.

15.2.1.2 For the sole purpose of computing the increase in energy consumption between any two consecutive 12-month periods of comparison under this section 15.2.1, BPA shall determine if the reductions in the end-use consumer's load associated with a facility during the first 12-month period of comparison are due to unusual events reasonably beyond the control of the end-use consumer, and, if so, BPA shall compute the energy consumption as if such reductions had not occurred.

15.2.1.3 The Parties may agree that the applicable increase in load of installed production equipment at a facility will equal or exceed ten Average Megawatts consumption over any 12 consecutive months and that such production load constitutes an NLSL. Any such agreement will be a binding NLSL determination, and BPA shall add the NLSL to section 1 of Exhibit B.

15.2.1.4 Unless the Parties agree pursuant to section 15.2.1.3 above, BPA shall determine whether a new load or an increase in existing load at a facility is an NLSL. If BPA determines that the load at a facility is an NLSL, then BPA shall notify «Customer Name» and BPA shall add the NLSL to section 1 of Exhibit B if such is not already in Exhibit B after the facility determination pursuant to section 15.2.2.

15.2.1.5 BPA shall list «Customer Name»'s CF/CT loads, Potential NLSLs and NLSLs in section 1 of Exhibit B.

15.2.2 Determination of a Facility

BPA shall make a written determination as to what constitutes a single facility, for the purpose of identifying an NLSL. BPA's determination will be made by applying some or all of the following criteria:

- (1) whether the load is operated by a single end-use consumer;
- (2) whether the load is in a single location;
- (3) whether the load serves a manufacturing process which produces a single product or type of product;
- (4) whether separable portions of the load are interdependent;
- (5) whether the load is separately metered from other loads;
- (6) whether the load is contracted for, served or billed as a single load under «Customer Name»'s customary billing and service policy or practices;

- (7) consideration of the facts from previous similar situations; and
- (8) any other factors the Parties determine to be relevant.

15.2.3 Access and Metering

Upon BPA 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. Such BPA inspections may include but are not limited to those needed to make a facility, final NLSL, or CF/CT determination. «Customer Name» shall coordinate with the end-use consumer to provide BPA, at reasonable times, physical access to inspect a facility for these purposes.

For any load that is monitored by BPA for an NLSL determination, and for any load at any facility that was determined by BPA to be an NLSL, BPA may, in its sole discretion, install BPA-owned meters. If the Parties agree, «Customer Name» may install meters meeting specifications 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 coordinate with BPA and the end-use consumer to arrange for metering locations that allow accurate measurement of the load at a facility. «Customer Name» shall arrange for BPA to have physical access to such meters and «Customer Name» shall ensure BPA has access to all meter data for loads that are monitored under this section 15.2 and section 1 of Exhibit B that BPA determines are necessary to forecast, plan, schedule, and bill for power.

15.2.4 Undetermined NLSLs

If BPA concludes in its sole judgment that «Customer Name» has not fulfilled its obligations, or has not been able to obtain access or information from the end-use consumer under this section 15.2, then BPA may determine any large load capable of growing ten Average Megawatts or more in a consecutive 12-month period or any Potential NLSL subject to monitoring to be an NLSL. Such NLSL determination shall be final unless «Customer Name» proves to BPA's satisfaction that the applicable increase in load did not equal or exceed ten Average Megawatts in any 12-month monitoring period.

15.3 BPA Appropriations Refinancing

The Parties agree that the provisions of Section 3201(i) of the Bonneville Power Administration Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, as stated in the United States Code on the

Effective Date, are incorporated by reference and are a material term of this Agreement.

16. STANDARD PROVISIONS

16.1 Amendments

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 writing and signed by authorized representatives of each Party. Upon «Customer Name»'s request, and to the extent BPA determines it is practicable, BPA shall provide «Customer Name» a reasonable opportunity to review any unilateral provision or exhibit revisions, or the data that will be input into an exhibit revision, prior to BPA making such unilateral revisions.

16.2 Entire Agreement and Order of Precedence

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. 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.

16.3 Assignment

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 the sale of power by BPA to the assignee would violate any applicable statute. «Customer Name» may not transfer or assign this Agreement to any of its retail consumers.

16.4 No Third-Party Beneficiaries

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.

16.5 Waivers

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 of any other breach of this Agreement.

16.6 BPA Policies

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.

17. INFORMATION EXCHANGE AND CONFIDENTIALITY

17.1 Information Exchange

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement. Such information shall be provided in a timely manner.

17.2 Confidentiality

Before «Customer Name» provides information to BPA that is confidential, or is otherwise subject to privilege or nondisclosure, «Customer Name» shall clearly designate 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 release such confidential information consistent 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.

18. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

«FULL NAME OF CUSTOMER»

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name _____
(Print/Type)

Name _____
(Print/Type)

Title _____

Title _____

Date _____

Date _____

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

Exhibit A
RESIDENTIAL LOAD DEFINITION

1. «Customer Name»'s Residential Load is the sum of the loads within the Region eligible for the Residential Exchange Program under the tariff schedules described below, as determined pursuant to BPA's Customer Load Eligibility Guidelines, or its successor. Such load will be adjusted for distribution losses as determined pursuant to the ASC Methodology, as revised, supplemented, or superseded.
2. Such tariff schedules as presently effective include:
 - 2.1 for all schedules listed below, include the amount, expressed in kilowatthours, of Qualifying Residential and Small Farm Load supplied by «Customer Name» under:
 - 2.1.1 «schedule»
 - 2.1.2 «schedule»
 - 2.1.3 «schedule»
3. See <https://www.bpa.gov/energy-and-services/power/residential-exchange-program> for the current version of BPA's Customer Load Eligibility Guidelines.
4. BPA may unilaterally revise this exhibit to modify these tariff schedules and/or incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.

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

Exhibit B
CF/CT AND NEW LARGE SINGLE LOADS

1. CF/CT AND NEW LARGE SINGLE LOADS

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

1.1 CF/CT Loads

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

End Option 1

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

Drafter's Note: If customer has more than one CF/CT, number each separately as (1), (2), etc. and indent appropriately.

1.1 CF/CT Loads

The Administrator has determined that the following loads were CF/CTs as of September 1, 1979, as defined in Section 3(13)(A) of the Northwest Power Act.

End Use Consumer's Name	Facility Name	Facility Location	Date of CF/CT determination	Amount of firm energy contracted for, or committed to (MW)

Note: Amount of Firm Energy is at 100 percent load factor.

End Option 2

*Option 1: Include the following if customer **has no** POTENTIAL NLSLs.*

1.2 Potential NLSLs

«Customer Name» has no identified potential NLSLs.

End Option 1

*Option 2: Include the following if customer **has** POTENTIAL NLSL(s).*

Drafter's Note: If customer has more than one potential NLSL, number each separately as (1), (2), etc. and indent appropriately.

1.2 Potential NLSLs

«Customer Name» has the following identified potential NLSL(s):

End Use Consumer's Name	Facility Name	Facility Location	Date of BPA facility determination	12-month Monitoring Period
				«Month Day» through «Month Day»

End Option 2

1.3 NLSLs

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

«Customer Name» has no NLSLs.

End Option 1

*Option 2: Include the following if customer **has** an existing NLSL and will serve the NLSL with a **non-federal firm resource**.*

1.3.1 NLSL

«Customer Name» has one or more NLSLs and listed below pursuant to section 15.2 of the body of this Agreement.

Drafter's Note: If customer has more than one NLSL, number each separately as (1), (2), etc. and indent appropriately. Add facility name if there are two NLSLs at same site or as needed.

End Use Consumer's Name	Facility Name	Facility Location	Date of BPA facility determination	12-month Monitoring Period	Date Load Determined to be an NLSL	Manner of Service
				«Month Day» through «Month Day»		«Direct or Transfer»

End Option 2

2. REVISIONS

BPA shall unilaterally revise section 1, CF/CT and New Large Single Loads to reflect BPA's determinations made in accordance with section 15.2 of the body of the Agreement and section 1 of this Exhibit B. All other changes to this Exhibit B will be made by mutual agreement of the Parties.

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

Exhibit C
AVERAGE SYSTEM COST METHODOLOGY

See <https://www.bpa.gov/energy-and-services/power/residential-exchange-program> for the current version of BPA's Average System Cost Methodology.

Exhibit D
IN-LIEU BPA SYSTEM POWER SCHEDULING AND SETTLEMENTS

Drafters Note: Insert provisions similar to Exhibit D mutatis mutandi for power to be physically delivered (by «Customer Name» or BPA) pursuant to an election pursuant to section 5.2a.

1. DEFINITIONS AND ACRONYMS

- 1.1 “Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.
- 1.2 “Balancing Authority Area” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.
- 1.3 “Electronic Tag” or “E-Tag” means an electronic record that contains the details of a transaction to transfer energy from a source point to a sink point where the energy is scheduled for transmission across one or more Balancing Authority Area(s), consistent with all relevant WECC, NAESB, NERC, or their successors, and FERC requirements.
- 1.4 “Interchange Points” means the points where Balancing Authority Areas interconnect and at which the interchange of energy between Balancing Authority Areas is monitored and measured.
- 1.5 Prescheduling: The process (electronic, oral, and written) of establishing and verifying with all scheduling parties, advance hourly Transactions through the following Workday(s). Preschedules apply to the following day or days (if the following day or days are not Workday(s)).
- 1.6 “«Customer Name»’s POD” means the scheduling point of delivery (POD) at which BPA shall deliver the ~~In-Lieu Power to~~ BPA System Power to «Customer Name», which will be reflected in the E-Tag. The scheduling POD will be the «Customer Name»’s system, unless BPA and «Customer Name» mutually agree to another POD.
- 1.7 “Resource Support Services” or “RSS” means a suite of services BPA Power Services provides to integrate federal and non-federal resources defined in Exhibit J and priced in each regular 7(i) Process consistent with chapter 6 of the PRDM.
- 1.8 Real-Time: The hourly or minute-to-minute operation and scheduling of a power system as opposed to those operations which are prescheduled a day or more in advance.

- 1.9 “Shaping Capacity” shall have the meaning as established in section 1.4 of Exhibit C, when applicable, as an hourly range for each month within which a customer may reshape the hourly energy amount of its Block purchase, on a day-ahead basis.

2. SCHEDULING ~~IN LIEU POWER OF BPA SYSTEM POWER~~

2.1 E-Tags

BPA shall create any necessary E-Tags for delivery of the ~~In-Lieu~~BPA System Power under section 9 of the body of this Agreement. When completing the E-Tag, if applicable, BPA shall insert the BPA contract number of this Agreement in the "reference" column of the miscellaneous section of the E-Tag.

3. DELIVERY

3.1 Acquisition of Transmission Service

3.1.1 BPA shall acquire transmission services to deliver the ~~In-Lieu~~BPA System Power to «Customer Name»’s POD.

3.1.2 «Customer Name» shall acquire transmission services for delivery from the «Customer Name»’s POD to load.

3.2 Failure to Deliver

Notwithstanding Section 13.1(1) of the Agreement, if BPA is unable to deliver ~~In-Lieu~~BPA System Power to «Customer Name»’s POD due to transmission curtailments or other system constraints, or disruption to, or market rule of, an organized energy market in which BPA is a participating transmission provider, the parties to this Agreement shall arrange to either (1) re-schedule such power at a later date, (insofar as practicable, 168 hours after such power was previously to be delivered) or (2) financially settle (as though BPA had not acquired In-Lieu Power equivalent to the undelivered BPA System Power) the applicable schedule after-the-fact; provided that if and to the extent there is a financial settlement with respect to such power, the Environmental Attributes and other REP Benefits of such power shall be delivered by BPA to «Customer Name» insofar as practicable and any undelivered Environmental Attributes and other REP Benefits shall be financially settled based on the value thereof.

3.3 Liability for Delivery

BPA shall not be liable for any claims for non-delivery of power to any points beyond Customer Name»’s POD. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership.

3.4 Real Power Losses

BPA is responsible for the real power losses necessary to deliver In-Lieu BPA System Power to «Customer Name»'s POD.

4. EMERGING ENERGY MARKETS

The Parties to this Agreement agree to work cooperatively together, and to take such actions as are reasonably necessary, to implement the In-Lieu BPA System Power deliveries under this Agreement in a sound and businesslike manner in the event BPA, «Customer Name», or any intervening transmission system, enters a new or emerging organized energy market including, but not limited to, a day-ahead energy market.

5. TAKE OR PAY

«Customer Name» shall pay for the In-Lieu BPA System Power that BPA makes available to «Customer Name»'s POD under section 9.1, at the applicable PF Exchange Rate, pursuant to section 9.4, whether or not «Customer Name» took delivery of such power.

6. AFTER THE FACT

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

7. REVISIONS

BPA may unilaterally revise this exhibit as necessary:

- (1) to implement changes that BPA determines are reasonably necessary to allow it to meet its power and scheduling obligations under this Agreement, or
- (2) to comply with requirements of WECC, NAESB, NERC, WRAP or their successors or assigns, or
- (3) to comply with requirements of the Parties to this Agreement entering new and emerging markets.

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

Exhibit E COMPLIANCE PROGRAM

1. BIENNIAL AGREED-UPON PROCEDURES COMPLIANCE REVIEW

Pursuant to section 7 of the body of the Agreement, «Customer Name» agrees to cooperate with a Biennial Agreed-Upon Procedures (AUP) Compliance Review, or AUP Review, initiated by BPA of «Customer Name»'s accounts and financial records concerning this Agreement.

1.1 Final AUP Report

After conclusion of «Customer Name»'s AUP Review, BPA may, and the CPA shall, produce a Final AUP Report documenting the reviewer's findings and provide the report to «Customer Name».

1.2 Third-Party Engagement of «Customer Name»'s CPA

BPA may, at its expense, elect to engage «Customer Name»'s certified public accountant (CPA) that also prepares its financial accounts and audits to conduct the AUP Review pursuant to section 7 and this Exhibit E. In such instance, BPA shall request that «Customer Name» contract with its CPA. «Customer Name» shall (1) obtain an engagement letter between «Customer Name» and its CPA, and (2) ensure the CPA provides BPA a letter of acknowledgement of such engagement. The engagement letter and letter of acknowledgement should provide the Parties to this Agreement a detailed statement of the work to be performed to meet the AUP Review included in Exhibit E, the hours, and the fee for such work.

«Customer Name» shall be responsible for ensuring that:

- (1) each AUP Review report provides all information requested by BPA consistent with the AUP Compliance Review procedures in section 3 of this Exhibit E; and
- (2) «Customer Name»'s CPA is contractually obligated to conduct each AUP Review in accordance with the applicable auditing standards, *e.g.*, General, Field Work, and Reporting Standards for Attestation Engagements as contained in the Government Auditing Standards (the Yellow Book) by the Comptroller General of the United States of America; the Public Company Accounting Oversight Board (PCAOB) Statements of Standards for Attestation Engagements; or, the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements.

1.2.1 Documentation Provided to «Customer Name»'s CPA

To conduct the AUP Review, BPA shall make accessible to «Customer Name» the following documentation to be provided to «Customer Name»'s CPA:

- (1) Two of «Customer Name»'s Final ASC Reports containing the ASCs in effect during the Base Period and the year after the Base Period applicable to the Exchange Period subject to the AUP Compliance review;
- (2) «Customer Name»'s Residential Load documentation pursuant to section 6.1, for the Exchange Period subject to the AUP Review, that contains the Residential Load for each month of the Base Period and the year after the Base Period.
- (3) «Customer Name»'s End-of-Year REP ~~Benefit~~Benefits Certification packets for each Fiscal Year of the Exchange Period subject to the AUP Compliance Review;
- (4) BPA's applicable Power Rate Schedules and General Rate Schedule Provisions (GRSPs) for the Exchange Period subject to the AUP Review; and
- (5) the then in-effect Customer Load Eligibility Guidelines (CLEG).

1.3 BPA's Reimbursement Cap and Reimbursement of Invoiced CPA Fees to «Customer Name»

1.3.1 BPA's Reimbursement Cap

At the commencement of the AUP Review, pursuant to section 1 of this Exhibit E, BPA shall provide «Customer Name» with a letter that includes the maximum amount BPA shall reimburse «Customer Name» for the upcoming final AUP Review report. «Customer Name»'s reimbursement cap shall be determined solely by BPA and shall be based on BPA's overall reporting budget for all parties participating in the Residential Exchange Program. If the estimate in «Customer Name»'s CPA engagement letter exceeds «Customer Name»'s reimbursement cap, BPA may adjust the AUP Review procedures to ensure the CPA's review can be completed at or under the reimbursement cap. If such adjustment is necessary, BPA shall promptly notify «Customer Name» and adjust «Customer Name»'s AUP Review procedures.

1.3.2 Reimbursement of Fees

BPA shall reimburse «Customer Name» for its CPA fees for completing the AUP review pursuant to section 7 of the body of this Agreement and section 3 of this Exhibit E.

2. REVISIONS

BPA may, upon not less than 10 business days' prior written notice to «Customer Name», unilaterally revise this Exhibit E to implement changes that BPA determines are reasonably necessary to allow it to conduct reviews of the accounts

and financial records concerning BPA customers' participation in the Residential Exchange Program.

BPA shall provide a draft of any material revisions of this exhibit to «Customer Name», with reasonable time for comment, prior to BPA's written notice of the revision.

3. AUP COMPLIANCE REVIEW PROCEDURES

This section 3 of Exhibit E outlines the procedures to conduct Biennial AUP Compliance Reviews.

Definitions:

“Applicable Exchange Period” means the Exchange Period subject to the Biennial AUP Compliance Review.

“Residential Load Worksheet” means the worksheet developed by BPA for validation by IOU, that contains the calculation of «Customer Name»'s Exchange Period Residential Load pursuant to section 6 of the body of this Agreement. The Residential Load Worksheet contains the Residential Load for each month of the Base Period and the year after the Base Period, and the two-year average load by month for the twelve-month Applicable Exchange Period

“System-sourced Residential Load” means the Residential Load produced by CUSTOMER from its system that contains the monthly retails sales (load) data.

3.1 RESIDENTIAL LOAD SUPPORTED BY LOAD DATA

The objective of this section 3.1 is to confirm the source data used to calculate «Customer Name»'s Residential Load for the Applicable Exchange Period.

3.1.1 To complete this review, compare «Customer Name»'s Residential Load Worksheet with «Customer Name»'s System-sourced Residential Load data for each of the corresponding months of the Base Period and the year following the Base Period of the Applicable Exchange Period. Note any exceptions.

3.1.2 **CPA Only:** Using «Customer Name»'s System-sourced Residential Load obtained in section 4.1.1 above, calculate a two-year average by month of load for a twelve-month period. Cross-check against the same data within the Residential Load Worksheet. Note any exceptions.

3.1.3 Follow up with «Customer Name» personnel for explanations of any monthly differences greater than 1% and document such explanations and differences.

3.2 RESIDENTIAL AND FARM BILLS CONTAIN CORRECT REP BENEFITS

The objective of this section is to confirm, by random sample review of consumers' electric bills for the Applicable Exchange Period, that the REP ~~Benefit~~Benefits specified by the appropriate tariff is reflected on the consumers' electric bills, and that the REP ~~Benefit~~Benefits has been calculated correctly using (1) the appropriate REP tariff credit and (2) the energy usage on the bill (subject to any kWh cap).

- 3.2.1 «Customer Name» shall provide copies of all tariffs in effect during the Applicable Exchange Period that were eligible for REP Benefits.
- 3.2.2 «Customer Name» shall make accessible a list of the Residential Load accounts from the Applicable Exchange Period that were recipients of the REP Benefits. If the list is transmitted to BPA, the list shall not contain any customer personally identifiable information (PII), such as, names and addresses; however, stand-alone account numbers may be provided.
- 3.2.3 From such list of accounts, a random sample of 50 residential and farm accounts will be selected. The total population of the residential and farm accounts does not need to be tied-out for completeness.
- 3.2.4 For each of the 50 randomly selected accounts, «Customer Name» shall provide copies of the bills. If the bills are transmitted to BPA, none of the bills shall include any customer PII.
- 3.2.5 For each of the bills, BPA or «Customer Name»'s CPA shall verify the credit specified on the residential and farm tariff is applied to calculate the REP ~~Benefit~~Benefits and is calculated correctly (subject to any kWh cap imposed by «Customer Name»). The total population of the residential and farm accounts does not need to be tied-out for completeness. Note any exceptions.
- 3.2.6 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

3.3 IRRIGATION BILLS CONTAIN CORRECT REP BENEFITS

The objective of this section is to confirm, by random sample review of consumers' irrigation/pumping bills for the Applicable for the Exchange Period, that the REP ~~Benefit~~Benefits specified by the appropriate tariff is reflected on the consumer bill and that the REP ~~Benefit~~Benefits has been calculated correctly using (1) the appropriate REP tariff credit and (2) the

energy usage of the bill (not to exceed 222,000 kWh/month). If «Customer Name» does not have any irrigation load, notate and move to section 3.4.

3.3.1 «Customer Name» shall provide copies of all tariffs in effect during the Applicable Exchange Period covering «Customer Name»'s irrigation load that were eligible of the REP Benefits.

3.3.2 «Customer Name» shall provide the months during the Applicable Exchange Period that comprised the high irrigation season.

3.3.3 «Customer Name» shall provide a list of irrigation load accounts, with single and multiple metered irrigation/pumping loads from the «Customer Name»'s high irrigation season that were recipients of REP Benefits during the Applicable Exchange Period. If the list is transmitted to BPA, the list shall not contain any customer personally identifiable information (PII), such as, names and addresses; however, stand-alone account numbers may be provided

3.3.4 From such list of accounts, a random sample of 25 irrigation account bills will be selected. The total population of the irrigation accounts does not need to be tied out for completeness.

3.3.5 For each of the 25 randomly selected irrigation accounts, Customer Name» shall provide copies of the bills. If the bills are transmitted to BPA, none of the bills shall include any customer PII .

3.3.6 For each of the bills, BPA or «Customer Name»'s CPA shall verify the credit specified irrigation/pumping tariff is applied to calculate the REP ~~Benefit~~Benefits and is calculated correctly. Furthermore, BPA or «Customer Name»'s CPA shall verify the REP ~~Benefit~~Benefits applied is not calculated on any (combined/aggregated) monthly irrigation/pumping load in excess of 222,000 kWh/month per farm (as defined in the Customer Eligibility Load Guidelines. Note any exceptions.

3.3.7 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

3.4 «CUSTOMER NAME»'S END-OF-YEAR REP ~~BENEFIT~~BENEFITS CERTIFICATION SUPPORTED BY BOOKS AND RECORDS

The objective of this section is to confirm the information contained in the End-of-Year (EOY) REP ~~Benefit~~Benefits Certifications for each of the applicable Fiscal Years of the Exchange Period subject to the AUP Review ties with the «Customer Name»'s accounts, exclusive of benefits from In-Lieu Power deliveries.

3.4.1 For each of the Fiscal Years of the Exchange Period, agree beginning balances of REP Pass-through account as reported in the respective

«Customer Name»'s EOY REP ~~Benefit~~Benefits Certifications with «Customer Name»'s general ledger accounts or subsidiary accounting records for the same time period. Note any exceptions.

3.4.2 For each of the Fiscal Years of an Exchange Period, agree the total amount of Cost Benefit payments made by BPA as reported in the «Customer Name»'s EOY REP ~~Benefit~~Benefits Certifications with «Customer Name»'s general ledger accounts or subsidiary accounting records for the same periods of time. Note any exceptions.

3.4.3 For each of the Fiscal Years of an Exchange Period, agree the total Cost Benefits «Customer Name» disbursed to its Residential Load as reported in the respective «Customer Name»'s EOY REP ~~Benefit~~Benefits Certifications with «Customer Name»'s general ledger accounts or subsidiary accounting records for the same period of time. Note any exceptions.

3.4.4 For each of the Fiscal Years of an Exchange Period, compare the method reported to compute interest expense accrued on under-distributed Cost Benefits in the “Notes” section of «Customer Name»'s EOY REP ~~Benefit~~Benefits Certifications with the method used to compute interest expense on the «Customer Name»'s general ledger accounts or subsidiary accounting records for the same periods of time. Note any exceptions.

3.4.5 For each of the Fiscal Years of an Exchange Period, confirm the amounts of interest accrued on under-distribution of Cost Benefits as reported in the respective «Customer Name»'s EOY REP ~~Benefit~~Benefits Certifications with the amounts recorded on the utility's general ledger accounts or subsidiary accounting records for the same period. Note any exceptions.

3.4.6 For each of the Fiscal Years of an Exchange Period, agree year-end balances of REP Pass-through accounts as reported in the respective «Customer Name»'s EOY REP ~~Benefit~~Benefits Certifications with «Customer Name»'s general ledger account or subsidiary accounting records for the same period of time.

3.4.7 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

3.5 **FEDERAL COLUMBIA RIVER BENEFIT BILL NOTICE**

Confirm that all of the sampled residential, farm, and irrigation «Customer Name» bills include a statement or a reference to “BPA REP Credit”, or such other reference as approved by BPA.

3.6 REVISIONS

- 3.6.1 BPA may, upon not less than 10 business days' prior written notice to «Customer Name», unilaterally revise this exhibit's biennial AUP Compliance Review procedures to implement changes that BPA determines are reasonably necessary to allow it to conduct reviews of the accounts and financial records concerning BPA customers' participation in the Residential Exchange Program.
- 3.6.2 BPA shall provide a draft of any material revisions of these AUP Review procedures to «Customer Name», with reasonable time for comment, prior to BPA's written notice of the revision.

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

[Exhibit F reserved]

[Exhibit G reserved]

Exhibit H RENEWABLE ENERGY CERTIFICATES, ENVIRONMENTAL ATTRIBUTES, AND OTHER REP BENEFITS

1. PURPOSE AND INTENT; DISCLAIMER

The Parties acknowledge that: different jurisdictions, regulatory programs, and entities (federal, state, county, cities, and others) have different definitions for environmental attributes, renewable energy credits/certificates, emissions credits, and similar instruments; the various jurisdictions, programs, and entities are inconsistent in how they define and address these concepts; and these concepts are continually evolving. Accordingly, through this Agreement BPA does not attempt to define these concepts other than by reference to how they may be defined by others, and BPA does not represent or warrant that the items conveyed in this Exhibit H are suitable for a particular purpose or regulatory program. Whatever the regulatorily-defined environmental and non-power characteristics are of the power that customers buy from BPA, the purpose and intent of this Exhibit H is to convey to «Customer Name», in accordance with this Exhibit H, all Environmental Attributes, if any, and to the extent they exist, associated and commensurate with the physical amount of power «Customer Name» buys from BPA and the Attribute Pools associated with «Customer Name»'s purchase obligation under this Agreement. This Exhibit H accomplishes this by BPA: (1) agreeing to register applicable generation, (2) providing for the creation of an Environmental Attribute Accounting Process, (3) producing Inventories of RECs based on power generated, (4) committing to transfer «Customer Name»'s share of RECs based on its BPA power purchases and as determined in accordance with this Exhibit H to «Customer Name», (5) committing to provide an emissions accounting and non-emitting generation accounting for customers' use, and (6) undertaking the other actions identified in this exhibit below.

2. DEFINITIONS

- 2.1 “Attribute Pools” means the results calculated in the Environmental Attribute Accounting Process whereby the physical resources and forecasted power deliveries associated with each of BPA’s rates and firm power obligations are determined for the upcoming Rate Period.
- 2.2 “Emissions Allowance” means an authorization in a given jurisdiction to emit a specified amount of carbon dioxide equivalent or other measurement of greenhouse gases, and documented as an emissions credit, certificate, or similar instrument.
- 2.3 “Environmental Attribute Accounting Process” means the public process BPA will conduct each Rate Case Year, after the conclusion of each routine power rate 7(i) Process, during which the allocation methodology and Attribute Pools for BPA’s Environmental Attributes for the upcoming Rate Period will be determined.
- 2.4 “Environmental Attributes” means the environmental and non-power characteristics of power, however defined or titled and arising under any federal, state, or local law or regulation, including but not limited to current or future certificates, credits, benefits, and avoided emissions attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.
- 2.5 “Inventory” or “Inventories” means the Environmental Attributes, including RECs, that are attributable to the output of generation resources, by Attribute Pool(s).
- 2.6 “Renewable Energy Certificates” or “Renewable Energy Credits” or “RECs” means the tradeable certificates, credits, documentation, or other evidence that demonstrates: (1) that the electricity was generated from a renewable or non-emitting energy generating unit and (2) proof of ownership of the Environmental Attributes of such generated electricity in a REC tracking system. Some jurisdictions and regulatory programs may interpret a REC to include the emissions avoided by the generation of electricity by a renewable or non-emitting generating unit. For purposes of such situations, the Parties’ intent is that the RECs conveyed herein include the associated Environmental Attributes; however, this conveyance is not intended to impact BPA’s reporting in any generation-based emission programs where REC retirement is not required. One megawatt-hour of energy generation from a resource registered with the tracking system under section 5 is associated with one REC.
- 2.7 “Retire” or “Retirement” means an action taken to remove a REC from circulation within a REC tracking system.

3. ENVIRONMENTAL ATTRIBUTE INVENTORY AND ACCOUNTING

The Parties acknowledge that the Environmental Attribute accounting outlined below will be provided consistent with physical deliveries of power.

3.1 Registration of Renewable Energy Generating Units

BPA shall take all reasonable steps to register the applicable renewable energy generating units in BPA's system mix, including any hydro resources, with the tracking system selected under section 5 of this Exhibit H.

3.2 Environmental Attribute Accounting Process

Starting after issuance of the Final ROD of the BP-29 power rate 7(i) Process, and after the issuance of the Final ROD in each subsequent routine power rate 7(i) Process thereafter through the term of the Agreement, BPA shall conduct an Environmental Attribute Accounting Process for each upcoming Rate Period.

3.3 REC Inventory Accounting

No later than April 15, 2030, and by each April 15 over the remaining term of this Agreement, BPA shall calculate its Inventory for RECs for each Attribute Pool created during the prior calendar year in the applicable Environmental Attribute Accounting Process for the applicable Rate Period.

3.4 Emission Accounting

No later than June 1, 2029 and by each June 1 thereafter, and as an outcome of the Environmental Attribute Accounting Process, BPA will provide emission accounting information and, if applicable, will provide such information consistent with state rules.

3.5 Non-Emitting Electric Generation Accounting

No later than June 1, 2029 and by each June 1 thereafter, and as an outcome of the Environmental Attribute Accounting Process, BPA will provide non-emitting electric generation accounting information and, if applicable, will provide such information consistent with state rules.

4. CUSTOMER'S SHARE OF RECS

Drafter's Note: Include the following paragraph for customers that had a Regional Dialogue CHWM Contract.

All capitalized terms used in this paragraph and the related underlying processes described in this paragraph shall be as defined, determined and calculated under «Customer Name»'s Regional Dialogue CHWM Contract. By April 15, 2029, BPA shall transfer to «Customer Name» or manage a pro rata share of Available Tier 1 RECs from calendar year 2028 based on «Customer Name»'s FY 2028 RHWM divided by the total FY 2028 RHWMs of all customers with Regional Dialogue CHWM Contracts. BPA shall also transfer to «Customer Name» its share of Tier 2 RECs, if applicable, generated during calendar year 2028. «Customer Name» agrees that its REC transfer or management election (WREGIS account, WREGIS

subaccount, or remarketing) for Fiscal Year 2028 shall apply for all calendar year 2028.

End Option

By April 15, 2030, and by each April 15 over the remaining term of this Agreement, BPA shall determine «Customer Name»'s share of RECs as a pro rata share of the actual megawatt-hours of power «Customer Name» purchased from BPA the prior calendar year under this Agreement. «Customer Name»'s pro rata share of each Inventory of RECs shall be calculated as the actual megawatt hours of power «Customer Name» purchased from BPA under this Agreement during the prior calendar year from the applicable Attribute Pool divided by the sum of all power purchased from BPA for the applicable Attribute Pool.

5. TRANSFER AND TRACKING OF RECS

By December 1, 2029, «Customer Name» shall provide written notice to BPA stating which one of the three options below it elects for the transfer of «Customer Name»'s share of RECs, for the remaining term of the Agreement. However, «Customer Name» may change its transfer election for the remaining term of the Agreement by providing written notice to BPA of such change by December 1, 2030 or by any December 1 over the remaining term of the Agreement.

- (1) BPA shall transfer «Customer Name»'s share of RECs into «Customer Name»'s own Western Renewable Energy Generation Information System (WREGIS) account, which shall be established by «Customer Name»; or
- (2) BPA shall transfer «Customer Name»'s share of RECs into a BPA-managed WREGIS subaccount. Such subaccount shall be established by BPA on «Customer Name»'s behalf and the terms and conditions of which shall be determined by the Parties in a separate agreement; or
- (3) BPA shall transfer «Customer Name»'s share of RECs into a third party-managed WREGIS account. «Customer Name» shall notify BPA of the third-party WREGIS account number in its notice provided pursuant to this section 5.

By April 15, 2030, and by each April 15 over the remaining term of this Agreement, BPA shall transfer «Customer Name»'s share of RECs from the prior calendar year to «Customer Name» via WREGIS in accordance with its transfer election.

If «Customer Name»'s WREGIS account number has changed, then «Customer Name» shall notify BPA of such change by December 1, 2028 and by each December 1 over the remaining term of this Agreement.

All references to WREGIS in this Exhibit H should be understood to mean WREGIS or a comparable commercial tracking system. BPA may change commercial tracking systems with reasonable advance notice to «Customer Name». In such case, the Parties shall establish a comparable process for BPA to provide «Customer Name» its share of RECs.

6. FEES

BPA shall pay any reasonable fees associated with: (1) the transfer of «Customer Name»'s RECs into any WREGIS account or WREGIS subaccount and (2) the establishment of any WREGIS subaccounts in «Customer Name»'s name pursuant to section 5 of this exhibit. «Customer Name» shall pay all other fees associated with any WREGIS or successor commercial tracking system, including WREGIS Retirement, reserve, and export fees.

7. EMISSION ALLOWANCES

7.1 BPA Compliance with Emission Allowance Program(s)

If over the term of this Agreement BPA incurs an emissions compliance obligation placed on electricity importers that provide power to «Customer Name»'s service territory, and if based on that compliance program:

- (1) BPA is obligated to obtain Emission Allowances sufficient to cover power purchased under this Agreement to «Customer Name», and
- (2) «Customer Name» is eligible to receive Emission Allowances at no cost from «Customer Name»'s applicable jurisdiction and which can be used directly for compliance.

then «Customer Name» shall transfer, or otherwise provide, Emission Allowances to BPA on the schedule and in the amount agreed to by BPA and «Customer Name» that is sufficient to satisfy BPA's compliance obligations that arise in order to serve «Customer Name»'s load in its state.

The Parties shall revise section 7.2 below to include the specific terms and conditions, such as the calculation of the Emission Allowances to be transferred, and cost responsibilities, if any, associated with the transfer of Emission Allowances to BPA.

If «Customer Name» elects to not revise this Exhibit H to include applicable special provisions in section 7.2 below, then BPA shall apply and «Customer Name» shall pay the applicable Emissions Allowance costs through charges established in the BPA Power Rate Schedules and GRSPs.

7.2 Transfer of Emission Allowances to BPA

Placeholder for special provisions.

Drafter's Note: Include the following for customers with a BPA-managed WREGIS subaccount.

Drafter's Note: Delete this section for all customers at contract offer as, per section 5 above, customer's election for transfer of RECs is by December 1, 2029. This section will be added as applicable after such election.

8. TERMS AND CONDITIONS OF CUSTOMER'S WREGIS SUBACCOUNT

8.1 Establishment of WREGIS Subaccount

In accordance with «Customer Name»'s election under section 5(2) above, BPA shall establish a subaccount in «Customer Name»'s name, if not already established, within BPA's WREGIS account. BPA shall provide «Customer Name» read-only access to its subaccount.

BPA shall use such subaccount for the purposes of administering the provisions of this Agreement related to RECs that «Customer Name» receives from BPA.

«Customer Name» gives its consent to be bound by the terms stated in the WREGIS Account Holder Registration Agreement, also referred to as the WREGIS Terms of Use (WREGIS TOU) Agreement, executed by BPA and including any revisions. BPA shall provide «Customer Name» a copy of the executed WREGIS TOU Agreement upon request.

8.2 Transfer of RECs to Customer's WREGIS Subaccount

BPA shall transfer «Customer Name»'s share of RECs to «Customer Name»'s WREGIS subaccount pursuant to the timeline established in section 5 above.

8.3 Resale, Purchase, and Retirement of RECs

If «Customer Name» wants to sell RECs received from BPA or purchase RECs other than those RECs it receives from BPA, then «Customer Name» shall request that BPA terminate its WREGIS subaccount pursuant to section 8.5 below and «Customer Name» shall establish its own WREGIS account.

Upon receipt of written notice from «Customer Name» of RECs «Customer Name» wants BPA to Retire, BPA shall Retire «Customer Name»'s RECs on its behalf. In such Retirement notice, «Customer Name» shall identify REC quantity, the name of the renewable project(s) which generated the RECs, and the month and year the RECs were generated by the project(s).

8.4 WREGIS Subaccount Fees

BPA shall pay the fees associated with «Customer Name»'s WREGIS subaccount consistent with section 5 of this exhibit. BPA shall pass through to «Customer Name» all other fees associated with «Customer Name»'s WREGIS subaccount including but not limited to any REC Retirement fees. «Customer Name» shall pay all WREGIS fees incurred from the termination of its WREGIS subaccount, and «Customer Name» shall pay all fees associated with establishment of its own WREGIS account.

8.5 Termination of Customer's WREGIS Subaccount

Either Party may terminate «Customer Name's» WREGIS subaccount after providing written notice to the other Party.

BPA shall not terminate «Customer Name's» WREGIS subaccount until (1) «Customer Name» has established its own WREGIS account or «Customer Name» has arranged for its RECs to be handled by a third party and (2) BPA has received written notice from «Customer Name» to transfer 100 percent of «Customer Name's» RECs into «Customer Name's» own WREGIS account or a third-party WREGIS account. After BPA has transferred «Customer Name's» RECs from its WREGIS subaccount to «Customer Name's» new WREGIS account or a third party WREGIS account, «Customer Name» may not have both a WREGIS account and a WREGIS subaccount open at the same time.

Unless otherwise agreed by the Parties, if «Customer Name» asks BPA to terminate its WREGIS subaccount, then BPA shall not establish another WREGIS subaccount for «Customer Name» for the remaining term of this Agreement.

End Option

«#»9 . REVISIONS

BPA may unilaterally revise this exhibit:

- (1) to add or remove the terms and conditions of «Customer Name's» WREGIS subaccount following either «Customer Name's» election of a WREGIS subaccount pursuant to section 5 of this exhibit or either Party's notice for termination of a WREGIS subaccount; and
- (2) to incorporate any significant edits related to a change to the commercial tracking system, pursuant to the last paragraph of section 5 of this exhibit.

All other changes to this Exhibit H will be made by mutual agreement of the Parties. As discussed in section 1 of this exhibit, BPA and «Customer Name» acknowledge that the regulatory concepts covered in this exhibit are not well settled and are continually evolving. Accordingly, if future regulatory concepts change such that the spirit and intent of this exhibit are not being met, then BPA agrees to discuss such situations with customers and, as needed, to attempt in good faith to agree on mutually acceptable amendments to this exhibit.

9. IMPLEMENTING OTHER REP BENEFITS THAT ARISE DURING THE TERM OF THIS AGREEMENT

If at any time during the term of this Agreement BPA offers itself or any counterparty to a contract made pursuant to section 5(b) or section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). 16 U.S.C. § 839 et seq., the ability to claim other REP Benefits as defined in this Agreement, whether or not such other REP Benefits are provided under such

contract made pursuant to section 5(b) or section 5(c), then, at the request of «Customer Name», BPA shall offer to enter into amendments to this Agreement to the extent necessary to provide for the same or comparable terms and provisions.

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

APPENDIX B:

BPA Whitepaper for “Provider of Choice” Contract Discussions:
Why BPA is Required to Sell From a Pooled System of Resources

(available at <https://www.bpa.gov/-/media/Aep/power/provider-of-choice/bpa-whitepaper-on-system-sales.pdf>)



WHITEPAPER FOR “PROVIDER OF CHOICE” CONTRACT DISCUSSIONS: Why BPA Is Required To Sell From A Pooled System Of Resources

I. Statutory Foundation Underlying System Sales

A system sale is a “sale to a customer, usually wholesale, from the seller’s system as a whole, without identifying a specific resource as being the creator of the power being sold.” *See* BPA Dictionary.¹ Bonneville is the statutorily-designated marketer for power generated by the system of federal dams in the Northwest. Bonneville is required to market from these dams (and non-federal resources that Bonneville acquires) as pooled system, the entirety of which Bonneville uses to meet its contractual power supply obligations.

The system Bonneville sells from is composed of: an interconnected system of hydroelectric plants known as the Federal Columbia River Power System (FCRPS), the non-federal nuclear power plant Columbia Generating Station, a variety of small non-federal resources (mostly small hydro and wind), and wholesale market purchases. Bonneville sells power produced by these pooled resources to satisfy a statutory obligation to supply regional power customers (public bodies, electric cooperatives, and investor-owned utilities) with all of the power they need, beyond what their own resources can produce to serve their load.

Except for an initial, brief period in the late 1930’s and early 1940’s of marketing power produced only by the Bonneville dam, Bonneville has not marketed power generated from an individual project. The foundation for Bonneville marketing federal power based on the system was developed over 80 years. As the system of interconnected and interdependent federal projects grew, Bonneville met growing requests for federal power by regional power customers with power produced by those projects. Over this long period of time Bonneville was guided by multiple parts of Bonneville’s statutes, legislative history, and federal executive orders.

The next sections discuss the pertinent provisions.

A. Bonneville Project Act of 1937 (16 U.S.C. § 832 et seq.)

This Act created the Bonneville Power Administration and granted the Administrator the authority to enter into contracts at wholesale for the sale and/or disposition of power produced by the Bonneville dam. When Grand Coulee dam was built and began operation in 1941, the Administrator was delegated the authority under Executive Order 8526 to market that project’s power, in addition to power produced by Bonneville dam. The power produced by both dams was used to satisfy the Administrator’s growing contractual obligations.

¹ The BPA Dictionary is an internal document.



B. Flood Control Act of 1944 (16 U.S.C. § 825s)

This Act made express the authority of the Secretary of Energy (formerly Interior) to transmit and dispose of energy generated by Army Corps of Engineers projects. For purposes of this memo, the legislative history of this Act is extremely relevant.

In hearings before the Senate Committee on Commerce, the Secretary of Interior, Harold Ickes, requested the inclusion of a power marketing provision, pointing out that the proposed authorization of the Snake River and Umatilla dams (McNary) would involve the generation of hydro power for use in Bonneville's area:

*Physical integration of the power facilities at these new projects with the existing facilities of the Bonneville Power Administration will be needed for most efficient and economical marketing of energy. At present the Administration maintains a network of high-voltage transmission lines in Oregon and Washington over which the power generated at Bonneville and Grand Coulee Dams is sold, and with which the proposed new projects should be interconnected in order to make the best use of all available power. . . .*²

This testimony recognizes that, as a practical matter, the most efficient way to operate an interconnected hydro system like the FCRPS is as a pooled resource, because generation at up-river dams results in water flowing down through the system. Operated as a pooled system, rather than as standalone projects, the FCRPS creates more energy and capacity. Producing more energy and capacity is consistent with the Bonneville Project Act's statutory directive to encourage the widest possible use of "all electric energy that can be generated and marketed" 16 U.S.C. § 832a(b).

Thus, under the authority granted in the Flood Control Act, and in concert with Bonneville's authority to construct transmission, additional federal dams (in particular The Dalles, John Day, McNary, and Chief Joseph) were constructed on the Columbia River and interconnected and integrated with the existing federal dams and sold as pooled, system power.

C. Regional Preference Act of 1964 (16 U.S.C. § 837 et seq.)

This Act focuses on assuring Bonneville meets its Pacific Northwest energy requirements, by supplying power from the whole federal system, before it sells surplus federal system power to entities outside the Pacific Northwest. Specifically, section 2 (16 U.S.C. § 837a) provides that "the sale, delivery, and exchange of electric energy generated at, and peaking capacity of, Federal hydroelectric plants in the Pacific Northwest for use outside the Pacific Northwest shall be limited to surplus energy and surplus peaking capacity." Because it is in the plural form

² Secretary of the Department of Interior, Harold Ickes, Senate Committee on Commerce hearings on H.R. 3961 (May 1944) (emphasis added).



(“hydroelectric plants”) this language encompasses the whole, interconnected system of Federal hydro projects and similarly encompasses surplus produced in the aggregate.

Likewise, the legislative history of this Act defined the meaning of “energy requirements of any Pacific Northwest customer” as the “share of the PNW load which the *Federal system* must meet”³ Thus, here again we see Congress directing Bonneville to use the whole system to meet any particular customer’s requirements.

D. 1966 Third Powerhouse Act, Grand Coulee Dam, (16 U.S.C. § 835j et seq.)

This Act granted the Secretary of the Interior the authority to construct, operate, and maintain the third powerhouse at the Grand Coulee hydro project. In addition, Congress included a provision which required the Secretary of the Interior (who reviewed Bonneville’s rates at the time) to prepare a consolidated financial statement of all federal projects that make up the FCRPS. *See* 16 U.S.C. § 835j. This consolidated financial statement allows the President and Congress to see whether, on a system-wide basis, the FCRPS is paying for itself.

The accompanying legislative history explains that the consolidated financial statement for the FCRPS follows from the way the projects are operated:

[The consolidated financial statement] rests on the premise that all revenues and all costs of the individual projects which are covered by the consolidated financial statement are in fact, and should in law be treated as being pooled. It thus reflects and is an outgrowth of the factual situation in the Columbia River Basin today.⁴

Most significantly, Congress described at length the interconnected state of the projects, which supported treating the FCRPS financially as a single system:

These numerous powerplants, linked together as they are both by transmission lines and by, in most cases, a common source of water supply are and *must be operated as a unit, not as if they were separate and competing enterprises. Only thus can maximum efficiency be attained, the power demands of the area satisfied, and operating costs minimized.*

The other side is equally clear. Just as the transmission grid draws on numerous Federal power installations for its supply of energy, so it delivers to numerous customers throughout its service area. Customer A does not know and does not care whether his energy purchases come from power source X, Y, or Z, and power source X does not know or care whether its output is delivered to customer A, B, or C. *The chances are, however, that A, B, and C all draw energy, directly or by*

³ Senate Report 1748, 87th Cong., 2d Sess., Committee on Interior and Insular Affairs (July 20, 1962), at 9 (emphasis added).

⁴ Committee on Interior and Insular Affairs report (89th Cong., 2d Sess., Rept. No. 1409 (April 1, 1966)), at 4-5.



*displacement, from X, Y, and Z and that the amount which they draw from each of these sources varies from season to season, from day to day, and even from hour to hour.*⁵

This situation is no different today. Bonneville's customers, whether in Washington state or other parts of Bonneville's service territory, all draw energy from numerous federal projects, as well as from Columbia Generating Station and from market purchases Bonneville has made--and the amount which they draw from each of these sources varies from season to season, from day to day, and from hour to hour.

E. Northwest Power Act (16 U.S.C. § 838 et seq.)

The system sales construct is deeply embedded in the Northwest Power Act in several operative provisions.

First, the concept of a pooled system is reflected in the term "Federal base system resources," which is defined as: (A) the Federal Columbia River Power System hydroelectric projects; (B) resources acquired by the Administrator under long-term contracts in force on December 5, 1980; and resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources referred to in (A) and (B). The last provision, regarding "resources acquired," is noteworthy. It is what makes the market purchases that BPA buys a part of BPA's pooled system of resources.

Second, section 5(b)(1) directs the Administrator to sell, whenever requested, electric power to each requesting public body, cooperative, IOU, and federal agencies as authorized in section 5(b)(3). The Act's rate directives specify that the electric power sold under such contracts is supplied by the FBS at the applicable rates set to recover the cost of FBS resources used to supply general requirements load.

Third, the Act specifically permits the Administrator to restrict his supply obligations under contract in an event known as a "resource insufficiency." Specifically, section 5(b)(6) provides that the restriction shall not be applicable to Bonneville's public customers until the total of such customers' "firm loads to be served by the Administrator equals or exceeds the firm capability of the *Federal base system resources*." In other words, Bonneville's firm power supply obligation to its public customers is tied to the *combined* supply produced by the resources that make up the FBS. Thus, Bonneville cannot declare an insufficiency if only one or two projects are incapable of meeting customers' demand for power; the combined output of the FBS must be insufficient.

Fourth, section 6 provides resource acquisition authority. It authorizes Bonneville to acquire resources to replace lost generating capability of the FBS. This authority is based on lost capability of the FBS *in the aggregate*. Bonneville need not replace lost capability at specific

⁵ *Id.* at 5 (emphasis added).



projects. Here again, Bonneville is directed to manage the system as a whole, pooled group of resources.

II. Bonneville's Statutory Rate Directives Are Based On System Sales

Bonneville's rate directives reflect its marketing of federal power on a system basis. The key concept is that Bonneville's rates meld the system's cost. Historically, as the FCRPS projects grew in number, their individual project costs were melded with the other projects and formed Bonneville's average rate.

For example, section 6 of the Bonneville Project Act originally governed Bonneville's rate setting and stated that Bonneville's "rate schedules may provide for uniform rates" 16 U.S.C. § 832e. Three years later, Grand Coulee dam was under construction and Executive Order No. 8526 authorized the Administrator to market Grand Coulee power, and provided that the power be sold at rates set by the Secretary of the Interior who, in turn, authorized the Bonneville Administrator to sell Grand Coulee's power under Bonneville's existing rate schedules.⁶

As additional federal projects came on line, Bonneville continued to sell power at a uniform rate reflecting the engineering and operational characteristics of the system. The system being a pool of resources operated as an integrated unit.

Today, Bonneville's rate directives are chiefly contained in section 7 of the Northwest Power Act. Section 7(b)(1) expressly ties the establishment of rates to the overall system costs of the FBS:

The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under section 839c(c) of this title. Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under section 839c(c) of this title and then from other resources.⁷

Likewise, section 7(a)(2)(B) requires that Bonneville's rates be "based upon the Administrator's total system costs" 16 U.S.C. § 839e(a)(2)(B). In short, these directives reflect that Bonneville markets power on a system basis (including market purchases that become a part of that system) and Bonneville's customers receive varying output of each of these resources, and benefit from the diversity and coordinated

⁶ See Secretary of Interior Memo Nov. 2, 1940.

⁷ 16 U.S.C. § 839e(a)(1).



operation of these resources, and therefore are responsible for the melded “total system costs.”

Otherwise, if the whole system were not being used to supply Bonneville’s customers, then Bonneville could face under-recovering its costs if, for example, a customer challenged Bonneville’s ability to allocate the costs of nuclear projects, fish and wildlife, conservation, and other costs not directly related to the generating costs of a specific project. That would create an internal conflict among Bonneville’s customers as to which customers are responsible for which costs of which projects at which time.

III. Conclusion

Bonneville’s statutes and legislative history form the foundation for Bonneville selling power from the system. They direct that the system is to be operated and treated as a whole rather than as individual projects. This structure reflects the reality that once there was more than one project and transmission lines were in place to interconnect the projects with load centers, the system was operated as a whole and contracts for system sales were put into place.

Due to the variability in loads, the need to meet non-power requirements (i.e., fish, flood control, irrigation, navigation, recreation) and the shape of the run-off (limited fuel supply) Bonneville relies on the system’s flexibility to determine the most efficient operation on a daily and hourly basis. In addition, Bonneville’s rate directives reflect the recovery of Bonneville’s total system costs and the recovery of FBS resource costs from sales of system power to firm power loads pursuant to section 7(b)(1).

Any sale from a specific resource or exclusion of particular resources from a system sale would be inconsistent with the above statutory foundations and would put specific limitations on how the system is operated. This would infringe on Bonneville’s flexibility and ultimately reduce the overall output of the system. The laws discussed above and this practical rationale provide the legal foundation for system sales.