

Draft Prototype

RESIDENTIAL PURCHASE AND SALE AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

«FULL NAME OF CUSTOMER»

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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»).

«Customer Name» is a «_____» organized under the laws of the State of «_____». BPA and «Customer Name» are sometimes referred to as "Party" or "Parties."

RECITALS

The Northwest Power Act, among other matters, provides that a Pacific Northwest (PNW) 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 that BPA shall sell in return an equivalent amount of electric power for resale to that utility's residential and small farm users within the PNW; and

The Parties agree:

[OPTIONS for section 1.

Option 1-Include the following if no third-party approval of this Agreement is required.

1. TERM(02/29/00 Version, modified for IOUs)

This Agreement takes effect on the date signed by the Parties. Performance by the Parties, except for preparatory action for performance, shall commence on July 1, 2001, and shall continue through September 30, «_____» (Expiration Date).*(Drafter's Note: The Expiration Date must not exceed September 30, 2011. Change July 1, 2001, to October 1, 2001, if BPA and customer have settled RPSA from July 1, 2001, to October 1, 2001.)*

Option 2-Include the following if third-party approval of this Agreement is required.

1. TERM(02/29/00 Version, modified for IOUs)

This Agreement takes effect on the date signed by the Parties subject to «_____» approval. Performance by the Parties, except for preparatory action for performance, shall commence on July 1, 2001, and shall continue through September 30, «_____» (Expiration Date).*(Drafter's Note: Identify applicable organization, i.e., United States Department of Agriculture Rural Utilities Service or the Federal Energy Regulatory Commission (FERC). The Expiration Date must not exceed September 30, 2011. Change July 1, 2001, to October 1, 2001, if BPA and customer have settled RPSA from July 1, 2001, to October 1, 2001.)*

2. DEFINITIONS (10/29/99 Version)

Capitalized terms in this Agreement shall have the meanings defined below. All other capitalized terms are defined in BPA's applicable Wholesale Power Rate Schedule(s), including the General Rate Schedule Provisions (GRSPs), or their successors.*(Terms listed below that are defined in the GRSPs will be made consistent with the definitions in the final GRSPs. Five-year contracts can delete "or their successors," if requested by Customer.)*

- () "Average System Cost," or "ASC," means the average system cost of «Customer Name» resources, as determined by BPA using Exhibit D, or its successor.
- () "ASC Methodology" means a 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 and attached hereto for ease of reference only as Exhibit D.
- () "In-Lieu PF Power" means the power that is sold by BPA to «Customer Name» in an in-lieu transaction at the Priority Firm Power Exchange Rate, or its successor.
- () "In-Lieu Power" means 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.
- () "Jurisdiction" means the service territory of a distribution utility within which a State commission, as defined in the ASC Methodology, has authority to approve retail rates.
- () "New Large Single Load" or "NLSL" (02/29/00 Version) means the definition established for NLSL in the Northwest Power Act, as implemented in an NLSL policy developed by BPA after this Agreement is executed.
- () "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501.
- () "Pacific Northwest," or "PNW," shall have the same meaning given such term in the Northwest Power Act.
- () "Prior Residential Purchase and Sale Agreement," or "Prior RPSA" means the RPSA executed by «Customer Name» in 1981, Contract No. DE-MS79-81BPXXXXX.
- () "Residential Load" shall have the same meaning given such term in the Northwest Power Act and as further defined in Exhibit A.
- () "Surplus Firm Power" means electric power as described in section 5(f) of the Northwest Power Act.
- () "Uncontrollable Forces" shall have the meaning specified in section 15.

3. APPLICABLE PF RATE (10/29/99 Version, modified for RPSA)

Purchases from BPA under this Agreement are subject to the Priority Firm Power Exchange (PF Exchange) rate and applicable GRSPs, or their successors. Sections 6 and 7 of the body of this Agreement establish purchases subject to the PF Exchange rate schedule.

The PF Exchange rate for purchases from BPA under this Agreement prior to October 1, 2001 is specified in section II.F labeled Schedule PF-96 Priority Firm Power in the 1996 Wholesale Power and Transmission Rates. The PF Exchange rate for purchases from BPA under this Agreement starting October 1, 2001, are specified in section II.H. labeled Schedule PF-02 Priority Firm Power in the 2002 Wholesale Power Rate Schedules. BPA agrees that the PF Exchange rate and associated GRSPs available to «Customer Name» starting October 1, 2001, shall not be subject to revision prior to October 1, 2006, except for the application of a Cost Recovery Adjustment Clause as provided in the applicable PF rate schedule and GRSPs and this Agreement. *(Drafter's Note: Delete the first sentence of this paragraph if performance commences on October 1, 2001 in section 1.)*

4. ESTABLISHMENT OF ASC TO ACTIVATE AGREEMENT

Following the execution of this Agreement, «Customer Name» may activate its participation under this Agreement with respect to any Jurisdiction by filing an Appendix 1 for each such Jurisdiction, pursuant to the terms of Exhibit D of this Agreement. The Appendix 1 shall be based on the costs and loads for the rate schedules then in effect. Upon filing an Appendix 1, «Customer Name» shall commence invoicing for Residential Load on the later of the date of such filing or July 1, 2001. *(Drafter's Note: Change July 1 to October 1 if commencement date is October 1.)*

The purchase and sale transactions pursuant to sections 5 and 6 below are for the purpose of determining monetary benefits, if any, to be paid by BPA to «Customer Name». Sale transactions where BPA has acquired In-Lieu Power instead of purchasing electric power offered pursuant to section 5, shall be determined in accordance with section 7.

5. OFFER BY «CUSTOMER NAME» AND PURCHASE BY BPA

Following the filing of an Appendix 1 for any Jurisdiction under section 4 above, «Customer Name» shall offer and BPA shall purchase each month an amount of electric power equal to the Residential Load. The monthly amounts of Residential Load, for purposes of determining monetary benefits, shall be the amounts determined pursuant to Exhibit A, less: (a) any amounts of Residential Load where BPA has issued an in-lieu notice and «Customer Name» has elected to receive the In-Lieu PF Power pursuant to section 7 below; or (b) amounts of Residential Load suspended pursuant to section 7(c) below. The rate for such power sale to BPA shall be equal to «Customer Name»'s ASC, as determined by BPA using the ASC Methodology, attached hereto as Exhibit D for ease of reference only. «Customer Name» may only sell power for Residential Load that is associated with Jurisdictions in the PNW where «Customer Name» is authorized under State law or by order of the applicable State regulatory authority to serve Residential Load. However, «Customer Name» may sell power for the residential loads of another utility when it is acting as the agent for such other utility, if «Customer Name» has entered into an agreement with the other utility that has been approved by BPA and which may be terminated at will by the other utility.

6. SALE BY BPA AND PURCHASE BY «CUSTOMER NAME»

Following the filing of an Appendix 1 for any Jurisdiction under section 4 above, BPA shall offer and «Customer Name» shall purchase each month an amount of electric power equal to the Residential Load. The monthly amounts of Residential Load, for purposes of determining monetary benefits, shall be the amounts determined pursuant to Exhibit A, less: (a) any amounts of Residential Load where BPA has issued an in-lieu notice and «Customer Name» has elected to receive the In-Lieu PF Power pursuant to section 7 below; or (b) amounts of Residential Load suspended pursuant to section 7(c) below. The rate for such power sale to «Customer Name» shall be BPA's PF Exchange rate. For billing purposes, «Customer Name»'s load factor shall be determined pursuant to Exhibit B.

7. IN-LIEU TRANSACTIONS

(a) BPA's Right to In-Lieu

Rather than purchase all or a portion of the electric power offered to BPA pursuant to section 5 by «Customer Name» for any Jurisdiction at a rate equal to its ASC, BPA may acquire In-Lieu Power if the cost of such power is less than «Customer Name»'s ASC for that Jurisdiction. The ASC used for issuing an in-lieu notice shall be either the most current Appendix 1 filing under this Agreement or final ASC established under this Agreement.

(b) In-Lieu Notice(s)

BPA shall provide «Customer Name» a minimum of 30 days advance written notice of its election to acquire In-Lieu Power, and shall include in the notice the following information: the source(s) of In-Lieu Power, the amount of In-Lieu PF Power, the shape of the In-Lieu PF Power, the cost of such In-Lieu Power, the term of the In-Lieu PF Power sale, and the point or points of delivery.

(1) Source(s) of In-Lieu Power

In-Lieu Power may include, but is not limited to, Surplus Firm Power and wholesale power market purchases. The sources of In-Lieu Power, other than Surplus Firm Power will be from sources similar to those used by PNW utilities to meet utility firm loads.

(2) Amount of In-Lieu PF Power

The monthly amounts of In-Lieu PF Power shall be based on forecasts of «Customer Name»'s Residential Load for any Jurisdiction using the then-current Appendix 1 filing under this Agreement or final ASC determination under this Agreement. «Customer Name» shall identify the portion of its contract system load for each Jurisdiction, as described in Exhibit D, that is Residential Load at the time it files an Appendix 1 under this Agreement in the manner described in section 7(f). BPA may issue an in-lieu notice for all or a percentage portion of «Customer Name»'s Residential Load for any Jurisdiction.

- (3) **Expected Costs of In-Lieu Power**
BPA shall identify its expected costs of In-Lieu Power in the in-lieu notice. Such expected costs shall consist of BPA's forecast of the wholesale market costs of supplying In-Lieu Power to the delivery point in the amount and in the shape identified in the in-lieu notice. Such expected costs of the In-Lieu Power shall include: the cost of transmission and losses to integrate the power into the BPA system, to the extent they are incurred; the costs of the power shaped to meet a uniform percentage of diurnally differentiated monthly amounts of Residential Load identified in the in-lieu notice; the costs of additional operating reserves if such reserves are necessary under Western System Coordinating Council procedures; and the costs that BPA incurs to deliver the In-Lieu PF Power to the point of delivery as described below.

The wholesale market cost for Surplus Firm Power shall be BPA's forecast of its sales price for such power under BPA's applicable rate schedule. Such amount shall not be less than a reasonable forecast of wholesale market prices. Reasonable forecasts include, but are not limited to, broker quotes or futures prices for the term of the in-lieu notice.

The expected cost of In-Lieu Power shall include the costs of wheeling the power from BPA's system to the point of delivery unless the source of the In-Lieu Power is delivered directly to the point of delivery. Any transmission cost or losses incurred to deliver the In-Lieu Power directly to the point of delivery shall be treated as a cost to integrate the power into the BPA system.

- (4) **Term and Quality of the In-Lieu PF Power Sale**
The In-Lieu PF Power will be firm power offered by BPA for a period of one year or multiples thereof, except that BPA may issue an in-lieu notice for a period greater than one year that is not a multiple thereof if such notice lasts through the remaining term of this Agreement. BPA may issue multiple in-lieu notices.

(c) **«Customer Name» Election to Either Receive In-Lieu PF Power or Reduce ASC**

Within 15 days following the receipt of BPA's notice to acquire In-Lieu Power pursuant to section 7(b) above, «Customer Name» shall provide BPA written notice of its election to either receive and pay for all or a portion of the In-Lieu PF Power or to not receive In-Lieu PF Power and instead reduce its ASC for all or a portion of the In-Lieu Power to the expected cost of the In-Lieu Power. If «Customer Name» elects to reduce its ASC to the expected cost of the In-Lieu Power, and the expected cost of such In-Lieu Power is less than the PF Exchange Rate, then «Customer Name» may suspend its sale and purchase under sections 5 and 6 of this agreement for all or a portion of the amount of Residential Load that BPA proposes to serve with In-Lieu PF

Power, for the duration of time specified in the In-Lieu notice. «Customer Name»'s election under this section shall be based on all or a percentage portion of «Customer Name»'s Residential Load that BPA has specified in its in-lieu notice. If «Customer Name» fails to notify BPA of its election under this section, then «Customer Name» shall be deemed to have agreed to receive and pay for all of the In-Lieu PF Power specified in such notice.

(d) Delivery of and Payment for In-Lieu PF Power

In-Lieu PF Power shall be delivered to the transmission system connected to «Customer Name»'s distribution system in the Jurisdiction that is subject to the In-Lieu notice. All In-Lieu PF Power deliveries shall be scheduled. «Customer Name» shall pay BPA for In-Lieu PF Power made available for delivery at the PF Exchange Rate.

(e) Scheduling of In-Lieu PF Power

«Customer Name» shall preschedule In-Lieu PF Power in accordance with the provisions described in Exhibit E.

(f) Shaping of In-Lieu PF Power

In-Lieu PF Power will be delivered in monthly amounts shaped to «Customer Name»'s monthly Residential Load for each Jurisdiction (e.g., if «Customer Name»'s January Residential Load is 12 percent of its annual Residential Load, In-Lieu PF Power deliveries for January will be 12 percent of annual In-Lieu PF Power deliveries). Such monthly amounts shall be based on data used by «Customer Name» to establish its then-current rates, and shall be supplied to BPA with its forecast of Residential Load. «Customer Name» shall supply a monthly forecast of Residential Load, and the diurnal amounts of Residential Load when it files its Appendix 1. Deliveries within each month will be in equal hourly amounts during each heavy load hour and in equal hourly amounts during each light load hour, for each monthly period based on the load shape data in «Customer Name»'s forecast of Residential Load for each such Jurisdiction. If BPA does not have, or is not provided adequate load shape data, BPA will determine the load shape of the In-Lieu PF Power based on the average load shape of its preference customer class. Adequately documented load shape data shall include, but not be limited to, data that are verifiable through published sources. The load shape established for each notice will continue for the duration of the In-Lieu PF Power transaction.

8. BILLING AND PAYMENT

- (a)** «Customer Name» shall submit to BPA each month an accounting invoice that indicates the amount of Residential Load billed to retail customers during such month. Such documentation shall include the kilowatthours of energy which «Customer Name» billed to the Residential Load in each Jurisdiction. Although subject to adjustment, this amount shall be deemed to be equal to the amount of Residential Load. The amount of Residential Load purchased and sold under this Agreement for the determination of

monetary benefits pursuant to sections 5 and 6 is the amount invoiced under this section 8(a), reduced by: (1) amounts served with In-Lieu PF Power under section 7 above; or (2) amounts of Residential Load suspended pursuant to section 7(c) above. The monthly amounts of In-Lieu PF Power billed under this Agreement shall be the monthly amounts specified in the in-lieu notice.

(b) **Billing**

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

BPA may send «Customer Name» an estimated bill followed by a final bill if amounts are due BPA for a month. BPA shall send all bills on their issue date either electronically or by mail, at «Customer Name»'s option. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by mail.

(c) **Payment**

Payment must be received by the 20th day after the issue date of the bill where «Customer Name» pays BPA (Due Date). Payment must be received within 30 days following receipt of each monthly invoice pursuant to section 8(a) above where BPA pays «Customer Name» (Due Date). If the 20th day is a Saturday, Sunday, or Federal holiday, the Due Date is the next business day. After the Due Date, a late payment charge is calculated by dividing the Prime Rate for Large Banks as reported in the Wall Street Journal, plus 4 percent; by 365. The applicable Prime Rate for Large Banks shall be the rate reported on the first day of the month in which payment is received. «Customer Name» shall pay by electronic funds transfer using BPA's established procedures. BPA shall pay by electronic funds transfer using «Customer Name»'s established procedures.

(d) **Disputed Bills**

In case of a billing dispute, «Customer Name» shall note the disputed amount and pay its bill in full by the Due Date. Unpaid bills (including both disputed and undisputed amounts) are subject to late payment charges provided above. If «Customer Name» is entitled to a refund or additional payment for any portion of the disputed amount, then BPA shall make such refund or provide such additional payment with a simple interest computed from the date of receipt of the disputed payment to the date the refund or additional payment is made. The daily interest rate used to determine the interest is calculated by dividing the Prime Rate for Large Banks as reported in the Wall Street Journal; by 365. The applicable Prime Rate for Large Banks shall be the rate reported on the first day of the month in which payment is received by BPA.

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

9. ACCOUNTING, REVIEW, AND BUDGETING

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

- (a) «Customer Name»'s ASC as determined pursuant to Exhibit D;
- (b) identification of «Customer Name»'s eligible residential and small farm consumers;
- (c) the amount of Residential Load invoiced to BPA; and
- (d) evidence that the benefits received by «Customer Name» have been passed through to «Customer Name»'s eligible residential and small farm consumers, as provided for in section 10 below.

At BPA's expense, BPA or its agent may, from time-to-time, review or inspect «Customer Name»'s records, accounts, and related documents pertaining to this Agreement. «Customer Name» shall fully cooperate in good faith with any such reviews or inspections.

If BPA determines that «Customer Name» has received monetary benefits for ineligible load or other errors in implementing this Agreement, then any overpayment shall be returned to BPA within 30 days of BPA's determination, or BPA may adjust future monetary benefit payments to «Customer Name». If BPA determines that «Customer Name» has not received monetary benefits due to «Customer Name»'s failure to submit eligible Residential Load or other errors in implementing this Agreement, then BPA shall pay «Customer Name» within 30 days of BPA's determination, or BPA may adjust future payments to «Customer Name». In the event of a dispute about any amount of overpayment, «Customer Name» shall note the dispute and return such amount of overpayment identified by BPA within 30 days of BPA's written notice of such determination. Such disputed amounts shall be treated as disputed payment amounts under section 8(d) above.

10. PASS-THROUGH OF BENEFITS

- (a) Monetary benefits received by «Customer Name» under this Agreement shall not be included by «Customer Name» as a revenue, expense, or cost of «Customer Name» in its accounting used in establishing cost allocations or retail rate structure.

- (b) Except as otherwise provided in this Agreement, monetary amounts received by «Customer Name» from BPA under this Agreement shall be passed through, in full by Jurisdiction, to each residential and small farm consumer, as a credit against the charges for electric service to «Customer Name»'s qualified residential and small farm consumers. Benefits from In-Lieu PF Power received by «Customer Name» shall, subject to review by the applicable State regulatory authority, be passed through in full as a credit against the charges for electric service to «Customer Name»'s qualified residential and small farm consumers.
- (c) Monetary payments shall be distributed to the Residential Load in a timely manner. The amount of benefits held in the account described in section 10(d) at any time shall not exceed the expected receipt of monetary payments from BPA under this Agreement over the next 180 days. If the annual monetary payment is less than \$600,000, then «Customer Name» may distribute benefits on a less frequent basis provided that distributions are made at least once each year.
- (d) Monetary payments shall be identified on «Customer Name»'s books of account. Funds shall be held in an interest bearing account, and shall be maintained as restricted funds, unavailable for the operating or working capital needs of «Customer Name». Benefits shall not be pooled with other monies of «Customer Name» for short-term investment purposes.
- (e) Nothing in this Agreement shall require any power be delivered on an unbundled basis to residential or small farm customers of «Customer Name» or that «Customer Name» provide retail wheeling of any power.

11. TERMINATION OF AGREEMENT

- (a) «Customer Name» may elect to terminate this Agreement within 30 days of confirmation and approval by the Federal Energy Regulatory Commission of new BPA rates (on an interim basis, or if interim approval is not granted, on a final basis) in which the supplemental rate charge provided for in section 7(b)(3) of the Northwest Power Act is applied and the PF Exchange rate charged «Customer Name» exceeds «Customer Name»'s ASC. Any such termination shall continue through what would otherwise be the full term of the Agreement. If «Customer Name» has Residential Load in more than one Jurisdiction, then «Customer Name» may elect to terminate its rights under this Agreement separately with respect to each Jurisdiction under this section 11(a).
- (b) If the ASC Methodology is modified, then such modified ASC Methodology shall become effective under this Agreement 120 days after final approval by FERC, unless either Party provides written notice of termination of this Agreement within 60 days following the date of such final approval by FERC. If BPA terminates this Agreement, then BPA shall offer a new agreement

that reflects such modified ASC Methodology with its written termination notice.

12. PAYMENT BALANCING ACCOUNT

(a) Long-Term Payment Balancing Account

The account balance, if any, with respect to each Jurisdiction, is deemed to be \$___ on July 1, 2001. This account balance, if any, comprises the beginning balance for a payment balancing account described in this section. Such balance, if any, shall accumulate simple interest monthly, at an average prime rate charged by banks for each calendar quarter beginning July 1, 2001. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of 1 percent, of the prime rate values published in the Federal Reserve's "Selected Interest Rates" (Statistical Release G. 13) for the fourth, third, and second months preceding the first month of the calendar quarter. *(Drafters Note: Change July 1 to October 1 if BPA and customer start agreement on October 1, 2001.)*

(b) Annual Payment Balancing Account

Whenever the ASC for a Jurisdiction is less than BPA's then-current PF Exchange rate during the term of this Agreement, the payment that would otherwise be owed BPA will be tracked by BPA and debited to a separate payment balancing account. BPA shall examine such payment balancing account during the 13th month following the initial debit and each month thereafter. If the ending balance in such account is greater than the ending balance in the account 12 months earlier, then the ending balance in the account 12 months earlier shall be subtracted from this account and added to the long-term payment balancing account described in section 12(a) above.

(c) Resumption of Monetary Benefits

If there is a balance in the long-term balancing account or the annual payment balancing account and the ASC for that Jurisdiction is greater than the applicable Priority Firm Power Exchange Rate, BPA will make no cash payments but will apply the amount that would have been paid in order to reduce the account balance. These amounts will first be applied to the long-term balancing account and then the annual payment balancing account. «Customer Name» will resume performance of this Agreement and will receive exchange payments from BPA provided that there is no longer a debit balance in either payment balancing account, or «Customer Name» makes payments to BPA to bring the debit balance in the long-term payment balancing account to zero.

(d) Account Balance Carry Over

Any balance in either payment balancing account, upon termination of this Agreement, will carry over to the next RPSA.

13. NOTICES(02/29/00 Version)

Any notice required under this Agreement shall be in writing and shall be delivered (a) in person; (b) by a nationally recognized delivery service; or (c) by United States Certified Mail. Notices are effective when received. Either Party may change its address for notices by giving notice of such change consistent with this section. *(Drafter's Note: Check BPA address and phone number to ensure it is applicable.)*

If to «Customer Name»:

« _____ »
« _____ »
« _____ »
Attn: « _____ »
« _____ »
Phone: « ____-____-____ »
FAX: « ____-____-____ »
E-Mail: « _____ »

If to BPA:

Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621
Attn: « _____ »
Account Executive
Phone: 503-230-« ____ »
FAX: « ____-____-____ »
E-Mail: « _____ »

14. COST RECOVERY(02/29/00 Version, modified for IOUs)

- (a) Nothing included in or omitted from this Agreement creates or extinguishes any right or obligation, if any, of BPA to assess against «Customer Name» and «Customer Name» to pay to BPA at any time a cost underrecovery charge pursuant to an applicable transmission rate schedule or otherwise applicable law.
- (b) BPA may adjust the PF Exchange rate set forth in the applicable power rate schedule during the term of this Agreement pursuant to the Cost Recovery Adjustment Clause in the 2002 GRSPs, or successor GRSPs.

15. UNCONTROLLABLE FORCES(02/29/00 Version, modified for IOUs)

PBL shall not be in breach of its obligation to provide In-Lieu PF Power and «Customer Name» shall not be in breach of its obligation to purchase In-Lieu PF Power to the extent the failure to fulfill that obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that impairs that Party's ability to perform its contractual obligations under this Agreement and which, by exercise of that Party's reasonable diligence and foresight, such Party could not be expected to avoid and was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (a) any unplanned curtailment or interruption for any reason of firm transmission used to deliver In-Lieu PF Power to «Customer Name's» facilities or distribution system, including but not limited to unplanned maintenance outages;

- (b) any unplanned curtailment or interruption, failure or imminent failure of «Customer Name»'s distribution facilities, including but not limited to unplanned maintenance outages;
- (c) any planned transmission or distribution outage that affects either «Customer Name» or PBL which was provided by a third-party transmission or distribution owner, or by a transmission provider, including TBL, that is functionally separated from the generation provider in conformance with FERC Orders 888 and 889 or their successors;
- (d) strikes or work stoppage, including the threat of imminent strikes or work stoppage;
- (e) floods, earthquakes, or other natural disasters; and
- (f) orders or injunctions issued by any court having competent subject matter jurisdiction, or any order of an administrative officer which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

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.

The Party claiming the Uncontrollable Force shall notify the other Party as soon as practicable of that Party's inability to meet its obligations under this Agreement due to an Uncontrollable Force. The Party claiming the Uncontrollable Force also agrees to notify any control area involved in the scheduling of a transaction which may be curtailed due to an Uncontrollable Force.

Both Parties shall be excused from their respective obligations, other than from payment obligations incurred prior to the Uncontrollable Force, without liability to the other, for the duration of the Uncontrollable Force and the period reasonably required for the Party claiming the Uncontrollable Force, using due diligence, to restore its operations to conditions existing prior to the occurrence of the Uncontrollable Force.

16. GOVERNING LAW AND DISPUTE RESOLUTION (02/29/00 Version)

(Drafter's Note: The reference below to "CPR" means "Center for Policy Resolution." CPR is a proper name and should not be spelled out. The CPR arbitration rules are located in PBL Contracts menu under Contract-Related Documents).

[OPTIONS for section 16.

Option 1-Include the following if customer prefers to litigate (not arbitrate) disputes. This Agreement shall be interpreted in accordance with and governed by Federal law. The Parties shall make a good faith effort to negotiate a resolution of disputes before initiating litigation. During a contract dispute or contract issue between the Parties arising out of this Agreement, the Parties shall continue performance under

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

Option 2-Include the following if customer prefers to arbitrate (not litigate) disputes.

- (a) This Agreement shall be interpreted consistent with and governed by Federal law. Final actions subject to section 9(e) of the Northwest Power Act are not subject to binding arbitration and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals.
- (b) Any contract dispute or contract issue between the Parties arising out of this Agreement shall be subject to binding arbitration. The Parties shall make a good faith effort to resolve such disputes before initiating arbitration proceedings. During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.
- (c) Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The CPR Institute for Dispute Resolution's arbitration procedures for commercial arbitration, Non-Administered Arbitration Rules (CPR Rules), shall be used for each dispute; provided, however, that: (1) the Parties shall have the discovery rights provided in the Federal Rules of Civil Procedure unless the Parties agree otherwise; and (2) for claims of \$1 million or more, each arbitration shall be conducted by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a list containing the names of 15 qualified individuals supplied by the CPR Institute for Dispute Resolution. If the Parties cannot agree upon three arbitrators on the list within 20 business days, they shall take turns striking names from the list of proposed arbitrators. The Party initiating the arbitration shall take the first strike. This process shall be repeated until three arbitrators remain on the list, and those individuals shall be designated as the arbitrators. For disputes involving less than \$1 million, a single neutral arbitrator shall be selected consistent with section 6 of the CPR Rules.
- (d) Except for arbitration awards which declare the rights and duties of the Parties under the Agreement, the payment of monies shall be the exclusive remedy available in any arbitration proceeding. Under no circumstances shall specific performance be an available remedy against BPA. The arbitration award shall be final and binding on both Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. 1-16 (1988). Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.
- (e) Each Party shall be responsible for its own costs of arbitration, including legal fees. The arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as they deem reasonable taking into

account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.
End of OPTIONS for section 16.]

17. STATUTORY PROVISIONS

- (a) **Annual Financial Report and Retail Rate Schedules(02/29/00 Version)**
«Customer Name» shall provide PBL with a current copy of its annual financial report and its retail rate schedules, as required by Section 5(a) of the Bonneville Project Act, Public Law 75-329.
- (b) **Insufficiency and Allocations(02/29/00 Version, modified for IOUs)**
In-Lieu PF Power acquired on behalf of «Customer Name» shall not be restricted during the duration of time specified in any in-lieu notice provided by BPA under section 7(b) above.
- (c) **New Large Single Loads(02/29/00 Version, modified for IOUs)**
 - (1) All existing NLSLs are listed in Exhibit C, New Large Single Loads. «Customer Name» shall inform PBL of any expected increase in load that is likely to qualify as a new NLSL. PBL after consulting with «Customer Name» shall determine whether the load reasonably should be classified as a single facility and a NLSL. Exhibit C, New Large Single Loads shall be revised to reflect any such NLSL when it is determined that the expected load increase has occurred. *(Drafter's Note: List existing NLSLs in Exhibit C.)*

[OPTIONS for section 17(c)(2).

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

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

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

- (2) The following loads were determined by the Administrator to be contracted for, or committed to, as of September 1, 1979, as defined in section 3(13)(A) of the Northwest Power Act, and are subject to the applicable rate for the rest (non-NLSL) of «Customer Name»'s load:

Retail electric power consumer's name:

Amount of firm energy contracted for, or committed to, as of September 1, 1979:

Facility description:

End of OPTIONS for section 17(c)(2).]

- (d) **Priority of Pacific Northwest Customers(02/29/00 Version)**
The provisions of sections 9(c) and (d) of P.L. 96-501 and the provisions of P.L. 88-552 as amended by section 8(e) of P.L. 96-501 are incorporated into this Agreement by reference. BPA agrees that «Customer Name», together with other customers in the Region shall have priority to BPA power, consistent with these provisions.
- (e) **Prohibition on Resale(02/29/00 Version, modified for IOUs)**
«Customer Name» shall not resell power purchased under section 7 except to serve «Customer Name»'s retail load for the benefit of its Residential Load, unless otherwise permitted by Federal law.
- (f) **BPA Appropriations Refinancing Act(02/29/00 Version)**
Section 3201(i) of Public Law 104-134 is incorporated by reference. *(Drafter's Note: BPA is legally obligated to offer to make section 3201(i) of Public Law 104-134 a part of this Agreement. Customer may exclude this provision at their option. The full text version is located in PBL Contracts menu under Contract-Related Documents if customer prefers such version.)*

18. STANDARD PROVISIONS

- (a) **Amendments(02/29/00 Version)**
No oral or written amendment, rescission, waiver, modification or other change of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.
- (b) **Assignment(02/29/00 Version, modified for IOUs)**
This Agreement is binding on any successors and assigns of the Parties. BPA may assign this Agreement to another Federal agency to which BPA's statutory duties have been transferred. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. BPA shall consider any request for assignment consistent with applicable BPA statutes. Such consent shall not be unreasonably withheld. «Customer Name» may not transfer or assign this Agreement to any of its retail customers.
- (c) **Information Exchange and Confidentiality(02/29/00 Version)**
The Parties shall provide each other with any information that is reasonably required and requested in writing by either Party, to operate under and administer this Agreement, including load forecasts for planning purposes, information needed to resolve billing disputes, scheduling and metering information reasonably necessary to prepare power bills that is not otherwise available to the requesting Party. Such information shall be provided in a timely manner. Information may be exchanged by any means agreed to by the Parties. If such information is subject to a privilege of confidentiality, a confidentiality agreement or statutory restriction under state or Federal law on its disclosure by a Party to this Agreement, then that Party shall endeavor to obtain whatever consents, releases or agreements are necessary

from the person holding the privilege to provide such information while asserting the confidentiality over the information. Information provided to BPA which is subject to a privilege of confidentiality or nondisclosure shall be clearly marked as such and BPA shall not disclose such information without obtaining the consent of the person or Party asserting the privilege, consistent with BPA's obligation under the Freedom of Information Act. BPA may use such information as necessary to provide service or timely bill for service under this Agreement. BPA shall only disclose information received under this provision to BPA employees who need the information for purposes of this Agreement.

- (d) **Entire Agreement(02/29/00 Version)**
This Agreement, including all provisions, exhibits that are incorporated as part of this Agreement, and documents incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.
- (e) **Exhibits(02/29/00 Version)**
The exhibits listed in the table of contents are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.
- (f) **Liability of Delivery(03/25/00 Version, modified for IOUs)**
«Customer Name» waives any claims against BPA under this Agreement for non-delivery of power to any points beyond the applicable point(s) of delivery under section 7. In no event will either Party be liable under this Agreement to the other Party for damage that results from an Electrical Disturbance caused by or occurring on an electric system owned or operated by such other Party or a third-party. Electrical Disturbance means any sudden, unexpected, changed, or abnormal electrical condition occurring in or on an electric system which causes damage.
- (g) **No Third-Party Beneficiaries(02/29/00 Version)**
This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.
- (h) **Waivers(02/29/00 Version)**
Any waiver at any time by either Party to this Agreement of its rights with respect to any default or any other matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.
- (i) **BPA Policies(02/29/00 Version)**

Any reference in this Agreement to BPA policies, including without limitation BPA's NLSL Policy and the 5(b)/9(c) Policy, and any revisions thereto, does not constitute agreement by «Customer Name» to such policy, nor shall it be construed to be a waiver of the right of «Customer Name» to seek judicial review of any such policy.

[OPTION for section 18(j).

This provision is optional at customer's discretion.

(j) Hold Harmless(02/29/00 Version)

Each Party assumes all liability for injury or damage to persons or property arising from the act or negligence of its own employees, agents, members of governing bodies or contractors. Each Party shall indemnify and hold the other Party harmless from any liability arising from such act or negligence.

End of OPTION for section 18(j).]

19. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CONSUMERS

«Customer Name» will ensure that any entity that issues customer bills to «Customer Name»'s residential and small farm consumers shall provide written notice on such customer bills that the benefits of this Agreement are "Federal Columbia River Benefits supplied by BPA."

20. SIGNATURES(02/05/99 Version)

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

«FULL NAME OF CUSTOMER»

UNITED STATES OF AMERICA
Department of Energy
BPA Power Administration

By _____

By _____

Name _____
(Print/Type)

Account Executive

Name _____
(Print/Type)

Title _____

Date _____

Date _____

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Exhibit A
RESIDENTIAL LOAD DEFINITION

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

Such tariff schedules as presently effective include:

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

(1) [schedule]

(2) [schedule]

(3) [schedule]

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

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

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

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

where:

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

0.746 is the factor for converting horsepower to kW,

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

24 is the number of hours in a day.

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

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

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

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

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

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

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

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Exhibit B
LOAD FACTOR SPECIFICATION

Using data from the 60 months prior to the last BPA rate filing, the monthly load factor of «Customer Name» shall be averaged over each seasonal period in BPA's demand charge according to the formula below. The seasonal period is all months of the year that the PF Exchange Rate has the same demand charge.

$$\text{Load Factor} = \frac{E}{D} \times \frac{N}{H} \text{ for each month}$$

where,

- E** = the sum of the monthly energy loads in the seasonal periods «Customer Name» filed with the Federal Energy Regulatory Commission (FERC) or other appropriate body for the previous five years.
- D** = the sum of the monthly peak demands in the seasonal periods «Customer Name» filed with FERC or other appropriate body for the previous five years.
- N** = the number of months in the seasonal period.
- H** = the sum of hours in the month for all months in the seasonal period.

If «Customer Name» acts as an agent for another utility (Principal Utility) the load factor for the portion of the purchase equal to the residential load of the Principal Utility shall be determined based on the Principal Utility's own load data.

If BPA commences billing the majority of its public agency customers on a basis other than monthly coincidental demand, «Customer Name»'s load factor shall be computed from the 60-month historic data using a basis comparable to the billing criteria applied to the majority of public agencies.

The historic data used for load factor computation shall not be adjusted for normal temperature or streamflow. The historic data used for load factor computation shall only include sales to retail loads served from «Customer Name»'s distribution system. «Customer Name» shall provide, at BPA's request, the necessary information regarding the incidence and timing of such sales.

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Exhibit C
NEW LARGE SINGLE LOADS

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Exhibit D
AVERAGE SYSTEM COST METHODOLOGY

The current average system cost (ASC) methodology is attached as an Exhibit for ease of reference but is not incorporated as part of this Agreement. This exhibit will be changed whenever the ASC methodology is changed.

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[Include in Actual Partial Service-Complex and Block Prototypes.]

**Exhibit E
SCHEDULING**

1. PURPOSE OF THIS EXHIBIT(04/27/00 Version)

The purpose of this exhibit is to identify power scheduling requirements and coordination procedures necessary for the delivery of electric power and energy sold under this Agreement. All provisions apply to Purchasing-Selling Entities (PSEs), including their authorized scheduling agent. Transmission scheduling arrangements are handled under separate agreements/provisions with the designated transmission provider. Nothing in this exhibit is intended to relieve the Parties of any obligation they may have under North American Electric Reliability Council (NERC) or Western Systems Coordinating Council (WSCC) policy, procedure, or guideline.

2. COORDINATION: GENERAL, PRESCHEDULE, REAL-TIME, AND AFTER-THE-FACT REQUIREMENTS(04/27/00 Version)

(a) General Requirements

- (1) The Parties may revise and replace this exhibit by mutual agreement. BPA shall also have the right to revise and replace this exhibit under the following circumstances after providing an opportunity for all affected Parties to discuss and comment on any proposed changes: (1) to comply with rules or orders issued by FERC, NERC, or WSCC or (2) to implement changes reasonably consistent with standard industry practice, but necessary for BPA to administer its power scheduling function.
- (2) PSEs shall have staff available 24 hours a day for each day an active transaction or preschedule is in effect. PSE's must be prepared to verify transactions on an hourly basis if necessary.
- (3) PSEs shall complete the prescheduling and check out processes, and to verify Transactions and associated totals, per NERC tag, and BPA contract.
- (4) Inability to verify Transactions may result in schedule rejection or curtailment.
- (5) PSEs shall verify Transactions and totals after-the-fact (ATF) per both parties' ATF processes.
- (6) BPA is not obligated to accept Transactions that do not comply with the scheduling requirements in this exhibit or the contract.
- (7) Should a PSE attempt to preschedule a Transaction for power for which that PSE has an obligation to provide transmission and fails to

properly reserve the transmission necessary to complete the Transaction, the PSE will not be excused from its payment obligation, if any, under this Agreement.

- (8) All Transactions shall be stated in WSCC time zone and "hour ending" format.
- (9) All Schedules, except Dynamic Schedules, will be implemented on an hourly basis using the standard ramp as specified by WSCC procedures.
- (10) Any power that is allowed to be resold at wholesale under this Agreement may only be resold if all characteristics of the product (e.g., Point of Receipt, shape, hours) are maintained in the resale. *(Drafter's Note: This section may be replaced with the words "Intentionally Omitted" for RL Only contract, if requested by customer.)*
- (11) Changes to telephone or fax numbers of key personnel (for Prescheduling, Real-Time, Control Area, or Scheduling Agents, etc.) must be submitted to BPA.

(b) Prescheduling Requirements

(1) Information Required For Any Preschedule

- (A) Unless otherwise mutually agreed, all Transactions will be submitted according to NERC instructions for E-tagging, as modified by WSCC.
- (B) When completing the NERC E-Tag insert the applicable BPA Contract number(s) in the "reference" column of the miscellaneous section of the tag.
- (C) Transactions going to or from COB (California-Oregon Border) must be identified as using Malin or Captain Jack, or COB Hub.

(2) Preschedule Coordination

- (A) Final hourly preschedules (verbal submission of E-tag information) must be submitted for the next day(s) by 1000 of each Workday, unless otherwise agreed.
- (B) Typically, preschedules are for one to three days. By mutual agreement of the parties, final preschedules may be requested for longer time periods to accommodate special scheduling requirements.

- (C) Under certain operating conditions, either party may require submission of estimated daily preschedules for an ensuing period up to ten days in length, prior to the final preschedule.

(c) **Real-Time Requirements**

- (1) PSEs may not make Real-Time changes to the scheduled amounts, including transmission arrangements unless such changes are allowed under individual contract provisions or by mutual agreement.
- (2) If Real-Time changes to the Schedule become necessary, and are allowable as described in section 2(c)(1) above, PSEs must submit such request no later than 30 minutes prior to the hour for which the Schedule change becomes effective.
- (3) Multihour changes to the Schedule shall specify each hour to be changed and shall not be stated as "until further notice."
- (4) Emergency scheduling and notification procedures (including mid-hour changes) will be handled in accordance with NERC and WSCC procedures.

(d) **After-the-Fact Reconciliation Requirements**

PSEs agree to 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). The parties will verify all Transactions per BPA contract, as to product or type of service, hourly amounts, daily, and monthly totals, and related charges.

3. **DEFINITIONS AND ACRONYMS(04/27/00 Version)**

Capitalized terms in this Exhibit shall have the meanings defined below, in context, or as used elsewhere in this Agreement.

- (a) **Control Area:** An electrical system bounded by interconnection (tie-line) metering and telemetry. It controls generation directly to maintain its interchange schedule with other control areas and contributes to frequency regulation of the interconnection.
- (b) **Hour Ending:** Designation for one hour periods of time based upon the time which the period ends. For example: the one hour period between 1300 and 1400 is referred to as Hour Ending 1400.
- (c) **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)).

- (d) **Purchasing-Selling Entity (PSE):** (NERC defined term) An entity that is eligible to purchase or sell energy or capacity and reserve transmission services.
- (e) **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.
- (f) **Schedule:** The planned Transaction approved and accepted by all PSEs and Control Areas involved in the Transaction.
- (g) **Transaction:** An agreement arranged by a PSE to transfer energy from a seller to a buyer.
- (h) **Workday:** Any day BPA, other regional utilities, and PSEs observe as a working day.

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