

**FINAL REP SETTLEMENT IMPLEMENTATION
AGREEMENT PRODUCTION TEMPLATE**

Contract No. «##»PB-«#####»
DRAFT September, 2011

**RESIDENTIAL EXCHANGE PROGRAM SETTLEMENT IMPLEMENTATION
AGREEMENT**

executed by the
BONNEVILLE POWER ADMINISTRATION
and
«FULL NAME OF CUSTOMER»

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This RESIDENTIAL EXCHANGE PROGRAM SETTLEMENT IMPLEMENTATION 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 a «_____» 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 Pacific Northwest Regional electric utility may offer to sell electric power to BPA, and BPA shall purchase such electric power at the Average System Cost 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 an 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. This program is referred to as the Residential Exchange Program (“REP”).

BPA’s implementation of the REP has been and continues to be a source of significant controversy. BPA’s customers have filed numerous lawsuits challenging BPA’s REP-related decisions, several of which are currently pending before the U.S. Court of Appeals for the Ninth Circuit. In an effort to resolve these challenges, BPA and interested parties engaged in mediation over BPA’s implementation of the REP. BPA and certain other parties have now agreed to a settlement with respect to such litigation by agreeing to the terms of the Residential Exchange Program Settlement Agreement (as such agreement may from time to time be amended, “Settlement Agreement”), Contract No. 11PB-12322, dated as of July 26, 2011.

This Agreement implements provisions of the Settlement Agreement regarding payment of benefits to «Customer Name». This Agreement is intended to be part of the Settlement Agreement and is therefore neither severable nor independent from the duties and obligations of the Parties set forth in the Settlement Agreement.

The Parties agree:

1. TERM

This Agreement is being entered into contemporaneously with BPA's execution of the Settlement Agreement and shall take effect on the later 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, and it shall continue through and terminate on September 30, 2028.

Performance by the Parties of their obligations under this Agreement shall commence on October 1, 2011. Upon termination of this Agreement, all obligations incurred hereunder shall be preserved until satisfied. If the Settlement Agreement becomes void *ab initio* in accordance with its terms, this Agreement shall also be void *ab initio*.

2. DEFINITIONS

Capitalized terms below in this section shall have the meaning stated. Capitalized terms that are not listed below in this section are either defined within the section or exhibit in which they are used or, if not so defined, shall have the meaning stated in the Settlement Agreement, 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 and Exchange Period ASCs pursuant to the ASC Methodology.
- 2.2 "Average System Cost" or "ASC" has the meaning given such term in the Settlement Agreement.
- 2.3 "ASC Methodology" 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 B 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 "Base Period" means the calendar year of the most recent Federal Energy Regulatory Commission Form 1 data at the commencement of the ASC review period.
- 2.5 "Base Period ASC" means the ASC determined in the Review Period using «Customer Name»'s Base Period data, all in accordance with the ASC Methodology.
- 2.6 "Business Day(s)" means every Monday through Friday except Federal holidays.
- 2.7 "Contract System Costs" means «Customer Name»'s costs for production and transmission resources, including power purchases and conservation

measures, which costs are includable in and subject to the provisions of Appendix 1, all in accordance with the ASC Methodology as then in effect, and giving effect to the waivers set forth in section 6.4 of the Settlement Agreement. Under no circumstances shall Contract System Costs include costs excluded from the ASC by section 5(c)(7) of the Northwest Power Act.

- 2.8 “Contract System Load” means the total Regional retail load included in the Form 1, as may be adjusted pursuant to the ASC Methodology, all in accordance with the ASC Methodology.
- 2.9 “Implementation Effective Date” means the date this Agreement takes effect, as determined pursuant to section 1 above.
- 2.10 “Exchange Period” means the period during the Payment Period for which «Customer Name»’s ASC is effective for the calculations with respect to such ASC under this Agreement. Each Exchange Period shall be the period of time concurrent with the duration of each Rate Period.
- 2.11 “Fiscal Year” or “FY” has the meaning given “Fiscal Year” in the Settlement Agreement.
- 2.12 “Form 1” means the annual filing submitted to the Federal Energy Regulatory Commission required by 18 CFR §141.1, as specified in the ASC Methodology.
- 2.13 “IOU-Specific REP Settlement Benefit Amount” has the meaning given such term in the Settlement Agreement.
- 2.14 “In-Lieu Power” means electric 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.
- 2.15 “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.
- 2.16 “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.
- 2.17 “Northwest Power Act” or “Act” means the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §839, Public Law No. 96-501, as heretofore or hereafter amended.
- 2.18 “Payment Period” has the meaning given such term in the Settlement Agreement.
- 2.19 “Qualifying Residential and Small Farm Load” means, with respect to any IOU, residential load as defined in the Northwest Power Act and as further

defined in Exhibit A that such IOU is authorized under state law or by order of the applicable state regulatory authority to serve.

- 2.20 “Rate Period” has the meaning given such term in the Settlement Agreement.
- 2.21 “Reference Rate” has the meaning given such term in the Settlement Agreement.
- 2.22 “Region” or “Regional” means the Pacific Northwest as defined in section 3(14) of the Northwest Power Act.
- 2.23 “Regulatory Body” means a state commission or consumer-owned utility governing body, or other entity authorized to establish retail electric rates in a Jurisdiction.
- 2.24 “REP Settlement Benefit” has the meaning given such term in the Settlement Agreement.
- 2.25 “Residential Exchange Program” or “REP” means the program established by section 5(c) of the Northwest Power Act.
- 2.26 “Residential Load” has the meaning given such term in the Settlement Agreement.
- 2.27 “Review Period” means the period of time during which «Customer Name»’s Appendix 1 is under review by BPA pursuant to the ASC Methodology.
- 2.28 “Settlement Agreement” has the meaning given such term in the recitals of this Agreement.
- 2.29 “Uncontrollable Force” shall have the meaning specified in section 14.
- 2.30 “Utility-Specific Exchange Rate”, means for any IOU each rate applicable to such IOU BPA establishes in any Rate Proceeding to implement the provisions of sections 3 and 6 of this Agreement and section 6 of the Settlement Agreement.
- 2.31 “Agreed-Upon Procedures” means the specific tests and procedures outlined in Exhibit D to be performed by «Customer Name»’s certified public accountant.

3. UTILITY-SPECIFIC EXCHANGE RATE

BPA will develop the Utility-Specific Exchange Rates applicable to «Customer Name» such that for each Fiscal Year the payments to be made by BPA under this Agreement (i.e., the product of «Customer Name»’s Residential Load for such Fiscal Year multiplied by the amount, if any, by which «Customer Name»’s ASC for such Fiscal Year exceeds the Utility-Specific Exchange Rate applicable to «Customer Name» for such Fiscal Year) are equal to the IOU-Specific REP Settlement Benefit Amount for «Customer Name» calculated for such Fiscal Year pursuant to section 6

of the Settlement Agreement. Purchases under this Agreement by «Customer Name» are pursuant to the Utility-Specific Exchange Rates applicable to «Customer Name».

4. ESTABLISHMENT OF ASC TO ACTIVATE PARTICIPATION

The first Exchange Period for which «Customer Name» may activate its participation under this Agreement shall commence on October 1, 2011. «Customer Name» may activate its participation under this Agreement by filing an initial Appendix 1 for the initial Exchange Period that it has selected. Once «Customer Name» files an initial Appendix 1, «Customer Name» shall continue to file a new Appendix 1 as required by the ASC Methodology, unless and until «Customer Name» elects to suspend this Agreement pursuant to section 11 below. Upon filing an Appendix 1 for an Exchange Period, «Customer Name» shall commence invoicing for Residential Load, pursuant to section 8.1 below, in the month following the first full month of such Exchange Period.

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

5.1 Subject to the limitations set forth below in section 5.2, «Customer Name» shall offer and BPA shall purchase each month of each Fiscal Year an amount of electric power equal to the Residential Load of «Customer Name» beginning with the first month of the initial Exchange Period established under section 4 above.

5.2 The rate for such power sale to BPA shall be equal to «Customer Name»'s ASC, as determined by BPA using the ASC Methodology. «Customer Name» may sell only an amount of electric power under this section 5 that is equal to the Residential Load of «Customer Name».

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

6.1 Simultaneous with the offer by «Customer Name» and purchase by BPA pursuant to section 5 above, subject to the suspensions provisions set forth in section 11 below, BPA shall offer and «Customer Name» shall purchase each month an amount of electric power equal to the Residential Load that «Customer Name» offers and BPA purchases each month pursuant to section 5.

6.2 The rate for such power sale to «Customer Name» shall be the Utility-Specific Exchange Rate applicable to «Customer Name» as established pursuant to section 3 above.

7. IN-LIEU TRANSACTIONS

In consideration of the mutual benefits afforded by this Agreement and the Settlement Agreement, BPA shall not acquire or make arrangements to acquire In Lieu Power for sale to «Customer Name» during the Payment Period.

8. INVOICING, BILLING, AND PAYMENT

8.1 Invoicing for Residential Load

8.1.1 «Customer Name» shall submit to BPA for each month: (1) the amount of «Customer Name»'s Residential Load for such month that is exchanged pursuant to sections 5 and 6 above and (2) the sum of «Customer Name»'s Qualifying Residential and Small Farm Loads for such month. Each submittal shall be subject to adjustment pursuant to section 9 below.

8.1.2 Within 30 days following the receipt of each monthly submittal from «Customer Name», and subject to section 9 below, BPA shall verify the submittal, generate an invoice, and pay such invoice electronically by the 30th day following the receipt of such submittal. If the 30th day is a Saturday, Sunday, or federal holiday, then BPA shall electronically pay «Customer Name» the next Business Day.

8.2 Reimbursement of Fees for Final Agreed-Upon Procedures Report

Once the final Agreed-Upon Procedures Report has been provided to the Parties pursuant to section 9, Exhibit C, and Exhibit D, and the final accounting invoice has been supplied to «Customer Name» by its independent certified public accountant (CPA), then «Customer Name» shall be responsible for paying such invoice. For reimbursement, «Customer Name» shall create and submit to BPA a separate invoice with a copy of its CPA's final accounting invoice attached. «Customer Name» shall e-mail such invoices to BPA at bpaaveragesystemcost@bpa.gov, or its successor. BPA shall verify the final accounting invoice and reimburse «Customer Name» electronically by the 30th day following the receipt of such, subject to the reimbursement cap established in Exhibit C. Under no circumstances shall BPA reimburse «Customer Name» an amount higher than the final accounting invoice amount. If the 30th day is a Saturday, Sunday, or federal holiday, then BPA shall electronically reimburse «Customer Name» the next Business Day.

9. ACCOUNTING, REVIEW, AND BUDGETING

«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, and giving effect to the waivers set forth in section 7.4 of the Settlement Agreement;
- (2) identification of the consumers that comprise «Customer Name»'s Qualifying Residential and Small Farm Load;
- (3) the amount of Residential Load invoiced to BPA; and

- (4) evidence that the benefits received by «Customer Name» have been passed through to consumers that comprise «Customer Name»'s Qualifying Residential and Small Farm Load, as provided for in section 10 below.

At BPA's expense, BPA, its agent, or «Customer Name»'s agent, may, from time to time, review or inspect, consistent with the provisions of section 19, Exhibit C, and Exhibit D of this Agreement, «Customer Name»'s records, accounts, and related documents pertaining to this Agreement. BPA's or «Customer Name»'s agent, as applicable, shall be subject to approval by the other Party. Such approval shall not be unreasonably withheld. For purposes of meeting the Agreed-Upon Procedures, pursuant to Exhibit C and Exhibit D, «Customer Name» agrees to contract with the CPA that also prepares its financial accounts and audits. Additional reviews or inspections that BPA shall require include, but are not limited to, «Customer Name»'s Annual REP Accounting Report. «Customer Name» shall fully cooperate in good faith with any such reviews or inspections. 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 Qualifying Residential and Small Farm Load.

BPA's right to review or inspect «Customer Name»'s records, accounts, and related documents pertaining to this Agreement for any Fiscal Year shall expire 60 months after the end of such Fiscal Year. As long as BPA has such right to review or inspect, «Customer Name» agrees to maintain such records, accounts, and related documents.

If BPA determines that errors have occurred in implementing this Agreement that result in an overpayment, then any such overpayment shall be returned to BPA by «Customer Name» 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 errors in implementing this Agreement that result in an underpayment, then BPA shall pay «Customer Name» such monetary benefits within 30 days of BPA's determination that such benefits were not received. In the event «Customer Name» disputes any such BPA determination regarding any overpayment or underpayment, such dispute shall be subject to resolution pursuant to section 15.

10. PASS-THROUGH OF BENEFITS

- 10.1 Except as otherwise provided in this Agreement, all benefit amounts received by «Customer Name» from BPA under this Agreement shall be passed through to residential and small farm customers as either: (1) a separately stated credit to applicable retail rates; (2) monetary payments; or (3) as otherwise directed by the applicable Regulatory Body(ies).
- 10.2 Benefits shall be passed through by «Customer Name» in a timely manner, as set forth in this section 10, *provided, that*, it is specifically acknowledged and agreed that distributions of benefits for the Residential Load may be made by «Customer Name» in advance of its receipt of any such benefits from BPA and that such benefits may be used to set off distributions to the Qualifying Residential and Small Farm Load made by «Customer Name» before or after

October 1, 2011. The amount of benefits held as described in section 10.3 below at any time shall not exceed the greater of: (1) the expected receipt of monetary payments from BPA under this Agreement over the next 180 days, and (2) monetary payments received from BPA under this Agreement over the preceding 180 days; *provided, however*, that if the amount of benefits held in the account is less than \$1,000,000, then «Customer Name» may distribute benefits on a less frequent basis, provided that distributions are made at least once each Fiscal Year; provided, further, that any remaining benefits held shall be distributed to Qualifying Residential and Small Farm Load no later than one year following the earlier of: (a) the end of the term of this Agreement; or (b) suspension of this Agreement.

- 10.3 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 benefits pursuant to section 10.1 above, 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).

11. SUSPENSION OF THIS AGREEMENT

11.1 Suspension of Agreement

- 11.1.1 «Customer Name» may suspend performance under this Agreement for any reason upon 30 days advance written notice to BPA prior to the start of the Exchange Period. Such suspension shall suspend the rights and obligations of both Parties as of such date, and such suspension shall continue until the earlier to occur of (i) «Customer Name»'s reactivation of participation under this Agreement as of the beginning of an Exchange Period upon 30 days advance written notice to BPA, provided that «Customer Name» has timely submitted to BPA a new Appendix 1 for the Exchange Period, as required by the ASC Methodology, or (ii) the expiration of the Payment Period.
- 11.1.2 Upon suspension of this Agreement pursuant to section 11.1.1, «Customer Name» shall not be entitled to REP Settlement Benefits unless and until «Customer Name» reactivates participation under this Agreement as of the beginning of an Exchange Period pursuant to section 11.1.1 above.
- 11.1.3 Upon suspension of this Agreement pursuant to section 11.1.1, «Customer Name» shall not seek and shall not be entitled to receive a RPSA until the expiration of this Agreement on September 30, 2028.
- 11.1.4 No other provision of this Agreement or the Settlement Agreement shall be affected by such suspension.

11.2 Suspension of Sections 5 and 6

11.2.1 The purchase and sale in sections 5 and 6 above shall be suspended for any month of any Fiscal Year in the event that the amount BPA would charge «Customer Name» for such month pursuant to section 6 would exceed the amount «Customer Name» would charge BPA for such month pursuant to section 5.

11.2.2 During the period of suspension, BPA shall not be entitled to any payments, whether as cash or as setoffs against future REP benefits, nor shall BPA account for or keep track of any amounts that would otherwise be owing but for the suspension provided in this section.

11.2.3 No other provision of this Agreement or the Settlement Agreement shall be affected by such suspension.

11.3 Remedies

If the Federal Energy Regulatory Commission or a court of competent jurisdiction remands, reverses, or otherwise finds unlawful a BPA final decision or decisions that affect «Customer Name»'s receipt of, or failure to receive, benefits pursuant to this Agreement, then BPA will review and determine the rights and obligations of the Parties through additional administrative actions(s) as necessary to respond to such regulatory or court decisions.

Option 1: ONLY APPLICABLE FOR IOUS WITH A LONG-TERM RPSA

12. TERMINATION OF PREVIOUS RPSA

As of October 1, 2011, «Customer Name»'s Residential Purchase and Sales Agreement, Contract No. [xxxx], is hereby terminated and replaced by this Agreement. Upon termination of such «Customer Name»'s Residential Purchase and Sale Agreement, Contract No. [xxxx], all obligations incurred thereunder shall be preserved until satisfied.

End Option 1

Option 2: ONLY APPLICABLE FOR IOUS WITHOUT A LONG-TERM RPSA

12. TERMINATION OF PREVIOUS RPSA

Not applicable.

End Option 2

13. 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, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or
- (5) by another method agreed to by the Parties.

Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

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

If to «Customer Name»:

If to BPA:

«Utility Name»

Bonneville Power Administration

«Street Address»

P.O. Box 3621

«P.O. Box »

Portland, OR 97208-3621

«City, State, Zip»

«AE Name - Routing»

Attn: «Contact Name»

Attn: «Senior »Account Executive

«Contact Title»

Phone: «###-###-####»

Phone: «###-###-####»

FAX: «###-###-####»

FAX: «###-###-####»

E-Mail: «E-mail address»

E-Mail: «E-mail address»

14. UNCONTROLLABLE FORCES

14.1 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) strikes or work stoppage;
- (2) floods, earthquakes, other natural disasters, or terrorist acts; and
- (3) 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.

14.2 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.

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

- (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable;
- (2) use 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 13.

15. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law.

If BPA receives or gives written notice of a dispute to be resolved through binding arbitration in accordance with this section 15, BPA will promptly deliver a copy of such written notice (which may be delivered by electronic means) to all parties to the Settlement Agreement. 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 or issue, unless to do so would be impossible or impracticable.

Any dispute concerning any alleged breach of this Agreement that would also constitute a breach of the Settlement Agreement shall be subject to the dispute resolution provisions of the Settlement Agreement rather than the provisions below of this section 15. Any other dispute arising out of this Agreement shall be resolved as provided below in this section 15.

«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. Unless the Parties engage in binding arbitration as provided for in section 9 of the Settlement Agreement or in sections 15.2 through 15.6 of this Agreement, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

15.1 **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 include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of «Customer Name» or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 15, 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 15, 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 15.

15.2 **Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 15.1 or otherwise excluded by this section 15, shall be subject to arbitration, as set forth below in this section 15.2 and sections 15.3 through 15.6 of this Agreement.

«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 15.2 and sections 15.3 and 15.4 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 15.2 and sections 15.3 and 15.4 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 15.1 above and is not resolved via binding arbitration, unless «Customer Name» notifies BPA that it does not wish to proceed with nonbinding arbitration.

15.3 **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.

15.4 **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 15. 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.

15.5 **Finality**

15.5.1 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.

15.5.2 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.

15.6 **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.

16. **STATUTORY PROVISIONS**

16.1 **Retail Rate Schedules**

«Customer Name» shall make its retail rate schedules available to BPA, as required by section 5(a) of the Bonneville Project Act, P.L. 75-329, within 30 days of each of «Customer Name»'s retail rate schedule effective dates. This requirement may be satisfied by «Customer Name» informing BPA of its public website where such information is posted and kept current.

16.2 New Large Single Loads and CF/CTs

16.2.1 Determination of an NLSL

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

16.2.1.1 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 10 Average Megawatts (87,600,000 kilowatt-hours) or more in any consecutive 12-month period.

16.2.1.2 For the sole purpose of computing the increase in energy consumption between any two consecutive 12-month periods of comparison under this section 16.2.1, reductions in the end-use consumer's load associated with a facility during the first 12-month period of comparison due to unusual events reasonably beyond the control of the end-use consumer shall be determined by BPA, and the energy consumption shall be computed as if such reductions had not occurred.

16.2.1.3 The Parties may expressly agree in writing that the installed production equipment at a facility will exceed 10 Average Megawatts consumption over any 12 consecutive months and such agreement shall constitute a binding NLSL determination.

16.2.2 Determination of a Facility

BPA shall make a written determination as to what constitutes a single facility, for the purpose of identifying an NLSL, based on 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 contracted for, served or billed as a single load under «Customer Name»'s customary billing and service policy;

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

16.2.3 Administrative Obligations and Rights

16.2.3.1 «Customer Name»'s CF/CT loads and NLSLs are listed in Exhibit E.

16.2.3.2 «Customer Name» shall provide reasonable notice to BPA of any expected increase in a single load that may qualify as an NLSL. The Parties shall list any such potential NLSLs in Exhibit E. If BPA determines that any load associated with a single facility is capable of growing ten Average Megawatts or more in a consecutive 12-month period, then such load shall be subject to monitoring as determined necessary by BPA.

16.2.3.3 When BPA makes a request, «Customer Name» shall provide physical access to its substations and other service locations where BPA needs to perform inspections or gather information for purposes of implementing section 3(13) of the Northwest Power Act, including but not limited to making a final NLSL, facility, or CF/CT determination. «Customer Name» shall make a request to the end-use consumer to provide BPA, at reasonable times, physical access to inspect a facility for these purposes.

16.2.3.4 Unless the Parties agree pursuant to section 16.2.1.3 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 is an NLSL, BPA shall notify «Customer Name» and the Parties shall add the NLSL to Exhibit E to reflect BPA's determination.

16.2.4 Metering an NLSL

For any loads that are monitored by BPA for an NLSL determination, and for any loads at any facility that is determined by BPA to be an NLSL, BPA may, in its sole discretion, install BPA owned meters. If the Parties agree otherwise, «Customer Name» may install meters meeting the exact specification BPA provides to «Customer Name». «Customer Name» and BPA shall enter into a separate agreement for the location, ownership, cost responsibility, access, maintenance, testing, replacement and liability of the Parties with respect to such meters. «Customer Name» shall arrange for metering locations that allow accurate measurement of the facility's load. «Customer Name» shall arrange for BPA to have physical access to such meters and «Customer Name» shall ensure BPA has access to all NLSL meter data that BPA determines is necessary to forecast, plan, schedule, and bill for power.

16.2.5 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 sections 16.2.3 and 16.2.4, BPA may determine any load subject to NLSL monitoring to be an NLSL. Such NLSL determination shall be final unless «Customer Name» proves to BPA's satisfaction that the applicable load did not exceed ten Average Megawatts in any 12-month monitoring period.

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

17. STANDARD PROVISIONS

17.1 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; *provided*, that in the event of the conflict between the provisions of any amendment of this Agreement and the provisions of the Settlement Agreement, the provisions of the Settlement Agreement shall prevail.

BPA shall, prior to entering into any amendment of this Agreement, deliver a copy of the proposal to enter into such proposed amendment (which may be delivered by electronic means) to all parties to the Settlement Agreement, and shall withhold execution of such proposed amendment until the completion of any process as set forth in section 13.1.2 of the Settlement Agreement with respect to such proposed amendment, provided that such process is commenced in accordance with section 13.1.2 of the Settlement Agreement.

Amendments or revisions to matters related to the Agreed-Upon Procedures included in Exhibits C and D to this Agreement are not subject to this section 17.1.

17.2 Entire Agreement and Order of Precedence

The Settlement Agreement and this Agreement, including documents expressly incorporated by reference, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement. They supersede 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 the Settlement Agreement shall prevail over this Agreement in the event of a conflict. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

17.3 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.

17.4 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.

17.5 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.

17.6 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.

18. 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."

19. INFORMATION EXCHANGE AND CONFIDENTIALITY

19.1 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.

19.2 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 only release such confidential information to comply with FOIA or if required by

any other federal law or court or administrative order. BPA shall limit the use and dissemination of confidential information within BPA to employees who need it for purposes of administering this Agreement.

20. 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 _____

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EXHIBIT A TO REP SETTLEMENT IMPLEMENTATION AGREEMENT
QUALIFYING RESIDENTIAL AND SMALL FARM LOAD DEFINITION

1. «Customer Name»'s Qualifying Residential and Small Farm 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 <http://www.bpa.gov/corporate/finance/ascm/index.cfm> for the current version of BPA's Customer Load Eligibility Guidelines.

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EXHIBIT B TO REP SETTLEMENT IMPLEMENTATION AGREEMENT
AVERAGE SYSTEM COST METHODOLOGY

See <http://www.bpa.gov/corporate/finance/ascm/index.cfm> for the current version of BPA's Average System Cost Methodology

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EXHIBIT C TO REP SETTLEMENT IMPLEMENTATION AGREEMENT

TERMS AND CONDITIONS OF FINAL AGREED-UPON PROCEDURES REPORT

1. FINAL REPORT TERMS AND CONDITIONS

Pursuant to section 9 of the body of the Agreement, «Customer Name» agrees to cooperate with a biennial review or inspection of its accounts and financial records concerning its participation in the Residential Exchange Program and this Agreement.

Prior to «Customer Name»'s CPA initiating each final Agreed-Upon Procedures report, «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 a detailed statement of the work to be performed to meet the Agreed-Upon Procedures included in Exhibit D, the hours, and the fee for such work.

By each final Agreed-Upon Procedures report due date, «Customer Name» shall submit to BPA a copy of the final Agreed-Upon Procedures report completed by «Customer Name»'s CPA that complies with the Agreed-Upon Procedures in Exhibit D and encompasses the corresponding reporting period listed in the table below.

Final Agreed-Upon Procedures Report Due Dates	Reporting Periods
June 30, 2012	For FY 2010 & FY 2011
Every other June 30 th thereafter	For The previous two Fiscal Years

«Customer Name» shall be responsible for ensuring that:

- (1) each CPA's report provides all information requested by BPA in the Agreed-Upon Procedures included in Exhibit D; and
- (2) CPA is contractually obligated to conduct each CPA report 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.

2. BPA'S REIMBURSEMENT CAP AND REIMBURSEMENT OF INVOICED CPA FEES TO «CUSTOMER NAME»

2.1 BPA's Reimbursement Cap

By February 28, 2012; and by every other February 28th thereafter, BPA shall provide «Customer Name» with a letter that includes the maximum amount BPA shall reimburse «Customer Name» for the upcoming final Agreed-Upon Procedures report. «Customer Name» shall obtain an engagement letter from its CPA for the final Agreed-Upon Procedures report as soon as practicable after receiving notice of its reimbursement cap from BPA. «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 and BPA's letter of acknowledgement exceeds «Customer Name»'s reimbursement cap and BPA determines an adjustment to the Agreed-Upon Procedures to be appropriate to ensure the CPA's review can be completed at or under the reimbursement cap, then BPA shall promptly notify «Customer Name» and the Parties shall adjust «Customer Name»'s Agreed-Upon Procedures and revise Exhibit D accordingly.

2.2 Reimbursement of Fees

BPA shall reimburse «Customer Name» for its CPA fees for completing the Agreed-Upon Procedures pursuant to section 8.2 of the body of this Agreement.

3. REVISIONS

BPA may, upon not less than 10 business days' prior written notice to «Customer Name», unilaterally revise this exhibit 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.

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EXHIBIT D TO REP SETTLEMENT IMPLEMENTATION AGREEMENT

AGREED-UPON PROCEDURES

«Customer Name» shall ensure that its CPA is contractually obligated to complete the following Agreed-Upon Procedures, sections 1 through section 6, pursuant to the terms and conditions included in Exhibit C.

1. RESIDENTIAL EXCHANGE PROGRAM (REP) INVOICE SUPPORTED BY LOAD DATA

- 1.1 Obtain from «Customer Name» a reconciliation of (i) monthly Residential Load to billing system load data, and (ii) monthly Qualifying Residential and Small Farm Load to billing system load data.
- 1.2 Agree load data to «Customer Name»'s internal reports.
- 1.3 If such reconciliation does not exist, agree the total monthly load amount invoiced by «Customer Name» to BPA with «Customer Name»'s billing system load data and internal reports. (BPA shall provide the CPA firm with copies of «Customer Name»'s monthly invoices submitted to BPA.)
- 1.4 Follow up with «Customer Name» personnel for explanations of any monthly differences greater than 1% and document such explanations and differences.

2. RESIDENTIAL BILLS CONTAIN CORRECT REP CREDITS

- 2.1 Obtain from «Customer Name» copies of all REP credit tariffs along with a description of the applicable eligible loads that qualify for residential rate credit treatment.
- 2.2 The CPA shall select a random sample of 100 residential «Customer Name» bills for performing procedures, ensuring that all months of Fiscal Years 10/01/20xx - 09/30/20xx are sampled, and that bills with small invoiced amounts (less than \$50/ month), average invoiced amounts (between \$50 and \$150/month), and large invoiced amounts (greater than \$150/month) are selected.
- 2.3 Verify that the approved tariff is applied to the appropriate load to calculate the credit for each of the sampled items. Note any exceptions.
- 2.4 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

3. SMALL FARM AND IRRIGATION BILLS CONTAIN CORRECT REP CREDITS

- 3.1 Obtain from «Customer Name» a copy of the REP irrigation credit tariff amount and a description of applicable loads that qualify for small farm and irrigation rate credit treatment for Fiscal Years 10/01/20xx - 09/30/20xx.
- 3.2 Obtain from «Customer Name» which months of Fiscal Years 10/01/20xx - 09/30/20xx were the high irrigation season, if this information was not obtained during the Agreed-Upon Procedures in section 1 of this exhibit.
- 3.3 Obtain from «Customer Name» a list of farms with multiple metered pumping loads for Fiscal Years 10/01/20xx - 09/30/20xx.
- 3.4 The CPA shall randomly select a sample of 25 «Customer Name» bills for the farms with multiple metered pumping loads, ensuring that all bills occurred during the irrigation season months.
- 3.5 For a sampled farm, ensure that the aggregation of multiple separately metered irrigation pumping loads, together with any allocated pumping loads served by common pumping stations attributable to individual farms, do not exceed the (combined/aggregated) monthly irrigation/pumping loads eligible to receive the REP credit up to the cap of 222,000 kWh/month per individual farm. Note any exceptions.
- 3.6 Ensure that the approved tariff is applied to the appropriate load to calculate the credit for each of the sampled items. Note any exceptions.
- 3.7 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

4. «CUSTOMER NAME»'S ANNUAL ACCOUNTING REPORT SUPPORTED BY BOOKS AND RECORDS

- 4.1 Agree the total amount of REP monies/credits distributed as reported in «Customer Name»'s Annual REP Accounting Report submitted to BPA with «Customer Name»'s general ledger accounts or subsidiary accounting records for the same time period. Note any exceptions.
- 4.2 Describe the method used to compute interest credit/expense on the monthly Pass-through account and provide documentation of such.
- 4.3 Obtain from «Customer Name» copies of «Customer Name»'s monthly interest credit/expense calculation associated with the Pass-through account for Fiscal Years 10/01/20xx - 09/30/20xx.

- 4.4 Agree that interest is credited/expensed on the monthly Pass-through account balance as described above in section 4.2 for Fiscal Years 10/01/20xx - 09/30/20xx. Note any differences.
- 4.5 Agree the interest credit/expense associated with undistributed monthly Pass-through account balances as reported in «Customer Name»'s Annual REP Accounting Report with «Customer Name»'s general ledger accounts or subsidiary accounting records for the same time period. Note any exceptions.
- 4.6 Agree the ending balance of the Pass-through account for the Fiscal Year-end date in the Annual REP Accounting Report with the balance contained in «Customer Name»'s books and records associated with that date.
- 4.7 If the Pass-through account monies are on deposit with a bank/financial institution, confirm the ending balance at Fiscal Year-end (09/30/XX) with the institution. Note any differences between the confirmation and the recorded amount.
- 4.8 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

5. FEDERAL COLUMBIA RIVER BENEFIT BILL NOTICE

Confirm that the statement or footnote “Federal Columbia River Benefits supplied by BPA,” is included in all of the sampled residential and small farm «Customer Name» bills.

6. DEVIATIONS FROM STANDARDS

In the final Agreed-Upon Procedures report, disclose any deviations from the applicable standards listed in section 1 of Exhibit C.

7. REVISIONS

BPA may, upon not less than 10 business days' prior written notice to «Customer Name», unilaterally revise this exhibit 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.

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EXHIBIT E TO REP SETTLEMENT IMPLEMENTATION AGREEMENT

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 contracted for, or committed to be served (CF/CT), 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:

Facility description:

Amount of firm energy (megawatts at 100 percent load factor) contracted for, or committed to:

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 potential NLSL(s):

End-use consumer name:

Facility location:

End Option 2

1.3 **Existing NLSLs**

*Option 1: Include the following if customer **has no existing NLSLs AND DELETE** sections 1.3.1.*

«Customer Name» has no existing 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 **«Name of NLSL» NLSL**

«Customer Name» has an NLSL.

End-use consumer name:

Facility location:

Date load determined as an NLSL:

Approximate load:

Description of NLSL:

Manner of service:

End Option 2

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