

**BONNEVILLE POWER ADMINISTRATION  
COMPLIANCE REVIEW PROGRAM**

**CUSTOMER LOAD  
ELIGIBILITY GUIDELINES**

**FOR THE**

**Residential Exchange Program**

**Residential Purchase and Sale Agreements**

**February 2010**

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# **ELIGIBILITY GUIDELINES**

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# ELIGIBILITY GUIDELINES

## INTRODUCTION

In 1980 Congress enacted the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). The Northwest Power Act authorizes Northwest utilities to exchange their generally higher-cost power for an equivalent amount of Bonneville Power Administration's (BPA's) lower-cost power. This program is called the Residential Exchange Program (REP). The REP was developed in order to address wholesale rate disparity between the region's investor-owned utilities (IOUs) and public utilities. REP benefits are limited to utilities' eligible residential and small farm loads.

BPA has prepared these guidelines to assist exchanging utilities in identifying eligible residential and small farm loads. The purpose of this document is to provide a set of guidelines that will assist utilities in determining whether or not a load meets the definition of residential and small farm use under the Northwest Power Act. Customer loads that meet the definition are eligible for REP Benefits providing the customer is served under a rate schedule listed on Exhibit A to the Residential Purchase and Sale Agreements (RPSAs). While these guidelines may be helpful in preliminary eligibility determinations, final determinations of eligibility will be made by BPA based on the provisions of the Northwest Power Act and the facts of each case.

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### BPA ELIGIBILITY GUIDELINES

Section 3(18) of the Northwest Power Act defines “residential use” or “residential load” as “all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.” Exhibit A of the RPSAs provides a general definition of eligible residential and farm loads. These definitions of eligible residential exchange loads, however, are quite general. Because of the general nature of Exhibit A’s definitions, BPA’s customers have asked BPA to develop more specific eligibility guidelines. The guidelines that follow are based on the Northwest Power Act, contract language, and BPA’s Compliance Review experience and previously issued load eligibility determinations.

The guidelines are continually evolving. Different fact circumstances that have not been specifically dealt with before are directed to BPA to determine whether the loads in question are eligible qualifying loads. The guidelines are updated to reflect these determination decisions. The guidelines presented here may be used to make a preliminary determination of the eligibility of the great majority of loads. They may also be useful in a preliminary analysis of unusual loads that have no prior eligibility determination.

In developing these guidelines, BPA has distinguished three general classes of eligible customers -- residential, farm, and irrigation (a special type of farm load). Eligibility guidelines for these three groups are as follows:

#### 1. Residential

A *residence* is a structure used by, or restricted to, residents. For purposes of these guidelines, a resident is defined as a person living in a place for some length of time.

Generally, any residence will qualify as exchangeable as long as its purpose is to provide shelter on a non-transient (greater than 30 days) basis. This means that hotels, motels, and campsites are not qualified for the residential exchange. Seasonal dwellings, however, are specifically cited in the Northwest Power Act as eligible for REP benefits.

There are three general types of residential usage:

- i) Single Family Dwelling Usage -- normal household usage including swimming pools, hot tubs, tool or equipment sheds and outdoor area lighting. This also includes loads related to commercial operations metered through bona fide residences as long as the commercial activity consumes 50% or less of the total load and is not separately metered.

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- ii) Multi-Family Dwelling Usage -- normal household usage including swimming pools, hot tubs, laundry rooms, parking area lights, maintenance equipment, and tool sheds. This also includes loads related to commercial operations metered through bona fide residences as long as the commercial activity consumes 50% or less of the total load and is not separately metered.
- iii. Seasonal Dwelling Usage -- includes single and multi-family dwellings (as defined above) used seasonally such as beach or mountain cabins, condominiums, and homes. Motor trailers and motor homes used as a permanent or seasonal residence in a fixed location are also eligible.

### 2. Farm

A *farm* consists of a parcel or parcels of land owned or leased by one or more persons (including 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. For purposes of these guidelines the following definitions apply:

*Agriculture* is the business of cultivating the soil, producing *crops* or *pasturage*, or raising *livestock* for sale in the marketplace. Agriculture also includes, in varying degrees, the *incidental primary processing* of these agricultural items.

*Crop*: a plant or animal, or plant product or animal product that can be grown and harvested for profit.

*Pasturage*: plants grown for the feeding of grazing animals.

*Incidental primary processing*: those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment.

Incidental primary processing is limited to activities necessarily undertaken to prepare agriculture products for safe and efficient storage or shipment. It generally does not include activities such as grinding and pelletizing. Comparing the farm's processing operation with that of similar farms will usually distinguish an incidental primary processing operation from a commercial operation.

There is one exception to the general incidental primary processing rule. Processing that goes beyond primary incidental processing is allowed if the resulting product is consumed entirely on the same farm as an intermediate product used in the production of a final agricultural product that is subsequently shipped to the marketplace. For example, consider the farmer who converts alfalfa, grown on his/her farm, to alfalfa pellets, which are then used to feed animals on the farm prior to the animals being shipped to the market. Normally the conversion of alfalfa to pellets would be considered a commercial operation. Alfalfa is not usually pelletized prior to shipment to the market and therefore pelletizing goes beyond the definition of incidental primary processing and is not

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exchangeable. However, in this case the pellets are used to feed the farmer's animals. Because the pellets are used on the farm, the pelletizing operation is characterized as a usual farm load eligible for REP Settlement benefits.

### **3. Irrigation /Pumping**

In addition to general farm use, farm *irrigation* and *pumping* loads may also be eligible for REP Settlement benefits. For purposes of these guidelines the following definitions apply:

*Irrigation* is the process of supplying agricultural land with water by means of ditches, pipes or streams.

Agricultural *pumping* involves the transport of surface or ground water for agricultural purposes.

Exchangeable irrigation and pumping loads may be related to a specific farm's facilities or to common pumping facilities shared with others. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the common installation shall be allocated among the farms using the installation, based on the method that the farms use to allocate the power costs among themselves (e.g., water shares, acreage).

Small pumps located on farms that have constant rather than seasonal loads are usually classified as general farm loads and not irrigation loads.

Qualified irrigation/pumping loads may receive benefits up to a maximum of 400 horsepower/month (222,000 kWh/month) per farm. The total monthly irrigation/pumping load for any individual farm includes any farm-specific irrigation loads and any allocated loads from common pumping installations. Because of the load limitation, it is necessary to identify farms with common ownership to determine whether the combined farming operation exceeds, in aggregate, the 222,000 kWh/month limitation.

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

The Northwest Power Act allows each eligible farm to receive a credit for irrigation and pumping up to 400 horsepower, or 222,000 kWh/month. The legislative history of the Northwest Power Act demonstrates that Congress intended this credit to benefit small family farms, as opposed to large farms and agribusinesses. Each legitimate farm, regardless of size, is entitled to a single credit up to 222,000 kWh/month. Thus, all farms (including large farms which use over 222,000 kWh) are eligible for a single credit up to the first 222,000 kWh. For this reason, if the owner of a large farm attempted to subdivide the farm into smaller parcels in order to increase the amount of REP benefits, the farmer would be subverting the intent of Congress. Such subdivision is not permitted. It is clear Congress intended to limit the benefit to 222,000 kWh in order that small farms receive the credit while larger farms do not gain windfall benefits or a competitive advantage over the small family farm. This information is necessary to assist the utility in billing irrigation loads so as to not

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exceed the above monthly irrigation benefit amount of 222,000 kWh/month. Upon request by either the utility or BPA, the operator of a farm is required to provide all documentation needed to assist in making farm determinations.

Farmers may not increase their farms by subdividing them and organizing them to ostensibly satisfy the farm criteria. Farmers must provide a description of existing farm(s) along with any additional information requested by the utility in the utility's administration of the REP. All parcels of a farm that have been subdivided to increase REP benefits will be treated collectively as a single farm. Attempts to improperly increase benefits by characterizing parcels as separate farms will not be recognized. The fact that a separate parcel may satisfy numerous criteria will not necessarily entitle the parcel to an additional credit. No single farm criterion is determinative in and of itself, and all of the farm criteria must be viewed together in making a determination. Parties that improperly characterize parcels as separate farms by attempting to structure the parcels to fit the farm criteria will have their applications denied. BPA reserves the right to carefully review claims for more than a single farm credit by any person, family, corporation or other ownership entity. BPA will provide assistance to utilities in making such determinations.

Contiguous Farm Parcels: 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. 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. Farm parcels are considered contiguous if they are touching, either side-by-side or corner-to-corner. Farmland that is separated by a road, canal, fences, and easements are still considered to be contiguous pieces of farmland. A number of factors determine whether contiguous or noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

Size. The largest farm and the smallest farm are each entitled to a single monthly credit. Size alone is therefore not determinative of the existence of a farm. The existence of smaller parcels that previously comprised a single farm militates in favor of a single collective farm.

Use. If parcels have the same uses, this tends to support the existence of a single farm. For example, if two parcels each raise wheat, this establishes the same use for the parcels. Where parcels have different crops raised on them, it does not automatically support a finding of separate farms. It is common for a farmer on a single farm to divide the land and grow a variety of crops, with the crops being rotated from year to year. In this case, however, the farm would be treated as one farm for REP benefits.

Ownership. Ownership may be true ownership or a leasehold interest held by an entity capable of owning farmland. If the same party owns more than one parcel or leases more than one parcel, this would militate toward a single farm. Leases to relatives or acquaintances for the primary purpose of increasing REP benefits are not recognized as separate farms.

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Control. Control concerns a number of activities. If a person has the authority to make substantive decisions regarding the parcel, this suggests that the person has control. The fact that a manager may be responsible for day-to-day operation of the parcel does not mean that the manager exercises control. The person who determines whether to hire or fire the manager exercises control. Who ultimately pays the bills for the parcels and who receives the revenues or absorbs the losses may also indicate control.

Operating practices. If the same equipment or labor is used to farm a number of parcels, this militates in favor of a single farm. If accounting is done jointly for a number of parcels, this militates in favor of a single farm. If one party receives the profits or absorbs the losses of the farm operation, this militates in favor of a single farm.

Distance between parcels. Generally, the closer the parcels the more likely the existence of a single farm. The farther apart the parcels, the more likely the existence of more than one farm.

Custom in the trade. If a farm activity is consistent with a custom in the trade, the activity will not be categorically held inconsistent with the existence of more than one farm.

Billing treatment by the utility. The manner in which the utility has previously billed the farmer may simply be based on acceptance at face value of applications filed with the utility. Utilities should carefully review the accuracy of factual representations by the farmers and should carefully review those facts against the farm criteria.

#### **4. Common Customer Types and Eligibility Status**

##### **Agricultural Research Station**

Ineligible -- government entity operation and primary use is research and not the production of crops or livestock for shipment to market.

##### **Canal Company**

See Common Pumping Installation.

##### **Cemetery**

Ineligible -- neither farm nor residence.

##### **Church, Cathedral, Temple, Synagogue or Other Religious Meeting Facility**

Ineligible -- neither farm nor residence.

##### **Club or Similar Association**

Ineligible -- neither farm nor residence.

##### **Commercial Agricultural Operation**

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Ineligible -- these operations usually consist of the storage or processing of the agricultural productions of others. Factors that distinguish a commercial agricultural operation from a farm include the following:

- ♦ A storage facility operated for the benefit of others is part of a commercial agricultural operation. A storage facility operated strictly for the owner's own use is considered general farm use. (Written confirmation from the owner of owner-use should be obtained by the utility.)
- ♦ An agricultural process that, while it could be used to prepare agricultural products for sale, results in intermediate products used only on the farm performing the processing is considered general farm use. If the resulting products are not used on the farm, the process is considered a commercial agricultural operation.

### **Commercial Enterprise**

Generally ineligible -- however, commercial enterprises metered through a bona fide residence where the commercial activity consumes 50 percent or less of the power and is not separately metered are eligible. All others are ineligible. (See also Repossessed Properties.)

### **Common Pumping Installation**

Ineligible -- when government owned. For example, drainage and pumping districts in Oregon and Washington are subdivisions of the State, comprised of publicly elected boards which hold public meetings, and have the power to pay on warrants and assess taxes for payment of district costs. Even if their loads may incidentally aid agricultural use, as a governmental agency they are ineligible.

Eligible -- when the governmental district load is allocated to individual farmers. REP benefits are limited to the allocated irrigation load up to the aggregate of the individual member farm's 222,000 kWh/month limitation.

Eligible -- when facility is privately owned and load is allocated to individual farmers. REP benefits are limited to allocated irrigation load use up to the aggregate of the individual member farm's 222,000 kWh/month limitation.

### **Culinary Water Pumping Loads**

Eligible - - culinary water used for household purposes such as cooking, cleaning, water for heating, and lawn and yard watering; *i.e.*, normal household water use.

Ineligible -- where the culinary water use is connected to a commercial operation, an operation run by federal, state, or local government, or a water utility company.

### **Dairy Farm**

Eligible -- meets definition of a farm.

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### **Drainage District**

See Common Pumping Installation.

### **Egg Producer**

Eligible -- meets definition of a farm.

### **Equestrian Facility**

Ineligible -- neither farm nor residence.

### **Experimental Farm**

Ineligible -- does not meet definition of a farm. A farm is defined as land that is used to raise crops or livestock for ultimate shipment to market. An experimental farm means that the crops may not necessarily be sent to the market.

### **Feedlot**

Eligible -- when located on and part of livestock-raising operation.

Ineligible -- when it is a separate facility or feeds animals that were purchased for resale, or on contract for others.

### **Fire Districts**

Ineligible -- neither farm nor residence.

### **Fish Farm (See also Fish Hatchery)**

Eligible -- providing crops (e.g., fish, eggs, and smolts) are harvested for shipment to market.

### **Fish Hatchery (See also Fish Farm)**

Ineligible -- normally government owned or contracted to restock dams, lakes and rivers for state, federal, or local governments.

### **Golf Course**

Ineligible -- neither farm nor residence.

### **Government Agency**

Ineligible -- not a residence or farm. An exception is a vacant property repossessed temporarily by the Department of Housing and Urban Development (HUD). (See also Government-Owned Land and Repossessed Property.)

### **Government-Owned Land -- Leased Farm On**

Eligible -- when lessee farmer is financially responsible for the load, receives the REP benefits and the government has no operating or controlling interest in the farm.

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### **Government-Owned Land -- Residence On**

Eligible -- when resident is financially responsible for the load and receives the benefits.

### **Grain Processing Facility**

Ineligible -- the processing of grain into feed for ultimate shipment to the marketplace is a commercial operation.

Eligible -- when the feed represents an intermediate product used entirely on the same farm.

### **Hospitals**

Ineligible -- neither a farm nor a residence.

### **Irrigation District**

See Common Pumping Installation.

### **Land Association**

Eligibility depends on nature and ownership of the association. Generally eligible if association is a farm or farms with benefits restricted to individuals and subject to the 222,000 kWh/month irrigation/pumping limitation.

### **Latter Day Saints (LDS) Stake Welfare Farm**

Eligible -- meets definition of a farm.

LDS stake farms are owned by the church, but operated independently. Profits and losses are not shared between the farms or with the church. The farms are generally not contiguous. Because of the independent nature of the farms, each farm is entitled to up to 222,000 kWh per month of irrigation-load exchange benefits in addition to any general farm-load exchange benefits provided the farms satisfy the farm criteria. (See also Church, Nonprofit Organization and Religious Organization.)

### **Mission (Religious)**

See Religious Organization.

### **Municipal Corporations**

See Government Agency.

### **Multiple Residential Loads On One Meter**

Eligible -- the number of loads associated with a meter is irrelevant to the determination of eligibility as long as the individual loads qualify for REP benefits.

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### **Nursery (Horticultural)**

Ineligible -- when nursery or horticultural operation purchases or converts agricultural/horticultural products for resale.

Eligible -- when primary purpose of nursery or horticultural operation is the growing of plants for ultimate sale in the marketplace.

### **Nursing Home**

Eligible -- when the average length of stay is 30 days or longer and does not provide full medical care similar to the medical facilities, equipment, and staff normally provided by hospitals, clinics, or similar institutions. Nursing homes that provide lower levels of care, independent living quarters, along with skilled nursing facilities on the same site can apportion the electric loads eligible for the credit associated with the portion of the facilities that are not providing full medical care (skilled nursing facilities) on the basis of square feet.

### **Parks and Recreation Area**

Ineligible -- neither farm nor residence.

### **Pellet Mill**

Ineligible -- the processing of crops into pellets for ultimate shipment to the marketplace is a commercial agricultural operation.

Eligible -- if the pellets represent an intermediate product used entirely on the same farm.

### **Police Station**

Ineligible -- neither farm nor residence.

### **Potato Storage Facility**

Eligible -- when owner uses facility for own use; otherwise ineligible.

### **Property Development Company**

Ineligible -- commercial activity neither a farm nor a residence.

### **Pumping District**

See Common Pumping Installation.

### **Recreation Facility**

Ineligible -- neither farm nor residence.

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### **Region -- Customers Located Outside of**

Ineligible -- the program is limited to those customers located in the Columbia River drainage basin and any contiguous area, not in excess of 75 air miles which are a part of the service area of a rural electric cooperative customer served by BPA on the effective date of the Northwest Power Act which has a distribution system from which it serves both within and without the region.

### **Religious Organization**

Eligibility depends on nature of the operation. Operation or ownership by a religious organization does not necessarily make the associated load eligible or ineligible. (See also Church, LDS Stake Welfare Farm and Nonprofit Organization.)

### **Repossessed Properties**

Eligible -- residences and farms that have been repossessed, but are otherwise considered eligible, continue to be eligible during the period of repossession (regardless of the type of repossessing entity -- bank, insurance company, corporation, partnership, individual, etc.) as long as the repossession is considered temporary. If the repossession is considered to be a permanent acquisition, then the eligibility status of the property must be reexamined in light of the new ownership.

### **Residential Security Lighting**

Eligible -- if metered, or if unmetered but based on an accurate and verifiable engineering study.

### **Residential Street Lighting**

Ineligible -- not considered "usual" residential use even when it is under the auspices of a local utility district. Utilities themselves generally do not consider street lighting to be a usual residential load; they do not include residential street lighting in residential tariff schedules.

### **Residential Yard Lighting**

See Residential Security Lighting.

### **School and School District**

Ineligible -- neither farm nor residence.

### **Trailer Park/Mobile Home Park**

Eligible -- if residents stay longer than 30 days, otherwise ineligible.

### **Tree Farm**

Eligible -- meets definition of a farm.

### **Water District**

See Common Pumping Installation and Culinary Water Pumping.

### **Wildlife Refuge**

Ineligible -- neither farm nor residence.