

Regional Dialogue:  
Revisions to the load following template that were  
not included in the 7/18/08 redline

7/23/08

- **Section 2 Definition of Annexed Load**- see attached
- **Section 14.3 Liability for WEIS**- BPA has decided not to make this change
- **Section 14.7 Proportional Scheduling**- see attached
- **Section 15.4 Transmission metering agreement**- see attached
- **Section 16.1 and 16.4 Billing and Payment**- see attached
- **Section 18 Conservation and Renewables reporting**- see attached
- **Section 20 Notices: Add Notices Change Language for Website**- BPA has decided not to make this change
- **Section 20 Notices: clarify use of "Notices"**- see attached. Most sections of the contract that use the word “notify” “notification” or “notice” do not require proof of delivery. Only the following events specifically require that notices be delivered in accordance with section 20:
  - 16.4 Termination (Billing and Payment)
  - 21.3 Uncontrollable Forces
  - 25.7 Terminations (Rate Covenant and Payment Assurance) ( a reference to the Notices section will be added to this section)
- **Section 21 Changes to Uncontrollable Forces** - see attached
- **Section 22 Disputes**- see attached
- **Section 25.8 Rules Regarding Usage** BPA proposes not to make this change- see attached
- **Exhibit F Transmission Scheduling Service (Giving Customer notice of curtailment)**- see attached
- **Exhibit H Renewable Energy Certificates and Carbon Credits** - - see attached

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2.1 “Annexed Load” **(07/15/08 Version)** means existing load and distribution system, and/or service territory «Customer Name» acquires after the Effective Date during the term of this Agreement from another utility, by means of annexation, merger, purchase, ~~or~~ trade, or other acquisition of rights, and which has been authorized by a final state, regulatory or court action, ~~for which «Customer Name» has the right, and has obtained an ownership interest in the facilities necessary, to serve the load.~~ The Annexed Load must be served from distribution facilities that are owned or acquired by «Customer Name».

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*Drafter’s Note: Include section 14.7 for the following transfer customers with load interconnected to multiple transmission systems (This section is 2 pages long): Asotin County PUD, Benton REA, Big Bend, Central Electric Coop, Clark Co, Clearwater, Columbia Basin, Columbia Power, Columbia REA, Columbia River, Cowlitz, Douglas Electric, Emerald, Harney, Hood River, Inland, Kittitas, Klickitat, Lane, Lewis, Northern Lights, Oregon Trail, Surprise Valley, Tillamook, Umatilla Electric, Wasco, Wells Rural, West OR, Whatcom:*

14.7 **Delivery Of ~~Non-Federal~~New Resources Over Multiple Transmission Systems (07/17/08 Version)**

14.7.1 **Determination of «Customer Name»’s Baseline Load Percentages**

If «Customer Name» is applying ~~non-federal~~New resources Resources to serve its Above-RHWM Load ~~over-located on~~ multiple transmission systems, BPA shall, by July 31, 2010 and by July 31 of every Forecast Year through the term of this Agreement:

- (1) calculate «Customer Name»’s baseline delivery percentages and amounts for the upcoming Rate Period. Such percentages and amounts shall be based on BPA’s forecasted net requirement for «Customer Name» for use in the upcoming ~~rate-ease~~7(i) Process, and shall serve as the basis from which BPA calculates any cost shifts, pursuant to section 14.7.3 below. BPA shall calculate «Customer Name»’s baseline delivery percentages and amounts by comparing forecasted load on each applicable transmission system to «Customer Name»’s total forecasted load.
- (2) revise Exhibit D, Additional Products and Special Provisions to list «Customer Name»’s baseline delivery percentages and amounts, ~~and identify if «Customer~~

~~Name's transmission system(s) qualify for de minimis load pursuant to section 14.7.2 below.~~

#### 14.7.2 De Minimis Load

If, when BPA calculates «Customer Name's baseline delivery percentages and amounts, «Customer Name's Above-RHWM Load served over a transmission system is forecasted to be less than 8,760 megawatt-hours, then «Customer Name's delivery percentage for that system shall be zero, and «Customer Name's ~~non federal resources~~New Resources shall be delivered, in aggregate, over the transmission system or transmission systems serving «Customer Name's load pursuant to sections 14.7.3 or 14.7.4 below.

#### 14.7.3 Delivery of ~~Non-Federal Resources~~New Resources at Percentages Different than Baseline

##### 14.7.3.1 Notification of Proposed Delivery Option

«Customer Name» may notify BPA by August 15, 2010, and by August 15 of every Forecast Year through the term of this Agreement, of «Customer Name's proposed option for delivering its ~~non federal resources~~New Resources to its Above-RHWM Loads. In such notice, «Customer Name» shall provide BPA a table that includes the monthly amounts of each non-federal resource, in megawatt-hours, it proposes to deliver over each transmission system to its load(s) for the upcoming Rate Period.

~~BPA shall require that t~~The delivered amount over a transmission system ~~is not~~shall be no more than the minimum forecasted load served over such transmission system during any hour of the upcoming Rate Period.

##### 14.7.3.2 Cost Shift Calculations

Once BPA receives notification from «Customer Name» with its proposed delivery amounts, BPA shall compare the baseline delivery amounts and «Customer Name's proposed delivery amounts to calculate the costs BPA determines would be shifted between the «Customer Name» and BPA by such a proposal.

In its calculation of «Customer Name's costs shifts,  
BPA shall:

(1) include any reasonable cost shifts from  
«Customer Name» to between PF-Tier 1 rates

Rates; and «Customer Name» in its calculation of «Customer Name»'s costs

- (2) include any reasonable benefits of «Customer Name»'s delivery proposal that offset costs to BPA; and,
- (3) not include any costs to «Customer Name» attributable to future BPA resource acquisition decisions.

—Such categories of costs shall include, but are not limited to, losses, risk of increased curtailments, and ancillary services. Once BPA, in collaboration consultation with «Customer Name», determines the categories of costs for each non-federal resource that will apply in BPA's cost shift calculation, BPA shall not add any additional categories of costs into its calculations as long as the resource remains committed to serve load interconnect to the same transmission for the term of this Agreement duration of «Customer Name»'s purchase commitment of each non-federal resource. BPA's calculation of cost shifts shall include any benefits of «Customer Name»'s delivery proposal that offset costs to BPA. Such categories of costs shall include, but are not limited to, losses, risk of increased curtailments, and ancillary services.

#### 14.7.3.3 Notification of Costs and Exhibit D Revision

BPA shall notify «Customer Name» of such costs by September 15, 2010 and by September 15 of every Forecast Year through the term of this Agreement.

If the Parties negotiate mutually acceptable delivery options that are different than the baseline delivery percentages, the Parties shall, by September 30, 2010, amend-revise Exhibit D to include the details of such delivery options. If there are any changes to «Customer Name»'s non-federal resources New Resources, load shifts, or any transmission conditions since the previous cost shift calculation, the Parties shall amend-revise Exhibit D to reflect such changes by September 30 of every Forecast Year through the term of this Agreement.

14.7.4 **Delivery of ~~Non-Federal Resources~~New Resources at the Baseline Delivery Percentages**

Unless the Parties have agreed otherwise pursuant to section 14.7.3 above, «Customer Name» shall apply its ~~non-federal resources~~New Resources to serve its Above-RHWM Load consistent with the baseline delivery percentages listed in Exhibit D.

*End Option 14.7 Proportional Scheduling*

~~END Option 14.6 and 14.7 for Transfer Service Customers.~~

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15.4 **New Meters ~~(0607/1022/08 Version)~~**

~~«Customer Name» and Transmission Services may enter into a~~ separate agreement addressing the location, cost responsibility, access, maintenance, testing, and liability of the Parties with respect to new meters shall be entered into between «Customer Name» and Transmission Services.

All new and replaced meters shall meet American National Standard Institute standards, including, but not limited to C12.20, Electricity Meters—0.2 and 0.5 Accuracy Classes, and the Institute of Electrical and Electronics Engineers, Inc. standard C57.13, Requirements for Instrument Transformers, or their successors. Any new and replaced meters shall be able to record meter data hourly and store data for a minimum of 45 days.

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*Only 16.1 and 16.4 have been changed since 7/18. The other sections are included here for context.*

**16. BILLING AND PAYMENT**

16.1 **Billing ~~(0507/141822/08 Version)~~**

BPA shall bill «Customer Name» monthly for all products and services provided during the preceding month(s). BPA may send «Customer Name» an estimated bill followed by a final bill. ~~BPA shall send all bills on the bill's issue date.~~The Issue Date is the date BPA electronically sends the bill to «Customer Name». If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

16.2 **Payment ~~(03/26/08 Version)~~**

«Customer Name» shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20<sup>th</sup> day after the ~~i~~Issue Date of the bill (Due Date). If the 20<sup>th</sup> day is a Saturday, Sunday, or federal holiday,

the Due Date is the next Business Day. If «Customer Name» has made payment on an estimated bill then:

- (1) if the amount of the final bill exceeds the amount of the estimated bill, «Customer Name» shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; and
- (2) if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay «Customer Name» the difference between the estimated bill and final bill by the 20<sup>th</sup> day after the final bill's ~~Issue~~ date ~~Date~~. If the 20<sup>th</sup> day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

### 16.3 Late Payments *(03/26/08 Version)*

After the Due Date, a late payment charge equal to the higher of:

- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

### 16.4 Termination *(05/07/142218/08 Version)*

If «Customer Name» has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment in full. ~~If «Customer Name» is more than 45 days late in paying its bill, BPA may require additional forms of payment assurance acceptable to BPA.~~ If «Customer Name» does not provide ~~such~~ payment ~~assurance~~ within three Business Days after receipt of an additional written notice from BPA, and BPA determines in its sole discretion that «Customer Name» is unable to make the payments owed, then BPA may terminate this Agreement. Written notices sent under this section must comply with section 20, Notices and Contact Information.

### 16.5 Disputed Bills *(05/07/1417/08 Version)*

16.5.1 If «Customer Name» disputes any portion of a charge or credit on «Customer Name»'s estimated or final bills, «Customer Name» shall provide notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether ~~If~~ any portion of the bill is in dispute, «Customer Name» shall pay the entire bill by the Due Date. Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a

disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

16.5.2 If the Parties agree, or if after a final determination of a dispute resolution pursuant to section 22, Governing Law and Dispute Resolution, «Customer Name» is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

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## 18. CONSERVATION AND RENEWABLES

### 18.1 Conservation *(075/2214/08 Version)*

#### 18.1.1 Evaluations

At BPA's expense, BPA may conduct, and «Customer Name» shall cooperate in, conservation impact and project implementation process evaluations to assess the amount, cost-effectiveness, and reliability of conservation in BPA's or «Customer Name's» service area.

BPA shall select the timing, frequency, and type of such evaluations. BPA shall do so with reasonable consideration of «Customer Name's» and «Customer Name's» consumers' needs.

#### 18.1.2 Reporting Requirements

18.1.2.1 This section does not apply if «Customer Name's» average annual Total Retail Load from the most recent prior Fiscal Year is 25 aMW or less, or if «Customer Name» purchases all of its power from BPA to serve its Total Retail Load. Beginning June 1, 2010, and no later than June 1 every two years thereafter, «Customer Name» shall ~~create and~~ submit a 10-year conservation plan stating «Customer Name's» projection of planned conservation, including biennial conservation targets. This requirement may be satisfied by submitting any plans «Customer Name» prepares in the normal course of business if the plans include, or are supplemented by, the information required above. If «Customer Name» is This includes plans required under state law (such as the Washington State Energy Independence Act

(RCW 19.285)), ~~to create and submit a conservation plan, «Customer Name» may submit to BPA a copy of such plan to meet the requirements of this section 18.1.2.1 if it includes, or is supplemented by, the information required above. The requirements of this section 18.1.2.1 are waived if «Customer Name» purchases all of its power from BPA to serve its Total Retail Load.~~

18.1.2.2 «Customer Name» shall verify and report all cost-effective (as defined by section 3(4) of the Northwest Power Act) non-BPA-funded conservation measures and projects savings achieved by «Customer Name» through the Regional Technical Forum's Planning, Tracking and Reporting System or its successor tool. Verification protocols of conservation measures and projects, reporting timelines and documentation requirements shall comply with BPA's Energy Efficiency Implementation Manual or its successor.

## 18.2 Renewable Resources *(074/0522/08 Version)*

### 18.2.1 Renewable Energy Certificates

BPA shall transfer Renewable Energy Certificates (RECs), or their successors, to «Customer Name» in accordance with Exhibit H, Renewable Energy Certificates and Carbon Attributes.

### 18.2.2 Reporting Requirements *(076/2204/08 Version)*

The following reporting requirements do not apply if «Customer Name»'s Total Retail Load is 25 aMW or less or if «Customer Name» purchases all of its power from BPA to serve its Total Retail Load. If «Customer Name»'s Total Retail Load is above 20 aMW, the following requirements may be satisfied by submitting plans and reports «Customer Name» prepares in the normal course of business as long as they include the information required below.

Beginning September 1, 2012, and by September 1 every year thereafter, «Customer Name» shall provide BPA with the following:

- (1) updated information on power forecasted to be generated over the forthcoming calendar year by renewable resources greater than 200 kilowatts, including net metered renewable resources operating behind the BPA meter, used by «Customer Name» to serve its Total Retail Load, under Exhibit A, Net

Requirements and Resources. Such information shall include: project name, fuel type(s), location, date power purchase contract signed, project energization date, capacity, capacity factor, remaining term of purchase (or if direct ownership remaining life of the project), and the percentage of output ~~used~~dedicated to serve «Customer Name»'s Total Retail Load for the forthcoming calendar year. Where resources are jointly owned by «Customer Name» and other customers who have a CHWM Contract, «Customer Name» may either submit a report on behalf of all owners or identify the customer who will submit the report.

- (2) the amount of all purchases of RECs used to meet requirements under state or federal law for the forthcoming calendar year. ~~Such information shall include: quantity, fuel type(s), location and energization date of the RECs producing resource(s), as well as the calendar quarter and the year in which the RECs will be generated.~~
- (3) if «Customer Name» is required under state law or by Transmission Services to prepare long-term integrated resource plans or resource forecasts, «Customer Name» shall provide Power Services with updated copies of such or authorize Transmission Services to provide them directly to Power Services. an updated long-term renewable resource plan. This shall include «Customer Name»'s 2-year forecast of expected acquisitions of power generated by renewable resources greater than 200 kilowatts. Such forecast shall disclose the expected amount of such power to be purchased, capacity of expected acquisitions by fuel type, and percentage of output dedicated used to serve «Customer Name»'s Total Retail Load.

~~The three preceding renewable resource requirements are waived if «Customer Name» purchases all of its power for service to its Total Retail Load from BPA.~~

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**20. NOTICES AND CONTACT INFORMATION (06/13/08 Version)**

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»:

«Utility Name»  
 «Street Address»  
 «P.O. Box »  
 «City, State, Zip»  
 Attn: «Contact Name»  
 «Contact Title»  
 Phone: «###-###-####»  
 FAX: «###-###-####»  
 E-Mail: «E-mail address»

If to BPA:

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

## 21. UNCONTROLLABLE FORCES *(07/21/08 Version)*

21.1 ~~The A Parties~~ shall not be in breach of ~~their respective an~~ obligations ~~under this Agreement~~ to the extent ~~the its~~ failure to fulfill ~~any the~~ obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control ~~of~~, and without the fault or negligence ~~of~~, of the Party claiming the Uncontrollable Force, that prevents that Party from performing its ~~contractual~~ obligations under this Agreement and which, ~~by exercise of~~ that Party's ~~could not have avoided by the exercise of~~ reasonable care, diligence and foresight, ~~such Party was unable to avoid.~~ Uncontrollable Forces include Each event listed below, to the extent it satisfies the foregoing criteria, shall constitute an Uncontrollable Forces include, but are not limited to only these listed events:

- (1) any ~~unplanned~~ curtailment or interruption of firm transmission service on BPA's or a Third Party Transmission Provider's System used to that prevents delivery of Firm Requirements Power sold under this Agreement to «Customer Name»;

~~(2) any planned curtailment or interruption of long term firm transmission service used to deliver Firm Requirements Power sold under this Agreement to «Customer Name» if such curtailment or interruption occurs on BPA's or a Third Party Transmission Provider's System;~~

(23) any failure of «Customer Name»'s distribution or transmission facilities that prevents «Customer Name» from delivering power to end-users;

(34) strikes or work stoppage;

(45) floods, earthquakes, other natural disasters, or terrorist acts;  
and

(56) final orders or injunctions issued by a court or regulatory body having ~~competent~~ 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 ~~of competent~~ having subject matter jurisdiction.

21.2 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.

21.3 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 ~~its best 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 20, Notices and Contact Information.

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*Redlines in this section reflect the changes made to this clause compared to the version that Randy Roach shared with customers last week.*

**22. GOVERNING LAW AND DISPUTE RESOLUTION (0507/1622/08 Version)**

This Agreement shall be interpreted consistent with and governed by federal law. ~~The «Customer Name» Parties and BPA~~ shall identify issue(s) in dispute arising out of this ~~contract~~ Agreement and make a good faith effort to negotiate a resolution of such disputes before either ~~Party~~ may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties elect to engage in binding arbitration as provided for in this section 22, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

**22.1 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 ~~Ninth Circuit~~ 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 ~~the Parties~~ under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 22, Governing Law and Dispute Resolution, 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, including a BPA rates or rate methodology. If ~~either the Parties BPA~~ disagrees as to whether asserts that a dispute is excluded from arbitration under this section 22, Governing Law and Dispute Resolution, then ~~both the «Customer Name» Parties~~ seeking non-binding arbitration shall apply to the federal court having jurisdiction for an order determining whether such dispute is subject to arbitration under this section 22, Governing Law and Dispute Resolution.

**22.2 Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 22.1 above, shall be subject to arbitration, as set forth below.

~~The Parties may agree to use binding arbitration, consistent with BPA's Binding Arbitration Policy or its successor, «Customer Name» A Party may request that BPA engage in binding arbitration to resolve any disputes that the Parties agree are strictly an issues of fact and that «Customer Name» the Party requesting arbitration believes falls within BPA's Binding Arbitration Policy or its successor. If «Customer Name» a Party requests such binding arbitration and BPA determines in its sole discretion that such binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, BPA will engage in such binding arbitration, provided that the remaining requirements of this section 22.2 and sections 22.3 and 22.4 are met. BPA may request that «Customer Name» engage in binding arbitration to resolve any dispute that the Parties agree is strictly an issue of fact and that BPA determines is appropriate for binding arbitration under BPA's Binding Arbitration Policy or its successor. In response to BPA's request, «Customer Name» may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 22.2 and sections 22.3 and 22.4 are met. Before initiating such 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, if any, 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 21.1 above, and is not resolved via binding arbitration. «Customer Name» A Party other than BPA has the right to waive nonbinding arbitration.~~

### 22.3 **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.

### 22.4 **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding, ~~provided however, that this shall not be interpreted to mean that the object of arbitration cannot simply be the determination of facts.~~ Under no circumstances shall specific performance be an available remedy against BPA.

### 22.5 **Finality**

22.5.1 In binding arbitration, the arbitration award shall be final and binding on ~~both 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.

22.5.2 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 **«Customer Name»** a ~~Party other than BPA~~ rejects the arbitration award or if BPA rejects the arbitration award, ~~the 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.

**22.6 Arbitration Costs**

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

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*BPA proposes that we not include this clause, primarily because it assumes the many people who will refer to the contract on an infrequent basis during its 20 year term will read this clause each time they read a particular section of the contract. Since that is not likely to be the case, we prefer to deal with the issues in the context of the individual section in which the term is used, if necessary. We can discuss further at the meeting.*

**~~25.8—Rules Regarding Usage (07/18/08 Version)~~**

~~*Reviewer's Note: The purpose of this provision is to reduce the amount of text that would otherwise have to be repeated multiple times throughout the contract. Customers and BPA have not yet decided whether to include this provision in the templates and have agreed to assess it further during this review period. If adopted, BPA will edit the template to reflect the conventions below.*~~

~~For purposes of interpreting this Agreement, the following shall apply:~~

~~25.8.1 The meanings of the defined terms set forth in this Agreement are equally applicable to both the singular and plural forms of such defined terms.~~

~~25.8.2 "Include," "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import.~~

~~25.8.3 "Writing," "written" and comparable terms refer to printing, typing, and other means of reproducing words in a visible form.~~

~~25.8.4 All instances that authorize BPA to "revise" or "update" an exhibit based on an election or notification made by «Customer Name», shall be binding only to the extent BPA's revision is consistent with the elections or notification made by «Customer Name».~~

~~25.8.5 References in the body of this Agreement to a particular "section" refer to sections in the body of this Agreement, unless stated otherwise.~~

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**EXHIBIT F**  
**TRANSMISSION SCHEDULING SERVICE**

4.3 **Transmission Curtailments and Generation Outages** *(02/07/2822/08 Version)*

The timelines below apply to «Customer Name» if «Customer Name» has not acquired Forced Outage Reserves from Power Services:

- (1) ~~If a transmission curtailment or generation outage occurs prior to 45 minutes before delivery the hour of delivery, «Customer Name» shall be responsible for securing replacement energy within or to the BPA Balancing Authority Area and notifying Power Services of the revised delivery schedule prior to 45 minutes before the hour of delivery.~~

If Power Services is unable to secure secondary network transmission for the replacement resource because «Customer Name» did not notify Power Services of the revised delivery schedule prior to 45 minutes prior to the hour of delivery or secondary network transmission is unavailable, «Customer Name» shall be subject to charges consistent with the provisions of this Agreement and all related products and BPA's rate schedules, including UAI charges.

- (2) ~~**Curtailment or Outage After 45 Minutes Before Delivery Hour**~~

Power Services shall not accept replacement delivery schedules for transmission curtailments or generation outages that occur after 45 minutes before delivery hour. «Customer Name» shall be subject to charges consistent with the provisions of this Agreement and all related products and BPA's rate schedules, including UAI charges.

~~If «Customer Name» has not acquired Forced Outage Reserves from Power Services «Customer Name» may request and then BPA shall, upon request, provide «Customer Name» notice of transmission curtailments to «Customer Name» either by electronically copying «Customer Name» on any electronic tags (E-Tags), or by emailing «Customer Name» within 10 minutes of the a transmission curtailment that impacts any of «Customer Name»'s non-federal resources. If «Customer Name» requests notification of transmission curtailments by e-mail, «Customer Name» shall provide BPA a single e-mail address for BPA to send email such notifications to, and the Parties shall amend revise this exhibit to include the e-mail address.~~

5. **E-TAGS**

To the extent ~~electronic tags~~ (E-Tags) are required by transmission provider(s), Power Services shall create all E-Tags necessary for delivery of energy to «Customer Name»'s Total Retail Load.

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**Exhibit H (0607/1722/08 Version)**  
**RENEWABLE ENERGY CERTIFICATES AND CARBON ATTRIBUTES**

**1. DEFINITIONS**

- 1.1 “Carbon Credit(s)” (07/22/08 Version) means emissions credits, certificates, or similar instruments related to carbon.
- ~~1.2~~
- 1.2 “Environmental Attribute(s)” (0407/0422/08 Version) means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from ~~specific~~ renewable resources. Environmental Attributes do not include the tax credits associated with such resource. One megawatt hour of energy generation from ~~such renewable~~ a resource is associated with 1 megawatt hour of Environmental Attributes.
- 1.3 “Environmentally Preferred Power RECS” or “EPP RECS” (0407/0122/08 Version) means the portion of BPA’s Tier 1 RECs that is equal to an amount of up to 130 percent of the annual average of equivalent environmentally preferred power (EPP) contracted for as of October 1, 2009, for FYs 2010 and 2011 under Subscription power sales contracts containing rights to Environmental Attributes through FY 2016, as determined by BPA to be necessary to administer such rights.
- 1.24 “Renewable Energy Certificates” or “RECs” (0307/2022/08 Version) means the certificates, documentation, or other evidence that demonstrates, in the tracking system selected under section 5, document the ownership of Environmental Attributes.
- 1.35 “Tier 1 RECs” (0407/0422/08 Version) means the Environmental Attributes RECs composed of a blend, by fuel source, based on annual generation of the ~~specified renewable~~ resources listed-described in section 2 below.
- 1.46 “Tier 2 Cost Pools” (06/16/08 Version) means the collection of Tier 2 costs, to be recovered by means of the application of Tier 2 Rates, or as defined in the TRM. Each Tier 2 Rate will be based on a corresponding Tier 2 Cost Pool.
- 1.57 “Tier 2 RECs” (0307/2722/08 Version) means the Environmental Attributes RECs associated with generation of the ~~eed by specified renewable~~ resources whose costs are ~~recovered in a~~ allocated to any Tier 2 Cost Pool in accordance with the TRM.

~~1.6~~ “Environmentally Preferred Power RECS” or “EPP RECs” ~~(04/01/08 Version)~~ means the portion of BPA’s Tier 1 RECs that is equal to an amount up to 130 percent of the annual average of environmentally preferred power (EPP) contracted for as of October 1, 2009, for FYs 2010 and 2011 under Subscription power sales contracts containing rights to Environmental Attributes through FY 2016.

2. **BPA’S TIER 1 REC INVENTORY**

~~BPA’s Tier 1 REC inventory shall include all RECs that BPA has determined are associated with resources whose output is used to establish Tier 1 System Capability, as Tier 1 System Capability is defined in the TRM. The disposition of any Carbon Credits, that BPA determines are associated with resources not listed in this section 2, shall be as described in section 7. As of the Effective Date, BPA has determined that the following resources have RECs associated with them that will be included in BPA shall use its share of generation from the following renewable resources to establish the Tier 1 REC inventory: Foote Creek I, Foote Creek II, Stateline, Condon, Klondike I, Klondike III, and Ashland Solar. BPA shall maintain a current list, on a publicly accessible BPA website, of the then current renewable resources that contribute BPA uses to the establish its Tier 1 REC inventory on a publicly accessible BPA website. BPA shall may update this list to include at any resources that BPA has determined have Tier 1 RECs associated with them. time.~~ BPA shall calculate its inventory of Tier 1 RECs annually and after-the-fact based on energy generated by listed resources during the previous calendar year.

3. **«CUSTOMER NAME»’S SHARE OF TIER 1 RECS (05/14/08 Version)**

Beginning April 15, 2012, and by April 15 every year thereafter over the duration of this Agreement, BPA shall:

- (1) transfer to «Customer Name», or manage in accordance with section 5 below, at no additional charge or premium beyond «Customer Name»’s payment of the otherwise applicable Tier 1 Rate, a pro rata share of Tier 1 RECs based on «Customer Name»’s RHWm divided by the total RHWms of all holders of CHWM Contracts; and,
- (2) for transferred RECs, provide «Customer Name» with a letter assigning title of such Tier 1 RECs to «Customer Name».

The amount of Tier 1 RECs available to BPA to transfer or manage shall be subject to the amount of available Tier 1 REC inventory, excluding amounts of Tier 1 REC inventory used to provide EPP RECs.

4. **TIER 2 RECS (06/16/08 Version)**

If «Customer Name» chooses to purchase Firm Requirements Power at a Tier 2 Rate, and there are RECs associated with the resources whose costs are allocated to the Tier 2 Cost Pool for such rates such power includes RECs, then beginning April 15, 2012, and by April 15 every year thereafter for the duration of «Customer Name»’s Tier 2 purchase obligation, BPA shall, based

on «Customer Name»'s election pursuant to section 5 below, transfer to or manage for «Customer Name», a pro rata share of applicable Tier 2 RECs generated during the previous calendar year. The pro rata share of Tier 2 RECs BPA transfers to «Customer Name» shall be the ratio of RECs associated with «Customer Name»'s ~~PF Tier 2~~ purchase amount of power at the Tier 2 Rate obligation to the RECs associated with the purchase amounts obligation of all other customers ~~under from~~ the respective Tier 2 Rate-Cost Pool.

5. **TRANSFER, TRACKING, AND MANAGEMENT OF RECS** ~~(06/16/08 Version)~~

Subject to BPA's determination that the commercial renewable energy tracking system WREGIS is adequate as a tracking system, BPA shall transfer «Customer Name»'s share of Tier 1 RECs, and Tier 2 RECs if applicable, to «Customer Name» via WREGIS ~~or its successor~~. If, ~~over~~during the term of this Agreement, BPA determines in consultation with customers that WREGIS is not adequate as a tracking system, then BPA may change commercial tracking systems with one year advance notice to «Customer Name». In such case, the parties shall establish a comparable process for BPA to provide «Customer Name» its RECs.

Starting on July 15, 2011, and by July 15 prior to each Rate Period through the duration of this Agreement, «Customer Name» shall notify BPA which one of the following three options it chooses for the transfer and management of «Customer Name»'s share of Tier 1 RECs, and Tier 2 RECs if applicable, for each upcoming Rate Period:

- (1) BPA shall transfer «Customer Name»'s RECs into «Customer Name»'s own WREGIS account, which shall be established by «Customer Name»; or
- (2) BPA shall transfer «Customer Name»'s RECs into a BPA-managed WREGIS subaccount. Such subaccount shall be established by BPA on «Customer Name»'s behalf and the terms and conditions of which shall be determined by the Parties in a separate agreement; or,
- (3) «Customer Name» shall give BPA the authority to market «Customer Name»'s RECs on «Customer Name»'s behalf. BPA shall annually credit «Customer Name» for «Customer Name»'s pro rata share of revenues generated by such sales on its April bill, issued in May.

If «Customer Name» fails to notify BPA of its election by July 15 before the start of each Rate Period, ~~BPA shall market «Customer Name» shall be deemed to have elected the option in section 5(3) above.'s RECs and annually credit «Customer Name» for «Customer Name»'s pro rata share of revenues generated by such marketing on «Customer Name»'s April bill issued by BPA in May.~~

Any RECs BPA transfers to «Customer Name» on April 15 of each year shall be limited to those generated January 1 through December 31 of the prior year, except that any RECs BPA transfers to «Customer Name» by April 15, 2012, shall be limited to those generated October 1, 2011, through December 31, 2011.

**6. FEES (06/16/08 Version)**

BPA shall pay any reasonable fees associated with (1) the provision of «Customer Name»'s RECs and (2) the establishment of any subaccounts in «Customer Name»'s name pursuant to sections 5(1) and 5(2) above. «Customer Name» shall pay all other fees associated with any WREGIS or successor commercial tracking system, including WREGIS retirement, reserve, and export fees.

**7. CARBON CREDITS ATTRIBUTES (06/17/08 Version)**

In the absence of carbon regulations or legislation directly affecting BPA, BPA intends to convey the value of any future Carbon Credit~~carbon emission credits, or similar carbon instruments,~~ associated with resources whose costs are recovered in PF-Tier 1 or Tier 2 Rates to «Customer Name» on a pro rata basis, in the same manner as described for Tier 1 RECs and Tier 2 RECs in sections 3 and 4 above. This value may be conveyed as: (1) the Carbon Credit~~carbon emission credit, or similar carbon instrument,~~ itself; (2) a revenue credit after BPA markets such Carbon Credit~~carbon emission credits, or similar carbon instruments;~~ or, (3) the ability to claim that power purchases at the applicable PF rate are derived from specific federal resources.

~~The value of carbon emission credits, or similar carbon instruments, associated with resources whose costs are recovered in a Tier 1 rate will be shared on a pro rata basis among all holders of CHWM Contracts. The value of carbon emission credits, or similar carbon instruments, associated with resources whose costs are recovered in a Tier 2 Rate will be shared on a pro rata basis among customers within the same respective Tier 2 Cost Pool.~~

**8. BPA'S RIGHT TO TERMINATE «CUSTOMER NAME»'S RECS AND/OR CARBON CREDITS (05/29/08 Version)**

Consistent with any federal regulation or legislation addressing Carbon Credit~~carbon emission credits, or similar carbon instruments,~~ or any form of renewable energy~~Environmental~~ attribute(s) applicable to BPA which includes compliance costs, BPA may, upon 5 years' notice to «Customer Name», terminate «Customer Name»'s contract rights to Tier 1 RECs under section 3 above and/or «Customer Name»'s pro rata share of Carbon Credits under section 7 above.