

**NOTICE**

The draft Residential Exchange Settlement Agreement included with BPA's initial proposal documents for the BPA Residential Exchange Program Settlement Agreement Proceeding (REP-12) did not include provisions for dispute resolution.

The provisions below have been negotiated by representatives of the IOU Group and COU Parties, and are proposed for inclusion in the form of Residential Exchange Settlement Agreement to be evaluated by BPA in the REP-12 proceeding.

The IOU Group and COU Parties are giving notice of these proposed dispute resolution provisions separately from any other proposed refinements to the draft Residential Exchange Settlement Agreement to provide as much time as possible for all REP-12 parties (including BPA) to evaluate these proposed dispute resolution provisions. The IOU Group and COU Parties would like BPA to convene a publicly noticed workshop or settlement meeting as soon as possible to provide an opportunity for all parties to discuss these proposed dispute resolution provisions.

## **9. DISPUTE RESOLUTION**

**9.1 Scope of Dispute Resolution Provisions.** Disputes concerning any alleged breach of this Settlement Agreement will be resolved as provided in this section 9. BPA will, to the maximum extent permitted by law, participate in binding arbitration, as provided in this section 9, of any alleged breach of this Settlement Agreement. For any dispute not arising out of any alleged breach of this Settlement Agreement (including claims against BPA insofar as such claims allege that BPA has taken action contrary to or outside the scope of its statutory authority), the Parties will have whatever remedies are provided by law. As used in this section 9, “alleged breach” includes alleged anticipatory breach.

### **9.2 Binding Arbitration Process.**

**9.2.1 Notice to BPA.** Any Party that alleges any breach of this Settlement Agreement must, before initiating binding arbitration under section 9.3 or 9.4, deliver electronic notice to BPA, specifying:

- (i) the nature of such alleged breach of this Settlement Agreement;
- (ii) the Party or Parties alleged to have committed such breach;
- (iii) the specific action or actions required to correct such alleged breach;
- (iv) a date, not less than 30 nor more than 60 days from the date such notice is delivered, by which time the alleged breach must be corrected; and
- (v) that binding arbitration under this Settlement Agreement will be initiated if the alleged breach is not corrected within the specified period.

Any claim of alleged breach subject to arbitration under this section 9 will be barred unless notice of such claim has been given within 180 days of the date, as determined by the Arbitrator, on which the Party making the claim knew, or reasonably should have known, of the alleged breach. Any Party (other than BPA) may, if it so chooses, in a notice delivered to BPA under this section 9.2.1, state its claims in the alternative such that, if BPA states, in accordance with section 9.2.3, that it is not obligated to engage in binding arbitration with respect to one or more matter(s) identified in the Dispute Notice, such Party may proceed with arbitration pursuant to section 9.4 with respect to the portions of such Party’s claims within the scope of section 3.3.6.

**9.2.2 BPA Delivery of Dispute Notice.** If BPA receives notice as provided in section 9.2.1, BPA will promptly deliver such notice (or, if BPA is the Party initiating the dispute, BPA will deliver its written notice) to all Non-Settling Entities that are purchasers of BPA power at adjustable wholesale power rates and to all Parties (such Non-Settling Entities and Parties (including BPA) collectively, the “Notice Recipients,” and

such notice, a “Dispute Notice”). In addition to the information required by section 9.2.1, BPA will include with the notice a notification that any Notice Recipient that intends to contest the arbitrability of the matter(s) identified in the Dispute Notice must respond within 30 days of receiving the Dispute Notice indicating its intent to contest arbitrability in accordance with section 9.3.4 or 9.4.1, as applicable, and that failure of any Notice Recipient to respond indicating its intent to contest the arbitrability of the matter(s) within 30 days of receiving a Dispute Notice will, for purposes of this Settlement Agreement, constitute a binding admission by such Notice Recipient that the matter(s) identified in the Dispute Notice are subject to binding arbitration under this Settlement Agreement. Dispute Notices, and any statements following or responses to Dispute Notices required or permitted by other provisions of this section 9, must be delivered electronically.

**9.2.3 BPA Statement Concerning Arbitrability.** Within 30 days following issuance of a Dispute Notice under section 9.2.2, BPA will deliver to all Notice Recipients a statement (including an explanation of the basis therefor) of BPA’s position concerning whether BPA is obligated, pursuant to either section 9.3 or 9.4, to engage in binding arbitration with respect to each matter identified in the Dispute Notice. Any statement delivered by BPA in accordance with this section 9.2.3 that BPA is obligated to engage in binding arbitration with respect to any such matter will be binding on BPA for purposes of such arbitration.

**9.2.4 Applicability of Binding Arbitration Provisions.** If legislation as contemplated by section 8 is in effect, then disputes between or among the Parties concerning any alleged breach of this Settlement Agreement will be resolved by binding arbitration in accordance with Exhibit E (Arbitration Procedures) and the additional terms set forth in section 9.3. For any period during which legislation as contemplated by section 8 is not in effect,

- (i) disputes between or among the Parties concerning alleged breach of this Settlement Agreement with respect to which BPA has stated, in accordance with section 9.2.3, that it is obligated to engage in binding arbitration will be resolved by binding arbitration accordance with Exhibit E and the additional terms set forth in section 9.3;
- (ii) disputes between or among COU Parties and IOUs within the scope of section 3.3.6 will be resolved by binding arbitration accordance with Exhibit E and the additional terms set forth in section 9.4; and
- (iii) all other disputes will not be subject to binding arbitration under this section 9.

In any arbitration under this section 9, the Arbitrator (as defined in section 3 of Exhibit E) will apply the terms of this Settlement Agreement and may not modify, disregard, or add to the terms of this Settlement Agreement. All Notice Recipients (including Parties) that elect pursuant to section 9.3.1, or are permitted in accordance with section 9.4.4, to participate in the arbitration in accordance the terms of this Settlement Agreement will be referred to in this section 9 and in Exhibit E as “Participants.”

**9.3 Binding Arbitration Process with Legislation or with BPA Agreement.** This section 9.3 will govern disputes concerning any alleged breach of this Settlement Agreement only (i) if legislation as contemplated by section 8 is in effect, or (ii) if BPA has determined, in accordance with section 9.2.5, that it may lawfully engage in binding arbitration with respect to such dispute. Claims relating to Administrator determinations made in setting rates will be subject to arbitration under section 9.3 only to the extent such claims allege that, as a result of such determinations, a Party has incurred or will incur costs or has received or will receive payments inconsistent with the terms of this Settlement Agreement.

**9.3.1 Rights of Participation.** Any Notice Recipient may participate in an arbitration conducted pursuant to this section 9.3, provided it agrees in writing to be bound by Exhibit E and all provisions of this section 9 applicable to such arbitration.

**9.3.2 Challenges to Applicability of Binding Arbitration Provisions.** If, in its statement delivered in accordance with section 9.2.3, BPA states that it is not obligated to engage in binding arbitration with respect the matter(s) identified in the Dispute Notice, the applicability of the arbitration provisions of this Settlement Agreement will be a matter for the Federal District Court for the District of Oregon to decide. If another Notice Recipient claims that the matter(s) submitted are not subject to binding arbitration under this Settlement Agreement and BPA does not so claim, the applicability of the arbitration provisions of this Settlement Agreement will be a matter for the Arbitrator to decide. Any Notice Recipient that fails to respond, within 30 days of receiving a Dispute Notice, indicating its intent to contest the arbitrability of the matter(s) identified Dispute Notice will, for purposes of this Settlement Agreement, be deemed to have made a binding admission that the matter(s) identified in the Dispute Notice are subject to binding arbitration under this Settlement Agreement.

**9.3.3 Administrative Dispute Resolution Act Not Applicable; BPA Binding Dispute Resolution Policy.** The Administrative Dispute Resolution Act will not apply to disputes subject to binding arbitration under this section 9.3. All Parties acknowledge and agree that the provisions of Exhibit E and this section 9 (excluding section 9.4) satisfy all applicable requirements of BPA's Binding Arbitration Policy.

**9.4 Dispute Resolution Process for Disputes Arising Under Section 3.3.6 When Legislation Is Not in Effect and BPA Is Not a Participant.** The provisions of this section 9.4 will govern disputes:

- (i) between or among COU Parties and IOUs,
- (ii) within the scope of section 3.3.6,
- (iii) that arise in any period during which legislation as contemplated by section 8 is not in effect, and
- (iv) with respect to which BPA has stated, in its statement delivered in accordance with 9.2.3, that it is not subject to binding arbitration.

**9.4.1 Binding Arbitration Within the Scope of Section 3.3.6.** If

(i) BPA's statement delivered in accordance with section 9.2.3 states that BPA is not obligated to engage in binding arbitration with respect to the matter(s) identified in the Dispute Notice, and (ii) the Dispute Notice states one or more claims within the scope of section 3.3.6, then such claims will be resolved by binding arbitration in accordance Exhibit E and the following additional provisions:

- (a) the scope of permitted claims under this section 9.4 will be as set forth in section 9.4.2;
- (b) BPA's rights and obligations with respect to the arbitration will be as set forth in section 9.4.3;
- (c) the rights of Non-Settling Entities to be Participants in the arbitration will be as set forth in section 9.4.4;
- (d) any COU Party and any IOU, as applicable, will be entitled to the absolute defenses set forth in section 9.4.5;
- (e) the Arbitrator's power to grant remedies will be as set forth in section 9.4.6; and
- (f) the Parties' obligations with respect to implementing the remedies determined by the Arbitrator will be as set forth in section 9.4.7.

If any Notice Recipient claims that the matter(s) submitted are not subject to binding arbitration under this section 9.4, the applicability of this section 9.4 will be a matter for the Arbitrator to decide. Any Notice Recipient (including a COU Party or IOU) that fails to respond, within 30 days of receiving a Dispute Notice, indicating its intent to contest the arbitrability of the matter(s) identified Dispute Notice will, for purposes of this Settlement Agreement, be deemed to have made a binding admission that the matter(s) identified in the Dispute Notice are subject to binding arbitration under this Settlement Agreement

**9.4.2 Limitations on Parties' Rights to Make Claims Under Section 3.3.6.**

- (i) No Party other than an IOU may make a claim based on section 3.3.6(i), and any such claim may be made only against one or more COU Parties.
- (ii) No Party other than a COU Party may make a claim based on section 3.3.6(ii), and any such claim may be made only against one or more IOUs.
- (iii) No Party other than an IOU may make a claim based on section 3.3.6(iii), and any such claim may be made only against one or more other IOUs.

**9.4.3 BPA Rights and Obligations With Respect to an Arbitration Conducted Pursuant Section 9.4.** BPA will not be entitled to be a Participant in any arbitration conducted pursuant to this section 9.4. BPA will cooperate with the Arbitrator and all Participants to any arbitration conducted pursuant to this section 9.4, including by making reasonably available, as requested by the Arbitrator, (i) relevant information in BPA's possession or control, and (ii) witnesses with knowledge relevant to the dispute.

**9.4.4 Rights of Participation for Non-Settling Entity.** A Non-Settling Entity may become a Participant in an arbitration conducted pursuant to this section 9.4 only if (i) upon petition by the Non-Settling Entity, the Arbitrator determines that such Non-Settling Entity has a direct and substantial interest that will be materially affected by the outcome of the arbitration, and (ii) such Non-Settling Entity agrees in writing to be bound, with respect to such arbitration, by all provisions of this Settlement Agreement applicable to the alleged breach and all provisions of this Settlement Agreement applicable to such arbitration, including Exhibit E and all limitations on the Arbitrator's powers to grant remedies.

**9.4.5 Absolute Defenses With Respect to Claims Subject to Arbitration Under Section 9.4.** In any arbitration initiated in accordance with section 9.4:

- (i) All COU Parties will have an absolute defense to any claim by any IOU based on section 3.3.6(i) if the amounts included in the COU Parties' Tier 1 PF Rates to recover the cost of REP Settlement Benefits are at least equal to the COU Parties' Allocated Share as provided in this Settlement Agreement.
- (ii) All IOUs will have an absolute defense to any claim by any COU Party based on section 3.3.6(ii) if the REP Settlement Benefits received by the IOUs, in aggregate, are in accordance with this Settlement Agreement; provided, however, that the preclusion of any COU Party claim under section 3.3.6(ii) will not be deemed to preclude claims by one or more IOUs against one or more other IOUs based on allegations of breach of section 3.3.6(iii).
- (iii) Any individual IOU will have an absolute defense to a claim by any COU Party based on section 3.3.6(ii), and to any claim by any other IOU based on allegations of breach of section 3.3.6(iii), if the REP Settlement Benefits received by such IOU are in accordance with this Settlement Agreement.

**9.4.6 Limitation on Arbitrator's Power to Grant Remedies for Breach of Section 3.3.6.** In any arbitration conducted pursuant to section 9.4, if the Arbitrator determines that one or more Parties have breached their obligations under section 3.3.6, the Arbitrator's powers to grant remedies will be subject to the limitations set forth in Exhibit E and will be further limited as follows:

- (i) For breach of section 3.3.6(i), the sole remedy will be a requirement for prospective adjustments to COU Parties' bills to recover amounts that should have been included in the COU Parties' Tier 1 PF Rates to recover REP Settlement Benefits, together with corresponding increases to the prospective payments to the IOUs, such that the COU Parties and the IOUs will be restored to the positions they would have been in had section 3.3.6(i) been performed according to its terms.
- (ii) For breach of section 3.3.6(ii), the sole remedy will be a requirement for prospective adjustments to IOUs' payments of REP Settlement Benefits (or, if after the Payment Period, REP benefits) to recover amounts that should not have been included in the IOUs' REP Settlement Benefits, together with corresponding credits to the COU Parties' power bills, such that the COU Parties and the IOUs will be restored to the positions they would have been in had section 3.3.6(ii) been performed according to its terms.
- (iii) For breach of section 3.3.6(iii), the sole remedy will be a requirement for prospective adjustments to IOUs' payments of REP Settlement Benefits (or, if after the Payment Period, REP benefits) to cause the amounts received by each of the IOUs to be consistent with section 6.
- (iv) In determining remedies in accordance with this section 9.4.6, the Arbitrator will require adjustments to be made over a time period comparable to the time period during which the over- or under-payment determined by the Arbitrator occurred and, with respect to the COU Parties, any adjustments to their power bills must be proportionate to their contributions to the under- or over-payment.
- (v) The Arbitrator will have no authority to require any Participant to remit to any other Participant a cash payment to remedy a breach of section 3.3.6

**9.4.7 Parties' Actions to Implement the Arbitrator's Determination.** By its execution of this Settlement Agreement, each IOU and each COU Party agrees, as of the Effective Date, that such execution constitutes a continuing and irrevocable request to BPA to make any adjustments to its power bills or payments (as applicable) as may be required to implement an Arbitrator's determination pursuant to section 9.4. BPA agrees that it will make any and all such adjustments in accordance with the Parties' requests under this section 9.4.7.

**9.4.8 No Implied Limitation on Parties' Abilities to Pursue Other Claims.** Nothing in this section 9.4 will be deemed to limit any Party's ability to initiate disputes concerning an alleged breach of this Settlement Agreement apart from or in addition to claims within the scope of section 3.3.6.

## **Exhibit E**

### **Arbitration Procedures**

#### **1. Arbitration Procedures**

The arbitration provisions set forth in this Exhibit E (the “Arbitration Procedures”) will govern any binding arbitration within the scope of section 9 of the Settlement Agreement.

#### **2. Modification of Arbitration Procedures**

Any provision of these Arbitration Procedures may be modified or supplemented with respect to a specific arbitration by agreement of all of the Participants.

#### **3. Selection of Arbitration Panel**

If BPA, one or more COU Parties, and one or more IOUs are all Participants to a dispute within the scope of section 9 of the Settlement Agreement, they will select a panel of three arbitrators in accordance with the process specified in section 3.1 of this Exhibit E. If a dispute within the scope of section 9 of the Settlement Agreement involves only two of the foregoing categories of Participants (that is, only COU Parties and IOUs, or only BPA and COU Parties, or only BPA and IOUs), then those Participants to the dispute will select two arbitrators in accordance with the process specified in section 3.2 of this Exhibit E. If a dispute within the scope of section 9 of the Settlement Agreement solely among two or more IOUs, then those IOUs that are Participants to the dispute will select their arbitrators in accordance with the process specified in section 3.3 of this Exhibit E. The panel of arbitrators selected in accordance with section 3.1, 3.2, or 3.3 of this Exhibit E will be referred to in these Arbitration Procedures and in section 9 of the Settlement Agreement as the “Arbitrator.”

##### **3.1 Process for BPA, COU Parties, and IOUs to Select a Panel of Three Arbitrators**

Within not more than 45 days following the date on which BPA delivers or issues Dispute Notice pursuant to section 9.3.2 of the Settlement Agreement, each of the Nominating Participants (as defined below) will submit to the other Nominating Participants a list of the names, together with a brief description of the qualifications, of five individuals, with experience with electric utility contracts, whom such Nominating Participant proposes as potential arbitrators for a dispute within the scope of section 9 of the Settlement Agreement. The Nominating Participants will then draw straws to determine the order in which the Nominating Participants will strike names from each others’ lists of proposed arbitrators. The Nominating



Participant entitled to take the first turn will then strike one name from one of the other Nominating Participant's list of proposed arbitrators. The Nominating Participant entitled to take the second turn will then do likewise, and the Nominating Participant entitled to take the third turn will then also do likewise. The Nominating Participant entitled to take the first turn will then strike another name from one of the other Nominating Participant's list of proposed arbitrators, and the process of striking names in this manner will continue until only one name remains on each of the Nominating Participant's lists. The three individuals whose names remain on such lists will serve as Arbitrator for the dispute. Unless another period is agreed to by the Nominating Participants, any Nominating Participant that fails to provide its list of names within 45 days will forfeit its right to submit such a list, and the arbitrators will be chosen from the remaining list(s) as provided in this section 3.1 and in section 3.2 below. In such event, the Nominating Participants may strike names from their own lists of proposed arbitrators, if they so choose.

As used in section 3.1 (and section 10.2, if applicable) of this Exhibit E, the term "Nominating Participant" means

- (i) BPA,
- (ii) those COU Parties that are Participants (collectively), or
- (iii) those IOUs that are Participants (collectively),

and collectively means the foregoing Parties, taken together, but in the groupings identified in items (i), (ii), and (iii) above.

### **3.2 Process for Subsets of Parties to Select Two Arbitrators Who Then Select a Third**

The process of selecting a panel of arbitrators under section 3.2 of this Exhibit E will be the same as specified in section 3.1 of this Exhibit E, except that

- (i) there will be only two Nominating Participants (as described in item (iii) below), and therefore only two lists of potential arbitrators totaling ten individuals, and the Nominating Participants will take turns striking names from each other's lists until only two names remain (one on each Nominating Participant's list),
- (ii) the two names remaining after the process of striking names will serve on the panel of arbitrators and together will select one additional person (with experience with electric utility contracts) to serve as the third member of the panel that will serve as Arbitrator for the dispute, and

- (iii) as used in section 3.2 (and section 10.2, if applicable) of this Exhibit E, the term “Nominating Participant” means
  - (a) in a dispute in which Participant Parties are limited to COU Parties and IOUs (but not BPA),
    - (1) those COU Parties that are Participants (collectively),  
or
    - (2) those IOUs that are Participants (collectively);
  - (b) in a dispute in which Participant Parties are limited to BPA and COU Parties (but not IOUs),
    - (1) BPA, or
    - (2) those COU Parties that are Participants (collectively),
  - (c) in a dispute in which Participant Parties are limited to BPA and IOUs (but not COU Parties),
    - (1) BPA, or
    - (2) those IOUs that are Participants (collectively),

and collectively means the foregoing subsets of Parties, taken together as described in items (a), (b), or (c) above, but in the groupings identified in subparts (1) and (2), as applicable, of each such item.

### **3.3 Process for Disputes Involving Only IOUs.**

The process of selecting a panel of arbitrators under section 3.3 of this Exhibit E will be the same as specified in section 3.1 of this Exhibit E, except that

- (i) each IOU will be a Nominating Participant (for purposes of this section 3.3 and for purposes of section 10.2 of this Exhibit E),
- (ii) each Nominating Participant will be entitled to submit a list of three individuals, with experience with electric utility contracts, whom such Nominating Participant proposes as potential arbitrators,
- (iii) if there are only two Nominating Participants, then the Nominating Participants will take turns striking names from each other’s lists until only two names remain (one on each Nominating Participant’s list), the two individuals whose names remain after the process of striking names will serve on the panel of arbitrators and together will select one additional person (with experience with electric utility

contracts) to serve as the third member of the panel that will serve as Arbitrator for the dispute,

- (iv) if there are three Nominating Participants, then the Nominating Participants will take turns striking names from each other's lists until only three names remain, and the three individuals whose names remain at the end of the striking process will serve as Arbitrator for the dispute, and
- (v) if there are four or more Nominating Participants, then the Nominating Participants will take turns striking names from each other's lists until there are the same number of proposed arbitrators as there are Nominating Participants, after which the three arbitrators' names will be selected by a random process.

**4. Consolidation**

All disputes concerning the same alleged violation of the Settlement Agreement will be consolidated into a single arbitration process. The Arbitrator may consolidate related disputes.

**5. Venue**

Any binding arbitration within the scope of section 9 of the Settlement Agreement will be conducted in Portland, Oregon unless the Participants agree otherwise.

**6. Duration of Arbitration Process**

All Participants acknowledge and agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Participants will (i) make good faith efforts to participate in a manner that will facilitate conclusion of the arbitration proceedings within nine months following the selection of the Arbitrator in accordance with section 3 of this Exhibit E, and (ii) request that the Arbitrator render a decision within 90 days following the conclusion of the arbitration proceedings.

**7. Prehearing Meeting**

Unless all Participants agree otherwise, within 15 days following selection of the Arbitrator, the Arbitrator will convene a prehearing meeting, at which each Participant will present a memorandum stating with specificity the basis of its claims and the issues such Participant intends to raise. At the prehearing meeting, the Arbitrator will set a schedule for submissions and hearings consistent with the Arbitrator's powers as set forth in these Arbitration Procedures.

**8. Discovery**

**8.1 Federal Rules of Civil Procedure.**

Except as otherwise provided in section 8.2 of this Exhibit E, discovery will be governed by the Federal Rules of Civil Procedure, subject to any reasonable limitations or procedures agreed to by the Participants, or, upon petition by a Participant, established by the Arbitrator. Such reasonable limitations or procedures may include time, scope, and grouping of Participants for purposes of discovery.

**8.2 Limitation on Depositions.**

Depositions may be taken only upon request to the Arbitrator and with the Arbitrator's approval for good cause shown.

**9. Rules of Evidence**

The Arbitrator will apply the Federal Rules of Evidence, but construe them liberally to allow for the admission of evidence that is helpful in resolving the matter(s) in dispute. Rulings on the admission of evidence made by the Arbitrator at the hearing will be final, binding, and not subject to any appeal.

**10. Arbitrator's Determination**

**10.1 Adherence to Terms of Settlement Agreement**

In any arbitration within the scope of section 9 of the Settlement Agreement, the Arbitrator must apply the terms of the Settlement Agreement and may not modify, disregard, or add to the terms of the Settlement Agreement.

**10.2 Proposed Determinations; Arbitrator's Decision**

After hearing all of the evidence, the Arbitrator will issue a statement identifying all of the issues to be resolved in the arbitration. Each Nominating Participant (as defined in section 3.1, 3.2, or 3.3 of this Exhibit E, as applicable) will be entitled to submit (i) a single, preferred proposal specifying how each of the issues identified by the Arbitrator should be resolved (the Nominating Party's "Preferred Solution"), and (ii) one or more alternative resolutions of any one or more of the identified issues for the Arbitrator to consider should the Arbitrator determine that no Preferred Solution submitted by any Nominating Party can be adopted. The Arbitrator will provide an opportunity for all Participants to submit briefs concerning all Nominating Participants' Preferred Solutions and alternatives.

After receiving all Nominating Participants' Preferred Solutions and briefs, the Arbitrator will determine whether one or more Preferred Solutions are consistent with the Settlement Agreement and these Arbitration Procedures. If the Arbitrator determines that only one Preferred Solution is consistent

with the Settlement Agreement and these Arbitration Procedures, the Arbitrator will adopt such Preferred Solution. If the Arbitrator determines that more than one Preferred Solution is consistent with the Settlement Agreement and these Arbitration Procedures, the Arbitrator will select and adopt one Preferred Solution from among the Preferred Solutions that are consistent with the Settlement Agreement and these Arbitration Procedures. If the Arbitrator determines that no Preferred Solution is consistent with the terms of the Settlement Agreement and these Arbitration Procedures, the Arbitrator may provide such remedies as the Arbitrator determines are consistent with the terms of the Settlement Agreement and these Arbitration Procedures, taking into consideration, as the Arbitrator deems appropriate, the alternative resolutions proposed by the Participants in their briefs.

#### **10.3 Adjustments Must Be Prospective Only**

If the Arbitrator determines that a Party has received or will receive more or less, or has paid or will pay more or less, than provided for in the Settlement Agreement, any recovery of under- or over-payment of Total Settlement Benefits, and any corresponding adjustments to reflect amounts that should or should not have been included in COU Parties' Tier 1 PF Rates, must be implemented solely through prospective adjustments to (i) IOUs' payments of REP Settlement Benefits (or, if after the Payment Period, REP benefits), and (ii) COU Parties' power bills, in either case as necessary to place the Parties in the positions they would have been in had the Settlement Agreement been performed in accordance with its terms. The Arbitrator must specifically state any amounts of such prospective adjustments, including any applicable interest, and such adjustments must be made over a time period comparable to the time period during which the over- or under-payment determined by the Arbitrator occurred. With respect to the COU Parties, any adjustments to their power bills must be proportionate to their contributions to the under- or over-payment.

#### **10.4 Further Limitations on Remedies**

The Arbitrator may not grant remedies with respect to (i) any IOU to the extent the Total Settlement Benefits received by such IOU are accordance with this Settlement Agreement, or (ii) any COU Party to the extent the costs of REP Settlement Benefits included in such COU Party's Payment Period Rates are in accordance with this Settlement Agreement. The arbitrator will have no authority to impose penalties on any Participant.

### **11. Arbitrator's Determination Final and Binding; No Precedential Effect**

#### **11.1 Finality**

Except as provided in section 11.2 of this Exhibit E, (i) any Arbitrator's determination in an arbitration conducted pursuant to section 9.3 will be final and binding on all Notice Recipients for purposes of this Settlement

Agreement, and (ii) any Arbitrator's determination in an arbitration conducted pursuant to section 9.4 will be final and binding on all Participants. Judgment upon the Arbitrator's determination may be entered by any court with jurisdiction. In delivering his or her determination, the Arbitrator will prepare and provide to the Participants findings of fact and conclusions of law supporting the determination.

#### **11.2 Judicial Review Under Federal Arbitration Act**

Any Participant may seek judicial review of an Arbitrator's determination based only upon one or more of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988).

#### **11.3 Issue and Claim Preclusion**

The Arbitrator's determination will have no precedential effect with respect to any matter or proceeding other than the arbitration to which it relates; provided, however, that any issue or claim that was raised in the arbitration by a Participant for which the Arbitrator has made a determination will be given preclusive effect and will be deemed *res judicata* in any subsequent arbitration under these Arbitration Procedures.

### **12. Arbitration Costs**

Each Participant will be responsible for its own costs of participating in the arbitration, including legal fees and expenses. The Arbitrator may not include in an award to any Participant any other Participant's cost of participating in the arbitration or its legal fees and expenses. Unless the Participants agree otherwise, the Arbitrator will apportion all joint costs of arbitration equally between the Nominating Participants other than BPA.