

REP SETTLEMENT AGREEMENT

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Exhibits and Attachments

- Exhibit A – Form of REP Settlement Implementation Agreement
- Exhibit B – PF-02 Customer Percentages and Customer-Specific PF-02 Refunds
- Exhibit C – Renewable Energy Certificates and Carbon Attributes to IOUs
- Exhibit D – Illustrative Table for Section 6
- Exhibit E – Arbitration Procedures
- Exhibit F – Not Used
- Exhibit G – Not Used
- Exhibit H – Template Replacement Form of Exhibit H to COU Parties' CHWM Contracts

RECITALS

A. BPA, entities in the IOU Group and entities in the COU Group are parties or intervenors to *Idaho Public Utilities Commission, et al. v. Bonneville Power Administration* (Docket Nos. 08-74927, 08-74928, 08-74929, 08-74932, 08-74933, 08-74942, 08-74957 (Consolidated) USCA-Ninth Circuit) and to *The Association of Public Agency Customers, et al. v. Bonneville Power Administration* (Docket Nos. 08-74725, 08-74811, 08-74900, 08-75008, 08-75091, 08-75098, 08-75099, 08-75112, 08-75113, 08-75130, 08-75132, 08-75133, 08-75161, 08-75165 (Consolidated) USCA-Ninth Circuit) (collectively, the “Current Litigation”).

B. BPA, entities in the IOU Group and entities in the COU Group are also parties or intervenors to *Avista Corporation, et al. v. Bonneville Power Administration* (Docket Nos. 09-73160, 09-73201, 09-73225, 09-73228, 09-73230, 09-73247, 09-73249, 09-73251, 09-73252, 09-73254, 09-73264, 09-73269, 09-73271, 09-73274, 09-73281 (Consolidated) USCA-Ninth Circuit) and to *Portland General Electric Company, et al. v. United States Department of Energy, et al.* (Docket Nos. 09-73288, 09-73289, 09-73317, 09-73322, 09-73326 (Consolidated) USCA-Ninth Circuit) (collectively, together with any challenges in the U.S. Court of Appeals for the Ninth Circuit to BPA’s WP-10 rates, the “Related Litigation”).

C. The Parties desire to resolve certain disputes underlying the Current Litigation and Related Litigation and to settle matters relating to the payment of benefits and the recovery of costs of IOU participation in the Residential Exchange Program for the Settlement Period.

SETTLEMENT AGREEMENT

This REP Settlement Agreement (“Settlement Agreement”), dated as of _____, 2011 is entered into by and among the Bonneville Power Administration and the undersigned investor-owned utilities, state public utility commissions, Citizens’ Utility Board of Oregon, consumer-owned utilities, consumer-owned utility associations, and other BPA power customers.

1. EFFECTIVE DATE; BINDING RIGHTS AND INITIAL OBLIGATIONS

1.1 Effective Date and Term. This Settlement Agreement will take effect as to all Parties on the Effective Date in accordance with section 1.4.1, and will take effect with respect to the Initial Obligations applicable to all Parties other than BPA in accordance with section 1.2. This Settlement Agreement will expire upon the expiration of Fiscal Year 2028.

1.2 Parties’ Representations and Warranties Related to Signing Settlement Agreement; Conditions Precedent to Initial Obligations.

1.2.1 Representation and Warranties Related to Signing Settlement Agreement. By signing this Settlement Agreement, each Party represents and warrants, with respect to itself only, to each other Party that as of the date of such signing the execution, delivery, and performance of this Settlement Agreement (i) are within its powers, (ii) have been duly authorized by all necessary action on its behalf, and all other necessary consents or approvals (including any necessary regulatory consents or approvals) have been obtained and are in full force and effect, and (iii) do not violate any of the terms and conditions of any applicable law or materially violate any contracts to which it is a party.

1.2.2 Conditions Precedent to Initial Obligations. The Initial Obligations of the Parties other than BPA will take effect when the following conditions precedent have been satisfied:

- (i) on or before April 15, 2011, (a) COUs, having in the aggregate, Transition High Water Marks (as defined in the TRM) equal to or greater than 91 percent of the total Transition High Water Marks of all COUs, have signed and delivered to BPA this Settlement Agreement, (b) the Public Power Council and Northwest Requirements Utilities have signed and delivered to BPA this Settlement Agreement, (c) Pacific Northwest Generating Cooperative has signed and delivered to BPA this Settlement Agreement, and (d) each entity of the IOU Group has signed and delivered to BPA this Settlement Agreement; and
- (ii) on or before April 25, 2011, BPA has delivered a written notice to each Party, certifying that item (i) above is satisfied.

If such conditions precedent have not been satisfied on or before the dates specified therefor, then all provisions of this Settlement Agreement and any REP Settlement Implementation Agreement will be void *ab initio*.

1.3 Initial Obligations. Each Party (other than BPA) will, commencing if and at such time as the conditions precedent set forth in section 1.2 above are satisfied, perform the following obligations (the “Initial Obligations”):

- (i) support, in BPA proceedings to evaluate whether the Administrator should execute this Settlement Agreement, a BPA decision that this Settlement Agreement should be so executed;
- (ii) seek, in cooperation with the other Parties, a stay or other procedural order that preserves all claims and defenses in the Litigation, as described in section 10.1; and
- (iii) support, in BPA proceedings to adopt applicable power rates for the initial Rate Period, BPA’s use of this Settlement Agreement to develop such rates.

Any Party may cite any other Party’s execution of this Settlement Agreement, at any time after such other Party’s execution and delivery to BPA of this Settlement Agreement and the conditions precedent in section 1.2 have been satisfied, as evidencing such other Party’s support for this Settlement Agreement.

1.4 Execution by Administrator; REP Settlement Implementation Agreement.

1.4.1 Effective Date for All Provisions Other Than Initial Obligations.

Provided the conditions precedent in section 1.2 have been satisfied and subject to sections 1.4.3 and 3.7, all provisions of this Settlement Agreement (other than section 1.3) will become effective as to all Parties as of the date on which the Administrator executes this Settlement Agreement (the “Effective Date”).

1.4.2 Other Settlement Documents.

Contemporaneously with the Administrator’s execution of this Settlement Agreement, BPA and each IOU will enter into a REP Settlement Implementation Agreement in the form attached as Exhibit A to this Settlement Agreement. The purpose of each such REP Settlement Implementation Agreement is to implement certain provisions of this Settlement Agreement, including how IOU-Specific REP Settlement Benefit Amounts are distributed to each Participating IOU. Each such REP Settlement Implementation Agreement is and must at all times remain consistent with this Settlement Agreement.

1.4.3 Failure of Administrator to Execute Settlement Agreement. If the Administrator has not executed this Settlement Agreement on or before August 1, 2011, then all provisions of this Settlement Agreement and any REP Settlement Implementation Agreement will be void *ab initio*.

2. DEFINITIONS

Capitalized terms used in this Settlement Agreement will have the meanings set forth below or in the provisions in which they are used, or, if not defined in this Settlement Agreement, as set forth in the WP-07S ROD. Such definitions are equally applicable to both the singular and plural forms of any such terms.

“Act” means the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839 *et seq.*

“Adjusted Average PF Rate” has the meaning given such term in section 14.1(i).

“Affected PF Customer” has the meaning given such term in section 14.1(ii).

“Administrator” means the administrator of BPA.

“Applicable Rates” means (i) any Tier 1 PF Rates, (ii) any IP Rate and any other rate at which BPA sells power to a DSI, (iii) any NR Rate, and (iv) any other rate established by BPA for the sale or exchange of power which BPA determines, for a given Rate Period, should be part of the Pro Rata Load Share as set forth in section 3.3.4. Applicable Rates will not include any Reference Rate.

“Arbitrator” has the meaning given such term in section 3 of Exhibit E to this Settlement Agreement.

“Average System Cost” or “ASC” means, for purposes of this Settlement Agreement with respect to any IOU for any Rate Period, the ASC determined for such IOU for such Rate Period in accordance with BPA’s Average System Cost Methodology as then in effect, and giving effect to the waivers set forth in section 6.4.

“Base Rate” means (expressed as dollars per megawatt hour), for a Rate Period, the sum of the following:

- (i) the quotient of (a) the forecasted total revenue requirement allocated for such Rate Period (without regard to results of the rate test under section 7(b)(2) of the Act or allocation of any surcharges under section 7(b)(3) of the Act) for the rates applicable to the forecasted loads enumerated in section 7(b)(1) of the Act, divided by (b) the total of such forecasted loads, all as will be determined in the Rate Proceeding for such Rate Period;

and

- (ii) the rates for such Rate Period applicable for wheeling power from BPA to the exchanging utility, as determined in the applicable BPA proceeding to set transmission rates;

provided, that if, for any Rate Period, BPA adjusts the COU Parties' PF Rates applicable for such Rate Period through an adjustment clause (for example, a Cost Recovery Adjustment Clause) that is triggered and effective as of the first day of the Rate Period and that is applicable to and adjusts such rates for the entire term of the Rate Period, the forecasted total revenue requirement used in determining the Base Rate for such Rate Period will, for purposes of determining the Base Rate, be adjusted by a percentage equal to the percentage change in such COU Parties' PF Rates for the Rate Period caused by such triggering of such adjustment clause.

"BP-12 Proceeding" means the administrative proceeding initiated by the Federal Register Notice issued on November 18, 2010 (75 Fed. Reg. 70744) and conducted by BPA under BPA Docket No. BP-12.

"BPA" means the Bonneville Power Administration.

"BPA Binding Arbitration Policy" means BPA's policy entitled *BPA's Guidance on the Use of Binding Arbitration for BPA Contracts*, or its successor.

"CHWM Contract" has the meaning given such term in the TRM.

"Consumer-Owned Utility" or "COU" means each PF Customer that is not a federal agency.

"COU Group" means all COU Parties, together with the Public Power Council and Northwest Requirements Utilities.

"COU Party" means a Party that is a COU. Except where the context requires otherwise, when used in the plural, the term "COU Parties" means all Parties that are COUs.

"COU Parties' Allocated Share" has the meaning given such term in section 3.3.5.

"COU Parties' Refund Share" has the meaning given such term in section 3.3.5.

"COU Parties' PF Rate" means any BPA wholesale power rate for service to COUs' "general requirements" (as defined in section 7(b)(4) of the Act), insofar as such rate is applicable to COU Parties for any Rate Period.

"COU REP Benefits" means the costs BPA incurs to provide benefits to COUs pursuant to section 5(c) of the Act, or the costs of settling BPA's obligations to provide such benefits.

"Current Litigation" has the meaning given such term in the recitals preceding this Settlement Agreement.

"Deemer Amount" means any amount of money purported or alleged to be owed by an IOU under the terms of the 1981 RPSA (including all amendments, suspensions, modifications, terminations, novations and restatements of liability, thereof) between BPA and an IOU, which was to be subsequently offset against and thereby would diminish future REP benefits that would otherwise have been payable by BPA to that IOU pursuant to an existing or future RPSA. Deemer Amount includes all amounts of interest and penalties added to the original amount.

"Direct Service Industrial Customer" or "DSI" has the meaning specified in section 3(8) of the Act.

“Dispute Notice” has the meaning given such term in section 9.2.2.

“Effective Date” has the meaning given such term in section 1.4.1.

“Federal Agency” means a federal agency that, at any time, purchases electric power from BPA pursuant to section 5(b)(3) of the Act.

“Fiscal Year” means each 12-month period, October 1 through September 30, during the Payment Period.

“Initial Obligations” has the meaning given such term in section 1.3.

“Initial IOU Adjustment Amount” has the meaning given such term in section 6.2.3(i).

“Interim Agreement True-Up Payment Amounts” has the meaning given such term in section 4.

“Investor-Owned Utility” or “IOU” means any of Avista Corporation (“Avista”), Idaho Power Company (“Idaho Power”), PacifiCorp, Portland General Electric Company (“Portland General”), Puget Sound Energy, Inc. (“PSE”), and NorthWestern Energy. Except where the context requires otherwise, when used in the plural, the term “IOUs” means all Parties that are IOUs.

“IOU Adjustment Amount Balance” has the meaning given such term in section 6.2.3(ii).

“IOU Group” means the IOUs, the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission, and the Citizens’ Utility Board of Oregon.

“IOU-Specific REP Settlement Benefit Amount” has the meaning given such term in section 6.1.1. The sum of the IOU-Specific REP Settlement Benefit Amounts for all Participating IOUs for each Fiscal Year will equal the REP Settlement Benefits for such Fiscal Year.

“IOU-Specific Unconstrained Amount” has the meaning given such term in section 6.1.1.

“IP Rate” means any rate established pursuant to section 7(c) of the Act.

“Litigation” means the Current Litigation and Related Litigation, collectively.

“Load Reduction Agreements” mean

- (i) Amendment No. 1 to Contract No. 01PB-12229, dated May 23, 2001, between PacifiCorp and BPA, and the Financial Settlement Agreement, dated July 1, 2001, Contract No. 01PB-10854, between PacifiCorp and BPA (together with Firm Power Block Power Sales Agreement, Contract No. 01PB-12230, between PacifiCorp and BPA; Agreement Regarding Conditional Deferral of Reduction of Risk Discount Amount, Contract No. 02PB-11157, between PacifiCorp and BPA; Agreement Regarding Fiscal Year 2003 Deferral Amount, Contract No. 03PB-11262, between PacifiCorp and BPA; and Agreement Regarding Payment of Residential Exchange Program Settlement Benefits During Fiscal Years 2007 Through 2011, Contract No. 04PB-11468, between BPA and PacifiCorp); and

- (ii) Amended Settlement Agreement, Contract No. 01PB-10885, between PSE and BPA (together with Firm Power Block Power Sales Agreement, Contract No. 01PB-10886, between PSE and BPA; Agreement Regarding Conditional Deferral of Reduction of Risk Discount Amount, Contract No. 02PB-11156, between BPA and PSE; Agreement Regarding Fiscal Year 2003 Deferral Amount, Contract No. 03PB-11251, between BPA and PSE; and Agreement Regarding Payment of Residential Exchange Program Settlement Benefits During Fiscal Years 2007 Through 2011, Contract No. 04PB-11467, between BPA and PSE);

and any and all amendments, supplements, and modifications thereof.

“Lookback Claims” means any amount purported or alleged to be

- (i) wrongly charged to any BPA customers by BPA in its wholesale power rates as a result of amounts that BPA paid or value transferred to an IOU pursuant to any 2000 and 2001 REP Settlement Agreements or any Load Reduction Agreements or
- (ii) wrongly paid or transferred by BPA as a result of any 2000 and 2001 REP Settlement Agreements or any Load Reduction Agreements;

including any interest or penalties added to the original amounts so paid or transferred.

“Material Cost Change” has the meaning given such term in section 14.1(iv).

“Maximum IOU Annual Adjustment Amount,” for any IOU other than Idaho Power, has the meaning given such term in section 6.2.3(iii).

“Maximum IOU Annual Adjustment Amount,” for Idaho Power, has the meaning given such term in section 6.2.3(iv).

“Non-Settling COU” means any COU that is not a Party.

“Non-Settling Entity” means any person or entity that is not a Party (including a Non-Settling COU).

“Notice Recipient” has the meaning given such term in section 9.2.2.

“NR Rate” means any rate established pursuant to section 7(f) of the Act and determined by BPA to be an NR rate.

“Participant” has the meaning given such term in section 9.2.4.

“Participating IOU” means, for any Fiscal Year, any IOU that has an IOU-Specific Unconstrained Amount for such Fiscal Year that is greater than zero, as determined pursuant to section 6.1.1, and that has commenced and has not suspended its REP Settlement Implementation Agreement (and has not suspended sections 5 and 6 thereof) for such Fiscal Year.

“Party” means (i) any entity that signs this Settlement Agreement and delivers it to BPA on or before April 15, 2011, and (ii) BPA as of the Effective Date.

“Payment Period” means the period beginning on October 1, 2011, and continuing through September 30, 2028.

“Payment Period Rates” means BPA’s wholesale power rates applicable to Parties for any Rate Period or partial Rate Period wholly within the Payment Period.

“PF Customer” means any entity eligible to purchase power from BPA at wholesale power rates applicable to “general requirements,” as that term is defined in section 7(b)(4) of the Act.

“Priority Firm Rates” has the meaning given such term in section 14.1(iii).

“Pro Rata Load Share” has the meaning given such term in section 3.3.4.

“Qualifying Condition” has the meaning given such term in section 14.1(v).

“Rate Period” means the period of time, in the Payment Period, during which a specific set of rates established by BPA is intended to remain in effect.

“Rate Proceeding” means a proceeding conducted by BPA under section 7(i) of the Act to establish rates for the sale of power.

“Reference Rate” means, for any Fiscal Year, the Base Rate for such Fiscal Year as determined in the Rate Proceeding for such Rate Period, except as otherwise provided in section 6.1.2.

“Refund Amounts” means the amounts set forth in the table in section 3.2, which are stated in nominal dollars.

“Related Litigation” has the meaning given such term in the recitals preceding this Settlement Agreement.

“REP Benefit Costs” means the costs that, absent this Settlement Agreement, would be or would have been recoverable in BPA’s wholesale power rates due to BPA’s participation in purchase and exchange sales with the IOUs pursuant to section 5(c) of the Act for the Settlement Period.

“REP Benefit Payments” means the amounts that, absent this Settlement Agreement, would be or would have been paid or conveyed in aggregate to the IOUs for the Payment Period or the Settlement Period (as applicable) as the result of the purchase and exchange sale transactions provided for in section 5(c) of the Act, as such amounts may be limited by sections 7(b)(2) and 7(b)(3) of the Act.

“REP Recovery Amounts” has the meaning given such term in section 3.3.

“REP-12 Proceeding” means the administrative proceeding initiated by the Federal Register Notice issued on December 16, 2010 (75 Fed. Reg. 78694) and conducted by BPA under BPA Docket No. REP-12.

“2000 and 2001 REP Settlement Agreements” mean

- (i) Settlement Agreement, Contract No. 00PB-12157, between Avista and BPA (together with Firm Power Block Power Sales Agreement, Contract No. 00PB-12163, between Avista and BPA, and Agreement Regarding Fiscal Year 2003 Deferral Amount, Contract No. 03PB-11265, between Avista and BPA);

- (ii) Settlement Agreement, Contract No. 00PB-12160, between NorthWestern Energy and BPA (together with Firm Power Block Power Sales Agreement, Contract No. 00PB-12165, between NorthWestern Energy and BPA, and Agreement Regarding Fiscal Year 2003 Deferral Amount, Contract No. 03PB-11269, between NorthWestern Energy and BPA);
- (iii) Settlement Agreement, Contract No. 00PB-12161, between Portland General and BPA (together with Firm Power Block Power Sales Agreement, Contract No. 00PB-12167, between Portland General and BPA, Agreement Regarding Fiscal Year 2003 Deferral Amount, Contract No. 03PB-11267, between Portland General and BPA);
- (iv) Settlement Agreement, Contract No. 01PB-12229, between PacifiCorp and BPA (together with Firm Power Block Power Sales Agreement, Contract No. 00PB-12230, between PacifiCorp and BPA; Agreement Regarding Conditional Deferral of Reduction of Risk Discount Amount, Contract No. 02PB-11157, between PacifiCorp and BPA; Agreement Regarding Fiscal Year 2003 Deferral Amount, Contract No. 03PB-11262, between PacifiCorp and BPA; and Agreement Regarding Payment of Residential Exchange Program Settlement Benefits During Fiscal Years 2007 Through 2011, Contract No. 04PB-11468, between BPA and PacifiCorp);
- (v) Settlement Agreement, Contract No. 00PB-12162, between PSE and BPA (together with Firm Power Block Power Sales Agreement, Contract No. 00PB-12168, between PSE and BPA);
- (vi) Settlement Agreement, Contract No. 00PB-12158, between Idaho Power and BPA (together with Firm Power Block Power Sales Agreement, Contract No. 00PB-12164, between Idaho Power and BPA, and Agreement Regarding Fiscal Year 2003 Deferral Amount, Contract No. 03PB-11268, between Idaho Power and BPA); and
- (vii) Amended Settlement Agreement, Contract No. 01PB-10885, between PSE and BPA (together with Firm Power Block Power Sales Agreement, Contract No. 01PB-10886, between PSE and BPA; Agreement Regarding Conditional Deferral of Reduction of Risk Discount Amount, Contract No. 02PB-11156, between BPA and PSE; Agreement Regarding Fiscal Year 2003 Deferral Amount, Contract No. 03PB-11251, between BPA and PSE; and Agreement Regarding Payment of Residential Exchange Program Settlement Benefits During Fiscal Years 2007 Through 2011, Contract No. 04PB-11467, between BPA and PSE);

and any and all amendments, supplements, and modifications thereof.

“REP Settlement Benefits” means, for each Fiscal Year, the amount payable in aggregate to Participating IOUs for such Fiscal Year, as such amount is determined pursuant to section 3.

“REP Settlement Implementation Agreement” means each agreement to be entered into pursuant to section 1.4.2 (as such agreement may from time to time be amended, consistent with this Settlement Agreement).

“REP Surcharge” has the meaning given such term in section 3.3.1.

“REP Surcharge Amount” has the meaning given such term in section 3.3.2.

“Requirement Change” has the meaning given such term in section 14.1(vi).

“Residential Exchange Program” or “REP” means the Residential Exchange Program established by section 5(c) of the Act.

“Residential Load” means, with respect to any IOU for any month of a Rate Period, an amount equal to the average of such IOU’s “Qualifying Residential and Small Farm Load” (as that term is defined in the REP Settlement Implementation Agreements) for

- (i) the same month in the “Base Period” (as that term is defined in BPA’s ASC Methodology) applicable to such Rate Period, and
- (ii) the same month in the 12 months following such Base Period.

“Residential Purchase and Sale Agreement” or “RPSA” means a residential purchase and sale agreement between an IOU and BPA pursuant to the REP. Any REP Settlement Implementation Agreement is specifically excluded from the term “Residential Purchase and Sale Agreement” or “RPSA” for purposes of this Settlement Agreement.

“Scheduled Amounts” means the amounts set forth in the table in section 3.1, which are stated in nominal dollars.

“Settlement Agreement” means this document, including its exhibits.

“Settlement Period” means the period from October 1, 2001 through September 30, 2028.

“Surcharged Rates” means (i) any IP Rate and any other rate at which BPA sells power to a DSI, (ii) any NR Rate, and (iii) any other rate established by BPA for the sale of power to which BPA determines, for a given Rate Period, the REP Surcharge should apply. Surcharged Rates will not include any COU Parties’ PF Rates or the Reference Rate.

“Tier 1 Cost Allocator” or “TOCA” has the meaning given such term in the TRM.

“Tier 1 PF Rate” means any Tier 1 Rate (as defined in the TRM) for “general requirements” (as defined in section 7(b)(4) of the Act).

“Tier 2 PF Rate” means any Tier 2 Rate (as defined in the TRM) for “general requirements” (as defined in section 7(b)(4) of the Act).

“Tiered Rate Methodology” or “TRM” means the Tiered Rate Methodology as adopted by BPA in the September 2009 Tiered Rate Methodology Supplemental Rate Proceeding (TRM-12S-A-03), as it may be subsequently modified according to its terms.

“Total Settlement Benefits” means (i) REP Settlement Benefits to be paid by BPA to any IOU, (ii) Tier 1 RECs and Carbon Credits (or the value thereof) to be conveyed by BPA to any IOU, (iii) Interim Agreement True-Up Payment Amounts to be paid by BPA to any IOU pursuant to section 4, (iv) any waivers pursuant to this Settlement Agreement of claims against any IOU, and (v) any and all other payments, benefits, and value to be provided or conveyed to any IOU, all of the foregoing pursuant to this Settlement Agreement.

“WP-07S ROD” means the “2007 Supplemental Wholesale Power Rate Case: Administrator’s Final Record of Decision” issued on September 22, 2008.

“WP-10 ROD” means the “2010 Wholesale Power Rate Adjustment Proceeding: Administrator’s Final Record of Decision” issued on July 21, 2009.

3. ESTABLISHMENT OF REP SETTLEMENT BENEFITS

3.1 Schedule of REP Settlement Benefits and Applicability of Ratesetting Provisions.

3.1.1 Schedule of REP Settlement Benefit Payments to IOUs. BPA will pay in total, as REP Settlement Benefits to the IOUs for each Fiscal Year, the Scheduled Amounts set forth in Table 3.1, except as otherwise provided in section 3.6, in which case BPA will instead pay to the IOUs, as REP Settlement Benefits, the amounts determined pursuant to section 3.6. The amounts set forth in Table 3.1 are not subject to direct or indirect adjustment, whether for inflation, interest, or otherwise, but the Parties recognize BPA may, in establishing rates consistent with this Settlement Agreement, round its rates such that the Scheduled Amounts paid to the IOUs differ from the Scheduled Amounts set forth in Table 3.1 below by no more than one thousand dollars (\$1,000) for any Fiscal Year.

Fiscal Year	(in millions)
2012	\$182.1
2013	\$182.1
2014	\$197.5
2015	\$197.5
2016	\$214.1
2017	\$214.1
2018	\$232.2
2019	\$232.2
2020	\$245.2
2021	\$245.2
2022	\$259.0
2023	\$259.0
2024	\$273.6
2025	\$273.6
2026	\$286.1
2027	\$286.1
2028	\$286.1

3.1.2 BPA Ratesetting Obligations. For each Fiscal Year, BPA will develop rates and refund amounts, in the Rate Proceeding for the applicable Rate Period, such that (i) the COU Parties’ PF Rates and refund amounts will be consistent with sections 3.2 through 3.5, and (ii) rates and refund amounts applicable to Non-Settling Entities will be consistent with BPA’s determination as described in section 3.7(iii). BPA may not recover costs of Scheduled Amounts or Refund Amounts from COU Parties in any manner other than through Applicable Rates or Surcharged Rates.

3.2 Refund Amounts. The amounts set forth in Table 3.2 (the “Refund Amounts”) will be included in the amounts to be recovered through BPA rates for the Payment Period as provided in section 3.3 and will be refunded to PF Customers as provided in section 3.4. The amounts set forth in Table 3.2 are not subject to direct or indirect adjustment, whether for inflation, interest, or otherwise.

Table 3.2 Refund Amounts	
Fiscal Year	Refund Amounts
2012	\$76,537,617
2013	\$76,537,617
2014	\$76,537,617
2015	\$76,537,617
2016	\$76,537,617
2017	\$76,537,617
2018	\$76,537,617
2019	\$76,537,617
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0
2025	\$0
2026	\$0
2027	\$0
2028	\$0

3.3 Inclusion in Rates of REP Recovery Amounts. BPA will establish rates for each Rate Period such that the sum of (i) the Scheduled Amounts plus (ii) the Refund Amounts (such sum, the “REP Recovery Amounts”) are recovered from the Applicable Rates as described in this section 3.3.

3.3.1 Initial Allocation of REP Recovery Amounts by REP Surcharge. Before determining the portion of the REP Recovery Amounts to be recovered from any rates other than the Surcharged Rates, BPA will first calculate a portion of the costs of the REP Recovery Amounts recoverable from the Surcharged Rates by adding a surcharge to the Surcharged Rates (“REP Surcharge”). The REP Surcharge, expressed in dollars per MWh, will be determined as follows:

$$\text{REP Surcharge} = (\text{REP Recovery Amounts plus COU REP Benefits}) * (7.38 / 265,846,587)$$

3.3.2 REP Surcharge Amount.

The REP Surcharge Amount will be determined as provided in the following table. BPA will subtract such REP Surcharge Amount from the REP Recovery Amounts before determining the portion of remaining REP Recovery Amounts to be recovered from any other rates:

REP Surcharge Amount	=	REP Surcharge * Forecasted Surcharged Load
where:		

Forecasted Surcharged Load	=	BPA's forecast of load to be served at the Surcharged Rates for the applicable Fiscal Year as determined in BPA's Rate Proceeding for the Rate Period in which the Fiscal Year occurs.
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3.3.3 Other Rates Subject to Surcharge. If it is determined in a Rate Proceeding for any Rate Period that there are one or more rates (excluding the Surcharged Rates, the COU Parties' PF Rates, and the Reference Rate) from which a portion of the REP Recovery Amounts are recoverable on a basis other than (or in addition to) Pro Rata Load Share, then, before allocating the remaining REP Recovery Amounts on a Pro Rata Load Share basis as provided in section 3.3.4, BPA will subtract such portion from the REP Recovery Amounts that remain after subtracting the REP Surcharge Amount added to the Surcharged Rates pursuant to section 3.3.1. Under no circumstances may a determination as described in this section 3.3.3 result in COU Parties' PF Rates that are higher than such rates would be absent such determination.

3.3.4 Allocation of Remaining Costs of REP Recovery Amounts to Applicable Rates. BPA will allocate to all Applicable Rates on a pro rata load share basis ("Pro Rata Load Share") the REP Recovery Amounts that remain after subtraction of the REP Surcharge Amount and any other amounts recovered pursuant to section 3.3.3. BPA will determine the Pro Rata Load Share for each Applicable Rate by dividing (i) the forecasted loads to be served at such Applicable Rate established in the Rate Proceeding for the Rate Period in which the applicable Fiscal Year occurs by (ii) the sum of all forecasted loads to be served at all Applicable Rates in such Rate Period.

3.3.5 COU Parties' Agreement to Pay Allocated Share of Scheduled Amounts and Refund Amounts. The COU Parties agree that BPA will include in their Tier 1 PF Rates for the Payment Period a portion of the costs of the Scheduled Amounts equal to the COU Parties' Allocated Share, which will be calculated as follows:

COU Parties' Allocated Share	=	$\text{Scheduled Amounts} * (\text{PF Recovery Amount} \div \text{REP Recovery Amounts}) * (\text{sum of the COU Parties' TOCAs} \div \text{the sum of all PF Customer TOCAs}),$ <p>where,</p> $\text{PF Recovery Amount} = \text{the portion of the REP Recovery Amounts BPA allocates to Tier 1 PF Rates pursuant to section 3.3.4}$
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BPA will not include in any COU Parties' PF Rates any portion of the costs of the Scheduled Amounts other than the COU Parties' Allocated Share.

The COU Parties agree that BPA will include in their Tier 1 PF Rates for the Payment Period a portion of the costs of the Refund Amounts equal to the COU Parties' Refund Share, which will be calculated as follows:

COU Parties' Refund Share	=	$\text{Refund Amounts} * (\text{PF Recovery Amount} \div \text{REP Recovery Amounts}) * (\text{sum of the COU Parties' TOCAs} \div \text{the sum of all PF Customer TOCAs}),$ <p style="margin-left: 40px;">where,</p> <p style="margin-left: 40px;">PF Recovery Amount = the portion of the REP Recovery Amounts BPA allocates to Tier 1 PF Rates pursuant to section 3.3.4</p>
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BPA will not include in any COU Parties' PF Rates any portion of the costs of the Refund Amounts other than the COU Parties' Refund Share.

3.3.6 COU Parties' and IOUs' Agreement Concerning REP Settlement Benefits.

- (i) The COU Parties agree to pay a portion of the REP Recovery Amount equal to no more or less than the COU Parties' Allocated Share plus COU Parties' Refund Share, both as determined in accordance with section 3.3.5. If BPA under- or over-recovers REP Recovery Amounts from the COU Parties for a Rate Period, the COU Parties agree to have adjustments to their BPA power bills to correct such under- or over-recovery.
- (ii) The IOUs agree to accept from BPA for each Rate Period an aggregate amount of REP Settlement Benefits that is no more or less than the REP Settlement Benefits for such Rate Period determined in accordance with section 3.1 or 3.6, as applicable. If BPA under- or over-pays to the IOUs in aggregate the REP Settlement Benefits for a Rate Period, the IOUs agree to have reflected in their REP Settlement Benefits for subsequent Rate Periods (or in their REP benefits if such adjustment occurs after the Payment Period), adjustments to correct such under- or over-payment.
- (iii) Each IOU agrees to accept from BPA for each Rate Period an amount of REP Settlement Benefits that is no more or less than the amount of such IOU's IOU-Specific REP Settlement Benefit Amounts determined in accordance with section 6. If BPA pays any IOU an amount of REP Settlement Benefits that is more or less than the amount of such IOU's IOU-Specific REP Settlement Benefit Amounts determined in accordance with section 6, such IOU agrees to have reflected in its IOU-Specific REP Settlement Benefit Amounts for subsequent Rate Periods (or in its REP benefits if such adjustment occurs after the Payment Period), adjustments to correct such under- or over-payment.

3.3.7 Parties' Rights to Information from BPA. BPA will, within 30 days of receiving a request from any Party, provide to such Party the requested information concerning Total Settlement Benefits paid or transferred under, or any adjustments made consistent with section 3.3.6 of, this Settlement Agreement. BPA will provide such information for any period specified by the requesting Party up through the end of the calendar month preceding the calendar month during which BPA receives the request. BPA may comply with its obligations under this

section 3.3.7 by making the requested information available on its Website in a manner accessible to the Parties.

3.4 Crediting of Refund Amounts. For any Fiscal Year in which the Refund Amount is greater than zero, BPA will refund the Refund Amounts by crediting the amounts to PF Customers as follows:

- (i) fifty percent of the Refund Amount for such Fiscal Year will be credited to each PF Customer identified in the table contained in Exhibit B in the amounts set forth in the far right column entry on the row in which such PF Customer's name appears; and
- (ii) the remaining Refund Amount for such Fiscal Year will be credited to PF Customers according to the following formula:

Customer-Specific Tier 1 Refund	=	Tier 1 Customer Refund Amount * Tier 1 Customer TOCA Share
where:		
Tier 1 Customer Refund Amount	=	Refund Amount for such Fiscal Year remaining after application of item (i) of this section 3.4, and
Tier 1 Customer TOCA Share	=	the Tier 1 Customer's TOCA ÷ the sum of all PF Customers' TOCAs, provided, however, that solely for purposes of the calculation of Tier 1 Customer TOCA Share, (a) only the TOCAs of Existing Customers (as that term is defined in the TRM) will be used, and (b) the TOCA for Grant County PUD will be calculated on the basis of an assumed TOCA Load (as that term is defined in the TRM) equal to 41.75 average MW.

- (iii) The manner of payment of such refunds will be determined by BPA in the Rate Proceeding for the applicable Rate Period.

3.5 Sales of Excess Energy. BPA will not, in any Rate Proceeding for any Rate Period,

- (i) apply or assess to sales of excess, surplus, or secondary energy produced by the federal system (including resources acquired by BPA for service at Tier 1 PF Rates or Tier 2 PF Rates) any REP Surcharge, section 7(b)(3) surcharge, or other costs, if and to the extent that any such REP Surcharge, section 7(b)(3) surcharge, or other costs, recover from the sale of such energy a portion of the REP Recovery Amounts, or

- (ii) include any such energy in the Pro Rata Load Share calculation pursuant to section 3.3.4

in any manner that causes

- (a) the COU Parties' Allocated Share, or
- (b) the COU Parties' PF Rates

to be greater than they would have been absent such REP Surcharge, section 7(b)(3) surcharge, other cost, or inclusion in the Pro Rata Load Share calculation. Nothing in this section 3.5 will preclude any application or assessment with respect to any BPA rate insofar as it does not cause the COU Parties' Allocated Share or COU Parties' PF Rates to be greater than they would have been absent such application or assessment. Nothing in this section 3.5 will modify in any way the treatment of Tier 2 PF Rates as provided in the TRM.

3.6 Court Decision Related to Allocation of Costs of REP Settlement Benefits to Non-Settling Entities. If a court with jurisdiction (i) makes a final decision on the merits that precludes the recovery of any REP Settlement Benefits through the rates of Non-Settling Entities as established in the BP-12 Proceeding or the REP-12 Proceeding, or (ii) makes a final decision on the merits of any issue in the Litigation that (a) pertains to the calculation of REP benefits under section 5(c) of the Act or other matters enumerated in section 7.4(i) through 7.4(vii), and (b) is inconsistent with the provisions of this Settlement Agreement, then:

- (1) rates and any refunds insofar as applicable to the Non-Settling Entities will be consistent with the court decision;
- (2) pursuant to the waivers in section 7, the Payment Period Rates will be calculated consistent with sections 3.1 through 3.5 (unaffected by any modification to the calculation of rates and refunds insofar as applicable to the Non-Settling Entities consistent with section 3.6(1)); and
- (3) BPA will pay the IOUs, as REP Settlement Benefits for each Fiscal Year, (A) the costs of REP Settlement Benefits includable pursuant to section 3.6(2) in Payment Period Rates, plus (B) amounts recoverable in rates insofar as applicable to the Non-Settling Entities consistent with section 3.6(1).

3.7 BPA Final Decisions in REP-12 Proceeding. If BPA in the record of decision for its final decision in the REP-12 Proceeding does not include specific determinations that BPA

- (i) will enter into this Settlement Agreement and, pursuant to this Settlement Agreement, pay to the IOUs as REP Settlement Benefits for each Fiscal Year in the entire Payment Period, the Scheduled Amounts set forth in Table 3.1 (absent a final decision by a court with jurisdiction, as described in section 3.6),
- (ii) will include in the COU Parties' PF Rates for the entire Payment Period a portion of the REP Recovery Amount equal to (i) the COU Parties' Allocated Share plus (ii) the COU Parties' Refund Share, both as determined in accordance with section 3.3.5, and

- (iii) may lawfully set rates and establish refund amounts applicable to Non-Settling Entities consistent with the provisions of sections 3.2 through 3.5, as applicable, and will do so for the entire Payment Period (absent a final decision by a court with jurisdiction, as described in section 3.6),

then, irrespective of whether the Administrator has executed this Settlement Agreement, all provisions of this Settlement Agreement and any REP Settlement Implementation Agreement will be void *ab initio*. If BPA fails to issue a record of decision for its final decision in the REP-12 Proceeding by September 1, 2011, then all provisions of this Settlement Agreement and any REP Settlement Implementation Agreement will be void *ab initio*.

3.8 Challenges to BPA Actions to Carry Out Settlement Agreement.

3.8.1 No Party Challenges to BPA Actions to Carry Out Settlement Agreement.

No Party will, except as provided in section 3.8.2:

- (i) challenge BPA actions that implement this Settlement Agreement consistent with its terms, or
- (ii) assert that BPA should, for the Settlement Period (or any portion of the Settlement Period), make payments to, or set rates of, any entity in a manner inconsistent with this Settlement Agreement;

provided, however, that nothing in this Settlement Agreement will limit any Party's right to (a) oppose any arguments that BPA should establish rates in a manner inconsistent with this Settlement Agreement, or (b) challenge any other BPA actions.

3.8.2 Responses to Others' Challenges. If any entity proposes or asserts in any proceeding that payments to or by, or rates applicable to, any entity for the Settlement Period (or any portion of the Settlement Period) should be made or established so as to be inconsistent with this Settlement Agreement, then each Party will have the right to assert any claims or arguments it may have regarding the payments or rates affected by such proposal or assertion. If any entity so proposes or asserts in any BPA proceeding, then BPA will provide thereafter in such proceeding an opportunity for each Party to submit direct and responsive testimony and other filings to affirmatively establish any claims or arguments it may have regarding the payments or rates affected by such proposal or assertion.

3.8.3 Limitation on Remedies for Claims Related to Costs of Service to DSIs. If a court with jurisdiction makes a final decision with respect to any past, current, or future claim against BPA or any DSI with respect to inclusion in any COU Parties' PF Rates of any costs or amounts arising from any rate at which BPA serves any DSI, none of the costs of any remedy for such claim may adversely affect, except as provided in section 3.6, the Total Settlement Benefits of any IOU.

4. INTERIM AGREEMENT TRUE-UP PAYMENT AMOUNTS

BPA will, at the time and in a manner consistent with the provisions of the 2008 Residential Exchange Interim Relief and Standstill Agreements (Contract Nos. 08PB-12438, 08PB-12439, 08PB-12441, 08PB-12442) ("Interim Agreements"), pay the amounts determined by BPA, pursuant to the WP-07S ROD and the "2010 BPA Rate Case Wholesale Power Rate Final Proposal: Lookback

Recovery and Return” (WP-10-FS-BPA-07), to be owed to the applicable IOUs as Interim Agreement True-up Payment Amounts (“Interim Agreement True-up Payment Amounts”) under the Interim Agreements; *provided*, that BPA payment of Interim Agreement True-up Payment Amounts pursuant to section 9(a)(1) of each Interim Agreement will commence no later than as follows:

- (i) If no petition or other legal action is filed in a court with jurisdiction for review of the lawfulness of this Settlement Agreement, then payments by BPA of such amounts will commence 95 calendar days after the Effective Date; or
- (ii) If one or more petitions or other legal actions are filed in a court with jurisdiction for review of the lawfulness of this Settlement Agreement, then BPA will commence payment of such amounts 30 days after a final, non-appealable order by such court that dismisses such actions or challenges or that otherwise upholds this Settlement Agreement, *provided*, however, that if such final, non-appealable order upholds this Settlement Agreement in less than all respects, BPA will make such payments to the maximum extent consistent with such final, non-appealable order.

Upon the satisfaction of the condition in (i) or (ii) above, the True-up Payment Event described in section 8 of such Interim Agreements will be deemed to have occurred. In addition, if Congress adopts legislation as contemplated by section 8 of this Settlement Agreement, then any applicable IOU may elect to receive its Interim Agreement True-up Payment Amount by providing BPA with written notice of such election, in which case, (a) the True-up Payment Event described in section 8 of the Interim Agreement of such electing IOU will be deemed to have occurred and the Interim Agreement True-up Payment Amount of such IOU will be deemed due and payable to such IOU, and (b) BPA will pay to such IOU its Interim Agreement True-up Payment Amount no later than 30 days after BPA’s receipt of such notice.

As specified in the Interim Agreements, the applicable IOUs’ respective Interim True-up Payment Amounts are the principal amounts set forth in Table 4, together with applicable interest:

Table 4 (Interim True-up Payment Principal Amounts)	
IOU	Interim True-up Payment Principal Amounts
Avista	\$2,410,000
NorthWestern Energy	\$10,199,000
Portland General	\$12,007,000
PSE	\$56,994,000

The Interim Agreement True-up Payment Amounts are in addition to and not a component of the REP Settlement Benefits provided for in section 3.

5. ENVIRONMENTAL ATTRIBUTES

5.1 IOUs. Consistent with and pursuant to Exhibit C, BPA will convey certain Tier 1 RECs and Carbon Credits (or the revenues generated by the sale of such) for each Fiscal Year to IOUs that are Participating IOUs for such Fiscal Year; *provided*, however, if any Non-Settling

Entity does not amend Exhibit H of its CHWM Contract in the same manner described for COU Parties in section 5.2, then BPA will (i) convey to the IOUs the value of such Non-Settling Entity's share of the Tier 1 RECs and Carbon Credits that would otherwise have been available for transfer to the IOUs by paying to the IOUs the value of such Tier 1 RECs and Carbon Credits, and (ii) to the maximum extent possible, recover the cost of such conveyance in rates applicable to such Non-Settling Entity pursuant to BPA's ratemaking authority as provided in section 9 in Exhibit H to such Non-Settling Entity's CHWM Contract.

5.2 COU Parties. Each COU Party hereby agrees that Exhibit H of its CHWM Contract is, as of the Effective Date, replaced in its entirety consistent with the template form of Exhibit H set forth as Exhibit H to this Settlement Agreement. BPA will, within 60 days of the Effective Date, deliver to each COU Party a replacement Exhibit H to its CHWM Contract identical in form to the Exhibit H attached to this Settlement Agreement except for the insertion of the appropriate contract number and customer name, which will be effective from the Effective Date without further action or signature by BPA or the COU Party.

5.3 COUs That Are Non-Settling Entities. BPA will ask each Non-Settling Entity that has a CHWM Contract to amend Exhibit H of its CHWM Contracts in the same manner described in section 5.2 for COU Parties.

6. ALLOCATION TO IOUS OF REP SETTLEMENT BENEFITS

The REP Settlement Benefits to be paid to the IOUs in accordance with section 3, together with any Environmental Attributes (or their value) to be transferred to the IOUs in accordance with section 5, will be distributed among the IOUs consistent with this section 6 and each IOU will, for each Fiscal Year, receive its IOU-Specific REP Settlement Benefit Amount and its share of any Environmental Attributes (or their value) as determined in accordance with this section 6.

For each Fiscal Year, BPA will develop rates, in the Rate Proceeding for the applicable Rate Period, such that each IOU will be paid its IOU-Specific REP Settlement Benefit Amount as calculated for such Fiscal Year pursuant to this section 6.

6.1 Determination of IOU-Specific REP Settlement Benefit Amount.

6.1.1 Calculation of IOU-Specific REP Settlement Benefit Amounts. For each Fiscal Year, in the Rate Proceeding for the applicable Rate Period, each IOU's IOU-Specific REP Settlement Benefit Amount will be calculated according to the following formula:

IOU-Specific REP Settlement Benefit Amount for such IOU for such Fiscal Year	=	the algebraic sum of (i) the product of (a) the IOU Specific Unconstrained Amount for such IOU multiplied by (b) the Constrained Total Benefit Ratio for such Fiscal Year, and (ii) the amount of any adjustment for such IOU pursuant to section 6.2.
where:		

IOU-Specific Unconstrained Amount for an IOU for a Fiscal Year	=	the product of (i) the amount (if any) by which such IOU's ASC for such Fiscal Year exceeds the Reference Rate for such Fiscal Year multiplied by (ii) the sum of such IOU's Residential Loads for such Fiscal Year
Constrained Total Benefit Ratio for such Fiscal Year	=	the REP Settlement Benefits for such Fiscal Year divided by the Aggregate Unconstrained Amount for such Fiscal Year
Reference Rate for a Fiscal Year	=	the Base Rate for such Fiscal Year as determined in the BPA Rate Proceeding for the applicable Rate Period, except as otherwise provided in section 6.1.2
Aggregate Unconstrained Amount for a Fiscal Year	=	the sum of the IOU-Specific Unconstrained Amounts for all IOUs for such Fiscal Year

If the Aggregate Unconstrained Amount for the applicable Fiscal Year is greater than or equal to the REP Settlement Benefits determined for that Fiscal Year pursuant to section 3, then the IOU-Specific REP Settlement Benefit Amount for such Fiscal Year will not be subject to recalculation pursuant to section 6.1.2.

If the Aggregate Unconstrained Amount for the applicable Fiscal Year is less than the REP Settlement Benefits determined for that Fiscal Year pursuant to section 3, then the IOU-Specific REP Settlement Benefit Amounts will be recalculated as provided in section 6.1.2.

6.1.2 Recalculation of IOU-Specific REP Settlement Benefit Amounts. If the Aggregate Unconstrained Amount determined in the initial calculation for any Fiscal Year in accordance with section 6.1.1 is less than the REP Settlement Benefits determined for that Fiscal Year pursuant to section 3, the IOU-Specific REP Settlement Benefit Amount for each IOU will be calculated in the same manner provided in section 6.1.1, except that the Reference Rate will be reduced such that the Aggregate Unconstrained Amount for the applicable Fiscal Year, as determined in accordance section 6.1.1, will equal (or be as nearly equal to as possible without being less than) the REP Settlement Benefits for such Fiscal Year.

6.2 IOU Settlement Adjustments. The IOU-Specific REP Settlement Benefit Amount for a Participating IOU for any Fiscal Year will include any adjustments made pursuant to this section 6.2.

6.2.1 Downward Adjustment for IOU Adjustment Amounts. For any Participating IOU with a remaining IOU Adjustment Amount for a given Fiscal Year, the IOU-Specific REP Settlement Benefit Amount of such Participating IOU for such Fiscal Year will include a downward adjustment equal to the lesser for such Fiscal Year of:

- (i) the Maximum IOU Annual Settlement Adjustment Amount for such Participating IOU, or
- (ii) the remaining IOU Settlement Adjustment Amount Balance for such Participating IOU, if any,

provided, that if and to the extent any such downward adjustment would result in the IOU-Specific REP Settlement Benefit Amount for such Participating IOU for such Fiscal Year that is below zero,

such downward adjustment will not be made to such extent, but will remain in the IOU Settlement Adjustment Amount balance at the end of such Fiscal Year.

6.2.2 Upward Adjustments to Allocate IOU Adjustment Amounts. The amount of each downward adjustment made pursuant to section 6.2.1 in the IOU-Specific REP Settlement Benefit Amount for a Participating IOU for a Fiscal Year will be allocated among the recipient Participating IOUs (as specified in Table 6.2.2) for such Fiscal Year in proportion to the respective IOU-Specific Unconstrained Amounts for such Fiscal Year for such recipient Participating IOUs thereby increasing the amounts to be included in such other Participating IOUs' IOU-Specific REP Settlement Benefit Amounts for such Fiscal Year. For the avoidance of doubt, a Participating IOU whose IOU-Specific REP Settlement Benefit Amount includes a downward adjustment pursuant to section 6.2.1 may also have pursuant to this section 6.2.2 an increase included in its IOU-Specific REP Settlement Benefit Amount for such Fiscal Year as a result of the inclusion of a downward adjustment to the IOU-Specific REP Settlement Benefit Amount of another Participating IOU for such Fiscal Year. Attached to this Settlement Agreement as Exhibit D is a hypothetical example of the operation of section 6.1 and this section 6.2. Such Exhibit D is for illustrative purposes only.

Table 6.2.2 (IOU Adjustments)	
Participating IOUs Subject to Downward Adjustment	Participating IOUs Receiving Amounts from Downward Adjustment (recipient)
Avista	NorthWestern Energy, Portland General, PSE
Idaho Power (to the extent of 92% of any downward adjustment of Idaho Power)	Avista, NorthWestern Energy, PacifiCorp, Portland General, and PSE
Idaho Power (to the extent of 8% of any downward adjustment of Idaho Power)	Avista, PacifiCorp, Portland General, and PSE
PacifiCorp	NorthWestern Energy, Portland General, and PSE
Portland General	NorthWestern Energy and PSE
PSE	NorthWestern Energy

6.2.3 Definitions and Amounts Related to IOU Adjustments Under Section 6.2.

As used in this section 6.2, the following terms will have the meanings specified below:

- (i) "Initial IOU Adjustment Amount" means an amount for each of the following IOUs equal to the following respective amounts:

Table 6.2.3(i) (Initial IOU Adjustment Amount)	
IOU	Initial IOU Adjustment Amount
Avista	\$22,985,810
Idaho Power	\$45,140,170

PacifiCorp	\$66,721,315
Portland General	\$4,669,222

- (ii) “IOU Adjustment Amount Balance” for an IOU will be initially set equal to its Initial IOU Adjustment Amount, if any, and will thereafter be reduced pursuant to this section 6.2 until extinguished; provided, the unextinguished amount of the IOU Adjustment Amount Balance will be increased by interest on the amount thereof, accrued at the rate of three percent, compounded annually, until the earlier of the extinguishment of such Initial Adjustment Amount or September 30, 2028; *provided further*, such interest will not commence to accrue on the IOU Adjustment Amount Balance for Idaho Power unless and until Idaho Power begins to receive REP Settlement Benefits from BPA. The IOU Adjustment Amount Balance subject to the foregoing interest calculation for a given Fiscal Year will be the quotient resulting from (a) summing IOU Adjustment Amount Balance as of the beginning of such Fiscal Year and the IOU Adjustment Amount Balance at the end of such Fiscal Year, and (b) dividing the resulting sum by two. Such interest will be added to IOU Adjustment Amount Balance on the first day of the Fiscal Year following the Fiscal Year to which such interest applies.
- (iii) “Maximum IOU Annual Adjustment Amount” means for each of the following IOUs an amount for any Fiscal Year equal to the following respective amounts set forth for such IOU:

Table 6.2.3(i) (Maximum IOU Annual Adjustment Amount)	
IOU	Maximum IOU Annual Adjustment Amount for a Fiscal Year
Avista	\$2,004,778
PacifiCorp	\$8,442,636
Portland General	\$1,237,583

- (iv) “Maximum IOU Annual Adjustment Amount” means, for Idaho Power for a given Fiscal Year, an amount equal to fifty percent of the IOU-Specific REP Settlement Benefit Amount for Idaho Power for such Fiscal Year before any adjustment thereto made pursuant to this section 6.2.

6.2.4 NorthWestern Energy Adjustments for Fiscal Year 2012 Through Fiscal Year 2016. For each of the first four Fiscal Years of the Payment Period (Fiscal Year 2012 through Fiscal Year 2015), (i) the IOU-Specific REP Settlement Benefit Amount for NorthWestern Energy will be increased by \$766,000; and (ii) the aggregate IOU-Specific REP Settlement Benefit Amounts for the Participating IOUs (exclusive of NorthWestern Energy and Idaho Power) for such Fiscal Year will be reduced by \$766,000. For each of the fifth and sixth Fiscal Years of the Payment Period (Fiscal Years 2016 and 2017), (a) the IOU-Specific REP Settlement Benefit Amount for NorthWestern Energy will be increased by \$383,000; and (b) the aggregate IOU-Specific REP Settlement Benefit Amounts for the Participating IOUs (exclusive of NorthWestern Energy and

Idaho Power) for such Fiscal Year will be reduced by \$383,000. Each reduction described in the preceding two sentences will be allocated among the Participating IOUs (exclusive of NorthWestern Energy and Idaho Power) for such Fiscal Year in proportion to the respective IOU-Specific Unconstrained Amounts for such Fiscal Year for such Participating IOUs, thereby decreasing the amounts to be included in the IOU-Specific REP Settlement Benefit Amounts for each of the Participating IOUs (exclusive of NorthWestern Energy and Idaho Power) for such Fiscal Year. Any adjustment to be made pursuant to this section 6.2.4 for any Fiscal Year for which NorthWestern Energy is not a Participating IOU will be deferred until the earliest Fiscal Year for which (a) NorthWestern Energy is a Participating IOU and (b) no adjustment is to otherwise be made pursuant to this section 6.2.4 for such Fiscal Year; provided, that, any deferral pursuant to this section 6.2.4 will be implemented such that adjustments for each Fiscal Year in a Rate Period will be equal and will not exceed \$766,000 in any Fiscal Year.

6.2.5 No Survival of IOU Adjustment Amounts. At the end of the Payment Period, any IOU Adjustment Amount Balance then remaining will be deemed fully extinguished, and no IOU will have any obligation to pay such IOU Adjustment Amount Balance or to offset such IOU Adjustment Amount Balance against other payments or entitlements that it may otherwise be entitled to receive.

6.3 Allocation of Environmental Attributes. Any Environmental Attributes (or the value thereof) to be transferred to the IOUs for any Fiscal Year in accordance with section 5 will be allocated among the Participating IOUs for such Fiscal Year in proportion to the respective IOU-Specific REP Settlement Benefit Amounts for such Fiscal Year for such Participating IOUs as calculated pursuant to sections 6.1.1 and 6.1.2 and without regard to any adjustments to IOU-Specific REP Settlement Benefit Amounts pursuant to section 6.2.

6.4 Restriction on Inclusion of New Resources in IOUs' ASC. Each IOU waives, as provided in this section 6.4, the right to include in its ASC, for any Exchange Period during the Payment Period, the cost of any major resource addition forecasted to occur during the Exchange Period as allowed by the ASC Methodology. Such waiver shall apply only to major resource additions that become, or are scheduled to become, commercially operational during such Exchange Period, and will be and remain in effect only with respect to such major resource additions for a period of no more than 24 months concurrent with a Rate Period with a duration of 24 months (unless applicable to an Exchange Period concurrent with a Rate Period with a duration 36 months, in which case the waiver will remain in effect for the duration of such Exchange Period, provided there has been no previous Rate Period with a duration longer than 24 months). For clarification, all major resource additions that become commercially operational before an Exchange Period, whether during the Base Period or after the Base Period but prior to such Exchange Period, will be allowed in ASC for such Exchange Period as provided in the ASC Methodology. This waiver will not apply to any Exchange Period for which BPA sets any rates in accordance with section 3.6. As used in this section 6.4, the terms "ASC Methodology" and "Exchange Period" have the meanings given such terms in Exhibit A attached hereto (Form of REP Settlement Implementation Agreement).

6.5 Application of Sections 6.1 Through 6.4 to Court Decision Related to Litigation or Settlement Agreement for Non-Settling Entities. If a court with jurisdiction (i) makes a decision that has the effect of precluding BPA from establishing rates or refunds applicable to Non-Settling Entities in accordance with sections 3.3 and 3.4, or (ii) makes a decision on the merits of any issue in the Litigation that alters the determinations made by BPA in the WP-07S ROD with respect to any matter enumerated in section 7.4(i), 7.4(iii), 7.4(iv), or 7.4(v), then the allocation to and

among the IOUs of any portion of refunds to or from Non-Settling Entities will be made prospectively and will take into account the court's decision and the specific IOU or IOUs affected by the court's decision. For example, in implementing a court decision that alters BPA's decision with respect to Lookback Claims for a specific IOU, but not other IOUs, the REP Settlement Benefits of such other IOUs will not be adversely affected by such decision either directly or indirectly.

7. WAIVERS AND SATISFACTION OF OBLIGATIONS AND CLAIMS

7.1 Acknowledgments. Each Party understands that the Litigation may not be dismissed or may continue notwithstanding this Settlement Agreement. Each Party also understands that the Settlement Agreement and the rates for wholesale power that BPA establishes consistent with this Settlement Agreement may be subject to judicial review. In connection with the waivers and releases set forth in this Settlement Agreement, each Party understands and accepts the risk that Non-Settling Entities may achieve, through litigation, results that assign costs or benefits to Non-Settling Entities that differ from the costs and benefits assigned to the Parties under this Settlement Agreement.

In connection with the waivers and releases set forth in this Settlement Agreement, each Party acknowledges that it is aware that it may hereafter discover facts in addition to or different from those that it knows or believes to be true with respect to the subject matter of this Settlement Agreement, but it is each Party's intention, except as expressly retained in section 7.5 and as provided in section 10.2, that all claims encompassed by the subject matter of this Settlement Agreement, including those that it may not know or suspect to exist at the time of execution of this Settlement Agreement, will be extinguished by the waivers and releases set forth in this Agreement. The waiver and releases set forth in this Settlement Agreement will remain in effect notwithstanding the discovery or existence of any such additional or different facts relating to the subject matter of this Settlement Agreement.

7.2 COU Group's Waivers. Each entity in the COU Group waives any and all past or future rights it may have to have included in the COU Parties' PF Rates an amount of REP Benefit Costs that is different from the COU Parties' Allocated Share as defined in section 3. This waiver includes (i) a waiver of any claims that BPA should set rates inconsistent with this Settlement Agreement, (ii) a waiver of statutory rights or rate protections greater than are provided for in this Settlement Agreement, notwithstanding any past or future legal interpretations of section 5(c), 7(b)(2), or 7(b)(3) of the Act by BPA, any court, or any other entity, and (iii) except as provided in section 10.6, a waiver of any existing or future rights to refunds, credits, cash payments, or any other adjustments that, if applied, would allow COU Parties to bear REP Benefit Costs that are lower than the COU Parties' Allocated Share. Each entity in the COU Group intends and agrees that the COU Parties' PF Rates will reflect the COU Parties' Allocated Share provided for in section 3 regardless of whether BPA is required to reflect a different amount of REP Benefit Costs in the rates applicable to Non-Settling Entities. Each entity in the COU Group also intends and agrees that (a) the REP Settlement Benefits paid to the IOUs under this Settlement Agreement will be consistent with section 3 regardless of any REP Benefit Costs reflected in the rates applicable to Non-Settling Entities, and (b) such REP Settlement Benefits will be allocated among the IOUs as provided in this Settlement Agreement.

7.3 IOU Group's Waivers. Except as provided in section 7.5, each IOU waives any and all past or future rights it may have to receive REP Benefit Payments for the Payment Period that differ from its share of the REP Settlement Benefits provided for in this Settlement Agreement. This waiver includes (i) a waiver of any claims that BPA should set rates inconsistent with this

Settlement Agreement, (ii) a waiver of any statutory rights to REP Benefit Payments for the Payment Period that are greater than the REP Settlement Benefits provided for in this Settlement Agreement, notwithstanding any past or future legal interpretations of section 5(c), 7(b)(2), or 7(b)(3) of the Act by BPA, any court, or any other entity, and (iii) except as provided in section 10.6, a waiver of any existing or future right to refunds, credits, cash payments, or any other adjustments that, if applied, would otherwise change the COU Parties' Allocated Share. Each entity in the IOU Group that is not an IOU waives any right to assert in any administrative or judicial proceeding that REP Benefit Payments for any IOU for the Payment Period should differ from its share of the REP Settlement Benefits provided for in this Settlement Agreement.

Each entity in the IOU Group intends and agrees that each IOU's share of REP Settlement Benefits for the Payment Period will be as provided for in this Settlement Agreement. No entity in the IOU Group will seek to have included in COU Parties' PF Rates costs of REP Settlement Benefits that exceed the COU Parties' Allocated Share irrespective of whether BPA is required to reflect a different amount of REP Benefit Costs in the rates applicable to Non-Settling Entities.

7.4 Satisfaction of Claims and Fulfillment of Obligations. Except as provided in section 7.5, each Party agrees, as to each other Party, that the rights and obligations undertaken by the Parties in accordance with this Settlement Agreement fully satisfy, discharge, and extinguish any and all obligations, claims, and liabilities among the Parties with respect to:

- (i) all benefits provided to any IOU for the period October 1, 2001, through September 30, 2011, under section 5(c) of the Act or under any prior settlement or purported settlement of rights under section 5(c) of the Act, whether pursuant to a BPA power sales contract (including amendments, novations, and replacements thereof) or otherwise and whether in the form of payment, power delivery, buyout of power delivery, or otherwise;
- (ii) all benefits (other than Total Settlement Benefits) provided or to be provided to any IOU for the Payment Period under section 5(c) of the Act;
- (iii) any Lookback Claims against any IOU or any Lookback Claims payments or recovery from any IOU, except as otherwise provided in section 7.6;
- (iv) any Load Reduction Agreement or Load Reduction Agreement payment or recovery;
- (v) any Deemer Amount;
- (vi) the manner in which BPA's rates, obligations, or authorities (including the implementation of section 7(b)(2) or 7(b)(3) of the Act) were used or applied or should have been used or applied in the determination, payment, or collection of any amount referred to in item (i), (ii), (iii), (iv), or (v) above; and
- (vii) any overcharge by BPA of any COU for any amount referred to in item (i), (ii), (iii), (iv), (v) or (vi) above.

7.5 IOUs' Retained Rights and Claims. Notwithstanding the provisions of sections 7.3, 7.4, 7.7, and 7.8, but subject to section 3.8, each IOU expressly retains, and does not waive,

- (i) any and all rights it has as of the Effective Date, or may later acquire, to receive from BPA the Non-Settling Entities' portion of the costs of REP Benefit Payments for the Settlement Period; and
- (ii) any and all rights, claims, and defenses with respect to Non-Settling Entities in the Litigation or in any future proceeding or litigation.

7.6 Permitted Lookback Amounts. Notwithstanding the satisfaction, discharge, and extinguishment of any and all other Lookback Claims pursuant to section 7.4(iii) above, the Parties agree, as among themselves and subject to section 10.2, that BPA will continue to deduct Lookback Amounts from REP benefits paid to the IOUs for the period through September 30, 2011, and continue to pay Lookback Amounts to COUs for the period through September 30, 2011, all in accordance with the WP-10 ROD and the Lookback Recovery and Return document in the 2010 BPA Rate Case Wholesale Power Rate Final Proposal (WP-10-FS-BPA-07).

7.7 Further Agreements and Waivers Related to Satisfied Claims. Without limiting the generality of section 7.4 above, the Parties specifically agree that:

- (i) PSE and PacifiCorp will retain any payments previously received under their respective Load Reduction Agreements;
- (ii) all Lookback Claims and Deemer Amounts owed by any IOU are fully satisfied, discharged, and extinguished as of October 1, 2011; and
- (iii) each Party, as to each other Party, waives any and all claims for damages, refunds, disgorgement, recoupment, restitution, setoff, costs, attorneys' fees, or other monetary or non-monetary remedies or relief (in the Litigation or otherwise) relating to the matters identified in section 7.4(i), (ii), (iii), (iv), (v), (vi), or (vii) above.

7.8 Waivers Related to Interim Agreement True-Up Payment Amounts and Environmental Attributes. Each Party, as to each other Party, waives any and all past or future claims for damages, refunds, disgorgement, recoupment, restitution, setoff, costs, attorneys' fees, or other monetary or non-monetary remedies or relief it may have related to:

- (i) the payment to any IOU of any Interim Agreement True-up Payment Amounts in accordance with section 4; and
- (ii) the provision to any IOU of certain Tier 1 RECs and Carbon Credits (or the value thereof) in accordance with section 5;

provided, that no IOU waives its rights to enforce payment to such IOU of any Interim Agreement True-up Payment Amounts in accordance with section 4 or waives its rights to enforce provision to such IOU of certain Tier 1 RECs and Carbon Credits (or the value thereof) in accordance with section 5.

7.9 No Release of Settlement Obligations. Nothing in this section 7 releases any Party from its obligations as set forth in this Settlement Agreement.

7.10 No Challenges to Settlement Agreement. No Party will directly or indirectly challenge, either in whole or in part, the legality of this Settlement Agreement or any REP Settlement Implementation Agreement. If any person or entity challenges, either in whole or in part, the legality of this Settlement Agreement or any REP Settlement Implementation Agreement,

no Party will support, directly or indirectly, any such challenge and each Party will cooperate as appropriate in efforts to oppose or have dismissed such challenges.

8. LEGISLATION

The entities in the IOU Group and the COU Group, in accordance with this section 8, will work together, directly or through associations, to urge the U.S. Congress to pass legislation expeditiously to affirm the Settlement Agreement and direct BPA to perform it according to its terms, in order to minimize the risk of protracted litigation arising from the Settlement Agreement.

The process for seeking such legislation will be developed through consultations among a committee of interested principals of Parties (“Committee”) and legislative specialists for Parties. Pursuant to such process the Parties will jointly work in consultation with members of the Northwest Congressional delegation on such legislation. BPA will participate in such process only to the extent permitted by law.

During the process seeking such legislation, each Party will refrain from proposing or supporting legislative language that will, if adopted, have any of the following effects:

- (i) materially change such legislation, or
- (ii) add provisions to such legislation, or condition such legislation on additional provisions or additional legislation, that will have a material adverse effect on any Party.

During the process seeking such legislation, each Party also will refrain from proposing or introducing (a) committee report language or floor statements inconsistent with such legislation, or (b) any competing or alternative legislation inconsistent with such legislation.

If, during the process seeking legislative authorization, a Party concludes that continued pursuit or adoption of the legislative authorization will have any effects of the type described above in items (i) or (ii), then the Party will consult with the Committee (and the legislative specialists) regarding the Party’s conclusion. If such consultation does not address such conclusion to the Party’s satisfaction, then the Party will notify each member of the Committee that the Party will no longer support, and may oppose, the request for legislative authorization. The Party giving such notice will be excused from its obligations under this section 8. Such Party will not be excused from any other of its obligations under this Settlement Agreement.

For purposes of this section 8 only, the terms “Party” and “Parties” will not include BPA; provided, however, if and to the extent consistent with law and Administration policy, BPA will support legislation to affirm this Settlement Agreement.

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 participate in binding arbitration, as provided in this section 9, of any alleged breach of this Settlement Agreement to the maximum extent permitted by law, and, if legislation as contemplated by section 8 is not in effect, in compliance with BPA’s Binding Arbitration Policy. For any dispute (i) 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), or (ii) that concerns an alleged breach of this Settlement Agreement but is not subject to binding

arbitration under this section 9, 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, 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 and will not 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 9.3.2 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. Notwithstanding section 13.1.1, 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 decision regarding whether, consistent with section 9.1, BPA will engage in binding arbitration with respect to each matter identified in the Dispute Notice. Any statement by BPA in accordance with this section 9.2.3 that BPA will 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 will engage in binding arbitration will be resolved by binding arbitration in accordance with Exhibit E;
- (ii) disputes between or among COU Parties and IOUs within the scope of section 3.3.6 will be resolved by binding arbitration in accordance with Exhibit E and the additional terms set forth in section 9.4; and
- (iii) all other disputes (except any disputes within the scope of section 14.3) will not be subject to binding arbitration under this section 9.

In any arbitration under this section 9, the Arbitrator (as defined in section 4 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 or are permitted to participate in the arbitration as provided in sections 2.1 and 2.2 of Exhibit E will be referred to in this section 9 and in Exhibit E as “Participants.”

9.3 Binding Arbitration Process with Legislation. This section 9.3 will govern disputes concerning any alleged breach of this Settlement Agreement only if legislation as contemplated by section 8 is in effect. Claims relating to Administrator determinations made in setting rates will be subject to arbitration under this 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 Challenges to Applicability of Binding Arbitration Provisions. If in its statement in accordance with section 9.2.3, BPA states that it will not engage in binding arbitration with respect the matter(s) identified in the Dispute Notice, any dispute regarding 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. Claims by any other Notice Recipient that the matter(s) submitted are not subject to binding arbitration under this Settlement Agreement will be resolved as provided in item (i) of section 2.3 of Exhibit E. 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.

9.3.2 Binding Arbitration Policy Not Applicable; Administrative Dispute Resolution Act Not Followed. BPA will not apply BPA’s Binding Arbitration Policy or follow the Administrative Dispute Resolution Act for disputes subject to binding arbitration under this section 9.3.

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 in accordance with section 9.2.3, that it will not engage in binding arbitration, and therefore is not a Participant in such arbitration.

9.4.1 Binding Arbitration Within the Scope of Section 3.3.6. If (i) BPA's statement in accordance with section 9.2.3 states that BPA will not 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 with 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) any COU Party and any IOU, as applicable, will be entitled to the absolute defenses set forth in section 9.4.4;
- (d) the Arbitrator's power to grant remedies will be as set forth in section 9.4.5; and
- (e) the Parties' obligations with respect to implementing the remedies determined by the Arbitrator will be as set forth in section 9.4.6.

Claims by any Notice Recipient (not including BPA) that the matter(s) submitted are not subject to binding arbitration under this section 9.4 will be resolved as provided in section 2.3 of Exhibit E. 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 in the 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 to Section 9.4.

- (i) Except as otherwise provided in this section 9.4.3, BPA will not participate in any arbitration conducted pursuant to this section 9.4. Accordingly, BPA will not be bound by or otherwise subject to the outcome of the arbitration beyond BPA's responsibility to adjust Participants' bills in accordance with the Arbitrator's decision pursuant to section 9.4.6.
- (ii) In any arbitration conducted pursuant to this section 9.4, the Arbitrator may request from BPA (a) relevant information in BPA's possession or control, and (b) testimony from BPA witnesses with knowledge relevant to the dispute. Based on his or her consistently applied determinations in such arbitration as to whether the requested information or testimony is relevant, not unduly burdensome, not commercially sensitive, and not subject to privilege or other restrictions on disclosure, the General Counsel of BPA will determine whether to grant or deny such requests in whole or in part. Requests for testimony from a specific BPA witness are subject to approval by the General Counsel of BPA and must be accompanied by a summary of the testimony desired. In any arbitration in which a BPA witness is made available to a Participant or the Arbitrator, counsel from BPA may participate in such arbitration to defend and represent such witness.
- (iii) Any information provided by BPA or BPA witnesses solely in an arbitration conducted pursuant to this section 9.4 will be used only in such arbitration, and will not be used or cited in any other proceeding.

9.4.4 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.

9.4.5 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 there has been a breach of one or more of the 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 9.4.5, 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.
- (vi) The Arbitrator will have no authority to provide a remedy that is binding on BPA or any entity that is neither a Party nor a Participant; provided, however, that the foregoing limitation on the Arbitrator's authority does not limit or modify BPA's obligations under section 9.4.6(iii).

9.4.6 Parties' Actions to Implement the Arbitrator's Determination.

- (i) 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 this section 9.4.
- (ii) For Participants that are not Parties to this Settlement Agreement, participation in an arbitration will constitute 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 the Arbitrator's determination with respect to such arbitration as provided in this section 9.4.

- (iii) BPA agrees that it will make any and all such adjustments in accordance with the Parties' or Participants' requests under this section 9.4.6; *provided, however,* that
 - (a) BPA will make such adjustments only to the extent BPA concludes that the billing adjustments will not affect any Notice Recipient that is neither a Party nor a Participant;
 - (b) BPA will provide credits on power bills in accordance with this section 9.4.6 only to the extent BPA has first received payment from the Parties or Participants required by an Arbitrator's determination pursuant to this section 9.4 to make such payments; and
 - (c) BPA's obligation to implement the Arbitrator's order will be limited to the billing adjustments identified in this section 9.4.6 and BPA will have no obligation to collect from or pay Notice Recipients that cease to be BPA power customers.

Each Participant waives all rights to challenge BPA's implementation of billing adjustments made consistent with the applicable Arbitrator's determination pursuant to this section 9.4.

9.4.7 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.

10. PARTIES' ACTIONS WITH RESPECT TO LITIGATION; COURT DETERMINATION OF UNENFORCEABILITY OF SETTLEMENT.

10.1 Preservation of Arguments in Litigation. Each Party that is a party to the Litigation will work cooperatively with the other Parties to seek a stay or other procedural order that preserves (until the later of (i) 91 days after the Effective Date, or (ii) any suit to challenge BPA's execution of this Settlement Agreement has been finally decided or dismissed) all claims and defenses in the Litigation regarding any claims sought to be satisfied or rendered moot as a result of this Settlement Agreement. This Settlement Agreement is not intended to, and does not, affect any claim or defense in the Litigation pertaining to service to any DSI or pertaining to the rates applicable to any DSI. Upon the later of (a) 91 days after the Effective Date, or (b) the date on which any court decision or legislative action finally affirms or authorizes BPA's execution or implementation of this Settlement Agreement, each Party will work cooperatively with the other Parties to seek to dismiss all claims and defenses that the Parties sought to have stayed or preserved pursuant to this section 10.1.

10.2 Retention of Claims and Defenses as Against Non-Settling Entities. No claim against any Non-Settling Entity will be deemed settled by this Settlement Agreement, and each of the Parties retains any and all claims and defenses it has or may claim to have against any Non-Settling Entity. Each Party agrees, however, that it will assert such claims, defenses, or rights only in accordance with section 3.8.

10.3 Failure to Stay Litigation. With respect to any part of the Litigation that is not stayed as described in section 10.1, any Party may, notwithstanding section 3.8, advance any

argument in the Litigation, except that no Party may challenge BPA actions that implement this Settlement Agreement consistent with its terms. Nothing in this section 10.3 will in any way modify or limit the waivers set forth in section 7.

10.4 Expedited Review of Challenges to BPA's Execution of Settlement Agreement. If any entity challenges in any court BPA's execution of, or authority to execute, this Settlement Agreement, each Party will work cooperatively with the other Parties to have such challenge resolved on an expedited basis.

10.5 Cooperation to Restore Benefits and Burdens of Settlement Agreement in the Event of Court Order Disrupting Parties' Agreement. If a court with jurisdiction enters a final order that finds BPA's execution of this Settlement Agreement to be invalid or unenforceable in any material respect as to any Party, then each Party will use good faith efforts to work cooperatively with the other Parties to develop mutually acceptable amendments to this Settlement Agreement that conform with the requirements of such order and that restore the balance of benefits and burdens contemplated in this Settlement Agreement. The provisions of this section 10.5 do not apply to any court determination to the extent it is addressed by the provisions of section 3.6.

10.6 Inability to Restore Costs and Benefits. If a court with jurisdiction enters a final order that finds BPA's execution of this Settlement Agreement to be invalid or unenforceable in any material respect as to any Party and the Parties are, notwithstanding their good faith efforts, unable to develop mutually acceptable amendments as described in section 10.5, then:

- (i) the entire Settlement Agreement (with the exceptions of this section 10 and sections 11.1 and 11.2) and any REP Settlement Implementation Agreement, will be void *ab initio*;
- (ii) each Party will be entitled to assert all available claims and defenses as though the Settlement Agreement were never entered into;
- (iii) each Party will be entitled to challenge BPA's actions in response to such court order, and no Party will assert or argue that any other Party's arguments are prejudiced, limited, or waived by virtue of its having been a Party to this Settlement Agreement;
- (iv) notwithstanding items (ii) and (iii) above, each IOU will be entitled, for the period between October 1, 2011, and the time at which the Settlement Agreement is found invalid or unenforceable, to benefits under section 5(c) of the Act as though (a) the Settlement Agreement had never been entered into, and (b) such IOU had entered into a RPSA with BPA for such period; and
- (v) any recovery of underpayments or overpayments of benefits under section 5(c) of the Act as compared to Total Settlement Benefits, or any adjustments to the allocation in rates of the costs of such benefits, will be achieved through adjustments to prospective benefits and rates only.

The provisions of this section 10.6 do not apply to any court determination to the extent it is addressed by the provisions of section 3.6.

10.7 Severability and Survival of Section 10. The provisions of this section 10 are severable from the other provisions of this Settlement Agreement and will survive and remain in full force and effect.

11. NO ADMISSION, PRECEDENTIAL OR EVIDENTIARY EFFECT; RESERVATION OF RIGHTS

11.1 No Admission. This Settlement Agreement reflects the compromise of disputed issues, claims, and defenses and does not constitute any Party's admission or concession with respect to the merits of any such disputed issues, claims, or defenses.

11.2 No Precedential or Evidentiary Effect. Neither this Settlement Agreement nor its performance will (i) constitute any Party's agreement to any underlying principle or statutory interpretation in any context, (ii) constitute any Party's agreement to any methodology other than for purposes of implementing this Settlement Agreement in accordance with its terms for the Payment Period, or (iii) serve as procedural or substantive precedent regarding any matter in any context other than BPA proceedings to implement the terms of this Settlement Agreement.

11.3 Status of BPA Interpretation and Methodologies Upon Expiration of Settlement Agreement. Before the start of the Fiscal Year 2029, BPA will conduct a proceeding and issue a record of decision to determine, for the period starting with Fiscal Year 2029, whether, and if so, how, to modify or replace its legal interpretation of, and methodology for implementing, sections 7(b)(2) and 7(b)(3) of the Act. Each Party retains its rights to seek judicial review of BPA's actions and determinations in such proceeding. No Party will assert that any other Party is precluded, as a result of performance of this Settlement Agreement, from seeking judicial review of such actions and determinations.

12. REPRESENTATIONS

Each Party makes the following representations and warranties, for itself only, to each other Party:

12.1 Authority to Execute. The execution, delivery, and performance of this Settlement Agreement (i) are within its powers, (ii) have been duly authorized by all necessary action on its behalf and all necessary consents or approvals (including any necessary regulatory consents or approvals) have been obtained and are in full force and effect, and (iii) do not violate any of the terms and conditions of any applicable law or materially violate any contracts to which it is a party.

12.2 Binding Obligation. This Settlement Agreement constitutes a legal, valid, and binding obligation, enforceable against it in accordance with its terms.

13. MISCELLANEOUS

13.1 Notices; Right to Notice of Disputes and Amendments.

13.1.1 Manner of Notices. All notices, requests or other communications required under this Settlement Agreement must be in writing and will be deemed "given": (i) if delivered in person or by courier, upon receipt by the intended recipient or upon the date of delivery (as confirmed by, if delivered by courier, the records of such courier), (ii) if sent by facsimile transmission, when the sender receives confirmation from the sending facsimile machine that such facsimile transmission was transmitted to the facsimile number of the addressee, (iii) if mailed, upon the date of delivery as shown by the return receipt therefore, (iv) if delivered by a nationally recognized mail delivery service, upon the date of delivery; or (v) if delivered electronically. Notices must be sent to the addresses compiled by BPA and posted on BPA's website at http://www.bpa.gov/corporate/finance/_ascm/index.cfm.

Promptly following the Effective Date, BPA will post on its website at such address (a) a listing of all other Parties' contact information as specified in their respective Regional Dialogue Contracts, which will serve as such Parties' initial contact information under this Settlement Agreement, and (b) an address for notices to BPA. Each Party will notify BPA of changes to its contact information for notices under this Settlement Agreement. BPA will update the posted contact information accordingly, and will give all Parties not less than 30 day's prior written notice if BPA proposes to change the URL specified in this section 13.1.1.

13.1.2 Parties' Rights to Notices of Amendments to REP Settlement Implementation Agreements. BPA will, prior to entering into any amendment of any REP Settlement Implementation Agreement, deliver a copy of the proposal to enter into such proposed amendment (which may be delivered by electronic means) to all Parties. Any Party that considers that the proposed amendment of such REP Settlement Implementation Agreement would be inconsistent with this Settlement Agreement may, within 30 days of receiving such notice, (i) respond in writing to BPA and the counter-party to such REP Settlement Implementation Agreement, indicating that such Party considers that the proposed amendment of the REP Settlement Implementation Agreement would be inconsistent with this Settlement Agreement, and (ii) pursue any rights such Party may have to dispute resolution pursuant to section 9 with respect to such proposed amendment.

13.1.3 Parties' Rights to Notices of Disputes Arising Under REP Settlement Implementation Agreements. If BPA receives or gives written notice of a dispute to be resolved through binding arbitration in accordance with section 15 of any REP Settlement Implementation Agreement, BPA will promptly deliver a copy of such written notice (which may be delivered by electronic means) to all Parties. Any Party that considers the dispute to involve a potential breach of the Settlement Agreement may, within 30 days of receiving such notice, (i) respond in writing to each of BPA and the counter-party to such REP Settlement Implementation Agreement, indicating that such Party considers such dispute to involve a potential breach of this Settlement Agreement, and (ii) pursue any rights that such Party may have to dispute resolution pursuant to section 9 with respect to such dispute. Any Party that fails to respond, within 30 days of receiving such notice, indicating that it considers the dispute to involve a potential breach of this Settlement Agreement will, for purposes of this Settlement Agreement, be deemed to have made a binding admission that the dispute does not involve a breach of this Settlement Agreement.

13.2 Entire Agreement. This Settlement Agreement, together with its exhibits, contains the entire agreement among the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations, or warranties among the Parties with respect to the subject matter hereof other than those set forth or referred to herein.

13.3 Limitations of Liability. NO PARTY WILL BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT DAMAGES, CONSEQUENTIAL DAMAGES, PUNITIVE DAMAGES, LOST PROFITS, OR ANY OTHER LOSS OF EARNINGS OR REVENUES THAT MAY OCCUR OR RESULT FROM ANY PARTY'S PERFORMANCE OR NON-PERFORMANCE OF THIS SETTLEMENT AGREEMENT, INCLUDING AS A RESULT OF NEGLIGENCE. ANY AWARD OF DAMAGES AGAINST BPA MUST BE CONSISTENT WITH FEDERAL LAW.

13.4 Successors and Assigns. This Settlement Agreement will be binding upon and inure to the benefit of the Parties and their permitted respective successors and assigns.

13.5 Amendments. This Settlement Agreement may not be amended or otherwise modified except in a writing signed by each of the Parties. No REP Settlement Implementation Agreement may be amended to be inconsistent with this Settlement Agreement and each such REP Settlement Implementation Agreement is binding only on the signatories thereto.

13.6 Assignment. No Party may assign this Settlement Agreement or its rights hereunder without the prior written consent of the other Parties, which consent will not be unreasonably withheld or delayed; provided, however, that any Party may, without the consent of the other Parties (and without relieving itself from obligation or liability hereunder), transfer or assign this Settlement Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, provided the assignee agrees in writing to be bound by the terms and conditions set forth in this Settlement Agreement.

13.7 Ambiguities Neutrally Construed. This Settlement Agreement is the result of negotiations among, and has been reviewed by, each Party and its respective counsel. Accordingly, this Settlement Agreement will be deemed to be the product of each Party, and no ambiguity will be construed in favor of or against any Party.

13.8 No Third-Party Beneficiaries. This Settlement Agreement does not confer upon any Non-Settling Entity any rights or remedies under this Settlement Agreement, and no Non-Settling Entity is entitled to rely on any representation, warranty, covenant, release, waiver or agreement contained in this Settlement Agreement.

13.9 No Joint and Several Liability. Nothing in this Settlement Agreement will be deemed to create any joint and several liability among any of the Parties.

13.10 Governing Law. This Settlement Agreement will be interpreted consistent with and governed by federal law.

13.11 Conflicts. If any provision in this Settlement Agreement conflicts with any provision in any REP Settlement Implementation Agreement, the provision in this Settlement Agreement will control.

13.12 Provisions That Survive Expiration. Apart from those provisions that specifically state that they will survive early termination of this Settlement Agreement,

- (i) the rights and obligations of the Parties under sections 7.4, 7.5, 7.7, 7.8, 9, 11, 13.8, 13.9, 13.12, and 14,
- (ii) any other provisions of this Settlement Agreement that by their nature are intended to survive expiration, and
- (iii) claims accrued under, but not fully satisfied during the term of, this Settlement Agreement

will survive the expiration of this Settlement Agreement or termination of this Settlement Agreement pursuant to section 14.4.

13.13 Section Headings; Recitals; Meaning of “Includes.” The section headings and recitals in this Settlement Agreement are for convenience only and will not be considered part of, or used in the interpretation of, this Settlement Agreement, except that any term defined in the recitals will have the meaning given there. The words “include,” “includes,” and “including” mean

including without limitation. References in the body of this Settlement Agreement to a “section” will be deemed to refer to a section in the body of this Settlement Agreement unless the reference specifically states otherwise.

14. PARTIES’ RIGHTS AND OBLIGATIONS RELATED TO QUALIFYING CONDITIONS.

14.1 Additional Definitions for Purposes of this Section 14. Capitalized terms used in this section 14 and set forth below will have the meanings set forth in this Section 14.1.

- (i) “Adjusted Average PF Rate” means (expressed in dollars per megawatt-hour), for each Rate Period,
 - (a) the average of the Priority Firm Rates for such Rate Period, which average will be determined by dividing the sum of the forecasted revenues from all such Priority Firm Rates for such Rate Period by the forecasted loads for such Priority Firm Rates, all as determined in the Rate Proceeding for such Rate Period; plus
 - (b) the effective rates (expressed in dollars per megawatt-hour) for such Rate Period applicable for wheeling power from BPA to the PF Customers, as determined in the applicable BPA proceeding to set transmission rates; less
 - (c) the quotient (expressed in dollars per megawatt-hour) of (1) if and to the extent not reflected as a reduction in revenue requirements for the Priority Firm Rates for such Rate Period, any value for such Rate Period received by any PF Customer in connection with or as a result of the purchase of power from BPA at Priority Firm Rates (excluding the value of (A) the power itself, (B) any Current Tier 1 RECs (as that term is defined in Exhibit C), and (C) any Tier 2 RECs (as that term is defined in Exhibit C) that are shown to be used or held by a COU to comply with renewable portfolio standards or comparable laws or regulations), divided by (2) the sum of the forecasted loads to be served at such Priority Firm Rates for such Rate Period, all as BPA will determine in the Rate Proceeding for such Rate Period.

For the avoidance of doubt, Adjusted Average PF Rate excludes the effect of any adjustment based on costs or credits not reflected in the rates as adopted in BPA’s final record of decision issued in the Rate Proceeding for the applicable Rate Period.

- (ii) “Affected PF Customer” means (a) any COU Party, and (b) any other COU that, at the time of a vote taken to determine whether to authorize notice pursuant to section 14.2(i), is purchasing firm power from BPA for service to meet its general requirements at rates set in the same manner provided for COU Parties pursuant to sections 3.3 and 3.4.
- (iii) “Priority Firm Rates” means for any Rate Period the rates charged by BPA to PF Customers for such Rate Period for service to meet such PF Customers’ “general requirements” (as defined in section 7(b)(4) of the Act and specifically excluding any priority firm exchange rate), or any successor rates for PF Customers.
- (iv) “Material Cost Change” means and will occur if and at such time as the BPA Administrator adopts Priority Firm Rates for a Rate Period that result in an Adjusted

Average PF Rate for such Rate Period that is greater than 79% of the arithmetic load-weighted average of the ASCs (adjusted to not give effect to the waivers set forth in section 6.4) of the IOUs. Such load-weighted average will be determined by averaging the ASCs (adjusted to not give effect to the waivers set forth in section 6.4) of the IOUs for such Rate Period weighted by the respective Residential Loads of the IOUs for such Rate Period, all as BPA will determine in the Rate Proceeding for such Rate Period. The ASC for any Rate Period of any IOU that does not file for such Rate Period an Appendix 1 as provided in section 4 of its REP Settlement Implementation Agreement will be determined for purposes only of this section 14 by BPA using the applicable FERC Form 1s and other publicly available information.

- (v) “Qualifying Conditions” means and will occur if and at such time as both
 - (a) a Requirement Change has occurred, and
 - (b) a Material Cost Change for a Rate Period has occurred and such Requirement Change has not been repealed or rescinded as of the commencement of the Rate Period for which such Material Cost Change has occurred.

- (vi) “Requirement Change” means any change to or enactment of law, regulation, legislative resolution, executive order or other authority or directive pursuant to which (a) BPA establishes the COU Parties’ PF Rates other than on the basis of the embedded costs and credits of the Federal Columbia River Power System (as the term “Federal Columbia River Power System” is used in the Act) and any other embedded costs and credits in accordance with sections 7(b) and 7(g) of the Act (as in effect on the Effective Date), or (b) there is a material acceleration of BPA’s obligation to amortize federal investment in the Federal Columbia River Power System. For purposes of this Settlement Agreement, each of the following specifically will not constitute a change or enactment within the meaning of the first sentence of this section (vi):
 - (1) any discretionary action of the BPA Administrator if the BPA Administrator could have taken such discretionary action irrespective of the change or enactment within the meaning of the first sentence of this section (vi);
 - (2) the inclusion in COU Parties’ PF Rates of any charges (such as capacity charges) not based on embedded costs, if the inclusion of such charges does not change BPA’s total revenue requirements for Priority Firm Rates;
 - (3) any provision of law, regulation, legislative resolution, executive order or other authority or directive that is not limited in its application to BPA or to BPA and any other Federal power marketing agency (as defined in 16 USC § 796(19), provided that for purposes of this subparagraph (3) of item (vi) of section 14.1, the Tennessee Valley Authority will be deemed to be included in the definition of “Federal power marketing agency”); and

- (4) any charges, fees, assessments, or other costs (including taxes) generally applicable to or imposed generally on electric utilities, wholesale suppliers of electric power, or the generation of electric power.

Each Party acknowledges and agrees that (A) no law, regulation, legislative resolution, executive order or other authority or directive as in effect as of February 15, 2011, would constitute a Requirement Change and (B) any provision of legislation adopted by Congress as contemplated by section 8 of this Settlement Agreement would not constitute a Requirement Change.

14.2 Notice of Qualifying Conditions. If Qualifying Conditions occur, or will occur as of the start of an upcoming Rate Period and either

- (i) the requisite proportion of Affected PF Customers (as determined in accordance with the following sentence), or
- (ii) two-thirds of the IOUs (utility count)

deliver written notice (which may be delivered by electronic means) to all other Parties that the Qualifying Conditions have occurred, then the Parties' rights and obligations under this Settlement Agreement will be as set forth in sections 14.3, 14.4 and 14.5. Written notice may be delivered pursuant to item (i) of this section 14.2 only if authorized by the affirmative votes of Affected PF Customers totaling both (a) at least two-thirds of the Affected PF Customers (utility count), and (b) at least two-thirds the sum of the TOCAs of all Affected PF Customers, with both of the foregoing measured by the individual vote of each Affected PF Customer. Any notice given pursuant to this section 14.2 must be given after the issuance of the Record of Decision adopting the Priority Firm Rates for the Rate Period for which the applicable Material Cost Change has occurred and must be given on or prior to the expiration of 60 days after the issuance of such Record of Decision. For the avoidance of doubt and without limiting the generality of section 13.8, it is specifically agreed that the provisions of this section 14.2 that permit voting by COUs that are Non-Settling Entities are solely for the purposes of such vote and no other purpose, are made and entered into for the sole benefit of Parties, and do not make any such COUs or any other Non-Settling Entities third-party beneficiaries of section 14.2 or any other provision of this Settlement Agreement.

14.3 Disputes Regarding the Existence of Qualifying Conditions. If, within 30 days following delivery of notice pursuant to section 14.2, any Party disputes the existence of Qualifying Conditions (which may (i) be on the basis of an allegation that one or both of a Requirement Change and a Material Cost Change have not occurred, and (ii) include disputes concerning any calculations related to the existence of a Material Cost Change) and gives notice (which may be delivered by electronic means) to all other Parties of such dispute, the dispute will be resolved by binding arbitration between the IOUs and the COU Parties in accordance with Section 9 and Exhibit E.

14.4 Termination of Settlement Agreement. If Qualifying Conditions have occurred and a timely notice thereof has been given pursuant to section 14.2, this Settlement Agreement will terminate as of the commencement of the Rate Period for which the applicable Material Cost Change has occurred unless the issue of the existence of such Qualifying Conditions is arbitrated pursuant to section 14.3, in which case this Settlement Agreement will terminate retroactively as of the commencement of the Rate Period for which the applicable Material Cost Change has occurred if it is determined through such arbitration that the Qualifying Conditions for which the notice was

given have occurred. During the pendency of any such arbitration, the Parties will continue performance of this Settlement Agreement until any such arbitration is concluded.

- (i) Upon any termination of this Settlement Agreement pursuant to this section 14.4, then concurrently with such termination, (a) the term “Payment Period” will be deemed to mean, from and after the Effective Date, “the period beginning on October 1, 2011, and continuing until the time as of which this Settlement Agreement is terminated pursuant to section 14.4”; and (b) the term “Settlement Period” will be deemed to mean, from and after the Effective Date, “the period beginning on October 1, 2001, and continuing until the time as of which this Settlement Agreement is terminated pursuant to section 14.4.”
- (ii) If this Settlement Agreement terminates retroactively pursuant to this section 14.4, a true-up will be performed for the period beginning with commencement of the Rate Period for which the applicable Material Cost Change has occurred and continuing until the conclusion of such arbitration. Pursuant to such true-up
 - (a) each IOU will be entitled, for the period beginning with commencement of the Rate Period for which the applicable Material Cost Change has occurred and continuing until the conclusion of such arbitration, to benefits, if any, under section 5(c) of the Act (as then in effect) as though (1) this Settlement Agreement had been terminated as of such commencement and (2) such IOU had entered into a RPSA with BPA for the period beginning with commencement of the Rate Period for which the applicable Material Cost Change has occurred and continuing until the conclusion of such arbitration; and
 - (b) any recovery of underpayments or overpayments of benefits under section 5(c) of the Act (as then in effect) as compared to the REP Settlement Benefits received by such IOU for the period beginning with the commencement of the Rate Period for which the applicable Material Cost Change has occurred beginning with commencement of the Rate Period for which the applicable Material Cost Change has occurred and continuing until the conclusion of such arbitration, will be achieved through adjustments to prospective benefits only; provided, that any remaining balance of underpayment or overpayment to any IOU remaining as of September 30, 2028 will be extinguished, and no further adjustment for any such remaining balance of underpayment or overpayment to any IOU will be required to be made after September 30, 2028.

For the avoidance of doubt, it is specifically agreed that any remedy arising out of any arbitration pursuant to section 14.3 or otherwise regarding this section 14 for overpayments to any IOUs will be limited to prospective adjustments consistent with section 11.3 of Exhibit E and consistent with the foregoing proviso.

14.5 No Claims or Damages Resulting from Termination Under Section 14; Prospective IOU Benefits Under Section 5(c). If this Settlement Agreement is terminated pursuant to section 14.4, no Party will be entitled to seek or receive, and each Party waives any right to seek or receive, any damages or restitution of any nature, in law or equity, from any other Party with respect to any and all payments, benefits and value paid or received by any Party in accordance with

this Settlement Agreement before the date as of which this Settlement Agreement is terminated pursuant to section 14.4. For the avoidance of doubt,

- (a) the satisfaction, discharge and extinguishment of any and all obligations, claims, and liabilities in accordance with sections 7.4, 7.7, and 7.8,
- (b) any and all waivers given pursuant to sections 7.7 and 7.8, and
- (c) any and all rights, claims, and defenses pursuant to section 7.5

will survive and remain in full force and effect notwithstanding termination of this Settlement Agreement pursuant to section 14.4, and, notwithstanding the waivers given pursuant to sections 7.3 and 7.4, each IOU will be entitled, for the period after termination of this Settlement Agreement, to benefits, if any, as provided in section 5(c) of the Act as then in effect.

14.6 No Waiver of Rights. Nothing in this section 14 is intended to be, or will be construed as, a waiver of any right held by any Party to contest the lawfulness or the applicability of any potential Requirement Change. Specifically, nothing in this section 14 will limit any COU Party's right to assert that a Requirement Change (or potential Requirement Change, if enacted), is or would be a breach or violation of the TRM, such COU Party's CHWM Contract, or any other rate methodology or agreement pursuant to which the COU Party purchases power from BPA during the Payment Period.

15. SIGNATURES

Each signatory represents that he or she is authorized to enter into this Settlement Agreement on behalf of the Party for whom he or she signs. For the convenience of the Parties, this Settlement Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts together constituting the same agreement. If the Administrator executes this Settlement Agreement pursuant to section 1.4 above, BPA will promptly deliver to each Party a conformed copy of this Settlement Agreement.

[SIGNATURES TO FOLLOW ON SEPARATE PAGES]

FULL NAME OF PARTY

(Print / Type)

By _____

Title _____

Name _____
(Print / Type)

Date _____

Exhibit A

Form of REP Settlement Implementation Agreement

REP SETTLEMENT IMPLEMENTATION AGREEMENT PRODUCTION TEMPLATE

Contract No. «##»PB-«#####»
DRAFT 01/14/2011

**RESIDENTIAL EXCHANGE PROGRAM SETTLEMENT IMPLEMENTATION
AGREEMENT**
executed by the
BONNEVILLE POWER ADMINISTRATION
and
«FULL NAME OF CUSTOMER»

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This RESIDENTIAL EXCHANGE PROGRAM SETTLEMENT IMPLEMENTATION AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and «FULL NAME OF CUSTOMER» («Customer Name»), hereinafter individually referred to as “Party” and collectively referred to as the “Parties.” «Customer Name» is a «_____» organized and authorized under the laws of the State of «_____» to purchase and distribute electric power to serve retail consumers from its distribution system within its service area.

RECITALS

Section 5(c) of the Northwest Power Act provides that a Pacific Northwest Regional electric utility may offer to sell electric power to BPA, and BPA shall purchase such electric power at the Average System Cost of that utility’s resources, and in exchange BPA shall offer to sell in return an equivalent amount of electric power to such utility, and such utility shall purchase such electric power at an exchange rate. The cost benefits of such purchase and exchange sale attributable to a utility’s residential load within a state shall be passed directly through to that utility’s residential load within such state. This program is referred to as the Residential Exchange Program (“REP”).

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

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

The Parties agree:

1. TERM

This Agreement is being entered into contemporaneously with BPA's execution of the Settlement Agreement and shall take effect on the later of

- (1) the date signed by the Parties, or
- (2) if applicable, the effective date specified by the Federal Energy Regulatory Commission in its acceptance for filing of this Agreement, provided the Federal Energy Regulatory Commission has not conditioned acceptance upon any change or condition unacceptable to either Party, and it shall continue through and terminate on September 30, 2028.

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

2. DEFINITIONS

Capitalized terms below in this section shall have the meaning stated. Capitalized terms that are not listed below in this section are either defined within the section or exhibit in which they are used or, if not so defined, shall have the meaning stated in the Settlement Agreement, or, if not so defined, shall have the meaning stated in BPA's applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions (GRSPs), or the ASC Methodology.

- 2.1 "Appendix 1" means the electronic form on which «Customer Name» reports its Contract System Costs and other necessary data to BPA for the calculation of «Customer Name»'s Base Period and Exchange Period ASCs pursuant to the ASC Methodology.
- 2.2 "Average System Cost" or "ASC" has the meaning given such term in the Settlement Agreement.
- 2.3 "ASC Methodology" means the methodology, as may be amended or superseded, used to determine ASC, as developed by BPA pursuant to section 5(c)(7) of the Northwest Power Act. Exhibit B contains a website link to the current version of the ASC Methodology. This Agreement is subject to the ASC Methodology, but such ASC Methodology is not incorporated as part of this Agreement.
- 2.4 "Base Period" means the calendar year of the most recent Federal Energy Regulatory Commission Form 1 data at the commencement of the ASC review period.
- 2.5 "Base Period ASC" means the ASC determined in the Review Period using «Customer Name»'s Base Period data, all in accordance with the ASC Methodology.
- 2.6 "Business Day(s)" means every Monday through Friday except Federal holidays.

- 2.7 “Contract System Costs” means «Customer Name»’s costs for production and transmission resources, including power purchases and conservation measures, which costs are includable in and subject to the provisions of Appendix 1, all in accordance with the ASC Methodology as then in effect, and giving effect to the waivers set forth in section 6.4 of the Settlement Agreement. Under no circumstances shall Contract System Costs include costs excluded from the ASC by section 5(c)(7) of the Northwest Power Act.
- 2.8 “Contract System Load” means the total Regional retail load included in the Form 1, as may be adjusted pursuant to the ASC Methodology, all in accordance with the ASC Methodology.
- 2.9 “Implementation Effective Date” means the date this Agreement takes effect, as determined pursuant to section 1 above.
- 2.10 “Exchange Period” means the period during the Payment Period for which «Customer Name»’s ASC is effective for the calculations with respect to such ASC under this Agreement. Each Exchange Period shall be the period of time concurrent with the duration of each Rate Period.
- 2.11 “Fiscal Year” or “FY” has the meaning given “Fiscal Year” in the Settlement Agreement.
- 2.12 “Form 1” means the annual filing submitted to the Federal Energy Regulatory Commission required by 18 CFR §141.1, as specified in the ASC Methodology.
- 2.13 “IOU-Specific REP Settlement Benefit Amount” has the meaning given such term in the Settlement Agreement.
- 2.14 “In-Lieu Power” means electric power acquired by BPA from a source(s) other than «Customer Name» at a cost less than «Customer Name»’s ASC, as provided in section 5(c)(5) of the Northwest Power Act.
- 2.15 “Jurisdiction” means the service territory of «Customer Name» within which a particular Regulatory Body has authority to approve «Customer Name»’s retail rates. Jurisdictions must be within the Region.
- 2.16 “New Large Single Load” or “NLSL” has the meaning specified in section 3(13) of the Northwest Power Act and in BPA’s NLSL Policy.
- 2.17 “Northwest Power Act” or “Act” means the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §839, Public Law No. 96-501, as heretofore or hereafter amended.
- 2.18 “Payment Period” has the meaning given such term in the Settlement Agreement.

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

3. UTILITY-SPECIFIC EXCHANGE RATE

BPA will develop the Utility-Specific Exchange Rates applicable to «Customer Name» such that for each Fiscal Year the payments to be made by BPA under this Agreement (i.e., the product of «Customer Name» 's Residential Load for such Fiscal Year multiplied by the amount, if any, by which «Customer Name» 's ASC for such Fiscal Year exceeds the Utility-Specific Exchange Rate applicable to «Customer

Name» for such Fiscal Year) are equal to the IOU-Specific REP Settlement Benefit Amount for «Customer Name» calculated for such Fiscal Year pursuant to section 6 of the Settlement Agreement. Purchases under this Agreement by «Customer Name» are pursuant to the Utility-Specific Exchange Rates applicable to «Customer Name».

4. ESTABLISHMENT OF ASC TO ACTIVATE PARTICIPATION

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

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

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

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

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

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

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

7. IN-LIEU TRANSACTIONS

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

8. INVOICING, BILLING, AND PAYMENT

8.1 Invoicing for Residential Load

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

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

8.2 Reimbursement of Fees for Final Agreed-Upon Procedures Report

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

9. ACCOUNTING, REVIEW, AND BUDGETING

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

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

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

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

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

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

10. PASS-THROUGH OF BENEFITS

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

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

- 10.3 Benefits shall be passed through consistent with any procedures developed by «Customer Name»'s Regulatory Body(ies) that are not otherwise inconsistent with this Agreement, the Northwest Power Act, or other applicable federal law. Until «Customer Name» has passed through such benefits pursuant to section 10.1 above, benefits received by «Customer Name» shall be identified on «Customer Name»'s books of account and shall accrue interest at the rate(s) established by «Customer Name»'s Regulatory Body(ies).

11. SUSPENSION OF THIS AGREEMENT

11.1 Suspension of Agreement

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

11.2 Suspension of Sections 5 and 6

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

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

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

11.3 Remedies

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

[[DRAFTING NOTE: ONLY APPLICABLE FOR IOUS WITH A LONG-TERM RPSA]]

12. TERMINATION OF PREVIOUS RPSA

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

13. NOTICES AND CONTACT INFORMATION

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or
- (5) by another method agreed to by the Parties.

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

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

If to «Customer Name»:

«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»

14. UNCONTROLLABLE FORCES

14.1 A Party shall not be in breach of an obligation under this Agreement to the extent its failure to fulfill the obligation is due to an Uncontrollable Force. “Uncontrollable Force” means an event beyond the reasonable control, and without the fault or negligence, of the Party claiming the Uncontrollable Force, that prevents that Party from performing its obligations under this Agreement and which that Party could not have avoided by the exercise of reasonable care, diligence, and foresight. Uncontrollable Forces include each event listed below, to the extent it satisfies the foregoing criteria, but are not limited to these listed events:

- (1) strikes or work stoppage;
- (2) floods, earthquakes, other natural disasters, or terrorist acts; and
- (3) final orders or injunctions issued by a court or regulatory body having subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court having subject matter jurisdiction.

14.2 Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

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

- (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable;
- (2) use commercially reasonable efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable;
- (3) keep the other Party apprised of such efforts on an ongoing basis; and
- (4) provide written notice of the resumption of performance.

Written notices sent under this section must comply with section 13.

15. GOVERNING LAW AND DISPUTE RESOLUTION

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

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

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

«Customer Name» and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Unless the Parties engage in binding arbitration as provided for in section 9 of the Settlement Agreement or in sections 15.2 through 15.6 of this Agreement, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

15.1 Judicial Resolution

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of «Customer Name» or BPA under any

rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 15, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section 15, then «Customer Name» may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 15.

15.2 Arbitration

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

«Customer Name» may request that BPA engage in binding arbitration to resolve any dispute. If «Customer Name» requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 15.2 and sections 15.3 and 15.4 are met. BPA may request that «Customer Name» engage in binding arbitration to resolve any dispute. In response to BPA's request, «Customer Name» may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 15.2 and sections 15.3 and 15.4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 15.1 above and is not resolved via binding arbitration, unless «Customer Name» notifies BPA that it does not wish to proceed with nonbinding arbitration.

15.3 Arbitration Procedure

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

15.4 Arbitration Remedies

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 15. This shall not be interpreted to preclude the Parties from agreeing to limit the object of

arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

15.5 Finality

15.5.1 In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

15.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

15.6 Arbitration Costs

Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

16. STATUTORY PROVISIONS

16.1 Retail Rate Schedules

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

16.2 New Large Single Loads and CF/CTs

16.2.1 Determination of an NLSL

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

16.2.1.1 BPA shall determine an increase in production load to be an NLSL if any load associated with a new facility, an existing facility, or an expansion of an existing facility, which is not contracted for, or committed to (CF/CT), as determined by the Administrator, by a public body, cooperative, investor-owned

utility, or federal agency customer prior to September 1, 1979, and which will result in an increase in power requirements of such customer of 10 Average Megawatts (87,600,000 kilowatt-hours) or more in any consecutive 12-month period.

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

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

16.2.2 Determination of a Facility

BPA shall make a written determination as to what constitutes a single facility, for the purpose of identifying an NLSL, based on the following criteria:

- (1) whether the load is operated by a single end-use consumer;
- (2) whether the load is in a single location;
- (3) whether the load serves a manufacturing process which produces a single product or type of product;
- (4) whether separable portions of the load are interdependent;
- (5) whether the load is contracted for, served or billed as a single load under «Customer Name»'s customary billing and service policy;
- (6) consideration of the facts from previous similar situations; and
- (7) any other factors the Parties determine to be relevant.

16.2.3 Administrative Obligations and Rights

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

16.2.3.2 «Customer Name» shall provide reasonable notice to BPA of any expected increase in a single load that may qualify as an

NLSL. The Parties shall list any such potential NLSLs in Exhibit E. If BPA determines that any load associated with a single facility is capable of growing ten Average Megawatts or more in a consecutive 12-month period, then such load shall be subject to monitoring as determined necessary by BPA.

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

16.2.3.4 Unless the Parties agree pursuant to section 16.2.1.3 above, BPA shall determine whether a new load or an increase in existing load at a facility is an NLSL. If BPA determines that the load is an NLSL, BPA shall notify «Customer Name» and the Parties shall add the NLSL to Exhibit E to reflect BPA's determination.

16.2.4 Metering an NLSL

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

16.2.5 Undetermined NLSLs

If BPA concludes in its sole judgment that «Customer Name» has not fulfilled its obligations, or has not been able to obtain access or information from the end-use consumer under sections 16.2.3 and 16.2.4, BPA may determine any load subject to NLSL monitoring to be an NLSL. Such NLSL determination shall be final unless «Customer Name» proves to BPA's satisfaction that the applicable load did not exceed ten Average Megawatts in any 12-month monitoring period.

16.3 **BPA Appropriations Refinancing**

The Parties agree that the provisions of section 3201(i) of the Bonneville Power Administration Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, as stated in the United States Code on the Implementation Effective Date, are incorporated by reference and are a material term of this Agreement.

17. **STANDARD PROVISIONS**

17.1 **Amendments**

Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or exhibit, no amendment of this Agreement shall be of any force or effect unless set forth in writing and signed by authorized representatives of each Party; *provided*, that in the event of the conflict between the provisions of any amendment of this Agreement and the provisions of the Settlement Agreement, the provisions of the Settlement Agreement shall prevail.

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

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

17.2 **Entire Agreement and Order of Precedence**

The Settlement Agreement and this Agreement, including documents expressly incorporated by reference, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement. They supersede all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of the Settlement Agreement shall prevail over this Agreement in the event of a conflict. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

17.3 **Assignment**

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld. Without limiting the foregoing, BPA's refusal to consent to assignment shall not be considered unreasonable if, in BPA's sole discretion the sale of power by BPA to the assignee would violate any applicable statute. «Customer Name» may not transfer or assign this Agreement to any of its retail consumers.

17.4 No Third-Party Beneficiaries

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

17.5 Waivers

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or of any other breach of this Agreement.

17.6 BPA Policies

Any reference in this Agreement to BPA policies, including any revisions, does not constitute agreement of «Customer Name» to such policy by execution of this Agreement, nor shall it be construed to be a waiver of the right of «Customer Name» to seek judicial review of any such policy.

18. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CONSUMERS

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

19. INFORMATION EXCHANGE AND CONFIDENTIALITY

19.1 Information Exchange

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement. Such information shall be provided in a timely manner.

19.2 Confidentiality

Before «Customer Name» provides information to BPA that is confidential, or is otherwise subject to privilege, or nondisclosure, «Customer Name» shall clearly designate such information as confidential. BPA shall notify «Customer Name» as soon as practicable of any request received under the Freedom of Information Act (FOIA), or under any other federal law or court or administrative order, for any confidential information. BPA shall only release such confidential information to comply with FOIA or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of confidential information within BPA to employees who need it for purposes of administering this Agreement.

20. SIGNATURES

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

«FULL NAME OF CUSTOMER»

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name _____
(Print/Type)

Name _____
(Print/Type)

Title _____

Title _____

Date _____

Date _____

(PS«X/LOC»- «File Name with Path».DOC) «mm/dd/yy» *{Drafter's Note: Insert date of finalized contract here}*

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

1. «Customer Name»'s Qualifying Residential and Small Farm Load is the sum of the loads within the Region eligible for the Residential Exchange Program under the tariff schedules described below, as determined pursuant to BPA's Customer Load Eligibility Guidelines, or its successor. Such load will be adjusted for distribution losses as determined pursuant to the ASC Methodology, as revised, supplemented, or superseded.

2. Such tariff schedules as presently effective include:
 - 2.1 for all schedules listed below, include the amount, expressed in kilowatthours, of Qualifying Residential and Small Farm Load supplied by «Customer Name» under:
 - 2.1.1 «schedule»
 - 2.1.2 «schedule»
 - 2.1.3 «schedule»

3. See <http://www.bpa.gov/corporate/finance/ascm/index.cfm> for the current version of BPA's Customer Load Eligibility Guidelines.

(PS«X/LOC»- «File Name with Path».DOC) «mm/dd/yy» *{Drafter's Note: Insert date of finalized contract here}*

EXHIBIT B TO REP SETTLEMENT IMPLEMENTATION AGREEMENT
AVERAGE SYSTEM COST METHODOLOGY

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

(PS«X/LOC»- «File Name with Path».DOC) «mm/dd/yy» *{Drafter's Note: Insert date of finalized contract here}*

EXHIBIT C TO REP SETTLEMENT IMPLEMENTATION AGREEMENT

TERMS AND CONDITIONS OF FINAL AGREED-UPON PROCEDURES REPORT

1. FINAL REPORT TERMS AND CONDITIONS

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

Prior to «Customer Name»’s CPA initiating each final Agreed-Upon Procedures report, «Customer Name» shall (1) obtain an engagement letter between «Customer Name» and its CPA and (2) ensure the CPA provides BPA a letter of acknowledgement of such engagement. The engagement letter and letter of acknowledgement should provide the Parties a detailed statement of the work to be performed to meet the Agreed-Upon Procedures included in Exhibit D, the hours, and the fee for such work.

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

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

«Customer Name» shall be responsible for ensuring that:

- (1) each CPA’s report provides all information requested by BPA in the Agreed-Upon Procedures included in Exhibit D; and
- (2) CPA is contractually obligated to conduct each CPA report in accordance with the applicable auditing standards, *e.g.*, General, Field Work, and Reporting Standards for Attestation Engagements as contained in the Government Auditing Standards (the Yellow Book) by the Comptroller General of the United States of America; the Public Company Accounting Oversight Board (PCAOB) Statements of Standards for Attestation Engagements; or, the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements.

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

2.1 BPA's Reimbursement Cap

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

2.2 Reimbursement of Fees

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

3. REVISIONS

BPA may, upon not less than 10 business days' prior written notice to «Customer Name», unilaterally revise this exhibit to implement changes that BPA determines are reasonably necessary to allow it to conduct reviews of the accounts and financial records concerning BPA customers' participation in the Residential Exchange Program.

BPA shall provide a draft of any material revisions of this exhibit to «Customer Name», with reasonable time for comment, prior to BPA's written notice of the revision.

(PS«X/LOC»- «File Name with Path».DOC) «mm/dd/yy» *{Drafter's Note: Insert date of finalized contract here}*

EXHIBIT D TO REP SETTLEMENT IMPLEMENTATION AGREEMENT

AGREED-UPON PROCEDURES

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

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

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

2. RESIDENTIAL BILLS CONTAIN CORRECT REP CREDITS

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

3. SMALL FARM AND IRRIGATION BILLS CONTAIN CORRECT REP CREDITS

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

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

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

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

5. FEDERAL COLUMBIA RIVER BENEFIT BILL NOTICE

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

6. DEVIATIONS FROM STANDARDS

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

7. REVISIONS

BPA may, upon not less than 10 business days' prior written notice to «Customer Name», unilaterally revise this exhibit to implement changes that BPA determines are reasonably necessary to allow it to conduct reviews of the accounts and financial records concerning BPA customers' participation in the Residential Exchange Program.

BPA shall provide a draft of any material revisions of this exhibit to «Customer Name», with reasonable time for comment, prior to BPA's written notice of the revision.

(PS«X/LOC»- «File Name with Path».DOC) «mm/dd/yy» *{Drafter's Note: Insert date of finalized contract here}*

EXHIBIT E TO REP SETTLEMENT IMPLEMENTATION AGREEMENT

CF/CT AND NEW LARGE SINGLE LOADS

1. CF/CT AND NEW LARGE SINGLE LOADS

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

1.1 CF/CT Loads

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

End Option 1

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

Drafter's Note: If customer has more than one CF/CT, number each separately as (1), (2), etc. and indent appropriately.

1.1 CF/CT Loads

The Administrator has determined that the following loads were contracted for, or committed to be served (CF/CT), as of September 1, 1979, as defined in section 3(13)(A) of the Northwest Power Act.

End-use consumer's name:

Facility name:

Facility location:

Date of CF/CT determination:

Facility description:

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

End Option 2

*Option 1: Include the following if customer **has no** POTENTIAL NLSLs.*

1.2 Potential NLSLs

«Customer Name» has no identified potential NLSLs.

End Option 1

*Option 2: Include the following if customer **has** POTENTIAL NLSL(s).*

Drafter's Note: If customer has more than one potential NLSL, number each separately as (1), (2), etc. and indent appropriately.

1.2 Potential NLSLs

«Customer Name» has the following potential NLSL(s):

End-use consumer name:

Facility location:

End Option 2

1.3 **Existing NLSLs**

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

«Customer Name» has no existing NLSLs.

End Option 1

*Option 2: Include the following if customer **has an** existing NLSL and will serve the NLSL with a **non-federal firm resource**.*

1.3.1 **«Name of NLSL» NLSL**

«Customer Name» has an NLSL.

End-use consumer name:

Facility location:

Date load determined as an NLSL:

Approximate load:

Description of NLSL:

Manner of service:

End Option 2

(PS«X/LOC»- «File Name with Path».DOC) «mm/dd/yy» *{Drafter's Note: Insert date of finalized contract here}*

Exhibit B

PF-02 Customer Percentages and Customer-Specific PF-02 Refunds

BPA Customer ID Number	BPA Customer Name	Corrected Non-Slice PF-02 Revenues	Corrected Non-Slice PF-02 Revenue Share	Slice % Share	PF-02 Customer Percentage	Customer Specific PF-02 Refund
			77.3722%	22.6278%		
10055	Albion, City of	\$-	0.0000%	0.0000%	0.0000%	\$-
10005	Alder Mutual	\$521,487	0.0083%	0.0000%	0.0083%	\$3,178
10057	Ashland, City of	\$26,503,084	0.4221%	0.0000%	0.4221%	\$161,518
10015	Asotin County PUD #1	\$-	0.0000%	0.0000%	0.0000%	\$-
10059	Bandon, City of	\$9,115,740	0.1452%	0.0000%	0.1452%	\$55,554
10024	Benton County PUD #1	\$65,553,689	1.0439%	1.7641%	2.8080%	\$1,074,609
10025	Benton REA	\$60,041,721	0.9562%	0.0000%	0.9562%	\$365,914
10027	Big Bend Elec Coop	\$29,627,132	0.4718%	0.0000%	0.4718%	\$180,557
10029	Blachly Lane Elec Coop	\$-	0.1080%	0.1608%	0.2688%	\$102,877
10061	Blaine, City of	\$9,928,284	0.1581%	0.0000%	0.1581%	\$60,506
10062	Bonnors Ferry, City of	\$7,480,515	0.1191%	0.0000%	0.1191%	\$45,589
10064	Burley, City of	\$17,292,443	0.2754%	0.0000%	0.2754%	\$105,386
10044	Canby Utility Board	\$24,086,860	0.3836%	0.0000%	0.3836%	\$146,793
10065	Cascade Locks, City of	\$2,939,295	0.0468%	0.0000%	0.0468%	\$17,913
10046	Central Electric Coop	\$-	0.3767%	0.6699%	1.0466%	\$400,537
10047	Central Lincoln PUD	\$79,300,824	1.2629%	0.0000%	1.2629%	\$483,285
10066	Centralia, City of	\$26,948,115	0.4291%	0.0000%	0.4291%	\$164,230
10067	Cheney, City of	\$17,820,873	0.2838%	0.0000%	0.2838%	\$108,606
10068	Chewelah, City of	\$-	0.0000%	0.0000%	0.0000%	\$-
10101	Clallam County PUD #1	\$85,421,031	1.3603%	0.0000%	1.3603%	\$520,583
10103	Clark County PUD #1	\$389,042,226	6.1955%	0.0000%	6.1955%	\$2,370,948
10105	Clatskanie PUD	\$40,050,220	0.6378%	0.9755%	1.6133%	\$617,393
10106	Clearwater Power	\$-	0.1025%	0.2263%	0.3288%	\$125,833

BPA Customer ID Number	BPA Customer Name	Corrected Non-Slice PF-02 Revenues	Corrected Non-Slice PF-02 Revenue Share	Slice % Share	PF-02 Customer Percentage	Customer Specific PF-02 Refund
10109	Columbia Basin Elec Coop	\$-	0.0000%	0.0000%	0.0000%	\$-
10111	Columbia Power Coop	\$-	0.0000%	0.0000%	0.0000%	\$-
10113	Columbia REA	\$-	0.0000%	0.0000%	0.0000%	\$-
10112	Columbia River PUD	\$43,556,001	0.6936%	0.0000%	0.6936%	\$265,444
10116	Consolidated Irrigation District #19	\$299,502	0.0048%	0.0000%	0.0048%	\$1,825
10118	Consumers Power	\$-	0.2361%	0.4069%	0.6430%	\$246,076
10121	Coos Curry Elec Coop	\$-	0.2194%	0.3797%	0.5991%	\$229,267
10378	Coulee Dam, City of	\$-	0.0000%	0.0000%	0.0000%	\$-
10123	Cowlitz County PUD #1	\$565,578,431	9.0068%	0.0000%	9.0068%	\$3,446,817
10070	Declo, City of	\$-	0.0000%	0.0000%	0.0000%	\$-
10136	Douglas Electric Cooperative	\$-	0.1063%	0.1690%	0.2753%	\$105,338
10071	Drain, City of	\$3,132,153	0.0499%	0.0000%	0.0499%	\$19,088
10142	East End Mutual Electric	\$-	0.0000%	0.0000%	0.0000%	\$-
10144	Eatonville, Town of	\$3,813,087	0.0607%	0.0000%	0.0607%	\$23,238
10072	Ellensburg, City of	\$28,744,653	0.4578%	0.0000%	0.4578%	\$175,179
10156	Elmhurst Mutual P & L	\$-	0.0000%	0.0000%	0.0000%	\$-
10157	Emerald PUD	\$61,786,661	0.9839%	0.0000%	0.9839%	\$376,548
10158	Energy Northwest	\$3,349,802	0.0533%	0.0000%	0.0533%	\$20,415
10170	Eugene Water & Electric Board	\$91,739,953	1.4610%	2.4328%	3.8938%	\$1,490,101
10172	Fairchild AFB	\$9,921,598	0.1580%	0.0000%	0.1580%	\$60,465
10173	Fall River Elec Coop	\$-	0.1217%	0.2765%	0.3983%	\$152,407
10174	Farmers Electric Company	\$-	0.0000%	0.0000%	0.0000%	\$-
10177	Ferry County PUD #1	\$11,137,412	0.1774%	0.0000%	0.1774%	\$67,875
10179	Flathead Elec Coop	\$99,778,075	1.5890%	0.0000%	1.5890%	\$608,080

BPA Customer ID Number	BPA Customer Name	Corrected Non-Slice PF-02 Revenues	Corrected Non-Slice PF-02 Revenue Share	Slice % Share	PF-02 Customer Percentage	Customer Specific PF-02 Refund
10074	Forest Grove, City of	\$27,753,860	0.4420%	0.0000%	0.4420%	\$169,141
10183	Franklin County PUD #1	\$28,141,565	0.4482%	0.7851%	1.2333%	\$471,954
10186	Glacier Elec Coop	\$-	0.0000%	0.0000%	0.0000%	\$-
10190	Grant County PUD #2	\$188,058,986	2.9948%	0.0000%	2.9948%	\$1,146,092
10191	Grays Harbor PUD #1	\$47,553,665	0.7573%	1.1681%	1.9254%	\$736,828
10197	Harney Elec Coop	\$14,994,607	0.2388%	0.0000%	0.2388%	\$91,382
10597	Hermiston, City of	\$16,436,038	0.2617%	0.0000%	0.2617%	\$100,167
10076	Heyburn, City of	\$8,295,872	0.1321%	0.0000%	0.1321%	\$50,558
10202	Hood River Elec Coop	\$14,732,263	0.2346%	0.0000%	0.2346%	\$89,783
10203	Idaho County L & P	\$6,400,997	0.1019%	0.0000%	0.1019%	\$39,010
10204	Idaho Falls Power	\$27,899,481	0.4443%	0.6931%	1.1374%	\$435,271
10209	Inland P & L	\$-	0.0000%	0.0000%	0.0000%	\$-
10230	Kittitas County PUD #1	\$7,886,149	0.1256%	0.0000%	0.1256%	\$48,061
10231	Klickitat County PUD #1	\$35,974,119	0.5729%	0.0000%	0.5729%	\$219,238
10234	Kootenai Electric Coop	\$-	0.0000%	0.0000%	0.0000%	\$-
10235	Lakeview L & P (WA)	\$42,983,094	0.6845%	0.0000%	0.6845%	\$261,953
10236	Lane County Elec Coop	\$-	0.1578%	0.2450%	0.4028%	\$154,159
10237	Lewis County PUD #1	\$118,233,668	1.8829%	0.0000%	1.8829%	\$720,554
10239	Lincoln Elec Coop (MT)	\$-	0.0000%	0.0000%	0.0000%	\$-
10242	Lost River Elec Coop	\$-	0.0423%	0.0904%	0.1327%	\$50,765
10244	Lower Valley Energy	\$-	0.0000%	0.0000%	0.0000%	\$-
10246	Mason County PUD #1	\$8,547,681	0.1361%	0.0000%	0.1361%	\$52,092
10247	Mason County PUD #3	\$89,282,630	1.4218%	0.0000%	1.4218%	\$544,117
10078	McCleary, City of	\$5,837,540	0.0930%	0.0000%	0.0930%	\$35,576
10079	McMinnville, City of	\$97,396,893	1.5510%	0.0000%	1.5510%	\$593,568
10256	Midstate Elec Coop	\$47,133,494	0.7506%	0.0000%	0.7506%	\$287,247

BPA Customer ID Number	BPA Customer Name	Corrected Non-Slice PF-02 Revenues	Corrected Non-Slice PF-02 Revenue Share	Slice % Share	PF-02 Customer Percentage	Customer Specific PF-02 Refund
10081	Milton Freewater, City of	\$12,628,309	0.2011%	0.0000%	0.2011%	\$76,961
10080	Milton, City of	\$8,812,635	0.1403%	0.0000%	0.1403%	\$53,707
10082	Minidoka, City of	\$-	0.0000%	0.0000%	0.0000%	\$-
10258	Mission Valley	\$-	0.0000%	0.0000%	0.0000%	\$-
10259	Missoula Elec Coop	\$-	0.0000%	0.0000%	0.0000%	\$-
10260	Modern Elec Coop	\$-	0.0000%	0.0000%	0.0000%	\$-
10083	Monmouth, City of	\$9,780,069	0.1557%	0.0000%	0.1557%	\$59,603
10273	Nespelem Valley Elec Coop	\$5,799,091	0.0924%	0.0000%	0.0924%	\$35,342
10278	Northern Lights	\$-	0.1060%	0.2465%	0.3525%	\$134,905
10279	Northern Wasco County PUD	\$27,761,184	0.4421%	0.0000%	0.4421%	\$169,186
10284	Ohop Mutual Light Company	\$-	0.0000%	0.0000%	0.0000%	\$-
10285	Okanogan County Elec Coop	\$-	0.0316%	0.0548%	0.0864%	\$33,056
10286	Okanogan County PUD #1	\$18,537,703	0.2952%	0.4951%	0.7903%	\$302,445
10288	Orcas P & L	\$-	0.0000%	0.0000%	0.0000%	\$-
10291	Oregon Trail Coop	\$87,898,936	1.3998%	0.0000%	1.3998%	\$535,684
10294	Pacific County PUD #2	\$43,225,744	0.6884%	0.0000%	0.6884%	\$263,432
10304	Parkland L & W	\$-	0.0000%	0.0000%	0.0000%	\$-
10306	Pend Oreille County PUD #1	\$11,873,709	0.1891%	0.3819%	0.5710%	\$218,512
10307	Peninsula Light Company	\$79,460,229	1.2654%	0.0000%	1.2654%	\$484,256
10086	Plummer, City of	\$4,636,078	0.0738%	0.0000%	0.0738%	\$28,254
10298	PNGC	\$150,259,824	0.0000%	0.0000%	0.0000%	\$-
10087	Port Angeles, City of	\$84,861,330	1.3514%	0.0000%	1.3514%	\$517,172
10706	Port of Seattle	\$-	0.0000%	0.0000%	0.0000%	\$-

BPA Customer ID Number	BPA Customer Name	Corrected Non-Slice PF-02 Revenues	Corrected Non-Slice PF-02 Revenue Share	Slice % Share	PF-02 Customer Percentage	Customer Specific PF-02 Refund
10326	Puget Sound Naval Shipyard (Bremerton)	\$35,603,669	0.5670%	0.0000%	0.5670%	\$216,980
10331	Raft River Elec Coop	\$-	0.0685%	0.1449%	0.2134%	\$81,677
10333	Ravalli County Elec Coop	\$-	0.0000%	0.0000%	0.0000%	\$-
10089	Richland, City of	\$102,334,128	1.6297%	0.0000%	1.6297%	\$623,657
10338	Riverside Elec Company	\$-	0.0000%	0.0000%	0.0000%	\$-
10091	Rupert, City of	\$11,968,975	0.1906%	0.0000%	0.1906%	\$72,943
10342	Salem Elec Coop	\$56,194,756	0.8949%	0.0000%	0.8949%	\$342,469
10343	Salmon River Elec Coop	\$-	0.1288%	0.2023%	0.3311%	\$126,695
10349	Seattle City Light	\$167,453,974	2.6667%	4.6676%	7.3343%	\$2,806,762
10352	Skamania County PUD #1	\$18,124,789	0.2886%	0.0000%	0.2886%	\$110,458
10354	Snohomish County PUD #1	\$407,609,649	6.4912%	4.9929%	11.4841%	\$4,394,837
10094	Soda Springs, City of	\$-	0.0000%	0.0000%	0.0000%	\$-
10360	South Side Electric	\$-	0.0000%	0.0000%	0.0000%	\$-
10363	Springfield Utility Board	\$80,523,560	1.2823%	0.0000%	1.2823%	\$490,736
10379	Steilacoom, Town of	\$5,829,528	0.0928%	0.0000%	0.0928%	\$35,527
10095	Sumas, City of	\$3,844,352	0.0612%	0.0000%	0.0612%	\$23,429
10369	Surprise Valley Elec Coop	\$13,419,017	0.2137%	0.0000%	0.2137%	\$81,780
10370	Tacoma Public Utilities	\$488,819,093	7.7844%	0.0000%	7.7844%	\$2,979,021
10371	Tanner Elec Coop	\$9,748,304	0.1552%	0.0000%	0.1552%	\$59,409
10376	Tillamook PUD #1	\$47,179,173	0.7513%	0.0000%	0.7513%	\$287,525
10097	Troy, City of	\$-	0.0000%	0.0000%	0.0000%	\$-
10406	U.S. DOE Albany	\$542,195	0.0086%	0.0000%	0.0086%	\$3,304
10408	U.S. Naval Station, Everett (Jim Creek)	\$1,769,301	0.0282%	0.0000%	0.0282%	\$10,783
10409	U.S. Naval Submarine Base, Bangor	\$24,866,971	0.3960%	0.0000%	0.3960%	\$151,547

BPA Customer ID Number	BPA Customer Name	Corrected Non-Slice PF-02 Revenues	Corrected Non-Slice PF-02 Revenue Share	Slice % Share	PF-02 Customer Percentage	Customer Specific PF-02 Refund
10388	Umatilla Elec Coop	\$-	0.5384%	0.9194%	1.4578%	\$557,880
10482	Umpqua Indian Utility Cooperative	\$2,573,041	0.0410%	0.0000%	0.0410%	\$15,681
10391	United Electric Coop	\$23,654,110	0.3767%	0.0000%	0.3767%	\$144,156
10399	USBIA Wapato	\$828,235	0.0132%	0.0000%	0.0132%	\$5,048
10426	USDOE-Richland	\$31,732,310	0.5053%	0.0000%	0.5053%	\$193,387
10434	Vera Irrigation District	\$31,257,715	0.4978%	0.0000%	0.4978%	\$190,495
10436	Vigilante Elec Coop	\$-	0.0000%	0.0000%	0.0000%	\$-
10440	Wahkiakum County PUD #1	\$5,335,683	0.0850%	0.0000%	0.0850%	\$32,517
10442	Wasco Elec Coop	\$-	0.0000%	0.0000%	0.0000%	\$-
11680	Weiser, City of	\$-	0.0000%	0.0000%	0.0000%	\$-
10446	Wells Rural Electric Company	\$63,749,308	1.0152%	0.0000%	1.0152%	\$388,509
10448	West Oregon Elec Coop	\$-	0.0488%	0.0791%	0.1279%	\$48,959
10451	Whatcom County PUD #1	\$29,532,452	0.4703%	0.0000%	0.4703%	\$179,980
10502	Yakama Power	\$467,547	0.0074%	0.0000%	0.0074%	\$2,849
	TOTAL	\$4,858,550,145	77.3722%	22.6278%	100.0000%	\$38,269,000

Exhibit C

RENEWABLE ENERGY CERTIFICATES AND CARBON ATTRIBUTES TO IOUS

1. DEFINITIONS

- 1.1 “Carbon Credits” means Environmental Attributes, consisting of greenhouse gas emission credits, certificates, or similar instruments, that BPA determines are associated with resources whose costs are recovered in Tier 1 Rates, excluding Initial Tier 1 Renewable Projects.
- 1.2 “Current Tier 1 RECs” means the RECs that BPA determines are attributable to electrical generation from the Initial Tier 1 Renewable Projects.
- 1.3 “Environmental Attributes” means the current or future credits, benefits, emission reductions, offsets, and allowances attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.
- 1.4 “Environmentally Preferred Power RECS” or “EPP RECs” 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 FY2010 and FY2011 under Subscription power sales contracts containing rights to Environmental Attributes through FY2016, as determined by BPA to be necessary to administer such rights.
- 1.5 “Renewable Energy Certificates” or “RECs” means the certificates, documentation, or other evidence that demonstrates, in the tracking system selected under section 5 of this exhibit, the ownership of Environmental Attributes.
- 1.6 “Initial Tier 1 Renewable Projects” means the following projects existing as of December 5, 2008:

<i>Project</i>	<i>Capacity (MW)</i>
<i>Foote Creek I</i>	<i>15.32</i>
<i>Foote Creek II</i>	<i>1.8</i>
<i>Stateline</i>	<i>89.76</i>
<i>Condon</i>	<i>49.8</i>
<i>Klondike I</i>	<i>24</i>
<i>Klondike III</i>	<i>50</i>
<i>Ashland Solar</i>	<i>0.015</i>

- 1.7 “RPSB” means, with respect to each IOU for each year of a Rate Period, the IOU-Specific REP Settlement Benefit Amounts for such IOU as calculated pursuant to sections 6.1.1 and 6.1.2 of the Settlement Agreement and without regard to any

adjustments to IOU-Specific REP Settlement Benefit Amounts pursuant to section 6.2 of the Settlement Agreement.

- 1.8 “Tier 1 RECs” means the RECs that BPA determines are attributable to resources whose output is used to establish Tier 1 System Capability, as Tier 1 System Capability is defined in the TRM, excluding the Initial Tier 1 Renewable Projects.
- 1.9 “Tier 2 RECs” means the RECs attributable to generation of the resources whose costs are allocated to a given Tier 2 Cost Pool in accordance with the TRM.
- 1.10 “Transferable RECs” means Tier 1 RECs exclusive of Current Tier 1 RECs.

2. IOU’S SHARE OF TRANSFERABLE RECS

Beginning April 15, 2012, and by April 15 every year thereafter over the Payment Period, BPA will transfer to each IOU, or manage for such IOU in accordance with section 4 of this exhibit, at no charge or premium, a share of the Transferable RECs (or the revenues generated by the sale of such) equal the Transferable RECs for such year multiplied by 14%, the product of which is then multiplied by a fraction, the numerator of which is such IOU’s RPSB for such year and the denominator of which is the total of the RPSBs of all IOUs for such year; provided, however, that if any Non-Settling Entity does not amend Exhibit H of its CHWM Contract by adopting the replacement form of Exhibit H attached to this Settlement Agreement, then BPA will convey to the IOUs the value, as determined by BPA, of the Non-Settling Entities’ share of the RECs that would otherwise have been available for transfer to the IOUs by paying to the IOUs the value of such RECs.

The amount of Transferable RECs available to BPA to transfer or manage shall be subject to available Transferable RECs inventory.

3. TIER 2 RECS

BPA will not transfer to, or manage for, any IOU any Tier 2 RECs.

4. TRANSFER, TRACKING, AND MANAGEMENT OF RECS

Subject to BPA’s determination that the commercial renewable energy tracking system WREGIS is adequate as a tracking system, BPA will transfer to each IOU its share of Transferable RECs via WREGIS or its successor. If, during the Payment Period, 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 each IOU. In such case, a comparable process for BPA to provide each IOU its RECs will be established.

Starting on July 15, 2011, and by July 15 prior to each Rate Period through the Payment Period, each IOU will notify BPA which one of the following two options it chooses for the transfer and management of such IOU’s share of Transferable RECs for each upcoming Rate Period:

- (i) BPA will transfer such IOU’s Transferable RECs into its own WREGIS account, which must be established by such IOU; or
- (ii) Such IOU gives BPA the authority to market such IOU’s Transferable RECs on such IOU’s behalf. BPA will annually in May pay such IOU its pro rata share of all revenues generated by sales of Transferable RECs for the prior calendar year.

If any IOU fails to notify BPA of its election by July 15 before the start of each Rate Period, then such IOU will be deemed to have elected the option in section 4(ii) of this exhibit.

Any Transferable RECs BPA transfers to an IOU on April 15 of each year will be limited to those generated January 1 through December 31 of the prior year, except that any Transferable RECs BPA transfers to such IOU by April 15, 2012, will be limited to those generated October 1, 2011, through December 31, 2011.

5. FEES

Each IOU will be responsible for all WREGIS (or any successor commercial tracking system) fees it incurs associated with its Transferable RECs.

6. IOU'S SHARE OF CARBON CREDITS

If, in any year, BPA conveys the value of Carbon Credits to COUs under their CHWM Contracts as the Carbon Credits themselves, or revenue credits after BPA markets such Carbon Credits, then BPA will, at the election of each IOU transfer to such IOU, or manage for such IOU in a manner comparable to section 4 of this exhibit, at no charge or premium, a share of the Carbon Credits (or the revenues generated by the sale of such) equal to the Carbon Credits for such year multiplied by 14%, the product of which is then multiplied by a fraction, the numerator of which is such IOU's RPSB for such year and the denominator of which is the total of the RPSBs of all IOUs for such year; provided, however, that if any Non-Settling Entity does not amend Exhibit H of its CHWM Contract adopting the replacement form of Exhibit H attached to this Settlement Agreement, then BPA will convey to the IOUs the value, as determined by BPA, of the Non-Settling Entities' share of the Carbon Credits that would otherwise have been available for transfer to the IOUs by paying to the IOUs the value of such Carbon Credits.

7. BPA'S RIGHT TO TERMINATE TRANSFER OF RECS AND CARBON CREDITS

To the extent necessary to comply with any federal regulation or legislation which addresses Carbon Credits or any other form of Environmental Attribute(s) and includes compliance costs applicable to BPA, BPA may, upon reasonable notice to any IOU, terminate such IOU's contract rights to Transferable RECs under section 2 of this exhibit and such IOU's share of Carbon Credits under section 6 of this exhibit in whole or in part.

EXHIBIT D

ILLUSTRATIVE TABLE FOR SECTION 6

HYPOTHETICAL EXAMPLE OF CALCULATION OF UTILITY-SPECIFIC REP SETTLEMENT BENEFIT AMOUNTS

Amounts Are Shown For Illustrative Purposes Only

FY 2012

Participating IOU	ASC (§ 2)	Reference Rate (§6.1.1)	IOU's Residential Loads (§ 2)	IOU-Specific Unconstrained Amount (§6.1.1)	Constrained Total Benefit Ratio (§6.1.1)	IOU-Specific REP Settlement Benefit Amount Before Any §6.2 Settlement Adjustment	IOU Settlement Adjustment (§6.2)	IOU-Specific REP Settlement Benefit Amount
a	b	c	d	e=(b-c)*d	f=REP Sett. Ben./Σe	g=e*f	h (from table below)	i=g+h
Avista	\$58.84	\$43.65	3,893,255	\$59,152,579	22.32%	\$13,200,277	(\$1,812,537)	\$11,387,740
Idaho Power	\$49.43	\$43.65	5,154,780	\$29,813,202	22.32%	\$6,653,007	(\$3,326,503)	\$3,326,503
NorthWestern Energy	\$56.91	\$43.65	633,014	\$8,396,044	22.32%	\$1,873,631	\$984,390	\$2,858,021
PacifiCorp	\$60.27	\$43.65	9,451,130	\$157,111,841	22.32%	\$35,060,514	(\$7,932,035)	\$27,128,479
Portland General	\$71.49	\$43.65	8,734,886	\$243,210,703	22.32%	\$54,274,027	\$4,011,046	\$58,285,073
PSE	<u>\$70.14</u>	<u>\$43.65</u>	<u>12,015,550</u>	<u>\$318,335,219</u>	<u>22.32%</u>	<u>\$71,038,544</u>	<u>\$8,075,640</u>	<u>\$79,114,184</u>
Total IOU	\$64.11	\$43.65	39,882,616	\$816,019,586	22.32%	\$182,100,000	\$0	\$182,100,000

REP Settlement Benefits = **\$182,100,000**

Amounts Are Shown For Illustrative Purposes Only

EXHIBIT D

ILLUSTRATIVE TABLE FOR SECTION 6 (continued)

HYPOTHETICAL EXAMPLE OF CALCULATION OF UTILITY-SPECIFIC REP SETTLEMENT BENEFIT AMOUNTS

Amounts Are Shown For Illustrative Purposes Only

FY 2012

Participating IOU	Maximum IOU Annual Adj. Amount (§6.2.3) (for Northwestern Energy, amount of §6.2.4 Adjustment)	IOU Settlement Adjustments (§§6.2.1,6.2.2 & 6.2.4)					IOU Settlement Adjustment (§§ 6.2.1, 6.2.2 & 6.2.4)
		Avista	Idaho Power	NorthWestern	PacifiCorp	PGE	
Avista	(\$2,004,778)	\$0	\$250,496	(\$58,254)	\$0	\$0	(\$1,812,537)
Idaho Power	(\$3,326,503)	\$0	\$0	\$0	\$0	\$0	(\$3,326,503)
NorthWestern Energy	\$766,000	\$29,533	\$32,682	\$0	\$124,372	\$31,802	\$984,390
PacifiCorp	(\$8,442,636)	\$0	\$665,327	(\$154,726)	\$0	\$0	(\$7,932,035)
Portland General	(\$1,237,583)	\$855,497	\$1,029,933	(\$239,518)	\$3,602,717	\$0	\$4,011,046
PSE	\$0	\$1,119,748	\$1,348,065	(\$313,502)	\$4,715,547	\$1,205,781	\$8,075,640
Total IOU	(\$14,245,500)	\$2,004,778	\$3,326,503	(\$766,000)	\$8,442,636	\$1,237,583	\$0

Amounts Are Shown For Illustrative Purposes Only

Exhibit E

Arbitration Procedures

1. **Arbitration Procedures; Modification of 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 body of Settlement Agreement. Any provision of these Arbitration Procedures may be modified or supplemented with respect to a specific arbitration by agreement of all of the Participants.

2. **Rights of Notice Recipients to Participate in Arbitration; Challenges to Arbitrability.**

2.1 **Rights of Participation in Arbitrations Conducted Pursuant to Section 9.2.4(ii) or 9.3 of the Body of the Settlement Agreement.**

Any Notice Recipient may participate in an arbitration conducted pursuant to section 9.2.4(ii) or section 9.3 of the body of the Settlement Agreement only if such Notice Recipient agrees in writing to be bound, with respect to such arbitration, by all provisions of the body of the Settlement Agreement applicable to the alleged breach and all provisions of the Settlement Agreement applicable to such arbitration, including this Exhibit E and all limitations on the Arbitrator’s powers to grant remedies.

2.2 **Rights of Participation in Arbitrations Conducted Pursuant to Section 9.4 of the Body of the Settlement Agreement.**

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

2.3 **Challenges to Applicability of Arbitration Provisions.**

- (i) If legislation as contemplated by section 8 of the body of the Settlement Agreement is in effect, then, except as provided otherwise in section 9.3.1 of the body of the Settlement Agreement, a claim by any Notice Recipient (not including BPA) that the matter(s) identified in the Dispute Notice are not subject to binding arbitration under the Settlement Agreement will be a matter for the Arbitrator to decide.
- (ii) If legislation as contemplated by section 8 of the body of the Settlement Agreement is not in effect, then, irrespective of whether BPA’s Dispute Notice pursuant to section 9.2.3 of the body of the

Settlement Agreement states that BPA (a) will not engage in binding arbitration, or (b) agrees to engage in binding arbitration, a claim by any Party (not including BPA) that the matter(s) identified in the Dispute Notice are not subject to binding arbitration under the Settlement Agreement will be a matter for the Arbitrator to decide. If in its statement in accordance with section 9.2.3 of the body of the Settlement Agreement, BPA states that it will not engage in binding arbitration with respect to the matter(s) identified in the Dispute Notice, the remedies, if any, with respect to any dispute regarding whether BPA's decision is consistent with the terms of this Settlement Agreement will not be determined by the Arbitrator, but will be as provided by law. In any other case, a Notice Recipient that is not a Party that claims the matter(s) identified in the Dispute Notice are not subject to binding arbitration under the Settlement Agreement may elect to have the arbitrability of the matter(s) decided by the Arbitrator.

3. **Additional Requirements When BPA Is a Party to the Arbitration and Legislation Contemplated by Section 8 of the Body of the Settlement Agreement Is Not in Effect**

If legislation as contemplated by section 8 of the Settlement Agreement is not in effect, then any binding arbitration in which BPA is a Participant must follow all requirements contained in BPA's Binding Arbitration Policy. Within not more than 45 days following the date on which BPA delivers or issues the Dispute Notices pursuant to section 9.2.2 of the Settlement Agreement, the Participants must enter a written agreement to arbitrate that states: (i) the issue(s) in dispute; (ii) the maximum monetary amount that the arbitrator may award; (iii) the only type of remedy available is monetary relief and that no specific performance or other non-monetary relief is available; (iv) money damages are limited to those allowed under federal contract law, even if the designated maximum award amount is higher; (v) all Participants will bear their respective arbitration costs and fees, including all attorney fees and expenses; (vi) no arbitration award may include any award of another Participant's attorney fees or arbitration costs; and (vii) the arbitration procedures. Any monetary relief or money damages must also be consistent with section 11 of this Exhibit E.

4. **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 4.1 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 4.2 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 4.3 of this Exhibit E. The panel of arbitrators selected in accordance with section 4.1, 4.2, or 4.3 of this Exhibit E will be referred to in these Arbitration Procedures and in section 9 of the Settlement Agreement as the "Arbitrator."

4.1 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 the Dispute Notices pursuant to section 9.2.2 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 4.1 and in section 4.2 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 4.1 (and section 11.2, 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.

4.2 Process for Subsets of Parties to Select Two Arbitrators Who Then Select a Third

The process of selecting a panel of arbitrators under section 4.2 of this Exhibit E will be the same as specified in section 4.1 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 4.2 (and section 11.2, 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.

4.3 Process for Disputes Involving Only IOUs.

The process of selecting a panel of arbitrators under section 4.3 of this Exhibit E will be the same as specified in section 4.1 of this Exhibit E, except that

- (i) each IOU will be a Nominating Participant (for purposes of this section 4.3 and for purposes of section 11.2 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.

5. 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.

6. 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.

7. 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 4 of this Exhibit E, and (ii) request that the Arbitrator render a decision within 90 days following the conclusion of the arbitration proceedings.

8. 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.

9. Discovery

9.1 Federal Rules of Civil Procedure.

Except as otherwise provided in section 9.2 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.

9.2 Limitation on Depositions.

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

10. 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.

11. Arbitrator's Determination

11.1 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.

11.2 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 4.1, 4.2, or 4.3 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.

11.3 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.

11.4 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 in 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.

12. Arbitrator's Determination Final and Binding; No Precedential Effect

12.1 Finality

Except as provided in section 12.2 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 9.2.4(i) or section 9.4 of this Settlement Agreement 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.

12.2 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).

12.3 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.

13. Arbitration Costs

13.1 Responsibility for Costs Absent Arbitrator's Finding of Frivolous Claims or Bad Faith

Except as otherwise provided in section 13.2 of this Exhibit E and subject to any agreement entered into pursuant to section 3, (i) each Participant will be responsible for its own costs of participating in the arbitration, including legal fees and expenses; (ii) 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; and (iii) the Arbitrator will apportion all joint costs of arbitration equally between the Nominating Participants other than BPA, unless the Nominating Participants have agreed to apportion joint costs in some other way.

13.2 Arbitrator's Authority to Impose Fees and Costs for Frivolous Claims or Bad Faith

Subject to section 13.3 of this Exhibit E and any agreement entered into pursuant to section 3, if the Arbitrator finds, with respect to an arbitration conducted pursuant to section 9 of the Settlement Agreement and this Exhibit E, that a Participant's claims are frivolous, or that the Participant has acted in bad faith during the course of the arbitration, the Arbitrator may require such Participant to pay all or a portion of one or more other Participants' costs of participating in the arbitration, including legal fees and expenses and its share of joint arbitration costs.

13.3 No Arbitration Costs or Other Participants' Legal Fees and Expenses to Be Apportioned to BPA

Subject to any agreement entered into pursuant to section 3 of this Exhibit E, the Arbitrator may not apportion any costs of the arbitration, or any other Participant's own costs of participating in the arbitration, including legal fees and expenses, to BPA.

Exhibit F
[Not Used]

Exhibit G
[Not Used]

Exhibit H

TEMPLATE REPLACEMENT FORM OF EXHIBIT H TO COU PARTIES' CHWM CONTRACTS

Revision No. ~~##~~, Exhibit H RENEWABLE ENERGY CERTIFICATES AND CARBON ATTRIBUTES

This revision replaces Exhibit H pursuant to the REP Settlement Agreement Contract No. 11PB-12322 executed by the Parties, and is effective as of the "Effective Date" of such REP Settlement Agreement.

1. DEFINITIONS

- 1.1 "Available Carbon Credits" means (i) eighty-six percent (86%) of the Carbon Credits that BPA determines are attributable to resources whose output is used to establish Tier 1 System Capability, as Tier 1 System Capability is defined in the TRM, excluding the Initial Tier 1 Renewable Projects; and (ii) one-hundred percent (100%) of the Carbon Credits attributable to electrical generation from Initial Tier 1 Renewable Projects, excluding Carbon Credits associated with EPP RECs.
- 1.2 "Available Tier 1 RECs" means the sum of: (i) eighty-six percent (86%) of the Future Tier 1 RECs; and (ii) one-hundred percent (100%) of the Current Tier 1 RECs.
- 1.3 "Carbon Credits" means Environmental Attributes consisting of greenhouse gas emission credits, certificates, or similar instruments.
- 1.4 "Current Tier 1 RECs" means Tier 1 RECs that BPA determines are attributable to electrical generation from Initial Tier 1 Renewable Projects, excluding EPP RECs.
- 1.5 "Environmental Attributes" means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.
- 1.6 "Environmentally Preferred Power RECS" or "EPP RECs" means the portion of the Current 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.

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- 1.7 “Future Tier 1 RECs” means Tier 1 RECs that BPA determines are attributable to resources whose output is used to establish Tier 1 System Capability, as Tier 1 System Capability is defined in the TRM, excluding the Initial Tier 1 Renewable Projects.
- 1.8 “Initial Tier 1 Renewable Projects” means the following projects existing as of the Effective Date of the «Customer Name»’s CHWM Contract:

Project	Capacity (MW)
Foote Creek I	15.32
Foote Creek II	1.8
Stateline	89.76
Condon	49.8
Klondike I	24
Klondike III	50
Ashland Solar	0.015

- 1.9 “Renewable Energy Certificates” or “RECs” means the certificates, documentation, or other evidence that demonstrates, in the tracking system selected under section 5 of this exhibit, the ownership of Environmental Attributes.
- 1.10 “Tier 1 RECs” means the sum of the Current Tier 1 RECs and Future Tier 1 RECs.
- 1.11 “Tier 2 RECs” means the RECs attributable to generation of the resources whose costs are allocated to a given Tier 2 Cost Pool in accordance with the TRM.

2. BPA’S TIER 1 REC INVENTORY

BPA shall maintain a list on a publicly accessible BPA website and shall periodically update it. This list will include any then-current resources that BPA has determined have Tier 1 RECs attributable to them. BPA shall also include on this list its inventory of then-current resources that BPA has determined have Available Tier 1 RECs (and Available Carbon Credits). BPA shall calculate its Available Tier 1 RECs and Available Carbon Credits annually and after-the-fact based on energy generated by listed applicable resources during the previous calendar year.

3. «CUSTOMER NAME»’S SHARE OF TIER 1 RECS

Beginning April 15, 2012, and by April 15 every year thereafter over the term of this Agreement, BPA shall transfer to «Customer Name», or manage in accordance with section 5 of this exhibit, at no additional charge or premium beyond «Customer Name»’s payment of the otherwise applicable Tier 1 Rate, a pro rata share of Available Tier 1 RECs based on «Customer Name»’s RHWM divided by the total RHWMs of all holders of CHWM Contracts.

The amount of Available Tier 1 RECs available to BPA to transfer or manage shall be subject to available Available Tier 1 REC inventory.

4. TIER 2 RECS

If «Customer Name» chooses to purchase Firm Requirements Power at a Tier 2 Rate, and there are RECs which BPA has determined are attributable to the resources whose costs are allocated to the Tier 2 Cost Pool for such rate, then beginning April 15 of the year immediately following the first Fiscal Year in which «Customer Name»'s Tier 2 purchase obligation commences, 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 of this exhibit, transfer to or manage for «Customer Name» a pro rata share of applicable Tier 2 RECs generated during the previous calendar year. BPA shall, for transferred RECs, provide «Customer Name» with a letter assigning title of such Tier 2 RECs to «Customer Name». The pro rata share of Tier 2 RECs BPA transfers to «Customer Name» shall be the ratio of «Customer Name»'s amount of power purchased at the applicable Tier 2 Rate to the total amount of purchases under that Tier 2 Rate.

5. TRANSFER, TRACKING, AND MANAGEMENT OF RECS

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 Available Tier 1 RECs, and Tier 2 RECs if applicable, to «Customer Name» via WREGIS or its successor. If, 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 Available Tier 1 and Tier 2 RECs.

Starting on July 15, 2011, and by July 15 prior to each Rate Period through the term 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 Available Tier 1 RECs, and Tier 2 RECs if applicable, for each upcoming Rate Period:

- (1) BPA shall transfer «Customer Name»'s Available Tier 1 and Tier 2 RECs into «Customer Name»'s own WREGIS account, which shall be established by «Customer Name»; or
- (2) BPA shall transfer «Customer Name»'s Available Tier 1 and Tier 2 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 Available Tier 1 and Tier 2 RECs on «Customer Name»'s behalf. BPA shall annually credit «Customer Name» for «Customer Name»'s pro rata

share of all revenues generated by sales of Available Tier 1 and Tier 2 RECs from the same rate pool 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, then «Customer Name» shall be deemed to have elected the option in section 5(3) of this exhibit.

Any Available Tier 1 and Tier 2 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 Available Tier 1 and Tier 2 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

BPA shall pay any reasonable fees associated with: (1) the provision of «Customer Name»'s Available Tier 1 and Tier 2 RECs and (2) the establishment of any subaccounts in «Customer Name»'s name pursuant to sections 5(1) and 5(2) of this exhibit. «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

In the absence of regulations or legislation concerning carbon credits and directly affecting BPA, BPA intends to convey the value of any future Available Carbon Credits to «Customer Name» on a pro rata basis in the same manner as described for Available Tier 1 RECs and Tier 2 RECs in sections 3 and 4 of this exhibit. This value may be conveyed as: (1) the Available Carbon Credits themselves; (2) a revenue credit after BPA markets such Available Carbon Credits; or (3) the ability to claim that power purchases at the applicable PF rate are derived from certain federal resources.

8. BPA'S RIGHT TO TERMINATE «CUSTOMER NAME»'S RECS AND/OR CARBON CREDITS

To the extent necessary to comply with any federal regulation or legislation which addresses Carbon Credits or any other form of Environmental Attribute(s) and includes compliance costs applicable to BPA, BPA may, upon reasonable notice to «Customer Name», terminate «Customer Name»'s contract rights to Available Tier 1 RECs under section 3 of this exhibit and/or «Customer Name»'s pro rata share of Available Carbon Credits under section 7 of this exhibit.