



McCleary City Council

PROPOSED AGENDA

March 23, 2011

7:00 Council Meeting

Flag Salute
Roll Call
Minutes (Tab A)
Public Comment
Mayor's Report

Staff Reports: Dan Glenn, City Attorney (Tab B)
 Nick Bird, Director of Public Works (Tab C)

Old Business: Clarification on Res. 625 (Tab D)

New Business: Residential Exchange Program (Tab E)
 Amendment No. 18 (Tab F)

Ordinances:

Resolutions:

Vouchers
Mayor/Council Comments
Public Comment
Executive Session
Adjournment

Americans with Disabilities Act (ADA)
Accommodation is Provided Upon Request

Please Turn Off Cell Phones – Thank You

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, March 09, 2011

REGULAR MEETING	Called to order by Mayor Dent.
FLAG SALUTE	The meeting was called to order at 7:00 PM with the Flag Salute.
ROLL CALL	Councilmember's Boling, Geer, Lant, Schiller, and Ator. All present.
ABSENT	None.
STAFF PRESENT	Present at the meeting were Dan Glenn, Wendy Collins, Nick Bird, Todd Baun, George Crumb, Mick Schlenker, Jennie Reed, Paul Nott, John Graham and Jon Hinton.
MINUTES APPROVED	It was moved by Councilmember Boling, seconded by Councilmember Geer to approve the minutes as written. Motion Carried.
PUBLIC COMMENT	None.
MAYOR'S REPORT	<p>Mayor Dent reported there has been no word yet from the Department of Corrections but the City believes we still have a good chance at being one of the top three selected sites.</p> <p>The State Auditor is still working on finishing the 2009 audit and we are waiting to hear back from them when they plan to finalize it and schedule the exit conference.</p>
CITY ATTORNEY REPORT	Dan Glenn reported the new Bill that was introduced in the Legislature, which mandated all municipal court judges be chosen by election, did not pass the Senate. He believes it will be brought up again next year.
FLOAT SHED	<p>At the last meeting, the Council asked if the float shed building were to be demolished, would the property be buildable. Nick Bird stated we would not have a problem rebuilding. Fencing has been installed to keep the public from entering the premises. Councilman Schiller asked why last fall Nick Bird recommended it would be more of an asset to maintain the building and reroof it but now he is suggesting demolition. Mayor Dent responded by saying it is an issue of money and it would cost more to replace the roof than to demolish the building.</p> <p>Councilman Schiller disagreed and stated it will cost about the same. He also stated in September 2010 the Council asked Nick to solicit a bid for a reroof and it was never done. Councilmember Schiller said the Council is very confused by the contradictory information they have been told and he is frustrated because they have not received any comparative cost figures. Attorney Glenn suggested Nick clarify what options there are, including specific costs, and bring it back to the council.</p>
BPA LONG-TERM FIRM AGREEMENT	It was moved by Councilmember Lant, seconded by Councilmember Ator to authorize the Mayor to sign the long term firm agreement with BPA. Motion Carried.
TSS VIOLATION-WWTP	At the wastewater treatment plant we have a National Pollutant Discharge Elimination System Permit that regulates our maximum influent and effluent flows and loadings. We are above the permitted 85% and we needed to address the issue immediately, as the fines for being over the limit can be as much as \$10,000 per day. Staff believes the problem is caused by an influent sampling hose that had a large mass attached, which very well could have caused the random spike in loading. The hose was replaced and will be checked regularly to ensure it remains free of debris. Mr. Bird will keep the Council informed if any further issues develop.
BUILDING DEPARTMENT SCHEDULE CHANGE	The Building Official has finalized his hours for his reduced schedule. He will be available 8am-Noon on Mondays and 8am to 4:30pm on Wednesdays and Thursdays. Building permit applications will be accepted during regular business hours.
RESOLUTION NO. 625 CLARIFICATION	More clarification has been requested in regards to the fees for the City's facilities. Resolution 625 did not address funerals and non profit usages and also did not separate large and small gathering pricing. Council will review the previous Resolution 473, along with Resolution 625, and discuss it at the next meeting.

ABERDEEN INTERLOCAL
AGREEMENT

It was moved by Councilmember Ator, seconded by Councilmember Lant to authorize the Mayor to sign the interlocal agreement with the City of Aberdeen to perform certain projects relating to public works for which we do not have the equipment to perform. Motion Carried.

GA SURPLUS AGREEMENT

Washington State General Administration sent a letter offering their services to surplus equipment. In the event the City does have surplus equipment, staff would like to utilize their offer. It was moved by Councilmember Lant, seconded by Councilmember Schiller to authorize the Mayor to sign the surplus agreement with General Administration. Motion Carried.

SUBSTATION MAINTENANCE
AND AWARD

As previously reported, the substations have not been regularly maintained. The City distributed a small works package to all six electrical contractors on our small works roster. KVA Electric was the only proposal submitted. The maintenance work is critical and we need to move forward as quickly as possible. Paul Nott gave a brief summary regarding the substation and stated that for many years the crew has requested maintenance to be budgeted but it never was. Fortunately, Mayor Dent approved the inspection and that is how we discovered the serious condition the substation is currently in.

As required, residents need to be notified as soon as possible of the outage. Paul Nott believes a 24-hour power outage should allow enough time to complete the necessary work. They will start on one-half of the City now and will complete the other half in a few weeks. It was moved by Councilmember Geer, seconded by Councilmember Lant to award the substation inspection and repair project to KVA Electric in the amount of \$82,689.69 and authorize the Mayor to execute the contract documents. Motion Carried.

PROGRESS ESTIMATE #4 -
RESERVOIR PROJECT
CLOSEOUT

It was moved by Councilmember Boling, seconded by Councilmember Ator to authorize the Mayor to execute Change Order 1, and to authorize the payment of Progress Estimate #4 with the amount to be paid to the Contractor for \$4,394.49 and the amount to be deposited in the retainage account is \$212.50 and to accept the project as complete. Motion Carried.

REPAYMENT PLAN -
CUSTOMER DEBTS

More inaccurate utility billing accounts have been discovered. The City became aware of a customer that connected to City sewer in 2005 and never paid the connection fee and also has never been billed for monthly sewer fees. Staff is requesting Attorney Glenn to prepare a contract with a repayment plan, including interest, to assist residents to pay the outstanding debt owed to the City.

PUBLIC COMMENT

Councilmember Lant wanted to clarify the Council's request in regards to the float shed by stating they would like to have Nick Bird prepare pricing for the building to be reroofed and also for demolition and removal. This way they have all options, including pricing, to review at the next meeting.

Everett Chalstedt commented on the float shed and stated he found it to be a very valuable building and suggested speaking to the Bear Festival Committee to see if they could assist in the possibility of salvaging the building.

Joy Iverson asked about the charges for the community center. Wendy Collins explained that the original resolution was not considered while preparing the cost changes for the rental of the City facilities. We need to have more user-friendly and simplified fee schedule than what was previously presented to the Council. Staff will briefly implement Resolution 625 until the Council decides on updated fees at the next meeting.

Angie Thompson asked if there will be a shelter available during the power outage since it is winter time. Paul Nott responded by stating the City tries to give advance notice to help people prepare; however, he will contact the Methodist Church because they work closely with the Red Cross and can open up their doors if there are people that need assistance.

Craig Ackley asked if the electrical cut-over will begin in the near future. Paul Nott stated they have to see how the budget looks after the work is completed on the substation. They will do the work as time and budget permits.

Four women representing Lindsey Baum asked how to go about getting a billboard sign placed in the City limits in a continued effort of publicizing her disappearance.

APPROVAL OF VOUCHERS

It was moved by Councilmember Lant, seconded by Councilmember Boling to approve the vouchers. Motion carried.

EXECUTIVE SESSION None

ADJOURNMENT **It was moved by Councilmember Aton seconded by Councilmember Geer to adjourn the**

Mayor Gary Dent: _____

Clerk-Treasurer Wendy Collins: _____

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary
FROM: DANIEL O. GLENN, City Attorney
DATE: March 17, 2011
RE: LEGAL ACTIVITIES as of MARCH 23, 2011

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure.

1. **ABERDEEN/McCLEARY INTERLOCAL:** Pursuant to your authorization, the draft agreement was forwarded to Mr. Nelson, Aberdeen's City Attorney. We have received a communication that he will be recommending its acceptance by the City Council at their next session which is this week. If that occurs, then the particular project in question will go forward upon such timing as the relevant staff determine most effective.

As a side point, there have been discussions about developing a county-wide interlocal for public services among the cities of the County. Mr. Nelson has "morphed" the agreement which has been provided so as to fit a multi-city and general project approach and circulated to the attorneys for the cities in the County. If it can be put together, it will allow each city to benefit from the capabilities of the other cities in terms of staff and equipment availability.

2. **ELECTED JUDICIARY MANDATE BILL:** As I believe I mentioned orally at the last meeting, as of this time the bill is "dead" for this legislative session. However, the AWC staff member responsible for keeping track of the bill indicated she had little doubt the bill would be back next year. We can anticipate the proponents, including the Chief Justice of the State Supreme Court and Grays Harbor District Court Judge Brown, in his role as president of their association, may seek to utilize information gathered by the Office of the Administrator of the Courts. As I believe I have mentioned, that office just happened to submit to the 80 plus cities which have a court such

as ours an extensive public records request seeking historical information in relation to the respective courts at about the time this bill was moving forward.

Ms. Collins will have spent quite a bit of time gathering and providing this information. It is pleasant that the information she will provide will reflect a court which has operated independently and consistent with the statutory and constitutional intentions of it being a separate branch of government.

3. **SOFTWARE STATUS:** Pursuant to your authorization, the final notice of termination of contract was given to the original provisioner. It is my understanding the City received a call from a representative which indirectly acknowledged that it had been received. Ms. Collins, pursuant to the second element of the authorization I understand you granted, has commenced the distribution of a request for proposals for replacement software. The applicable legislation recognizes that such items as software, computers, and telecommunications do not really fit well under the normal public works bidding process. Thus, it was my advice to her that she follow the procedures set out in RCW 39.04. 270 which allows the sending out of written requests, one publication in a paper of general circulation, and then an evaluation of the proposals. That evaluation is not necessarily based upon the price, but primarily upon what is delivered in terms of relation to what is needed.

4. **COMMUNITY FACILITY UTILIZATION:** A new draft has been provided to Ms. Collins and Mr. Bird for their review. It seeks to integrate the elements of the two resolutions and make them fit a bit easier. It is anticipated you will have a draft for your review. Given the breadth of the rental elements, it may be one of those drafts which you will wish to receive and then take some additional time to review for the purpose of making such changes or additions as you feel appropriate prior to its final enactment.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le

STAFF REPORT

To: Mayor Dent
From: Nick Bird, Director of Public Works
Date: March 18, 2011
Re: Current Non-Agenda Activity

Department of Corrections – Reception Center

We still have not heard any news about the Reception Center. The most recent posting on the DOC website is from February 2. As new information becomes available, we will be sure to pass it along.

Conservation Program

Draft components of the Conservation Program are now shown on our website. It is my understanding that we have already had some visitors taking a look at what may be offered. We still have a little fine tuning to complete the Program before we officially begin accepting applications. We anticipate implementation of the Program within the next few weeks.

Substation Repair and Inspection

Work will be completed this weekend at the 12KV substation (7th and Ash) resulting in a scheduled outage for all customers north of Simpson Avenue as indicated in the bulk mailing. We hope that we get a “clean bill of health” during the inspection at the 12KV substation. In the event that additional repairs are necessary, a second outage impacting the customers north of Simpson Avenue will be necessary.

Work on the 4KV substation, which will affect customers south of Simpson Avenue, is tentatively scheduled for the third or fourth weekend in April. The date is solely dependent upon the availability of the replacement components. When we have a firm date set we will again provide notification similar to the notification provided for the northern outage.

Float Shed

We are in the process of developing costs as requested.

Stormwater Plan

We have received a time extension to complete the Plan by September 18, 2011. This extension relates to a variety of difficulties we have had in relation to creating the basemap prior to modeling the system. The Plan is in draft form and has been reviewed, but a second draft will likely be provided within the next month addressing the revisions suggested by Todd and me.

Reservoir Repainting

Close out paperwork has been submitted and is in process.

County Wide Interlocal

A few administrative items still need to be completed before this document is distributed.

Learning to Grow Daycare

Traffic engineers are verifying sight distance availability at the LTG site. Once they provide their recommendation to the applicant, the applicant will submit their engineer's recommendations for correcting the sight distance deficiency. As the access is the only condition limiting the use of the site, the applicant is diligently working to address the existing concerns.

Sam's Canal

We will be meeting with the Army Corps of Engineers and Washington State Department of Fish and Wildlife on 3/22 to review our request for removal of deposited sediment at the culvert outfall adjacent to the Wastewater Treatment Plant. This deposited sediment has given the vegetation a foundation in which to grow, ultimately generating the potential to limit the flow in the channel. Our goal is to remove the sediment and vegetation that has accumulated over the years and restore the channel to the original post construction condition.

Bear Festival

We met with the Bear Festival Chair, Vice Chair, and additional volunteers regarding the 2011 Bear Festival. As a result of this meeting, we are considering some new options for traffic management on Saturday (parade day).

Should you have any questions about any items that have not been addressed, please feel free to ask away!

STAFF REPORT

To: Mayor Dent
From: Nick Bird, P.E., Director of Public Works
Date: March 18, 2011
Re: Clarification of Res. 625

Mr. Glenn has provided some modifications to Resolution 625 as was discussed last meeting. Both Wendy and I have had the opportunity to review the revisions. We have gone back and forth a bit, but hopefully we have worked out a solution that will be equally beneficial for all.

Action Requested:

Please consider adopting the resolution provided by Mr. Glenn to correct the noted deficiencies identified in Resolution 625.

STAFF REPORT

To: Mayor Dent
From: Nick Bird, P.E., Director of Public Works
Date: March 19, 2011
Re: Residential Exchange Program

I apologize for the massive topic, but this is a very big deal that has ramifications throughout the Northwest. Below you will find an executive summary of what the Residential Exchange Program (REP) is, and what BPA is asking us to do.

Additionally, the following items are attached:

- Attachment A – Background and Summary of the REP Settlement Agreement (Murphy, Legal Council for COUs)
- Attachment B – Key Elements of the REP Settlement Agreement (Corwin, Executive Director, Public Power Council)
- Attachment C – The Residential Exchange Program Settlement Agreement
- Attachment D – REP Settlement Update (March 11, 2011; from BPA)

Background

The Northwest Power Act, enacted in 1980, requires BPA to subsidize the residential and small farm consumers of the higher cost utilities in the Pacific Northwest. Typically, the higher cost utilities are Investor Owned Utilities (IOUs) like Puget Sound Energy, Portland General, PacifiCorp, Idaho Power, Avista, etc. We are a Consumer Owned Utility (COU). The obvious mechanism for the subsidy is through COU rates (i.e. our consumers are paying to subsidize the higher cost utilities).

After some questionable decisions made by BPA beginning in 1996, several COUs took BPA to the United States Court of Appeals for the Ninth Circuit. In May of 2007, the Court found that BPA failed to implement the 7(b)(2) protection to the COUs offered under the Northwest Power Act and required BPA to “try again”. Additionally, the Court invalidated a settlement that was completed in 2000.

In 2008, BPA initiated and completed the “WP-07S” proceeding in an effort to “try again”. The COUs were unhappy with BPA’s implementation of Section 7(b)(2) and again sued BPA claiming that BPA had misinterpreted Section 7(b)(2). A total of 56 lawsuits are pending regarding this issue.

Both parties (COUs and IOUs) were able to reach an Agreement in Principle, which was the beginning of the REP Settlement Agreement.

On March 16, I attended a workshop put on by the Public Power Council. The presenters included the Legal Council representing the COUs, the Power Rates Manager for BPA, and the Vice President of BPA. Bonneville strongly conveyed that they would like to see all COUs to sign the REP Settlement Agreement.

Basic Options

1. Execute the Contract
 - a. If the Contract is fully executed (91% COUs, 100% IOUs, and BPA), then the contract is binding. Litigation may proceed with the non-signers.
 - b. If the Contract is not fully executed, litigation will proceed.

2. Do not execute the Contract
 - a. If the Contract is fully executed, the Contract states that the Contract is enforceable upon the non-signers. I understand that if this alternative occurs, the courts will be involved significantly.
 - b. Again, if the contract is not fully executed, litigation will proceed.

Pages 7 through 9 of the “Background and Summary of the REP Settlement Agreement”, included as Attachment A, provides a great summary of the agreement.

Financial Impact

The Settlement Agreement identifies the amount to be paid through the REP to IOUs as a variable amount ranging from \$182 Million in 2012 to \$286 Million in 2028. Additionally the Settlement negates \$1.15 Billion in Lookback Credits and Refund Amounts that are owed to COUs. The information that we have received from BPA indicates that without a settlement, the 2012 REP value will be \$297 Million. Obviously the settlement is proposing a cost less than the proposed 2012 REP cost, however, in the event that the Courts rule in favor of COUs the REP value is projected to be \$0 over the next 6-8 years (note that multiple cases must be won to achieve this result).

The City of McCleary’s Total Overall Cost Allocation (TOCA) is 0.0635%. This value is used to roughly determine how much the City of McCleary is responsible for. The following values, based on the above financial data, are the 2012 calculated cost for the City of McCleary:

- Execute Settlement – \$116,000
- Do not Execute Settlement / Lose Litigation – \$179,000
- Win Litigation – \$0

The calculated 2011 REP cost is approximately \$163,000. Again, these values are included in the utility rates paid to BPA.

Ultimately this is a cost that will be passed onto our rate payer base. The City of McCleary has approximately 1,000 customers connected to the utility. The financial impact of executing the settlement is approximately \$10 a month, where if we do not execute the settlement the rate payer cost is approximately \$15 a month.

Additionally, there is a chance that if the signers reach “critical mass” (91% of the PF load) and we chose not to sign the Agreement, than we will be treated as if we had signed the Agreement (lose lookback credits / refund credits and pay the REP rates established

in the contract). If the Contract is executed, this will likely be challenged in the court system.

Action Requested:

No action required, however BPA requires any signatory parties provide the executed agreement to their office no later than April 15, 2011.

Background and Summary of the Residential Exchange Program Settlement Agreement

Paul M. Murphy
March 16, 2011

Background

The Pacific Northwest Electric Power Planning and Conservation Act of 1980 (“Northwest Power Act”) sets up a Residential Exchange Program (“REP”) that requires BPA to subsidize the residential and small farm consumers of the higher cost utilities in the Pacific Northwest. The cost of the REP increases BPA’s Priority Firm (“PF”) rate to consumer owned utilities (“COUs”) and the Industrial Power (“IP”) rates for power sold to direct service industries (“DSIs”). The impact of the REP on the PF rate is moderated, but not eliminated, by section 7(b)(2) of the Northwest Power Act. Section 7(b)(2) establishes a rate ceiling applicable to the PF preference rate based on five assumptions listed in section 7(b)(2), including the assumption that BPA is not participating in the REP.

BPA’s participation in the REP has been controversial from its inception. Only two years after the REP began, BPA modified the methodology for calculating the subsidy in response to complaints from COUs and DSIs that the cost of the REP was too high. The investor owned utilities (“IOUs”), which were the primary beneficiaries of the REP, sued BPA in the United States Court of Appeals for the Ninth Circuit to restore the initial methodology, but the Court upheld BPA’s modifications.

In the mid 1990’s, BPA significantly lowered the subsidy again in response to falling market power prices, and this time the IOUs turned to Congress. Congress gave the IOUs a temporary reprieve from the reduced subsidy, but basically allowed BPA’s action to stand. However, the governors of the four states in the Pacific Northwest forced BPA to re-think how it would implement the REP and its power marketing program generally beginning as of October 1, 2001.

In response to the pressure from the governors, BPA adopted what it called a Subscription Strategy that radically changed how BPA would implement the REP. Under BPA’s Subscription Strategy, BPA decided to

abandon the REP and the section 7(b)(2) rate protection to the COUs as set up by the Northwest Power Act. BPA substituted a much more expensive “REP Settlement” that it negotiated with the IOUs and the utilities commissions of the four Northwest states.

Several COUs took BPA to the United States Court of Appeals for the Ninth Circuit, and challenged both the negotiated REP Settlement for its failure to comply with the REP established by the Northwest Power Act and the PF rate BPA had developed to pay the higher REP costs without regard to the section 7(b)(2) rate ceiling. In May of 2007, the Ninth Circuit issued two opinions; one opinion overturned BPA’s REP Settlement with the IOUs¹, the other opinion ruled that BPA had failed to provide the COUs the section 7(b)(2) rate protection required by law and directed BPA to “set rates in accordance with this opinion.”²

In response to the two Court orders, BPA stopped paying REP Settlement benefits to the IOUs, but it did not stop collecting the cost of those benefits in the PF rate. BPA also initiated discussions among the COUs and IOUs in an attempt to reach an alternative settlement of the REP acceptable to the COUs. Although BPA, the IOUs and COUs came close to reaching an agreement, the settlement effort ultimately failed, in part because BPA believed it needed to respond to the Court’s orders before the passage of too much time.

The WP-07S Proceeding and Subsequent Litigation

In February 2008, BPA initiated the WP-07S proceeding to respond to the Ninth Circuit’s orders. This proceeding addressed a number of issues regarding the REP and BPA’s rates including: 1) how much REP benefits should the IOUs have received during FY 2002 through FY 2008; 2) how much section 7(b)(2) rate protection should the COUs have received during those same years; 3) how should BPA recover any over-payments of REP benefits from the IOUs; 4) how should BPA refund such over-payments to the COUs; 5) what adjustment did BPA have to make to its rates for FY 2009 to respond to the Court’s order; and, 6) how should BPA determine the

¹ *Portland General Electric Company v. Bonneville Power Administration*, 501 F.3d 1009 (9th Cir. 2007).

² *Golden Northwest Aluminum Inc. v. Bonneville Power Administration*, 501 F.3d 1037 (9th Cir. 2007).

section 7(b)(2) rate protection for the future. At the same time, BPA conducted a separate proceeding to revise its Average System Cost Methodology, which is an important element of determining the REP benefits and costs. The WP-07S case was hotly contested on all issues by the IOUs, the COUs and a group of industrial customers of the COUs (the Association of Public Agency Customers or "APAC").

In September 2008, BPA issued its decision in the WP-07S case. As part of its decision, BPA retroactively modified the way it calculated the section 7(b)(2) rate protection in a manner that substantially reduced the rate protection that was available under BPA's prior section 7(b)(2) implementation and increased the cost of REP. BPA also modified its section 7(b)(2) methodology prospectively in a manner that would further reduce the section 7(b)(2) rate protection. In the parallel proceeding, BPA revised the Average System Cost Methodology in a manner that also increased the cost of the REP. Even with these adverse modifications, BPA concluded that it had overcharged the COUs by about \$1 billion from FY 2002 through FY 2008. Part of this overcharge was quickly refunded from the money BPA had collected from the COUs but withheld from the IOUs. BPA has been refunding the remaining amount over time by reducing the IOUs' REP benefits below the level BPA now calculates they are entitled to. As of October 1, 2011, the as yet not refunded overcharges, plus interest, will be \$510 million. Only \$398 million of that amount would ever be refunded to the COUs because \$112 million is owed by Idaho Power who, absent a settlement, is unlikely to qualify for REP benefits.

No party was happy with BPA's decision. The COUs and APAC sued BPA claiming that BPA had misinterpreted section 7(b)(2) to their detriment, and that BPA had failed to order the return of all of the amounts by which the COUs had been overcharged. The IOUs and their regulatory commission sued BPA claiming that BPA's interpretation of section 7(b)(2) was too generous to the COUs, and that BPA had entered into a binding agreement not to recover any amount actually paid to the IOUs, so all refunds were unlawful. The 14 lawsuits challenging BPA's administrative determinations for FY 2002 through FY 2008 in the WP-07S lawsuit have been consolidated into a single court proceeding, and the parties have fully briefed the issues. The seven lawsuits addressing the IOUs contract claim against BPA have been consolidated into a separate court proceeding, and the parties have briefed the issues in that proceeding as well. Oral argument

and any further action by the Court have been stayed pending the parties' attempt to settle their disputes.

Several additional lawsuits have been filed challenging the REP costs in the PF rate for FY 2009 through FY 2011. These cases have not yet been briefed, but they have been stayed pending the settlement negotiations.

Renewed Settlement Efforts

After the parties had completed briefing of the cases that addressed only the FY 2002 through FY 2008 period, they agreed to engage in mediated settlement discussions. There were several reasons that motivated the parties to try again to settle the REP even though they had been unsuccessful in the 2007 discussions. One big reason was the recognition that settlement was the only way to achieve any fairly prompt resolution of their disputes. The disputes relating to the initial REP Settlement of 2000, which the COUs had not been party to, have still not been resolved ten years later in spite of two Ninth Circuit decisions arising out of that settlement. It is the nature of court decisions to identify errors, if any, committed by agencies, but courts do not generally specify how those errors should be corrected. Thus, even if the court were to reverse BPA's WP-07S decision in some fashion, it is very likely that BPA would retain ample discretion on how to "correct" its error.

A second factor is the large amount of deference a court is required to afford an administrative agency like BPA. Courts reverse agency decision only if the agency has acted clearly beyond the law, and they give the agency the benefit of the doubt on the agency's interpretation of the law. A third factor to be considered is that courts are not predictable. As much as a party may believe its position in court to be correct, there is always the risk that the court may rule against them. Most cases settle precisely because the parties have more confidence in their own ability to weigh the merits of the case than they have in the court's ability to weigh the merits.

In this case, with the help of a mediator, the COUs and IOUs were able to reach an Agreement in Principle as of September 1, 2010 to settle all issues relating to REP for the IOUs for the period FY 2002 through FY 2028, at which time the COUs' RD Power Contracts with BPA expire. The COUs, the IOUs and BPA then started to negotiate a detailed "Settlement

Agreement” to implement the Agreement in Principle, and to fill in the many gaps and details left open by the Agreement in Principle.

Terms of the Settlement Agreement

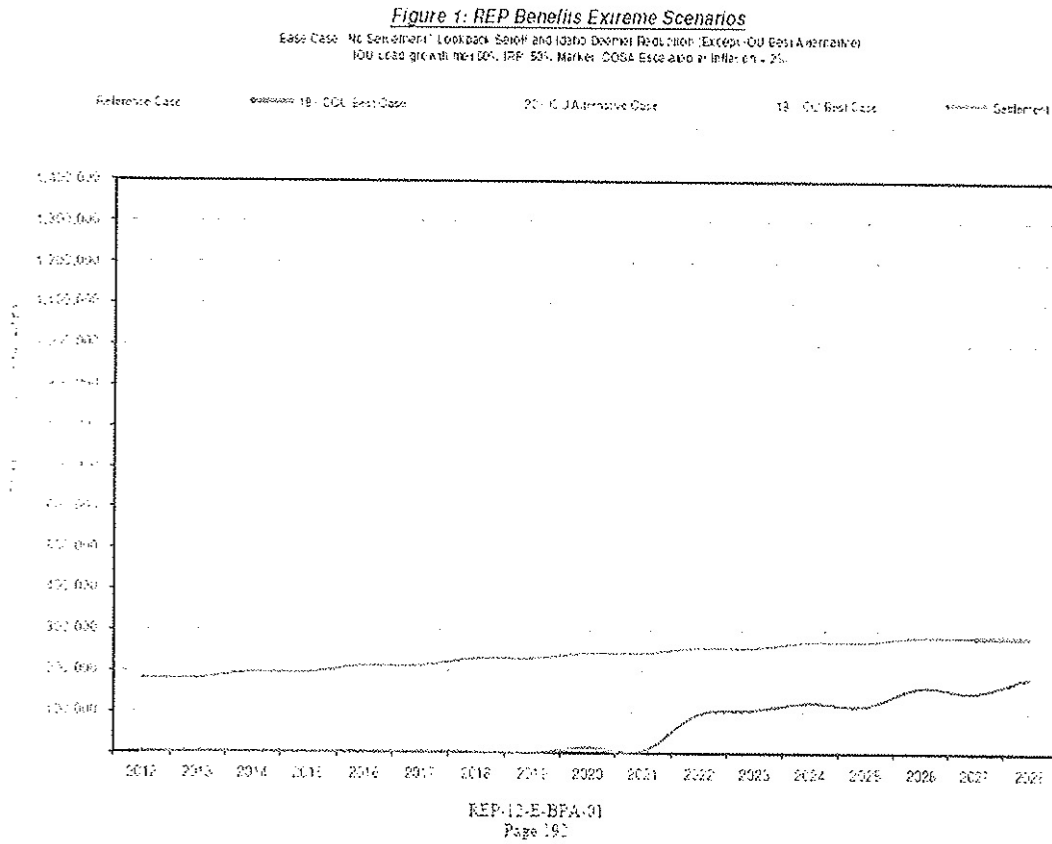
The Settlement Agreement reflects agreement on all of the elements of the settlement among the parties. The Agreement is fairly long and quite technical in places, but the essential elements affecting the rights and obligations of the COU parties are straight forward.

Section 3 of the Settlement Agreement is the most important. The parties have agreed to an amount of money and “Environmental Attributes” that the IOUs as a group will receive from BPA in each year FY 2012 through FY 2028. The dollar amounts are contained in Table 3.1 on page 11 of the Settlement Agreement. The Environmental Attributes are defined as 14% of the new tradable Renewable Energy Credits or Carbon Credits, if any, that may in the future be assigned by law to BPA’s existing Tier 1 resources. It is unlikely there will ever be any “Environmental Attributes” for the IOUs to share in.

The dollar amounts in Table 3.1 can best be thought of as consisting of two components; one component is the REP benefits the IOUs would be entitled to during FY 2012 through FY 2028; the other component is an adjustment to the future REP benefits to take into account resolution of the disputes over the proper level of REP benefits for the period FY 2002 through FY 2011. The parties never quantified these separate components, they simply agreed to the net amounts, but the net amounts were heavily influenced by the parties’ expectations that the COUs were likely to be entitled to hefty refunds if the cases were to proceed to judgment in the Ninth Circuit.

The dollar amounts agreed to by the parties are significantly lower than the REP amounts, net of refunds, which would result from BPA’s decisions in the WP-07S case being upheld in their entirety and applied for the term of the Settlement. This can be seen by comparing the orange line (the forecast results of BPA’s WP-07S decision, called the “Reference Case”) with the red line (the Settlement Amounts) on the following Figure

1.³ As a result of the high degree of deference that the Ninth Circuit is required to give to BPA's determinations, this Reference Case has to be considered a reasonably probable outcome of the pending litigation.



In each year, the Settlement amount is less than the net-REP benefits (benefits less refunds) for the same year in the Reference Case. In the early years the difference between the Settlement and the Reference Case is modest because the refund of past over charges offsets part of the high REP benefits in the Reference Case. But by the midpoint of the Settlement term, the Settlement amounts are less than half the Reference Case benefits, a savings of \$250 - \$300 million per year. Figure 1 also illustrates the huge gap between the positions taken by the IOUs and COUs in the litigation, roughly \$1 billion per year on average between the solid green line at the top

³ Figure 1 is one of BPA's exhibits in the pending REP-12 proceeding in which BPA is evaluating whether to enter into the Settlement Agreement.

of the chart (the IOUs alternative case) and the blue line at the bottom (the COUs best case).

Another key section of the Settlement Agreement is Section 7. In Section 7.2 and Section 7.3, the COUs and IOUs waive any right they may have had in the absence of the Settlement Agreement to more rate protection (in the case of the COUs) or higher REP benefits (in the case of the IOUs). These waivers are designed to assure that, even if the Settlement is found not to be binding on non-settling entities because it is not consistent with what the law would provide, the settling parties will nonetheless get to keep the Settlement they agreed to. This works because parties are free to waive rights they have under the law.

The waivers do not apply to non-settling COUs. Any COU that does not enter into the Settlement Agreement does not get the benefit of the IOU's waivers of higher REP benefits, and will therefore be exposed, even if they are not parties to the lawsuits, to the possibility that a court rules that the IOUs are entitled to more benefits. The remainder of Section 7 releases all the pending claims in the litigation among the settling parties while retaining for the IOUs any claims they may have for more REP benefits from non-settling entities.

Section by Section Summary of the Settlement Agreement

Section 1 sets a high threshold of public power participation in the Settlement Agreement (91% of load) by April 15, 2011, as a precondition to its effectiveness, and delays most of the substantive terms until after BPA completes its now ongoing REP-12 proceeding to evaluate the settlement.

Section 2 is a list of definitions used throughout the Settlement Agreement.

Section 3 specifies the REP benefits to be paid to the IOUs and defines exactly how the cost of such benefits is to be recovered in rates. The rate provisions apply to all BPA's customers whether or not they are parties to the Settlement Agreement unless a court rules non-settling entities are not subject to the Settlement. If a court rules that non-settling entities are not subject to the Settlement rates, then the rates for these entities may differ from the rates for settling parties. This section also includes a provision to

continue for eight years a refund payable primarily to the utilities who were overcharged in FY 2002 through FY 2006.

Section 4 provides for the release to certain IOUs by BPA of certain funds BPA had previously determined it owes to those IOUs.

Section 5 and its referenced Exhibit C provide for the transfer to the IOUs of 14% of the value of any new Renewable Energy Credits or Carbon Credits that may, but probably will not, be created in the future for BPA's Tier 1 resources. The 14% represents the percent of the value of any such credits that the IOUs would receive under BPA's current REP methodology.

Section 6 specifies how the REP benefits are allocated among the IOUs. This section does not affect the COUs' rights or obligations.

Section 7 contains waivers designed to preserve the Settlement as between settling parties even if a court concludes the Settlement does not comport fully with all statutory requirements. This section also discharges all of the pending claims among the parties relating to the REP or its effect on PF rates for the period FY 2002 through FY 2011.

Section 8 requires parties to seek legislative authorization from Congress for BPA to perform the Settlement Agreement according to its terms. The primary purpose of this provision is to avoid protracted litigation over the validity of the Settlement Agreement and to authorize BPA to engage in binding arbitration of any dispute over BPA's implementation of the Settlement Agreement. Each party is authorized to discontinue its support for, or even oppose, the legislation if it concludes the legislative effort may produce adverse consequences.

Section 9 addresses dispute resolution. It provides for binding arbitration of all disputes if legislative authorization has been obtained. Under current law, BPA is not authorized to engage in binding arbitration of most issues. Therefore, if legislative authorization has not been obtained, the COUs and IOUs agree to binding arbitration among themselves over purely dollar issues (whether the REP benefits were collected through rates to COUs and disbursed to the IOUs as required by the Settlement Agreement) and BPA agrees to make prospective bill adjustments to the COUs and IOUs bills, if necessary, to implement the arbitrator's decision.

Section 10 obligates the parties to attempt to stay the current litigation over the REP pending BPA's evaluation of the Settlement Agreement and to dismiss the current litigation if BPA does approve the Settlement Agreement. The parties also agree to press for expedited review of the Settlement Agreement if it is challenged in Court. If a Court sets aside the Settlement Agreement as it affects the parties, then the Settlement Agreement terminates. If a Court only deems the Settlement Agreement inapplicable only to non-parties, then the Settlement Agreement stays in full force and effect for Parties.

Section 11 provides that the Settlement Agreement will have no lasting effect beyond its term at the end of FY 2028.

Sections 12 and 13 are fairly standard contract boilerplate.

Section 14 provides a mechanism to terminate the Settlement Agreement with no further obligations among the parties if both: (i) there is a change in law or other authority applicable to BPA such that the cost basis for BPA's rates applicable to COUs is modified, and (ii) BPA's rates applicable to COUs rise to greater than 79% of the average of the average system cost of power of all of the Pacific Northwest IOUs.

Overall Summary

For years BPA has periodically modified its method for calculating the REP benefits payable to the IOUs and paid for primarily by higher rates to the COUs. BPA's current methodology for establishing REP benefits (which is now under review in the Ninth Circuit) is more costly to COUs than most of BPA's prior methodologies. The alternative provided for in the Settlement Agreement is significantly less costly to COUs than BPA's current methodology. While it is possible that litigation could produce a result that is less costly to COUs than the Settlement Agreement, it is far more likely that even success in the litigation would result in a remand that allows BPA ample discretion to create REP benefits and costs at least as high as provided for in the Settlement Agreement.

Key Elements of the Residential Exchange Program (REP) Settlement Agreement

The Residential Exchange Program (REP) Settlement Agreement is a lengthy and technical document. This document intends to highlight only the key elements affecting the rights and obligations of the Consumer Owned Utilities (COUs). Individual utilities are encouraged to read this document in conjunction the actual Settlement Agreement.

The entire REP Settlement Agreement can be found at <https://www.bpa.gov/secure/RateCase/openfile.aspx?fileName=REP-12-E-BPA-11.pdf&contentType=application%2fpdf>.

Fixed REP Benefits

- The REP Settlement Agreement resolves challenges over BPA's implementation of the REP in return for a known stream of REP benefits to the IOUs for a term of 17 years.
- The REP benefits are fixed under the REP Settlement, capping Preference Customers' exposure to higher REP costs.
- The fixed stream of REP benefits would begin at \$182.1 million in FY 2012 and increase over time to \$286.1 million in FY 2028.
- The IOUs will also receive 14% of any new tradable Renewable Energy Credits or Carbon Credits that may be assigned to BPA's existing Tier 1 resources.

Lookback/Refund Amounts

- Individual IOUs' Lookback Obligations are replaced by fixed, certain Refund Amount credits on Preference Customer bills: \$76.5 million per year for next eight years.
- Preference Customer Refunds would be allocated 50% based on PF-02 Customer revenues and 50% based on each customer's Tier 1 Customer TOCA Share (expected share of Tier 1 load).

Mutual Waivers

- The settling COUs waive any right to more rate protection they may have had in the absence of the REP Settlement Agreement.
- The IOUs waive any claim to higher REP benefits they may have had in absence of the REP Settlement Agreement. The IOUs do not waive claims against non-settling COUs and may receive different benefits from the non-signing COUs in the event a non-signing entity challenges the Settlement and the Court rules that the IOUs are entitled to

different benefits. Therefore, COUs cannot get the benefit of certainty (the known stream of benefits included in their power rates) without signing the Agreement.

Rates for COUs

- BPA agrees to set rates for all COUs consistent with the Agreement, and all Parties agree to support such rates and not seek alternative rate treatment for any COU. However, if a court sets aside the Agreement as to non-settling COUs, then BPA must set rates for all non-settling COUs consistent with the court's decision whether or not the non-settling COU was a party to the lawsuit.

REP Settlement Agreement Adoption

- At least 91% of the COUs (based on Tier 1 load) must sign the REP Settlement Agreement by April 15, 2011, in order for the Agreement to be adopted.
- The REP Settlement Agreement as a whole will become effective upon execution by the BPA Administrator. BPA is conducting an administrative proceeding, concurrent with the BP-12 Power and Transmission Rate Case, to determine whether or not to execute the REP Settlement Agreement and set rates consistent with the Agreement.



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

POWER SERVICES

March 3, 2011

In reply refer to: PS-6

Mr. Nick Bird
Public Works Director
City of McCleary
100 South 3rd Street
McCleary, WA 98557

Dear Mr. Bird:

Enclosed please find the final and executable version of the Residential Exchange Program Settlement Agreement (REP Settlement). The REP Settlement was negotiated by representatives of consumer-owned utilities (COUs), investor-owned utilities (IOUs), state commissions, and consumer advocacy groups. In order to go forward, a "critical mass" of parties must sign the REP Settlement by April 15, 2011, including utilities accounting for at least 91 percent of COU Transition Period High Water Mark (THWM) load.

The REP Settlement reflects the very significant efforts by a broad coalition of parties to reach a comprehensive resolution of a host of contentious and complicated REP-related issues. In general, the REP Settlement would resolve existing and future challenges to Bonneville Power Administration's (BPA) REP decisions by establishing an aggregate amount of REP benefits payable to the IOUs for the period FY 2012 through FY 2028. In return for these payments, BPA's ratepayers would receive certainty as to the implementation of the REP and future REP costs for the 17-year term of the REP Settlement.

BPA is conducting the Residential Exchange Program Settlement Agreement section 7(i) proceeding (REP-12) to evaluate whether or not BPA will execute the REP Settlement. If the REP Settlement signing threshold of at least 91 percent of COU THWM load is met by the April 15, 2011, deadline, BPA will continue the REP-12 proceeding and make a final decision on whether to adopt the REP Settlement in the REP-12 Final Record of Decision, which is expected to be issued in early July 2011. If the signing threshold is not met or if it is met but BPA decides at the conclusion of the REP-12 proceeding not to execute the REP Settlement, the REP Settlement will be null and void, BPA will set rates and implement the REP based on a "no-Settlement" approach, and the REP litigation will continue.

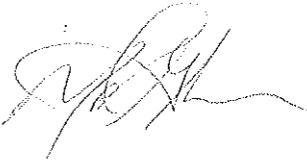
During the REP-12 proceeding, *ex parte* rules mean BPA employees cannot discuss the merits of the REP Settlement outside of the formal proceeding or noticed public meetings. However, your BPA Power Account Executive and others at BPA can answer factual questions regarding the REP Settlement and BPA's analyses presented in the REP-12 proceeding. BPA can also explain

the REP-12 process and answer questions regarding executing and returning the REP Settlement to BPA by the April 15, 2011, deadline.

If you decide to execute the REP Settlement, please return the signed agreement to me in the enclosed pre-addressed envelope by April 15, 2011. If you have questions or otherwise think that BPA might be of assistance, please do not hesitate to contact your BPA Power Account Executive or me.

Thank you in advance for your timely consideration of this very important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Gendron', with a long horizontal flourish extending to the right.

Mark Gendron
VP Requirements Marketing

Enclosure

cc:
Mayor Gary Dent, City of McCleary
Ms. Christiane Mercer, City of McCleary

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.

Table 3.1 Scheduled Amounts	
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 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 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	=	<p>Refund Amounts * (PF Recovery Amount ÷ REP Recovery Amounts) * (sum of the COU Parties' TOCAs ÷ the sum of all PF Customer TOCAs),</p> <p>where,</p> <p>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 to 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 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.

9.3.2 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 I 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 _____

REP Settlement Update March 11, 2011

This update reflects the final REP Settlement Agreement dated March 1, 2011.

Status of the Settlement and Next Steps

1. BPA has commenced the REP-12 proceeding to establish a record to determine whether the BPA Administrator should or should not sign the proposed REP Settlement Agreement drafted by the IOUs, representatives of most Preference Customers (COUs), and others. The Administrator will decide whether to sign the REP Settlement Agreement in a record of decision (ROD) that will be issued at the end of the REP-12 proceeding in early July 2011.
2. Preference Customers and other potential signers have received a signature ready copy of the Agreement and are in the process of determining whether or not to sign the Agreement.
3. The region's six IOUs, PUCs for the states of Washington, Oregon, Idaho; the Citizens' Utility Board of Oregon, PPC, PNGC and NRU, and a "critical mass" of COUs accounting for 91 percent of COU Transition High Water Mark load must sign the Agreement and return it to BPA by April 15, 2011. If the signing threshold is met, then the next decision point would be in early July 2011 when BPA decides whether to sign the Agreement or not based on the REP-12 administrative record and ROD.
4. The Agreement will become effective only if:
 - a. the April 15, 2011, signing threshold is met;
 - b. BPA decides it will sign the Agreement; and
 - c. BPA set rates for all customers (signers and non-signers) consistent with the Agreement.

If any of these three conditions is not met, the Agreement becomes void, rates will be set using a traditional calculation of REP benefits, and the parties will proceed with litigation on all REP issues.

5. The *ex parte* rules that apply during BPA rate proceedings prohibit BPA employees and the parties from engaging in off-the-record communications on substantive matters within the scope of a section 7(i) proceeding. Because the REP-12 proceeding is being conducted under the rules of section 7(i), and the REP Settlement Agreement is within the scope of the REP-12 case, BPA employees cannot have *ex parte* communications on the merits of the REP Settlement Agreement.
6. Not all communications with BPA employees regarding the REP Settlement, however, are prohibited by the *ex parte* rules. Communications are not *ex parte* if they occur during a noticed meeting open to all parties. In addition, BPA employees may clarify, explain,

or describe the Initial Proposal presented in the REP-12 proceeding with any party at any time without violating *ex parte*.

Key Elements of the 2012 REP Settlement Agreement:

1. The proposed 2012 REP Settlement Agreement would resolve challenges over BPA's implementation of the REP in return for a stream of REP benefits to the IOUs for a term of 17 years. This stream of REP benefits would establish a limit on the amount of REP benefit costs that BPA could include in the rates of the COUs.
2. The IOUs would receive a fixed stream of REP benefits that (after being adjusted for Refund Amounts as described in (4) below) would begin at \$182.1 million in FY 2012 and increase over time to \$286.1 million in FY 2028.
3. The distribution of these REP payments to the IOUs would depend on each IOU's respective Average System Cost (ASC) and exchange load, plus adjustments to reflect Lookback Amounts recovered from IOUs in Fiscal Years 2009 through 2011. The IOUs would continue to file ASCs with BPA pursuant to the 2008 Average System Cost Methodology.
4. The settling COUs' obligation to pay REP benefits in rates is limited to the settling COUs' share of the stream of REP benefits specified in the REP Settlement Agreement.
5. The outstanding "Lookback Amounts" BPA determined were owed by the IOUs as of the beginning of FY 2012 (approximately \$511 million) would be replaced by the "Refund Amounts" identified in the agreement. Unlike the Lookback Amounts, which are IOU-specific obligations, the Refund Amounts are treated as a corporate refund obligation of the IOUs as a group, *i.e.*, they are an offset against the total amount of REP benefits included in rates. The Refund Amounts of \$76.538 million per year would be returned to the COUs over an 8-year period (FY 2012-2019).
6. Distribution of the Refund Amounts among the COUs would occur as follows: 50 percent of the Refund Amount (\$38.269 million) would be returned to COUs based on the percentages BPA established in the WP-10 rate proceeding to allocate the FY 2010-2011 Lookback Credits to the COUs. The remaining 50 percent of the Refund Amount would be returned to COUs based on each customer's Tier 1 Customer TOCA Share (expected share of Tier 1 load), with a very small adjustment to address the unique circumstances of Grant PUD.
7. In addition to the stream of REP benefits, the IOUs would receive (1) a percentage of any incremental BPA Renewable Energy Credits (RECs) that might accrue to BPA resources used to serve BPA Tier 1 loads, and (2) the payment of interim true-ups due under the 2008 Residential Exchange Interim Relief and Standstill Agreements between BPA and four of the IOUs.

8. The Agreement would require the signatories to work together, directly or through associations, to urge the U.S. Congress to pass legislation that would affirm the REP Settlement. If a party concludes that the legislative ratification effort could have a material adverse effect, it can cease supporting and may oppose the ratification effort.
9. For the Agreement to go into effect, BPA must decide in its REP-12 final ROD that BPA will both execute the Settlement Agreement and set rates for all customers (settlement signers and non-signers) based on the Settlement for the 17-year term of the Settlement Agreement.
10. If BPA decides to execute the Agreement and set rates the same for signers and non-signers, parties that do not sign the Agreement can and may challenge application of the Agreement to their rates.
11. If the Agreement is challenged, all parties (IOUs, BPA, Signers and Non-signers) are free to fully argue and defend their positions on the issues and to challenge the positions of others.
12. If these challenges were to succeed, BPA would set rates for *all* non-signers consistent with the Court's ruling, regardless of whether the non-signing party challenged the Agreement. Only parties that sign the REP Settlement Agreement would receive the cost protections and certainty identified in the Agreement. Non-signers would be treated as a group and would pay IOU REP costs consistent with the Court's ruling and BPA's subsequent REP and rate setting decisions implementing the ruling.
13. REP costs in rates for non-signers could be higher or lower than REP costs in rates for signers, depending on the court ruling, BPA's decisions in response to the ruling, and results of possible future litigation over BPA's decisions.
14. Section 14 of the Agreement addresses what happens if Congress or the Administration forces BPA to move away from cost-based rates for Preference Customers. If PF rates are no longer set based on embedded costs and this results in an average PF rate greater than 79 percent of average IOU ASCs, the Agreement terminates.
15. Exhibit A of the Agreement is a template for the REP Implementation Agreement that BPA and IOUs would execute if the Agreement becomes effective at the conclusion of the REP-12 proceeding. It would not be signed by COUs and is included so that COUs know what the terms and conditions of the BPA-IOU REP Implementation Agreement will be if the Settlement goes forward.
16. Exhibit H of the Agreement is a revision to COUs' Regional Dialogue Exhibit H that signers agree will replace their current Exhibit H. This revised Exhibit H, combined with Exhibit C that applies to the IOUs, implements the sharing 14 percent sharing of possible future Tier 1 RECs and Carbon Credits that is described in section 5 of the Agreement.

BPA Staff's Initial Proposal Recommends that the Administrator Adopt The Proposed REP Settlement Agreement

BPA Staff has evaluated the proposed 2012 REP Settlement Agreement by comparing the protections and requirements set forth in the Agreement with protections and requirements that would be reasonably expected in the absence of the Agreement. In BPA Staff's REP-12 Initial Proposal, 2012 REP Settlement Evaluation and Analysis Study, REP-12-E-BPA-01, pages 179-183, BPA Staff proposes that the Agreement should be adopted by the Administrator for the following reasons:

1. BPA Staff's analysis demonstrates that the COUs would likely receive more protection from REP benefit costs under the REP Settlement Agreement than would likely occur if BPA were to continue to perform the section 7(b)(2) rate test in each rate proceeding over the next 17 years.
2. BPA Staff's analysis also demonstrates that the REP benefit payments to the IOUs would likely be lower under the REP Settlement Agreement even if the COUs were to prevail on certain outstanding litigated REP issues. The Initial Proposal shows that the COUs would have to prevail on a combination of litigated issues to obtain an equivalent or better amount of protection from REP benefit costs when compared to the REP benefits provided under the REP Settlement Agreement. BPA Staff's analysis also describes the risk the COUs face if the IOUs were to prevail with their REP-related issues in the existing litigation. BPA Staff's analysis shows that if the IOUs were to succeed in their challenges to BPA's REP implementation decisions, REP benefit costs could be significantly higher when compared to the REP Settlement Agreement or even BPA's existing REP methodologies.
3. The REP Settlement Agreement continues to provide REP benefits to the settling IOUs in conformance with section 5(c) of the Northwest Power Act by distributing the REP benefits among the settling IOUs in a manner consistent with ASCs established under BPA's current ASC Methodology and rates established under section 7 of the Northwest Power Act.
4. BPA Staff believes that the REP Settlement Agreement resolves, in a fair and equitable manner, all of the outstanding issues with BPA's development and implementation of the Lookback for the FY 2002--2011 period. The REP Settlement Agreement returns \$610 million to COUs over 8 years. These Refund Amounts will be fixed by the Settlement and will not be variable or dependent upon whether an IOU will be receiving REP benefits, as was the case with BPA's return of the Lookback Amount.

STAFF REPORT

To: Mayor Dent
From: Nick Bird, P.E., Director of Public Works
Date: March 18, 2011
Re: G&O Amendment #18

Attached you will find a copy of Amendment No. 18 to the General Services Contract between the City and G&O (executed April 2008). This is the third amendment that addresses general engineering. Amendment No. 6 and Amendment No. 14 both lasted approximately 1 year with similar occurrence and aggregate amounts (\$500 and \$5000 respectively).

The budget amount for Amendment No. 14 has approximately \$700 remaining, but we thought it appropriate to present this amendment before the remaining budget is exhausted.

Below is a list of the tasks completed under Amendment No. 14:

- Task 1 – \$490.85; Gravatt Easement
- Task 2 – \$450.00; Simpson Avenue Contract Evaluation
- Task 3 – \$438.22; Simpson Avenue Financial Evaluation
- Task 4 – \$500; Infill Frontage Improvement Figures
- Task 5 – \$500; Structural Evaluation of Float Shed
- Task 6 – \$500; Vicinity Map / Site Maps (DOC)
- Task 7 – \$500; Drainage Constraints / Critical Areas / Shooting Range Figures (DOC)
- Task 8 – \$500; Revision of Figures based on Comments (DOC)
- Task 9 – \$500; Slope and Transportation Exhibits (DOC)

Action Requested:

Please consider authorizing the Mayor to sign Amendment No. 18.

**AMENDMENT NO. 18
TO
CONTRACT FOR ENGINEERING SERVICES**

THIS AMENDMENT, made this day, by and between the City of McCleary, Grays Harbor County, Washington, hereinafter referred to as the Agency, and Gray & Osborne, Inc., hereinafter referred to as the Engineer, hereby modifies the contract for engineering services dated (by Agency) June 10, 2008, for additional services related to the General Engineering Services.

SCOPE OF SERVICES

The Agency has a variety of miscellaneous items that require engineering input or review during the course of any given month. The cost and time required to prepare a contract amendment for each of these items would be better spent directly addressing these issues. This Amendment provides a method for the City Administrator to authorize minor engineering support services on an as needed basis without incurring the cost of preparing a contract amendment.

When requested by the Agency, the Engineer shall provide miscellaneous engineering support services. Services that are specifically outlined in the nine tasks identified in Amendment No. 2 will be billed under a unique job number, according to the "not to exceed" costs outlined that Addendum. Services that are not identified in Amendment No. 2 and are estimated to cost more than \$600 will be authorized by separate contract amendment and invoiced under a unique job number. Minor engineering support services covered under this amendment would have an estimated cost of \$600 or less and may include, but are not limited to updating utility base maps and development activity maps, review of utility operational issues, assistance with meeting regulatory requirements, utility rate and SDC reviews, participation in meetings, review of variance requests or other minor support services requested by the Agency.

Costs for all minor engineering support services (\$600 or less per task) shall be tracked by a project number specifically issued for "Minor Engineering Support Services" and billed monthly with a description of the work provided for each engineering support task. The Engineer will provide an estimated cost for each minor engineering support service task to the City Administrator for approval at the time these services are requested. This work will be identified by fund (Water, Wastewater, Parks, Streets, and Stormwater) at the time of request and also in the monthly billing letter.

AGREEMENT

The Scope of Services above are hereby agreed to by the parties signed below. All terms and conditions of the April 2008 contract (dated June 10, 2008 by Agency) for engineering services shall be applicable to this amendment with the following exceptions:

- The current wage rates, overhead multiplier and mileage rate as shown on the attached Exhibit A shall be applicable to all invoices issued pursuant to this amendment.

Compensation for services provided under this Contract Amendment shall be authorized by the Public Works Director and/or Mayor on a case by case basis and shall not exceed \$600 per each authorized task. The aggregate amount of compensation for all minor engineering support services authorized by the City Administrator under this Contract Amendment shall not exceed \$5,000 without further authorization from the Agency.

IN WITNESS WHEREOF, the parties hereto have executed, or cause to be executed by their duly authorized officials, this AMENDMENT to the Contract for Engineering Services in duplicate on the respective dates indicated below.

GRAY & OSBORNE, INC.

CITY OF MCCLEARY

By: _____
(Signature)

By: _____
(Signature)

Name: Thomas M. Zerkel, P.E., President
GRAY & OSBORNE, INC.

Name: _____
(Print)

Date: _____

Date: _____

"Equal Opportunity/Affirmative Action Employer"

EXHIBIT "A"

GRAY & OSBORNE

COMPUTATION OF OVERHEAD MULTIPLIER

Federal, State, and Local Taxes.....	23.87%
Insurance and Medical.....	19.27%
Professional Development and Education.....	6.32%
Vacations and Holidays.....	13.95%
Administration (Typing, CADD, GIS, Computer)**.....	46.92%
Rent, Utilities, and Depreciation.....	14.74%
Office Expenses.....	11.40%
Recruiting.....	1.18%
Professional Services.....	1.23%
Incentive & Retirement.....	31.57%
Facilities Cost of Capital.....	0.55%
TOTAL:.....	171%

PROFESSIONAL ENGINEERING SERVICES CONTRACT
ENGINEER'S REPRESENTATIVE PAYROLL RATES
THROUGH JUNE 15, 2011*

<u>Employee Classification</u>		<u>Payroll Rates</u>	
Draftsman/Technician/Engineering Intern	\$15.00	to	\$33.00
Design/Civil Engineers	18.00	to	36.00
Electrical/Structural Engineers	24.00	to	50.00
Environmental Tech./Specialist	27.00	to	38.00
Project Engineers	25.00	to	48.00
Principal Engineers/Project Managers	32.00	to	56.00
Field Inspectors/Resident Engineers	22.00	to	45.00
Field Survey Crew (2 Person)	43.00	to	75.00
Field Survey Crew (3 Person)	70.00	to	98.00
Professional Land Surveyor	33.00	to	42.00
Secretary/Word Processor		N/A**	

* Updated annually, together with the overhead.

All actual out-of-pocket expenses incurred directly on the project are added to the billing. The billing is based on direct out-of-pocket expenses; meals, lodging, laboratory testing and transportation. The transportation rate is \$0.50s per mile or the current maximum IRS rate without receipt IRS Section 162(a).

** Administration expenses include secretarial and clerical work; GIS, CADD, and computer equipment; owned survey equipment and tools (stakes, hubs, lath, etc. -- Note: mileage billed separately at rate noted); miscellaneous administration tasks; facsimiles; telephone; and printing costs, which are less than \$150.