

DAVID F. WHITE

503.802.2168  
FAX 503.972.3868  
david.white@tonkon.com

March 14, 2008

Public Utility Commission of Oregon  
Attn: Filing Center  
550 Capitol St. N.E., #215  
P. O. Box 2148  
Salem, OR 97308-2148

Attention: Administrative Hearings Division

Re: UM 926 – Request for Order to Sign Proposed Bonneville Power Administration  
Interim Relief and Standstill Agreement

Dear Sir or Madam:

Pursuant to ORS 757.663, Portland General Electric Company ("PGE") hereby requests that the Commission require it to sign the proposed Interim Relief and Standstill Agreement (the "Interim Agreement") by and between PGE and Bonneville Power Administration ("BPA"). The proposed Interim Agreement is enclosed as Exhibit 1 and described in more detail below. BPA has offered the proposed Interim Agreement for execution by PGE no later than March 24. We will be available for questions at the public meeting scheduled for March 20.

**I. Background – The 2000 REP Settlement Agreement and Court Challenge**

In 2000 and 2001, BPA entered into a series of settlement agreements with its investor-owned utility ("IOU") customers that were intended to resolve disputes regarding BPA's implementation of the residential exchange program ("REP") under Section 5(c) of the Northwest Power Act for a 10-year period (the "2000 REP Settlement Agreement(s)"). On October 25, 2000, the Oregon Public Utility Commission ("OPUC") ordered PGE and PacifiCorp to enter into the 2000 REP Settlement Agreements. UM 926, Order No. 00-678. The Commission also approved a series of amendments and supplements to the 2000 REP Settlement Agreement, culminating in the 2004 Amendment. The 2000 REP Settlement Agreement and the 2004 Amendment were challenged in the courts by several BPA preference customers.

On May 3, 2007, the Ninth Circuit Court of Appeals held that BPA exceeded its authority in agreeing to provide settlement payments under the 2000 REP Settlement Agreement. In a companion case, the Ninth Circuit remanded back to BPA its power rates for fiscal year ("FY") 2002-2006, holding that the allocation of benefits under the 2000 REP Settlement Agreements to BPA's preference customers was unlawful. As a result of the Ninth Circuit decisions, on May 21, 2007, BPA suspended all cash payments under the 2000 REP Settlement Agreements and associated amendments. On May 31, 2007, the Commission permanently suspended the tariff under which PGE passed through REP credits to PGE's small farm and residential customers. UE 194, Order No. 07-213.

## **II. EFFORTS TO RESTART REP BENEFITS**

PGE and other IOUs petitioned the Ninth Circuit for a rehearing of the May 2007 decisions. That rehearing request was denied. On February 1, PGE, Puget Sound Energy and Avista Corporation filed an appeal of the Ninth Circuit decisions with the Supreme Court, which is currently pending.

Despite its suspension of benefits to IOUs, BPA has continued to charge its preference customers rates that include the benefits provided under the 2000 REP Settlement Agreements. BPA has initiated a supplemental ratemaking process (the WP-07 supplemental rate case), which will ultimately adjust preference customers' rates and permit BPA to reinstate REP benefits. PGE is a party in that proceeding and will advocate on behalf of its residential and small farm customers for their fair share of the benefits of the BPA hydro system. However, under the current schedule, BPA will not complete that proceeding before August, with new rates and REP benefits available on October 1, 2008.

## **III. Interim Agreements**

On December 17, 2007, BPA released for public comment two sets of draft prototype contracts (one for its IOU customers and the other for its preference customers) and requested comment by January 7, 2008. BPA received 31 written comments, including comments submitted by IOUs (including PGE) and the Commission, in response to BPA's proposed interim agreements. On February 21, BPA issued its response and offered interim agreements to its IOU customers and preference customers.

The purpose of the proposed Interim Agreements is to provide interim relief to BPA's customers while the WP-07 supplemental rate case is underway. The most important feature of the Interim Agreements is that the relief provided is interim. All funds paid under the Interim Agreements are subject to a true-up process after conclusion of the pending rate proceeding. The level of REP benefits under the Interim Agreements will be superseded by BPA's final determinations rendered at the conclusion of the WP-07 supplemental rate case.

**A. Interim Cash Payment and True-Up**

Under the proposed Interim Agreement, BPA will make an interim cash payment to PGE "as soon as practicable after execution" of the agreement. The interim cash payment will be a lump-sum amount and will be provided on an interim basis subject to a true up. The interim cash payment will be trued up to BPA's final determination in the current WP-07 supplemental rate case proceeding regarding the appropriate REP benefits for PGE for FY 2008 unless the 2000 REP Settlement Agreement is found lawful by the Supreme Court, in which case the interim cash payments will be trued up to the payment due PGE for FY 2008 under the 2000 REP Settlement Agreement. The proposed interim cash payment to PGE is \$43.2 million. Based on BPA's direct case in the WP-07 supplemental rate case, PGE's projected REP benefits for FY 2008 are \$51.6 million, although the final amount of REP benefits to which PGE is entitled for FY 2008 will not be known until the conclusion of the WP-07 supplemental rate case.

**B. Recovery or Refunding of the True-Up Balance (Plus Interest)**

Interest will accrue on the outstanding true-up balance starting from the date BPA makes the interim cash payment. The interest rate is the one-year annual Treasury rate posted on the date the interim cash payment is made. If the true-up amount is an amount BPA owes PGE, BPA will make that payment in a lump sum or in equal installments over seven months. If PGE owes BPA based on the true up, BPA will collect the true-up amount by offsetting such amount against future REP benefits to PGE in a manner mutually agreed upon by PGE and BPA or, in the absence of mutual agreement, BPA will make a good faith effort to recover the remaining balance in roughly equal installments over three years.

If BPA does not collect the true-up amount within three years of when the offsets commence, then PGE is obligated to pay the remaining true-up balance in equal monthly installments over the following year. This final year payment will come directly from PGE, not as an offset to REP benefits. PGE would have to recover any such amounts directly from customers. True-up payments or offsets will begin the later of (a) 95 days after BPA's WP-07 supplemental rate case determination is final or (b) if a legal challenge is filed against BPA's WP-07 supplemental rate case determination, then after BPA's determination is finally sustained by the courts.

**C. No Waiver of Rights and Arguments**

The Interim Agreement does not prejudice or waive PGE's rights or arguments regarding BPA's final determination of PGE's REP benefits for any period. The Interim Agreement does not preclude PGE from proceeding with its pending appeal to the Supreme Court of the Ninth Circuit's decision regarding the 2000 REP Settlement Agreement. In exchange for the interim cash payment, PGE agrees to stay any litigation with respect to challenges to BPA entering into the Interim Agreement with IOUs and the Standstill Agreements

BPA is proposing to sign with the Publics. PGE also agrees to abstain from filing a claim alleging that BPA's suspension of payments in May 2007 breached the 2000 Settlement Agreement. The stay of litigation provision applies until BPA issues its final record of decision in the WP-07 supplemental rate case, which is expected in August 2008.

#### **D. Early Termination**

If BPA has not yet made the interim cash payment and is enjoined or otherwise judicially precluded from making such payment, then the Interim Agreement will be deemed void without any force and effect. If a court vacates or otherwise reverses BPA's decision to enter into the Interim Agreements after the interim cash payments have been made, then PGE and BPA will work together to take such actions as are necessary to conform the Interim Agreement to such court order.

### **IV. PROS AND CONS OF ENTERING INTO THE INTERIM AGREEMENT**

#### **A. Benefits of the Interim Agreement**

The principal benefit of the proposed Interim Agreement is that it will restart the flow of REP benefits to PGE's small farm and residential customers. While we believe the interim cash payments are too low, the interim cash payments are provided on an interim basis only. The level of interim cash payments will be trued up to BPA's final determination in the pending rate proceeding. Signing the Interim Agreement does not hamper PGE's ability to continue its advocacy on behalf of residential and small farm customers. PGE will continue its efforts in the WP-07 supplemental rate case to increase the level of REP benefits for our customers. PGE will also continue to seek reversal of the Ninth Circuit's decision regarding the 2000 REP Settlement Agreement through our appeal to the Supreme Court.

#### **B. Risks of the Interim Agreement**

The principal risk of signing the Interim Agreement is the possibility that the true-up provision may result in offsets against REP benefits in the future or, in the worst case scenario, would require direct charges to PGE customers to pay the true-up amount owed to BPA. These scenarios could arise if BPA determines in its WP-07 supplemental rate proceeding that PGE is entitled to less than \$43.2 million (the amount of the interim cash payment) for FY 2008. In that case, PGE would owe BPA the true-up amount plus interest from the date of the interim cash payment. The interest component could be substantial given that it is likely that BPA's determination in the WP-07 supplemental rate case will be appealed and payment of the true-up amount (plus interest) will not begin until all appeals have been exhausted.

These scenarios currently appear unlikely given that BPA's direct case indicates PGE is entitled to \$51.6 million in REP benefits for FY 2008, more than the interim cash payment to PGE. However, BPA's final determination may vary for its direct case. BPA's final

decision in the WP-07 supplemental rate case could provide PGE's customers with less than \$43.2 million in REP benefits for FY 2008.

Another potential risk involves Clatskanie PUD's pending appeal of BPA's decision to offer the Interim Agreements. It is possible, although we believe not likely, that the Ninth Circuit could reverse or vacate BPA's decision to offer the Interim Agreements and order BPA to recover the interim cash payments from PGE and its customers.

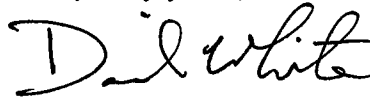
#### V. PGE'S RECOMMENDATION

PGE respectfully requests that the Commission order PGE to execute the proposed Interim Agreement. We believe the benefits of signing outweigh the risks, particularly given that the Interim Agreement does not prejudice PGE's ability to advocate for higher REP benefits in the current BPA rate case and does not require PGE to abandon its current appeal of the Ninth Circuit's decisions regarding the 2000 REP Settlement Agreement.

PGE currently has a negative balance of \$8.7 million in its residential exchange balancing account. PGE proposes to (a) first use the interim cash payments to remove that negative balance and (b) amortize the remainder of the interim cash payment to customers over a period to be determined by the Commission.

For the reasons stated above, the Commission should order PGE to execute the proposed Interim Agreement.

Very truly yours,



David F. White, On Behalf of  
Portland General Electric Company

DFW/ldh  
Enclosure  
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# **EXHIBIT 1**

**RESIDENTIAL EXCHANGE  
INTERIM RELIEF AND STANDSTILL AGREEMENT**

by and between

**UNITED STATES OF AMERICA DEPARTMENT OF ENERGY**

acting by and through the

**BONNEVILLE POWER ADMINISTRATION**

and

**PORTLAND GENERAL ELECTRIC COMPANY**

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This RESIDENTIAL EXCHANGE INTERIM RELIEF AND STANDSTILL AGREEMENT ("Agreement") is executed by PORTLAND GENERAL ELECTRIC COMPANY ("PGE"), an investor-owned utility organized under the laws of the State of Oregon, and the UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, acting by and through the BONNEVILLE POWER ADMINISTRATION ("BPA"). PGE and BPA are sometimes referred to herein individually as "Party" and together as "the Parties."

## RECITALS

WHEREAS, Section 5(c) the Northwest Power Act establishes the right of Pacific Northwest electric utilities to participate in the Residential Exchange Program that provides wholesale power cost benefits of the Federal Columbia River Power System for residential and small farm consumers; and

WHEREAS, BPA and PGE entered into a 2000 Agreement relating to the determination of the Parties' rights and obligations under the Residential Exchange Program for a period commencing October 1, 2001; and

WHEREAS, recently the United States Court of Appeals for the Ninth Circuit has issued a number of opinions, including *Portland General Electric, et al. v. Bonneville Power Administration*, *Golden Northwest Aluminum, Inc. v. Bonneville Power Administration* ("May Opinions"), *Public Utility Dist. No. 1 of Snohomish County Wash. v. Bonneville Power Administration*, and *Public Util. Dist. No. 1 of Grays Harbor v. Bonneville Power Administration* (collectively, including the May Opinions, "Opinions"); and

WHEREAS, as a consequence of BPA's uncertainty regarding its authority to continue payments under the 2000 Agreement after the May Opinions, BPA temporarily suspended payments to PGE under such agreement effective May 21, 2007 (the "Suspension Date"), while acknowledging that the temporary suspension did not constitute a waiver of, and was subject to, any statutory, contractual or other rights and obligations of the Parties and that such temporary suspension was without prejudice to the issue of whether the suspended Residential Exchange Program benefit amounts must at some later point be paid (or credited); and

WHEREAS, PGE along with other Investor-Owned Utilities and state public utility commissions filed on July 18, 2007, petitions for rehearing and rehearing *en banc* of the May Opinions with the Ninth Circuit Court of Appeals (the "Rehearing Petitions"), which petitions were denied October 5, 2007; and

WHEREAS, the time for filing petitions for *writs of certiorari* with respect to the May Opinions has not expired; and

WHEREAS, the effects of the Opinions are currently uncertain; and

WHEREAS, because of the temporary suspension of payments by BPA, the retail electric power bills of residential and small farm consumers of certain Pacific Northwest electric utilities, including PGE, have increased substantially and, in some cases, are causing economic hardship to such consumers; and

WHEREAS, the Parties agree that the exact amount of Residential Exchange Program benefits that PGE will ultimately receive for its residential and small farm consumers for Fiscal Year 2008 will not be known with certainty for a considerable period of time; and



WHEREAS, PGE offers to BPA to sell power to the Administrator in 2008 pursuant to section 5(c)(1) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839c(c)(1); and

WHEREAS, BPA has determined it would be inequitable to the residential and small farm consumers of PGE for BPA to continue suspending all Residential Exchange Program benefit payments pending a final determination of the exact amount of payments due and owing to PGE for the benefit of such consumers for Fiscal Year 2008; and

WHEREAS, by this Agreement, the Parties reserve and do not waive any and all statutory, contractual or other rights and obligations regarding the appropriate level of Residential Exchange Program benefits, including, but not limited to, the amount of such benefits to be provided for PGE's residential and small farm customers for all or part of the Benefit Period.

NOW, THEREFORE, in consideration of the promises and the respective representations hereinafter contained, the Parties hereby promise and agree as follows:

**1. TERM**

This Agreement shall become effective on the date of execution by the Parties ("Effective Date") and shall continue through the end of the Term. All obligations incurred hereunder shall be preserved until satisfied.

**2. DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings:

- (a) "Benefit Period" means the period beginning on October 1, 2001, and continuing through September 30, 2008.
- (b) "BPA True-up Payment Amount" means the amount, if any, by which the Interim Period Payment made to PGE is less than the Definitive Benefit Amount.
- (c) "Contract Year" means the period during the Term of this Agreement, beginning on the first day of the first month following the Effective Date.
- (d) "PGE True-up Payment Amount" means the amount, if any, by which the Definitive Benefit Amount is less than the Interim Period Payment made to PGE.
- (e) "Deemer Account" means a separate account established pursuant to Section 10 of Contract No. DE-MS79-81BP90603, the 1981 Residential Purchase and Sale Agreement between PGE and BPA that identifies a monetary payment plus interest that BPA asserts would have been owed to BPA by PGE if PGE had not "deemed" its Average System Cost equal to the PF Exchange Rate.

- (f) "PGE Benefit Amount" means the final amount of Residential Exchange Program benefits for Fiscal Year 2008 that PGE is entitled to, if any, as determined by the BPA Administrator pursuant to a final, judicially reviewable, Definitive Payment ROD, subject to any final court order with respect thereto after all judicial review thereof has been exhausted.
- (g) "Definitive Benefit Amount" means the PGE Benefit Amount as determined by the BPA Administrator in the Definitive Payment ROD, subject to any final court orders with respect thereto after all judicial review thereof has been exhausted, *provided however*, that in the event the 2000 Agreement is not judicially invalidated then "Definitive Benefit Amount" means the final amount of Residential Exchange Program benefits for Fiscal Year 2008 that PGE is entitled to pursuant to the 2000 Agreement, if any, as determined by the BPA Administrator and subject to the Opinions, if and as applicable, and any other final court orders with respect to such determination by the BPA Administrator and such Opinions after all judicial review thereof has been exhausted.
- (h) "Definitive Payment ROD" means a final record of decision in which the BPA Administrator will make, in addition to any other final decisions, a final determination on the Definitive Benefit Amount. The underlying proceeding will not be considered closed for purposes of there being final decisions until the Administrator issues the Definitive Payment ROD.
- (i) "True-up Payment Event" has the meaning specified in Section 8 of this Agreement.
- (j) "Effective Date" has the meaning specified in Section 1 of this Agreement.
- (k) "Expiration of Stay Date" means the day on which BPA issues the earlier of:
- (1) the Definitive Payment ROD;
  - (2) any other final decision regarding the level of payments under the Residential Exchange Program to which the Investor Owned Utilities are entitled for any part of the Benefit Period (not including Residential Exchange Interim Relief and Standstill Agreements); or
  - (3) a final BPA decision regarding the rates to be charged PGE for any portion of the Benefit Period or thereafter.
- (l) "Fiscal Year 2008" means the period beginning on October 1, 2007 and continuing through September 30, 2008.
- (m) "Interest Accrual Date" means the date on which the Interim Period Payment is made to PGE.

- (n) "Interim Period Payment" means the payment amount specified in Exhibit A.
- (o) "Investor-Owned Utilities" means Avista Corporation, Idaho Power Company, NorthWestern Energy, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc., or their respective successor entities.
- (p) "May Opinions" has the meaning specified in the recitals.
- (q) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501.
- (r) "Opinions" has the meaning specified in the recitals.
- (s) "Residential Exchange Program," or "REP," means the purchase and sale obligations established under Section 5(c) of the Northwest Power Act.
- (t) "Residential Load" means the load eligible for benefits under this Agreement, as such load is defined in Exhibit B.
- (u) "Standstill and Interim Relief Payment Agreements" means the agreement(s) of that title executed by BPA and some or all of its public preference customers.
- (v) "2000 Agreement" means BPA contract No. 01PB-12161 between the Parties (as such agreement may have been supplemented or amended by the Agreement Regarding Fiscal Year 2003 Deferral Amount (Contract No. 03PB-11267) between the Parties), as such agreements may have been heretofore amended.
- (w) "Term" means the period from and including the Effective Date and continuing until all true-up payments have been made pursuant to Section 9.
- (x) "True-up Effective Date" has the meaning specified in Section 8 of this Agreement.

**3. EXHIBITS**

Exhibits A and B are attached hereto and made a part of this Agreement.

**4. BPA DUTIES AND RESPONSIBILITIES**

BPA shall make the Interim Period Payment as specified in Exhibit A to PGE. The amount of the Interim Period Payment shall be as specified in Exhibit A. Payment shall be by electronic funds transfer pursuant to instructions provided to BPA by PGE. Payment shall be made as soon as practicable after execution of this Agreement.

**5. PGE'S DUTIES AND RESPONSIBILITIES**

**(a) Stay of Litigation Activities**

In consideration for the Interim Period Payment, and subject to Section 7 of this Agreement, PGE agrees to abstain until the Expiration of Stay Date from filing any claim, petition or other legal action in any court or administrative body (other than BPA's administrative proceedings) that:

- (1) Challenges BPA's decision to enter into this Agreement or any other Residential Exchange Interim Relief and Standstill Agreement(s) executed by BPA and any other Investor-Owned Utility;
- (2) Challenges BPA's decision to enter into the Standstill and Interim Relief Payment Agreement(s) executed by BPA and any public preference customer; or
- (3) Asserts that BPA is in breach of contract as a result of suspending, as of the Suspension Date, payments (including conservation and renewable discounts and any other credits) under the 2000 Agreement.

(b) Nothing in this Agreement shall prohibit PGE from seeking relief under any surplus power sales or transmission agreements with BPA for any other matters unrelated to the matters described in Section 5(a) above.

(c) Nothing in this Agreement shall prevent PGE from filing any documents or appearing in any court or administrative proceeding in order to seek to contest the Opinions or their effect, or to respond in any manner or take any action that PGE deems appropriate with regard to any actions taken, or arguments or claims raised, by others with respect to the Opinions or their effect.

(d) This Agreement and the Standstill and Interim Relief Payment Agreements executed by BPA and any preference customer do not constitute final decisions, including but not limited to final decisions on 2008 Residential Exchange benefits or the level of Residential Exchange Program costs that should or could be included in rates.

**6. REPRESENTATIONS AND ACKNOWLEDGEMENTS REGARDING INTERIM PERIOD PAYMENT**

Each Party hereby represents and acknowledges its agreement that: (a) the Interim Period Payment is an interim measure designed to mitigate the consequence of BPA's decision to temporarily suspend payments to the Investor-Owned Utilities as a result of BPA's uncertainty regarding its authority to continue payments under the 2000 Agreement after the May Opinions were issued; (b) the Interim Period Payment is not intended to be, nor shall it be interpreted to be, a final and definitive determination, payment, or settlement of any REP amounts (or of any payments under the 2000 Agreement), if any, that are finally determined due and payable to PGE for the benefit of its Residential Load during Fiscal Year 2008; and (c) the Interim Period

Payment made pursuant to this Agreement shall be subject to the reconciliation and true-up process described in Section 9 below. This Section 6 shall survive the termination or expiration of this Agreement and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

**7. NO WAIVER OF RIGHTS**

Notwithstanding anything in this Agreement to the contrary, it is hereby agreed that neither Party has waived or is waiving, either by virtue of entering into this Agreement, by making or accepting payments under this Agreement, or otherwise, any arguments or claims it has made or may make, or any rights or obligations it has or may have, regarding the 2000 Agreement or the calculation or implementation of Residential Exchange Program benefits for any period of time whether within or outside of the Benefit Period, and each Party hereby expressly reserves all such arguments and rights. This Section 7 shall survive the termination or the expiration of this Agreement and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

**8. TRUE-UP PAYMENT EVENTS**

The occurrence of one or more of the events identified below ("True-up Payment Event") shall result in the true-up of the Interim Period Payment pursuant to Section 9 of this Agreement.

- (a) The United States Court of Appeals for the Ninth Circuit, or other court of competent jurisdiction, issues a final order or opinion holding the 2000 Agreement is consistent with law (or dismisses any challenge thereto) and BPA ceases any suspension of payments due under the 2000 ; or
- (b) BPA issues the Definitive Payment ROD.

BPA shall provide written notice to PGE of such True-up Payment Event and shall specify in such notice the effective date of the True-up Payment Event ("True-up Effective Date"); *provided, however*, that such specified date shall not be a date earlier than three days after receipt by the other Party of such written notice. This Section 8 shall survive the termination or expiration of this Agreement and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

**9. TRUE-UP CALCULATION AND PAYMENT**

The Parties hereby agree that on the True-up Effective Date the Interim Period Payment amount paid under this Agreement shall be subject to reconciliation and true-up in accordance with this Section 9.

- (a) **Calculation of True-up Payment**  
BPA shall calculate the difference, if any, between the Interim Period Payment made to PGE and the Definitive Benefit Amount. If there is any

difference between the Definitive Benefit Amount and the Interim Period Payment, then the following provisions shall apply:

- (1) If there is a BPA True-up Payment Amount, then BPA shall pay PGE such amount, plus interest. BPA may elect to make such payment to PGE in a lump sum or in equal monthly amounts (including interest) for a period of seven (7) months. Payment shall be by electronic funds transfer pursuant to instructions provided to BPA by PGE.
- (2) If there is a PGE True-up Payment Amount, then BPA shall set-off such amount, plus interest, against future payments that PGE is entitled to under the REP as follows:
  - (A) During a three (3) year period immediately following the commencement of set-offs pursuant to Section 9(b) below, set-offs shall be made at such times and in such amounts as are mutually agreed in writing by BPA and PGE; or
  - (B) In the absence of such agreement, then BPA shall make such set-offs until the amount of set-offs is equal to the PGE True-up Payment Amount (plus interest). BPA agrees to make a good faith effort to amortize such set-offs over a three (3) year period immediately following the commencement of set-offs pursuant to Section 9(b) below and, if practicable, to do so in a fashion that amortizes such set-offs in equal monthly amounts; *provided, however,* that in no event shall any monthly set-off amount be greater than the payment that PGE is entitled to from BPA under the REP for that month.
  - (C) Set-offs under Section 9(a)(2)(A) or (B) shall continue until the PGE True-up Payment Amount (plus interest) has been set-off in its entirety, or for three (3) years, whichever occurs first. If, at the end of such three (3) year period, the PGE True-up Payment Amount (plus interest) has not been set-off in its entirety, then PGE shall pay to BPA any remaining portion. Such payment(s) shall begin within thirty (30) days following the expiration of the three (3) year period and be made in equal monthly amounts (including interest) over the following twelve (12) months.
- (3) The interest specified above in this Section 9 on the difference, if any, between the Definitive Benefit Amount and the Interim Period Payment as calculated in Sections 9(a)(1) or (2) shall be simple interest computed on the declining balance from the Interest Accrual Date until paid. The interest rate applied to such outstanding balances shall equal the one (1) year annual rate of interest posted under the title "Daily Treasury Yield Curve Rates" as published on the U.S. Treasury

Department's website at 3:30pm Eastern Prevailing Time on the Interest Accrual Date. The interest rate is available at the following website:  
[www.treasury.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml](http://www.treasury.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml).

**(b) Commencement of True-up Set-offs or Payments**

Payments or set-offs under this Section 9 shall commence in accordance with the following provisions:

- (1) If no petition or other legal action is filed challenging BPA's determination of the Definitive Benefit Amount, then payments or set-offs under Section 9(a) shall commence upon the later of:
  - (A) Ninety-five (95) calendar days after the publication of the Definitive Payment ROD; or
  - (B) If the Definitive Payment ROD includes final rate determinations subject to review by the Federal Energy Regulatory Commission (FERC), then ninety-five (95) calendar days after the issuance of an order from FERC approving BPA's rates on a final basis.
- (2) If one or more petitions or other legal actions are filed challenging BPA's determination of the Definitive Benefit Amount, then payments or set-offs under Section 9(a) shall commence thirty (30) days after the Definitive Benefit Amount is finally sustained or affirmed by a final, non-appealable order by a court of competent jurisdiction.
- (c) In addition to using the true-up provision described in Section 9(a) above, the Parties further agree and acknowledge that if a Court of competent jurisdiction remands, vacates or otherwise reverses BPA's decision to enter into this Agreement, then the Parties will work cooperatively and in good faith together and take such actions as are necessary to conform this Agreement to such order(s).

Any payment or set-off rights and obligations arising under this Section 9 shall survive the expiration or termination of this Agreement. This Section 9 shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

**10. PASSTHROUGH OF BENEFITS**

- (a) Except as otherwise provided in this Agreement, the Interim Period Payment received by PGE from BPA shall be passed through, in full, to each residential and small farm consumer, as either: (1) an adjustment in applicable retail

rates; (2) monetary payments; or (3) as otherwise directed by the applicable State regulatory authority.

- (b) The Interim Period Payment shall be distributed by PGE to the Residential Load in a timely manner as set forth in this Section 10; *provided, that*, it is specifically acknowledged and agreed that distributions to the Residential Load may be made by PGE in advance of its receipt of Interim Period Payment from BPA and that the Interim Period Payment may be used to set-off distributions to the Residential Load made by PGE prior to the Effective Date. If the Interim Period Payment is less than \$600,000, then PGE may distribute benefits on a less frequent basis provided that distributions are made at least once each Contract Year.
- (c) Interim Period Payment shall be passed by PGE through consistent with procedures developed by PGE's State regulatory authority(s). Interim Period Payment shall be identified on PGE's books of account. Funds shall be held in an interest bearing account, and shall be maintained as restricted funds, unavailable for the operating or working capital needs of PGE. Interim Period Payment funds shall not be pooled with other funds of PGE for short-term investment purposes until PGE has passed through such funds for its Residential Load as a credit or credits on its residential and small farm consumers' bills.

**11. AUDIT RIGHTS**

BPA retains the right to audit PGE at BPA's expense to determine whether the Interim Period Payment made to PGE under this Agreement was passed through to PGE's eligible Residential Load. BPA retains the right to take action consistent with the results of such audit to require the passthrough of such benefits to eligible Residential Load consistent with the provisions of this Agreement. BPA's right to conduct such audits of PGE with respect to a Contract Year shall expire 60 months after the end of each such Contract Year. As long as BPA has the right to audit PGE pursuant to this Agreement, PGE agrees to maintain records and documents showing all transactions and other activities pertaining to the terms of this Agreement with respect to which BPA has audit rights.

**12. DEEMER ACCOUNT BALANCE**

As a result of entering into this Agreement, BPA does not waive its right, if any, to assert that a Deemer Account balance, if any, from Contract No. DE-MS79-81BP90603, the 1981-2001 Residential Purchase and Sale Agreement between BPA and PGE, is required to be carried over to any subsequent agreement offered by BPA pursuant to Section 5(c) of the Northwest Power Act and PGE does not waive its right to contest any such carryover or to assert any defenses thereto.

**13. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CUSTOMERS**

PGE will ensure that any entity that issues customer bills to PGE's residential and small farm consumers shall provide written notice on such customer bills that a



portion of their power and associated benefits is "Federal Columbia River Benefits supplied by BPA."

#### 14. STANDARD PROVISIONS

(a) **Amendments**

Except as otherwise provided in Exhibit B, all amendments to this Agreement shall be set forth in a written instrument signed by authorized representatives of each Party.

(b) **Information Exchange and Confidentiality**

The Parties shall provide each other with any information that is reasonably required, and requested by either Party in writing, to operate under and administer this Agreement, including load forecasts for planning purposes, information needed to resolve billing disputes, and scheduling and metering information reasonably necessary to prepare power bills that is not otherwise available to the requesting Party. Such information shall be provided in a timely manner. Information may be exchanged by any means agreed to by the Parties. If such information is subject to a privilege of confidentiality, a confidentiality agreement or statutory restriction under state or Federal law on its disclosure by a Party to this Agreement, then that Party shall endeavor to obtain whatever consents, releases or agreements are necessary from the person holding the privilege to provide such information while asserting the confidentiality over the information. Information provided to BPA which is subject to a privilege of confidentiality or nondisclosure shall be clearly marked as such and BPA shall not disclose such information without obtaining the consent of the person or Party asserting the privilege, consistent with BPA's obligation under the Freedom of Information Act. BPA may use such information as necessary under this Agreement. BPA shall only disclose information received under this provision to BPA employees who need the information for purposes of this Agreement.

(c) **Entire Agreement and Order of Precedence**

This Agreement, including all exhibits incorporated as part of this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement, it being understood that the 2000 Agreement does not purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

(d) **No Third Party Beneficiaries**

This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person or entity shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.

(e) **Waivers**

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

(f) **Uncontrollable Forces**

Neither Party shall be in breach of their respective obligations under this Agreement to the extent the failure to fulfill any obligation is due to orders or injunctions issued by a court of competent jurisdiction ("Uncontrollable Force"). If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice; (2) attempt in good faith to stay, suspend or mitigate the effects of such Uncontrollable Force as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance.

**15. EARLY TERMINATION**

Notwithstanding any other provision of this agreement, in the event that BPA has not yet made the Interim Payment pursuant to this Agreement and BPA is enjoined or otherwise judicially precluded for any period of time from making either Standstill Payments pursuant to the Standstill and Interim Relief Payment Agreements or Interim Payments pursuant to the Residential Exchange Interim Relief and Standstill Agreements, then this Agreement shall be void *ab initio* and without any force and effect whatsoever.

**16. SIGNATURES**

Each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party for which he or she signs.

PORTLAND GENERAL ELECTRIC  
COMPANY

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

By \_\_\_\_\_

By \_\_\_\_\_

Name James Lobdell  
*(Print / Type)*

Name Charles W. Forman  
*(Print / Type)*

Title Vice President

Title Customer Account Executive

Date \_\_\_\_\_

Date \_\_\_\_\_

**Exhibit A**  
**INTERIM PERIOD PAYMENT**

**Interim Period Payment Amount**

The Interim Period Payment amount PGE shall receive under the terms of this Agreement is \$43,200,000.

**Exhibit B**  
**RESIDENTIAL LOAD DEFINITION**

1. PGE's Residential Load means the sum of the loads within the Pacific Northwest eligible for the Residential Exchange Program under the tariff schedules described below. If BPA determines that any action changes PGE's general tariffs or service schedules in a manner which would allow loads other than Residential Loads, as defined in the Northwest Power Act, to be included under these tariff schedules, or that the original general tariffs or service schedules include loads other than Residential Loads, such nonresidential loads shall be excluded from this Agreement.

Such tariff schedules as presently effective include:

- (a) for all schedules listed below, include the amount, expressed in kilowatthours, of Residential Load supplied by PGE under:
- (1) [schedule]
  - (2) [schedule]
  - (3) [schedule]
- (b) a portion of the Residential Load as determined pursuant to section 2 of this Exhibit B, supplied by the Utility under the Northwest Power Act, section 5(c).

2. Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

$$\text{Irrigation/Pumping Load} = 400 \times 0.746 \times \text{days in billing period} \times 24$$

**provided, however,** that this amount shall not exceed that farm's measured energy for the same billing period.

where:

400 is equal to the horsepower limit defined in the Northwest Power Act,

0.746 is the factor for converting horsepower to kW,

days in billing period is determined in accordance with prudent and normal utility business practices, and

24 is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms

using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.

4. For purposes of this Agreement, a farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels as determined by BPA.

Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to PGE which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

- use
- ownership
- control
- operating practices
- distance between parcels

5. Unused irrigation allocations may not be reallocated to other farms or to another billing period.
6. The operator of a farm is required to certify to PGE all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide PGE and BPA all documentation requested to assist in the farm determination.

7. This Exhibit B shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.