



March 17, 2008

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

PUC Filing Center
Public Utility Commission of Oregon
550 Capitol St. NE, #215
PO Box 2148
Salem, OR 97308-2148

Attention: Administrative Hearings Division

RE: UM 926 – *In the Matter of the Investigation Regarding the Purchase of Subscription Power from the Bonneville Power Administration*
Request for Order Not Requiring PacifiCorp to Enter Into the Residential Exchange Interim Relief and Standstill Agreement (Contract No. 08PB-12440) with the Bonneville Power Administration

Dear Administrative Hearings Division:

Pursuant to ORS 757.663, PacifiCorp hereby requests that the Commission not require PacifiCorp to enter into the Residential Exchange Interim Relief and Standstill Agreement (“Interim Agreement”) (Contract No. 08PB-12440) offered to PacifiCorp by the Bonneville Power Administration (“BPA”). On February 22, 2008, BPA offered Contract No. 08PB-12440 for PacifiCorp’s consideration and requested execution of the Interim Agreement by March 24, 2008. Based on the level of interim benefits being offered, PacifiCorp does not believe that execution of the Interim Agreement is in PacifiCorp’s customers’ best interest. As a result, PacifiCorp is requesting the Commission not require it to execute the Interim Agreement (attached as Exhibit 1 hereto).

I. Background

A. Settlement Agreements under Residential Exchange Program

The Northwest Power Act, through the Residential Exchange Program, provides access to the benefits of low-cost federal hydroelectricity to the residential and small-farm customers of the region’s investor-owned utilities. The program is administered by BPA in accordance with federal law. Pursuant to agreements between BPA and PacifiCorp, benefits from BPA are passed through to PacifiCorp’s Oregon, Washington and Idaho eligible customers in the form of bill credits. In October 2000, PacifiCorp entered into a settlement agreement with BPA that provided Residential Exchange Program benefits to PacifiCorp’s customers from October 2001 through September 2006.

Please Reply To:

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In May 2001, PacifiCorp entered into a load reduction agreement with BPA which eliminated BPA’s obligation to deliver power to PacifiCorp from October 2001 through September 2006 in exchange for cash payments. This agreement also contained a “reduction of risk discount” provision which provided that BPA would reduce the cash payments to PacifiCorp if by December 1, 2001, PacifiCorp and other utilities were able to negotiate and enter into settlement agreements with the publicly owned utilities and other of BPA’s preference customers dismissing certain lawsuits. If these parties did not reach settlement by the specified date, the clause would expire and BPA would make cash payments to PacifiCorp based on the original rate for the October 2002 – September 2006 period. Settlement was not reached and the clause expired obligating BPA to make the full cash payment to PacifiCorp. In May 2004, PacifiCorp, the BPA and other parties executed an additional agreement, modifying both the October 2000 and May 2001 agreements and providing for a guaranteed range of benefits to customers from October 2006 through September 2011. The Commission approved the execution of these agreements by PacifiCorp in Order Nos. 00-678, 01-321, 01-427, 02-414, 03-114 and 03-742.

B. *Challenges to the Settlement Agreements*

Several publicly owned utilities, cooperatives and BPA’s direct-service industry customers filed lawsuits against the BPA with the United States Ninth Circuit Court of Appeals (“Ninth Circuit”) seeking review of BPA’s decision to enter into the Residential Exchange Program settlement agreements, as well as challenging the allocation to BPA’s preference customers of certain costs associated with the settlement agreements. On May 3, 2007, the Ninth Circuit issued its opinions in *Portland General Electric, et al. v. Bonneville Power Administration*, 501 F.3d 1037 (9th Cir. 2007) and *Golden Northwest Aluminum Co., et al. v. Bonneville Power Administration*, 501 F.3d 1009 (9th Cir. 2007). The first decision finds the October 2000 Residential Exchange Program settlement agreement inconsistent with the Northwest Power Act. The second decision holds, among other things, that BPA acted contrary to law when it allocated to its preference customers, which include public utilities, cooperatives and federal agencies, certain costs of the October 2000 settlement BPA reached with its investor-owned utility customers.¹ The Ninth Circuit remanded to BPA to set rates in accordance with its opinions.

In July 2007, PacifiCorp and the other regional investor-owned utilities (“IOUs”) petitioned the Ninth Circuit for rehearing of the May 2007 decisions. That rehearing request was denied. On February 1, 2008, Portland General Electric (PGE), Puget Sound Energy and Avista Corporation filed a petition for writ of certiorari seeking review of the

¹ On October 11, 2007, the Ninth Circuit issued four more decisions. One of the decisions remanded the May 2004 agreements modifying the October 2000 and May 2001 agreements to BPA for further action consistent with the May 3, 2007 decisions. The other three decisions dismissed cases in which the publicly owned utilities sought review of BPA’s decision to implement the reduction of risk discount provision and make the full cash payment to PacifiCorp.

Ninth Circuit’s decisions with the United States Supreme Court. On February 25, 2008, PacifiCorp, joined by Idaho Power Company and Northwestern Energy, filed a brief in support of the petition. A decision on the petition is currently pending.

C. *Status of Residential Exchange Benefits*

As a result of the Ninth Circuit’s decisions, on May 21, 2007, BPA notified the Pacific Northwest’s six IOUs, including PacifiCorp, that it was immediately suspending Residential Exchange Program settlement payments. On May 23, 2007, PacifiCorp filed Advice No. 07-013 which revised Schedule 98 (Adjustment Associated with the Pacific Northwest Electric Power Planning and Conservation Act). On May 30, 2007, the Commission approved this tariff revision which reduced the level of credits provided to Pacific Power’s eligible customers to 0.00 cents per kWh. Following implementation of this rate change, PacifiCorp’s current balancing account shows a negative balance of \$291,426 for Oregon.

Since May 2007, PacifiCorp, along with the other IOUs, has been working with BPA to restore Residential Exchange Program benefits to eligible customers. As a result of these efforts, on December 17, 2007, BPA released for public comment two sets of draft contracts (one for the IOU customers and one for BPA’s preference customers). Comments on the draft contracts were submitted by the IOUs and other interested parties in January 2008. BPA issued its decision document entitled “Bonneville Power Administration’s Response to Comments Regarding Interim Agreements with Investor-Owned Utilities and Preference Customers” February 21, 2008 (“BPA Comments”) and subsequently offered revised draft contracts to its IOU and preference customers.

In February 2008, BPA initiated its WP-07 supplemental rate proceeding under section 7(i) of the Northwest Power Act to determine, among other things, the amount of benefits that BPA’s IOU customers received, or would have received from FY 2002-2008 as a result of the settlement agreements; determine the amount of residential exchange program benefits the IOUs allegedly would have received absent the settlement agreements; address any differences between these two amounts; and establish new power rates for FY 2009. BPA is concurrently conducting a formal consultation process to develop a new Average System Cost Methodology to become effective for FY 2009, as well as an expedited process to develop new Average System Cost filings for each utility intending to participate in the residential exchange program for FY 2009. PacifiCorp is a party to each of these proceedings and in each case will advocate on behalf of its eligible customers for their fair share of the benefits of the federal hydroelectric system. Under the current schedules, BPA is expected to complete the proceedings in time for new rates and new benefits to be available starting October 1, 2008.

II. Interim Agreements

A. *Structure of Interim Agreements*

In light of the expected timing of the conclusion of the WP-07 supplemental rate proceeding, BPA decided to offer interim agreements to provide interim relief to BPA’s customers while the rate case is pending. As noted in the BPA Comments, the “most important feature of the Interim Agreements is that they are *interim*. All funds paid out under the Interim Agreements are subject to true-up upon conclusion of the 7(i) rate proceeding.” BPA Comments at 5. The level of benefits provided under the Interim Agreements will be superseded by BPA’s final determinations rendered at the conclusion of the section 7(i) rate proceeding. At that time, all payments will be trued up so that the total benefits provided to each IOU and preference customer are precisely what they would have been whether or not the Interim Agreements were offered or executed.

The administrative record from BPA’s WP-07 power rate adjustment proceeding forms the basis for BPA’s decisions regarding the level of benefits the IOUs are eligible to receive. BPA intends to rely on its 1984 average system cost methodology to determine the level of benefits to be offered to the IOUs for FY 2002-2008. Under the Interim Agreement, the PacifiCorp Benefit Amount for its customers is expected to be \$20.7 million for FY 2008. The Definitive Benefit Amount for FY 2008 for PacifiCorp’s customers (resulting from the outcome of the WP-07 supplemental rate process) is expected to be approximately \$4.1 million. Therefore, under section 9 of the Interim Agreement, it is expected that PacifiCorp’s customers would be subject to the True-up Payment Amount resulting in approximately \$16.6 million plus interest. Due to the lack of a current agreement among the Oregon, Idaho and Washington commissions as to how PacifiCorp’s allocation of benefits would be spread among eligible customers in the three states, PacifiCorp is unable to provide an exact estimate of what Oregon’s share would be at this time. Overall, we estimate that the monthly benefit an average residential customer in any of the three states might receive from the interim agreement would range from approximately one dollar to less than three dollars per month. Interstate allocation is an issue that the Oregon, Idaho and Washington commissions will need to resolve before the conclusion of BPA’s supplemental rate process.

BPA has proposed in its WP-07S case that an interim payment that was not paid to a customer because it did not sign the agreement will earn interest² from the date it would have been paid had the customer signed the agreement; and payments will be made to non-signers on the same basis as payments are made to those who signed.

² The applicable interest rate will be determined in the WP-07 supplemental rate case.

B. *Challenge to Interim Agreements*

On March 5, 2008, Clatskanie People’s Utility District filed a challenge with the Ninth Circuit challenging BPA’s authority to offer the Interim Agreements. The Interim Agreement contains a provision which provides for early termination in the event BPA has not yet made the interim payments and is enjoined or judicially precluded from making the payments.³ As of the date of this letter, we understand that BPA still intends to offer the Interim Agreements. The potential for a protracted challenge to the Interim Agreements is another risk we do not believe is in the interests of our customers to take.

III. **PacifiCorp’s Request**

Contract No. 08PB-12440 was offered by BPA for PacifiCorp’s consideration. PacifiCorp has until March 24, 2008 to enter into the Interim Agreement with BPA. The key benefit of the Interim Agreement would be the recommencement of benefits to PacifiCorp’s customers. PacifiCorp finds itself in a unique situation where its customers’ allocated level of interim benefits is expected to be higher than its customers’ allocated level of final benefits. As a result, the Interim Agreement poses a risk to PacifiCorp’s customers that may not exist for PGE’s customers.

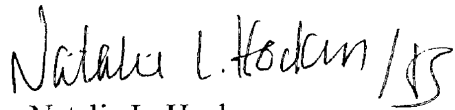
In light of the risk associated with the expected difference between the PacifiCorp Benefit Amount under the Interim Agreement and the Definitive Benefit Amount, PacifiCorp’s eligible customers would be subject to the True-up Payment Amount (including interest). While BPA has proposed to offset the True-up Payment Amount against future benefits over a three year period, because the level of future benefits to which PacifiCorp’s customers may be entitled is still speculative, PacifiCorp does not believe it is in the best interests of its customers to take the interim benefits at this time. In addition, it is possible that in a worst case scenario, a surcharge would be required in order to allow PacifiCorp’s customers to repay the true-up amount owed to BPA.

As a result, PacifiCorp is requesting that the Commission not require it to execute the Interim Agreement. For PacifiCorp’s customers, the risk of owing a true-up amount to BPA is high and should not be accepted lightly. PacifiCorp is keenly aware of the hardship the loss of the benefits and the resulting bill credit has had, and continues to have, on its eligible customers; however, PacifiCorp does not believe that taking a small level of benefits now is worth the risk associated with the expected obligation to pay the majority of these benefits back later. Further, BPA has insisted that customers of utilities that choose not to enter into Interim Agreements will not be prejudiced. The final level of benefits will still be available, plus interest, but at a later date upon conclusion of BPA’s rate process, which is expected to be later this year. PacifiCorp will continue to vigorously pursue an acceptable level of long-term benefits for its customers through legal, administrative, and policy channels.

³ See section 15 of the Interim Agreement.

For the reasons stated above, PacifiCorp requests that the Commission order PacifiCorp to not execute the Interim Agreement. PacifiCorp will be available to answer questions and discuss this request further at the scheduled March 20, 2008 public meeting.

Very truly yours,

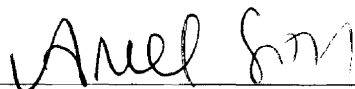
A handwritten signature in black ink that reads "Natalie L. Hocken" followed by a stylized flourish or initials.

Natalie L. Hocken

Attachment
cc: Service List

CERTIFICATE OF SERVICE

I certify that I have cause to be served the foregoing **REQUEST FOR ORDER NOT TO SIGN BPA INTERIM AGREEMENT** in OPUC Docket No. UM 926 by electronic mail and first class mail to the parties on the attached service list.
DATED this 17th day of March 2008.



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Coordinator, Administrative Services

Service List UM-926

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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

PACIFICORP

Table of Contents

Section		Page
1.	Term	3
2.	Definitions	3
3.	Exhibits.....	5
4.	BPA Duties and Responsibilities.....	5
5.	PacifiCorp’s Duties and Responsibilities	6
6.	Representations and Acknowledgements Regarding Interim Period Payment.....	6
7.	No Waiver of Rights	7
8.	True-Up Payment Events.....	7
9.	True-Up Calculations and Payment	8
10.	Passthrough of Benefits.....	10
11.	Audit Rights.....	10
12.	Deemer Account Balance.....	10
13.	Notice Provided to Residential and Small Farm Customers.....	11
14.	Standard Provisions	11
15.	Early Termination.....	12
16.	Signatures	13
	Exhibit A Interim Period Payment	
	Exhibit B Residential Load Definition	

This RESIDENTIAL EXCHANGE INTERIM RELIEF AND STANDSTILL AGREEMENT (“Agreement”) is executed by PACIFICORP (“PacifiCorp”), 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”). PacifiCorp 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 PacifiCorp 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 and the Financial Settlement Agreement after the May Opinions, BPA temporarily suspended payments to PacifiCorp under such agreements 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, PacifiCorp 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 PacifiCorp, 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 PacifiCorp 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, PacifiCorp 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 PacifiCorp 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 PacifiCorp 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 PacifiCorp'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 PacifiCorp 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) "PacifiCorp True-up Payment Amount" means the amount, if any, by which the Definitive Benefit Amount is less than the Interim Period Payment made to PacifiCorp.
- (e) "Deemer Account" means a separate account established pursuant to Section 10 of Contract No. DE-MS79-81BP90607, the 1981 Residential Purchase and Sale Agreement between PacifiCorp and BPA that identifies a monetary payment plus interest that BPA asserts would have been owed to BPA by PacifiCorp if PacifiCorp had not "deemed" its Average System Cost equal to the PF Exchange Rate.

- (f) “PacifiCorp Benefit Amount” means the final amount of Residential Exchange Program benefits for Fiscal Year 2008 that PacifiCorp 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 PacifiCorp 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 and Financial Settlement Agreement are not judicially invalidated then “Definitive Benefit Amount” means the final amount of Residential Exchange Program benefits for Fiscal Year 2008 that PacifiCorp is entitled to pursuant to the 2000 Agreement and Financial Settlement 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 PacifiCorp 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 PacifiCorp.

- (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-12229 between the Parties (as such agreement may have been supplemented or amended by the Agreement Regarding Conditional Deferral of Reduction of Risk Discount (Contract No. 02PB-11157) between the Parties and the Agreement Regarding Fiscal Year 2003 Deferral Amount (Contract No. 03PB-11262) between the Parties), as such agreements may have been heretofore amended.
- (w) "Financial Settlement Agreement" means BPA contract No. 01PB-10854 between the Parties, as such agreement may have been heretofore amended.
- (x) "Term" means the period from and including the Effective Date and continuing until all true-up payments have been made pursuant to Section 9.
- (y) "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 PacifiCorp. 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 PacifiCorp. Payment shall be made as soon as practicable after execution of this Agreement.

5. PACIFICORP'S DUTIES AND RESPONSIBILITIES

(a) Stay of Litigation Activities

In consideration for the Interim Period Payment, and subject to Section 7 of this Agreement, PacifiCorp 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 and Financial Settlement Agreement.

(b) Nothing in this Agreement shall prohibit PacifiCorp 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 PacifiCorp 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 PacifiCorp 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 and the Financial Settlement 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 and the Financial Settlement Agreement), if any, that are finally determined due and payable to PacifiCorp 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 Financial Settlement 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 and the Financial Settlement Agreement are consistent with law (or dismisses any challenge thereto) and BPA ceases any suspension of payments due under the 2000 Agreement and the Financial Settlement Agreement; or
- (b) BPA issues the Definitive Payment ROD.

BPA shall provide written notice to PacifiCorp 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 PacifiCorp 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 PacifiCorp such amount, plus interest. BPA may elect to make such payment to PacifiCorp 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 PacifiCorp.
- (2) If there is a PacifiCorp True-up Payment Amount, then BPA shall set-off such amount, plus interest, against future payments that PacifiCorp 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 PacifiCorp; 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 PacifiCorp 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 PacifiCorp 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 PacifiCorp 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 PacifiCorp True-up Payment Amount (plus interest) has not been set-off in its entirety, then PacifiCorp 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.

(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 PacifiCorp 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 PacifiCorp 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 PacifiCorp 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 PacifiCorp prior to the Effective Date. If the Interim Period Payment is less than \$600,000, then PacifiCorp 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 PacifiCorp through consistent with procedures developed by PacifiCorp's State regulatory authority(s). Interim Period Payment shall be identified on PacifiCorp'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 PacifiCorp. Interim Period Payment funds shall not be pooled with other funds of PacifiCorp for short-term investment purposes until PacifiCorp 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 PacifiCorp at BPA's expense to determine whether the Interim Period Payment made to PacifiCorp under this Agreement was passed through to PacifiCorp'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 PacifiCorp 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 PacifiCorp pursuant to this Agreement, PacifiCorp 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-MS79-81BP90607, the 1981-2001 Residential Purchase and Sale Agreement between BPA and PacifiCorp, is required to be carried over to any subsequent agreement offered by BPA pursuant to Section 5(c) of the Northwest Power Act and PacifiCorp 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

PacifiCorp will ensure that any entity that issues customer bills to PacifiCorp'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 and the Financial Settlement Agreement do 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.

PACIFICORP

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name Pat Egan
(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 PacifiCorp shall receive under the terms of this Agreement is \$20,700,000.

Exhibit B
RESIDENTIAL LOAD DEFINITION

1. PacifiCorp'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 PacifiCorp'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 PacifiCorp under:

- (1) Oregon
- | | |
|--------------|--|
| Schedule 4 | Residential |
| Schedule 14 | Outdoor Area Lighting |
| Schedule 24 | General Service |
| Schedule 26 | Large General Service Less Than 1,000 KW |
| Schedule 41 | Agricultural Pumping |
| Schedule 44T | Large General Service – Agricultural Pumping |
| Schedule 45T | Large General Service – Domestic and Farm |

- (2) Washington
- | | |
|--------------|--|
| Schedule 13 | Outdoor Area Lighting |
| Schedule 16 | Residential |
| Schedule 25 | General Service |
| Schedule 35 | Large General Service Less Than 1,000 KW |
| Schedule 40 | Agricultural Pumping |
| Schedule 42 | Controlled General Heating |
| Schedule 44T | Large General Service – Agricultural Pumping |

- (3) Idaho
- | | |
|--------------|--|
| Schedule 1 | Residential |
| Schedule 6A | General Service – Large Power – Residential & Farm |
| Schedule 7A | Security Area Lighting – Residential and Farm |
| Schedule 10 | Agricultural Pumping |
| Schedule 23A | General Service – Residential and Farm |
| Schedule 36 | Residential – Optional Time-of-Day |
| Schedule 36 | Residential – Optional Time-of-Day. |

- (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):

None.

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 PacifiCorp 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 PacifiCorp all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide PacifiCorp 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.

