RESIDENTIAL EXCHANGE PROGRAM SETTLEMENT AGREEMENT WITH CLARK PUBLIC UTILITIES

ADMINISTRATOR'S RECORD OF DECISION

Bonneville Power Administration
U.S. Department of Energy

February 10, 2006

Record of Decision

Residential Exchange Program
Settlement Agreement with Clark Public Utilities

I. Background

The Bonneville Power Administration (BPA) was created in 1937 to market electric power generated at Bonneville Dam, and to construct and operate facilities for the transmission of power. 16 U.S.C. § 832-832l. Since that time, Congress has directed BPA to market power generated at additional facilities. *Id*. § 838f. Currently, BPA markets power generated at thirty Federal hydroelectric projects, and several non-Federal projects. BPA also owns and operates approximately 80 percent of the Pacific Northwest's high-voltage transmission system. In 1974, BPA became a self-financed agency that no longer receives annual appropriations. *Id*. § 838i. BPA's rates must therefore produce sufficient revenues repay all Federal investments in the power and transmission systems, and to carry out BPA's additional statutory objectives. *See id*. §§ 832f, 838g, 838i, and 839e(a).

In the 1970s, threats of insufficient resources to meet the region's electricity demands led to passage of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). 16 U.S.C. § 839, *et seq*. In that Act, Congress, among other things, provided that BPA's public agency customers (preference customers) and investor-owned utility customers (IOUs) had a statutory right for service from BPA to meet their net requirements loads, *Id*. §§ 839c(b)(1). Congress also established the Residential Exchange Program (REP), which, as discussed in greater detail below, provides Pacific Northwest utilities a form of access to the benefits of low-cost Federal power. *Id*. § 839c(c).

Section 5(c) of the Northwest Power Act established the REP. *Id*. § 839c(c). Under the REP, a Pacific Northwest electric utility (either a publicly owned utility, an IOU or other entity authorized by state law to serve residential and small farm loads) may offer to sell power to BPA at the utility's average system cost (ASC). *Id*. § 839c(c)(1). BPA purchases such power and, in exchange, sells an equivalent amount of power to the utility at BPA's PF Exchange rate. *Id*. The amount of the power exchanged equals the utility's residential and small farm load. *Id*. In past practice, no actual power sales have taken place. Instead, BPA provided monetary benefits to the utility based on the difference between the utility's ASC and the applicable PF Exchange rate multiplied by the utility's residential and small farm load. These monetary benefits must be passed through directly to the utility's residential and small farm consumers. *Id*. § 839c(c)(3). While REP benefits have previously been monetary, the Northwest Power Act also provides for the sale of actual power to exchanging utilities in specific circumstances. Pursuant to section 5(c)(5) of the Northwest Power Act, in lieu of purchasing any amount of electric power offered by an exchanging utility, the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to the utility as part of an exchange sale. *Id*. § 839c(c)(5). However, the cost of the acquisition must be less than the cost of purchasing the electric power offered by the utility. *Id*. In these circumstances, BPA acquires power from an in lieu resource and sells actual power to the exchanging utility.

Each exchanging utility's ASC is determined by the Administrator according to the 1984 ASC Methodology, an administrative rule adopted by BPA after consultation with its customers and other regional parties. Under the 1984 ASC Methodology, a utility's ASC is the sum of a utility's production and transmission-related costs (Contract System Costs) divided by the utility's system load (Contract System Load). A utility's system load is the firm energy load used to establish retail rates. BPA's current ASC Methodology uses a "jurisdictional approach" in determining utilities' ASCs, which relies upon cost data approved by state public utility commissions (in the case of IOUs) and utility governing bodies (in the case of public utilities) for retail ratemaking. These data provide the starting point for BPA's determination of the ASC of each utility participating in the REP. Costs that have not been approved for retail rates are not considered for inclusion in Contract System Costs.

The schedule for filing and reviewing a utility's ASC is established in the 1984 ASC Methodology, which provides that "not later than five working days after filing for a jurisdictional rate change or otherwise commencing a rate change proceeding, the utility shall file a preliminary Appendix 1, setting forth the costs proposed by the utility and shall deliver to BPA all information initially provided to the state commission." The filing includes all testimony and exhibits filed in the retail rate proceeding. Not later than 20 days following the effective date of new rate schedules in a jurisdiction, the utility must file a revised Appendix 1 reflecting costs as approved by the state commission or utility governing body. BPA then has 210 days to review the filing and issue a report signed by the Administrator. During this review process, BPA ensures that the costs and loads conform to the rules and requirements of the ASC Methodology, as well as the applicable provisions of the Northwest Power Act. BPA makes adjustments as necessary.

The REP has traditionally been implemented through Residential Purchase and Sale Agreements (RPSAs). Between 1981 and the present, Residential Exchange Termination Agreements were negotiated with all of the previously active exchanging utilities except Montana Power Company (now NorthWestern Energy, or NWE). Regional utilities were eligible to participate in the REP again beginning July 1, 2001, except for those utilities that previously executed settlement agreements for terms extending beyond July 1, 2001.

II. <u>Procedural History</u>

On August 29, 2005, BPA and Clark Public Utilities (Clark) executed a Residential Purchase and Sale Agreement (RPSA). Subsequent to signing the RPSA, Clark submitted a preliminary Appendix 1 filing. As previously discussed, an Appendix 1 filing identifies the costs that establish a utility's ASC. Such costs must be approved for inclusion in current rates by an investor-owned utility's regulatory commission or, for preference utilities such as Clark, by its governing board. Clark's preliminary Appendix 1 reflected Clark's intent to implement a rate increase effective October 1, 2005. Clark later filed a revised Appendix 1 on October 7, 2005, to reflect a five percent rate increase approved by Clark's board effective October 1, 2005. Clark's as-filed ASC is $59 per MWh. Although the next step under BPA's ASC Methodology would be for BPA to conduct a 210-day public review of the filed ASC, Clark and BPA agreed to suspend such review while determining whether they could reach a settlement of BPA's obligation under the RPSA and Clark's participation in the REP.

During the negotiations, BPA and Clark shared the following goals:

- To secure a settlement to Clark's participation in the REP;
- To minimize cash outlays by BPA in FY 2006; and
- To minimize rate impacts on other BPA customers.

The proposed Settlement Agreement would terminate Clark's RPSA and replace the RPSA with the payment of specified lump sum amounts by BPA. As discussed in greater detail below, BPA is also proposing to terminate Clark's current Priority Firm Power Sales Block Agreement for load service from BPA and replace it with an Actual Partial Sales Agreement that would become effective on the date that Clark returns to the BPA Control Area.

One change has been made from the proposed agreements that BPA issued for public comment on December 19, 2005. The proposed new Actual Partial Power Sales Agreement, which would change Clark's load service from a Block to a Simple Actual Partial customer, would trigger a requirement by BPA's Transmission Business Line for Clark to apply for a New Network Resource contract. Removal of the River Road Project applied to Clark's native load, as described below, would negatively affect available transfer capability (ATC). In order to avoid the need for additional ATC, Clark has agreed to apply River Road generation to load and reduce the amount of requirements power included in the original draft settlement agreement. PBL will make available to Clark at the busbar an identical amount of surplus power priced under the Firm Power Products and Services (FPS) rate schedule at an index price equal to the PF Preference rate. This arrangement makes no substantive financial changes to the proposed settlement.

A. Summary of the Proposed Settlement Agreement

The Settlement Agreement proposes to settle the parties' rights and obligations under the REP through September 30, 2011. The provisions of the Settlement Agreement are summarized as follows:

- The RPSA would be terminated when the Settlement Agreement is executed. Clark would agree to forfeit its rights under the RPSA through September 2011.
- In full and complete satisfaction of all of its REP obligations under section 5(c) of the Northwest Power Act for the period through September 30, 2011, BPA would pay Clark monetary benefits of $15,000,000 in lump sum payments as specified below:

PAYMENT DATE	Payment Amount ($)
On or before January 1, 2006	2,716,962
On or before October 2, 2006	2,283,038
On or before October 1, 2007	5,000,000
On or before October 1, 2008	5,000,000

The payment for $2,716,962 was made by BPA under the RPSA prior to the date that the proposed Settlement Agreement would be executed.

- Amounts received by Clark under the Settlement Agreement must be passed through in full and in a timely manner to Clark's residential and small farm consumers. Such amounts must be identified on Clark's books of account. BPA retains the right to audit Clark at BPA's expense to determine whether the benefits paid to Clark under the Settlement Agreement were passed through to Clark's eligible residential and small farm customers as required by section 5(c)(3) of the Northwest Power Act. Clark is required to maintain records and documents needed for any audit by BPA.

- The lump sum payments made under the proposed settlement agreement have been discounted from the amounts Clark sought to receive under its Appendix 1 filing.

B. Summary of the Actual Partial Agreement

As part of the change in BPA's business relationship with Clark and to accommodate the transition of Clark into BPA's control area, BPA offers Clark an Actual Partial Agreement that would become effective on the date Clark returns to the BPA control area. The Actual Partial product was developed during BPA's Subscription process. Other than Clark-specific information, the offered Actual Partial Agreement would not contain any changes to such Actual Partial product. The Actual Partial Agreement would provide benefits to both Clark and BPA and is a better fit for Clark's load service when it returns to BPA's control area.

Performance under the proposed Actual Partial Agreement would commence on December 13, 2007, unless Clark is able to leave the PacifiCorp control area at an earlier date. The new Actual Partial Sales Agreement would replace Contract No. 01PB-12243 and continue through the same term, *i.e.*, through September 30, 2011. Key provisions of the Actual Partial Sales Agreement are as follows:

- Initially the amount of Clark load served by its River Road combined cycle combustion turbine plant (River Road) will decrease but Clark will use River Road and purchased power to meet the same load obligation Clark currently has under the current Block Power Sales Agreement. Over the term of the partial service contract, the contributions of Clark's resource will serve the same amount of load as under the current Block agreement. The River Road dedicated generation will increase annually to meet Clark's load growth over the contract term. Some River Road generation capability will be in excess of Clark's load in the early years, affording

Clark power marketing opportunities that must be consistent with section 9(c) of the Northwest Power Act.

- BPA total energy deliveries to Clark will not change on an expected annual basis, but some contract energy will be shaped out of the October through April period and into the May through September period. Thus, additional capacity and energy may become available to BPA's trading floor for surplus sales during the winter months.

- Clark will operate River Road (or purchase power) in June, July and August to meet ATC requirements. PBL will make available at the BPA busbar Surplus Firm Energy in the amounts stated in the proposed Contract No. 06PB-11697, and which Clark may use or market consistent with BPA's Northwest Power Act Section 5(b)/9(c) policy.

- Clark will schedule annual maintenance outages during the month of May. PBL will provide 230 aMW of Surplus Firm energy to meet the portion of Clark's load normally served by River Road during the scheduled maintenance period.

- BPA's assessment is that its net cost of serving Clark's load will be lower under the Actual Partial Agreement than under the existing Block Sale Agreement, thereby reducing impacts of the RPSA payments on other customer's rates.

III. <u>Review of Comments</u>

BPA's December 19, 2005, notice requested written comments by January 16, 2006. BPA received written comments from two parties.

Franklin County PUD requested clarification of BPA's public comment letter regarding the termination date of the proposed settlement contract. In response, BPA confirmed that the settlement contract would terminate September 30, 2011, which would be the same termination date as the contract it would replace (Contract No. 01PB-12243).

Cowlitz County PUD (Cowlitz) expressed initial misgivings regarding Clark exchanging the costs of its River Road resource, which was developed in order to forego purchases from BPA and, in retrospect, has proven to be a costly decision. Further, Cowlitz believes that public utility participation in the REP is "incompatible with a meaningful allocation of the BPA system [that is currently being addressed in the Regional Dialogue process]." However, Cowlitz concludes that "[w]hile we would have preferred Clark to have not filed for exchange benefits, we support BPA's execution of the proposed settlement agreement." BPA understands Cowlitz's concern but BPA was required to offer an RPSA to Clark under section 5(c) of the Northwest Power Act. BPA and Cowlitz both recognize that a settlement is a desired outcome.

IV. Environmental Considerations

BPA evaluated the proposed Settlement Agreement under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq. The proposed Agreement is primarily intended to replace the RPSA with specified lump sum payments and would replace Clark's current Priority Firm Power Sales Block Agreement with an Actual Partial Sales Agreement. These actions are primarily administrative and financial in nature and accordingly would not be expected to result in reasonably foreseeable environmental effects. In addition, it is expected that there would be no substantial change in consumer or utility behavior because there would be no resource or transmission development that would result from implementation of the Settlement Agreement. Under the Agreement, Clark would use its existing River Road resource to serve the same load obligation that it currently has under the Priority Firm Power Sales Block Agreement. Any environmental effects that could result from this use would clearly be within the scope of the environmental analysis contained in BPA's Business Plan Environmental Impact Statement (DOE/EIS-0183, June 1995), and be consistent with BPA's Market-Driven approach adopted in its Business Plan ROD (August 15, 1995).

V. Conclusion

Based upon the foregoing discussion, the record compiled in this proceeding, and all requirements of law, I hereby determine that BPA should execute the Residential Exchange Program Settlement Agreement with Clark.

Issued at Portland, Oregon, on this 10th day of February, 2006.

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By /s/ Stephen J. Wright

Name Stephen J. Wright_____________

Title Administrator and CEO_______