**Reservation of Rights:** *All draft Provider of Choice (POC) contract language presented by BPA for discussion is subject to ongoing review and revision. Prior to finalizing the POC contract templates, BPA will publish complete contract templates for public review and comment. BPA acknowledges that failure to offer edits or comments on this document does not preclude a stakeholder from offering edits or comments during the formal public review.*

**Summary of Changes:** BPA is proposing several new and updated definitions, which are included below for reference. BPA also updated the language specific to NLSL corrections and annexations. Then based on the POC Policy, new sections were added specific to the CF/CT adjustment and Small Utility Adjustment, and updates were made to the Tribal Utility section and US DOE Richland section. Finally, we removed all mention of CDQs from the exhibit.

**Customer Comments and BPA Responses from 9/18 Workshop:**

1. **Rate Impact Credits**

BPA took customer feedback that the POC contracts should include Rate Impact Credit (RIC) information. After careful consideration, BPA has determined that it will not be including RICs in the POC contracts.

* RICs are a design component of PF rates.
* RICs will be established pursuant to the PRDM and calculated during 7(i) rate proceedings. The methodology providing for that calculation can only change pursuant to the strict change provisions in the PRDM.
* RICs will be stated in the rate schedules / GRSPs, which are published, publicly available information. Accordingly, they do not need to be separately stated in contracts.
* Including duplicative information in the contract introduces the potential for error, misinterpretation, and creates additional administrative work that has no material purpose for charging rates. It also may introduce coordination challenges related to product changes and or/annexations--both of which are already addressed in the PRDM.
* Any decisions to adopt a RIC will be undertaken in the formal 7(i) proceeding currently under way (a prohibition of *ex parte* communications is in effect).

1. **Additional Comments and BPA Responses**

* Heard feedback that updates were needed for the CF/CT adjustment in section 1.2.6. In response, we are proposing an additional feature that would utilize the PRDM’s Marginal Energy True Up (METU) to provide access to eligible CHWM amounts within the BP-29 Rate Period. (note: Any decisions whether or not to adopt the METU will be undertaken in the formal 7(i) proceeding currently in flight. A prohibition of *ex parte* communications is in effect.)
* In addition to proposing use of the METU for the CF/CT adjustment, we are proposing similar treatment for the Small Utility and DOE Richland adjustments.
* Made several other “cleanup” edits in response to customer comments as noted in comment boxes below.

**Related Definitions:**

*Reviewer’s Note: This definition is consistent with the current draft definition in the PRDM.*

2.«#» **“Above-CHWM Load”** means the forecasted portion of a customer’s Preliminary Net Requirement that is in excess of the customer’s CHWM, if any, as determined in the Above-CHWM Load Process.

*Reviewer’s Note: This is a new defined term, consistent with the current draft definition in the PRDM.*

2.«#» **“Above-CHWM Load Process”** means the public process conducted during each Forecast Year, in which BPA will calculate the following values for the upcoming Rate Period:  (1) each customer’s Preliminary Net Requirement; (2) adjusted CHWMs ; and (3) each customer’s Above-CHWM Load.

2.«#» “Annexed Load” means existing load, distribution system (regardless of voltage), or service territory «Customer Name» acquires after the Effective Date from another utility, by means of annexation, merger, purchase, trade, or other acquisition of rights, the acquisition of which has been authorized agreement between the impacted utilities or by a final state, regulatory, or court action. The Annexed Load must be served from distribution facilities of any voltage that are owned or acquired by «Customer Name».

*Reviewer’s Note: This definition is consistent with the current draft definition in the PRDM.*

2.«#» “**Contract High Water Mark**” or “**CHWM**” means the amount of Firm Requirements Power (expressed in annual Average Megawatts) that a customer is eligible to access at Tier 1 Rates. The amount of Firm Requirements Power a customer purchases at Tier 1 Rates is limited to the lesser of its CHWM or its Net Requirement.

*Reviewer’s Note: This is a new defined term being presented for review.*

2.«#» **“CHWM Implementation Policy”** means the policy that documents the process details around the FY 2026 CHWM Calculation Process and Above-CHWM Load Process.

*Reviewer’s Note: This is a new defined term being presented for review.*

2.«#» “**FY 2026 CHWM Calculation Process**” means the public process where BPA shall calculate each customer’s CHWM in accordance with section 2.4 of the Provider of Choice Policy, March 2024, as amended or revised.

*Reviewer’s Note: This definition is consistent with the current draft definition in the PRDM.*

2.«#» **“Net Requirement”** means the amount of electric power that a customer may purchase from BPA to serve its Total Retail Load, minus amounts of its Dedicated Resources shown in Exhibit A, as determined consistent with section 5(b)(1) of the Northwest Power Act.

*Reviewer’s Note: This is a new defined term, consistent with the current draft definition in the PRDM.*

2.«#» **“Preliminary Net Requirement”** means the forecasted portion of a customer’s annual Net Requirement that BPA uses to calculate the customer’s Above-CHWM Load for each Fiscal Year. Preliminary Net Requirement is determined as the forecasted annual Total Retail Load less Existing Resources, NLSLs, Specified Resources added to Tier 1 Allowance Amount, and Consumer-Owned Resources serving On-Site Consumer Load, as determined in the Above-CHWM Load Process.

*Reviewer’s Note: This is a new defined term being presented for review.*

2.«#» **“Small Utility Adjustment”** means the subsequent CHWM adjustment as provided in section 2.4.2.1 of the Provider of Choice Policy, March 2024, as amended or revised.

*Reviewer’s Note: This is a new defined term, consistent with the current draft definition in the PRDM.*

2.«#» “**Tier 1 Marginal Energy True-Up”** means an end-of-fiscal-year process that evaluates the difference between forecast and actual energy usage and aligns that difference with appropriate Tier 1 and market-based pricing levels, as described in section 4.2 of the PRDM.

**Exhibit B*(XX/XX/XX Version)***

**CONTRACT HIGH WATER MARKS**

**1. CONTRACT HIGH WATER MARK (CHWM)**

1.1 **CHWM Amount**

By September 30, 2026, BPA shall fill in the table below with «Customer Name»’s CHWM. Once established, BPA may only adjust «Customer Name»’s CHWM as permitted pursuant to section 1.2 of this exhibit.

*Drafter’s Note: Fill in the table with customer’s CHWM. For updates following the initial value, enter*

*the applicable effective date.*

|  |  |
| --- | --- |
| **CHWM (annual aMW) )**« 1/»**:** | «x.xxx» |
| Note: BPA shall round the number in the table above to three decimal places.  «1/» CHWM amount effective «October 1, 2028». | |

1.2 **CHWM Adjustments**

BPA shall determine any adjustments to «Customer Name»’s CHWM pursuant to this section 1.2. BPA shall notify «Customer Name» of any adjustments and the date such adjustment will be effective.

1.2.1 **Corrections for NLSLs**

If after BPA establishes «Customer Name»’s CHWM pursuant to section 7 of the body of this Agreement, BPA determines that a load included in «Customer Name»’s Total Retail Load in the CHWM calculation was an NLSL or became an NLSL in FY 2023, then BPA shall adjust «Customer Name»’s CHWM by removing the FY 2023 load associated with the NLSL from «Customer Name»’s weather normalized Total Retail Load. BPA shall revise the table in section 1.1 of this Exhibit B with the adjusted CHWM and its effective date. BPA shall provide «Customer Name» written notice of the CHWM adjustment and its effective date, and will provide «Customer Name» with a revised Exhibit B. In the event of an adjustment, «Customer Name» shall pay any charges calculated by BPA to account for the ineligible PF power rate purchases dating back to October 1, 2028.

1.2.2 **Annexed Load**

If «Customer Name» annexes load from a utility that has a CHWM Contract, then BPA shall increase «Customer Name»’s CHWM in an amount determined as follows:

(1) If «Customer Name» and the other utility involved in the annexation agree on the amount of the CHWM transfer to «Customer Name», then BPA shall adopt that amount if BPA determines such amount is reasonable.

(2) If «Customer Name» and the other utility cannot agree on the amount of the CHWM transfer to «Customer Name», or if BPA determines the amount agreed to in section 1.2.2(1) of this exhibit is unreasonable, then BPA shall calculate the amount of «Customer Name»’s CHWM transfer using the following formula; provided however that BPA may adjust the calculated amount to reflect (A) the division of Dedicated Resources between the utilities and (B) other pertinent information provided by «Customer Name» and the other utility:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| [ | Annexed Load minus annexed NLSLs, if any | ] | × | [ | Other utility’s pre-annexation CHWM | ] |
| Other utility’s pre-annexation Total Retail Load minus total NLSLs, if any |

In no event shall the total CHWM amount of «Customer Name» and the other utility after the transfer exceed the total CHWM amount of «Customer Name» and the other utility prior to the transfer.

*[Drafter’s Note: Include the following sentence for any cooperative. If not a cooperative, delete the following sentence:*Any change to «Customer Name»’s CHWM related to the acquisition of an Annexed Load is subject to section 21.8 of the body of this Agreement.*]*

BPA shall revise the table in section 1.1 of this Exhibit B with the adjusted CHWM which will be effective on the date that «Customer Name» begins service to the Annexed Load.

1.2.3 **Ceded Load**

If another utility with a CHWM Contract annexes load of «Customer Name», then BPA shall reduce «Customer Name»’s CHWM in an amount determined as follows:

(1) If «Customer Name» and the other utility involved in the annexation agree on the amount of the CHWM transfer to the other utility, then BPA shall adopt that amount if BPA determines such amount is reasonable.

(2) If «Customer Name» and the other utility cannot agree on the amount of the CHWM transfer to the other utility, or if BPA determines the amount agreed to in section 1.2.3(1) of this exhibit is unreasonable, then BPA will calculate the amount of «Customer Name» CHWM transfer using the following formula; provided however, BPA may adjust the calculated amount to reflect (A) the division of Dedicated Resources between the utilities and (B) other pertinent information advanced by «Customer Name» and the other utility:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| [ | Annexed Load minus annexed NLSLs, if any | ] | × | [ | «Customer Name»’s pre-annexation CHWM | ] |
| «Customer Name»’s pre-annexation Total Retail Load minus total NLSLs, if any |

In no event shall the total CHWM amount of «Customer Name» and the other utility after the transfer exceed the total CHWM amount of «Customer Name» and the other utility prior to the transfer.

BPA shall revise the table in section 1.1 of this Exhibit B with the adjusted CHWM which will be effective on the date that the annexing utility begins service to the Annexed Load.

1.2.4 **Court Order on Annexation**

BPA shall adjust «Customer Name»’s CHWM due to annexation if BPA’s Administrator determines that a court order requires BPA to do so. BPA shall revise the table in section 1.1 of this Exhibit B with the adjusted CHWM and its effective date. BPA shall provide «Customer Name» written notice of the CHWM adjustment and revised Exhibit B as soon as reasonably practical.

1.2.5 **Small Utility Adjustment**

BPA shall determine in its sole discretion whether «Customer Name» qualifies for the Small Utility Adjustment. If «Customer Name» is eligible for the Small Utility Adjustment, then BPA shall also determine «Customer Name»’s Maximum Potential CHWM for purposes of this section 1.2.5. For purposes of this section 1.2.5, Maximum Potential CHWM shall have the meaning as the lesser of: (1) double «Customer Name»'s CHWM as calculated in the FY 2026 CHWM Calculation Process, or (2) 5 aMW. By September 30, 2026, BPA shall fill in the table below indicating such eligibility and «Customer Name»’s Maximum Potential CHWM.

*Fill in “Yes” or “No” depending on customer’s eligibility for the Small Utility Adjustment. If customer is eligible, also fill in the Maximum Potential CHWM amount, calculated as provided above, and rounded to three decimal places. If customer is not eligible, fill in N/A for Maximum Potential CHWM.*

|  |  |
| --- | --- |
| **Eligible for Small Utility Adjustment** | **Maximum Potential CHWM** |
| Yes / No | «x.xxx» |

If «Customer Name» is eligible for the Small Utility Adjustment as indicated above, then during each Above-CHWM Load Process BPA shall determine whether an adjustment is needed and calculate such adjustment as provided below. Any such adjustment would be added to «Customer Name»’s CHWM.

(1) BPA will determine whether «Customer Name»’s Preliminary Net Requirement exceeds its CHWM.

(2) If «Customer Name»’s Preliminary Net Requirement is less than its CHWM, then BPA shall make no adjustment to «Customer Name»’s CHWM.

(3) If «Customer Name»’s Preliminary Net Requirement exceeds its CHWM, then BPA shall calculate a CHWM adjustment in an amount equal to the difference between «Customer Name»’s Preliminary Net Requirement and its CHWM not to exceed «Customer Name»’s Maximum Potential CHWM stated above.

(4) If a proposed CHWM adjustment under this section 1.2.5 would exceed «Customer Name»’s Maximum Potential CHWM, then BPA shall reduce such adjustment to an amount resulting in a CHWM that equals «Customer Name»’s Maximum Potential CHWM.

(5) If «Customer Name»’s CHWM has been adjusted pursuant to section 1.2.5(4) above, then BPA shall make no additional change to «Customer Name»’s CHWM except as otherwise provided for in this Exhibit B.

For any Rate Period that BPA adjusts «Customer Name»’s CHWM pursuant to this section 1.2.5, BPA shall revise the table in section 1.1. of this Exhibit B with the adjusted CHWM to be effective at the start of the next Rate Period. BPA shall provide «Customer Name» written notice of the CHWM adjustment and revised Exhibit B. For purposes of the Tier 1 Marginal Energy True-Up rate, «Customer Name»’s CHWM shall be the Maximum Potential CHWM as stated above.

*Drafter’s Note: Include in contracts of customers that have requested a CF/CT adjustment to their CHWM.*

1.2.6 **CF/CT Adjustment**

«Customer Name» has requested an adjustment to its CHWM for a CF/CT load consistent with the requirements included in section 2.4.2.5 of the Provider of Choice Policy, March 2024, as amended or revised. BPA shall review such request and determine whether such load may qualify «Customer Name» for the CF/CT adjustment consistent with the requirements in section 2.4.2.5 of the Provider of Choice Policy, March 2024, as amended or revised. BPA shall make such determination as follows:

(1) During the FY 2026 CHWM Calculation Process, BPA shall determine if the same «Customer Name» CF/CT load qualifies «Customer Name» for an economic adjustment as provided in section 2.4.1.2 of the Provider of Choice Policy, March 2024, as amended or revised. If so, then such economic adjustment shall apply and «Customer Name» is not eligible for the CF/CT adjustment under this section 1.2.6. If the same CF/CT load does not qualify «Customer Name» for such economic adjustment, then «Customer Name» will remain eligible for the CF/CT adjustment under this section 1.2.6, subject to sections 1.2.6(2) and 1.2.6(3) below.

(2) During the Above-CHWM Load Process for the BP-29 Rate Period, BPA shall determine the amount of CHWM adjustment, if any, «Customer Name» qualifies for based on submitted meter data for its CF/CT load through FY 2026.

(3) During the Above-CHWM Load Process for the BP-31 Rate Period, BPA shall determine the amount of CHWM adjustment, if any, «Customer Name» qualifies for based on submitted meter data for its CF/CT load through FY 2028.

If BPA determines «Customer Name»’s CF/CT qualifies «Customer Name» for such CHWM adjustment under either section 1.2.6(2) or section 1.2.6(3) above, then BPA shall revise the table in section 1.1 of this Exhibit B with the adjusted CHWM to be effective at the start of the next Rate Period. BPA shall provide «Customer Name» written notice of the adjusted CHWM and revised Exhibit B.

In order to maintain such CF/CT adjustment, «Customer Name» shall submit meter data from the prior Rate Period for its CF/CT by December 31, 2028, and by December 31 of each Forecast Year thereafter. If, for a consecutive 12-month operating period, the associated CF/CT load’s actual power consumption drops below 50% of the load amount used to establish such CF/CT adjustment, then BPA shall reduce «Customer Name»’s CHWM by all or a portion of the CF/CT adjustment for the remaining term of the Agreement. BPA shall consider «Customer Name»’s submitted meter data and any other pertinent information to determine in its sole discretion whether such CF/CT ceases to consume electric power or significantly reduces the amount of electric power it consumes for production demand, and the commensurate reduction to «Customer Name»’s CHWM. If BPA determines «Customer Name»’s CHWM must be reduced consistent with this section 1.2.6, then BPA shall revise the table in section 1.1 of this Exhibit B with the adjusted CHWM and its effective date. BPA shall provide «Customer Name» written notice of the CHWM adjustment and revised Exhibit B no later than 30 days prior to the adjusted CHWM’s effective date.

For purposes of the Tier 1 Marginal Energy True-Up rate applied in FY 2029 and FY 2030, «Customer Name»’s CHWM shall be as established in the Above-CHWM Load Process for the BP-31 Rate Period.

*Drafter’s Note: Include in DOE Richland’s contract:*

1.2.6 **US DOE Richland**

BPA shall adjust «Customer Name»’s CHWM under the following conditions:

1.2.6.1 During each Above-CHWM Load Process, and subject to section 1.2.6.2 through section 1.2.6.5 of this exhibit, BPA shall increase «Customer Name»’s CHWM if «Customer Name»’s electric power consumption increases due to the loads related to defense materials activities that are on-site at the DOE facilities that «Customer Name» serves in the state of Washington.

1.2.6.2 «Customer Name» shall notify BPA at least three years prior to any forecasted increase in loads related to defense materials activities. «Customer Name» may satisfy this notice requirement by providing BPA with annual 10‑year load forecasts that indicate, with at least three years’ lead time, when these loads are expected to increase. If «Customer Name» notifies BPA pursuant to these terms, then by the next March 31 of a Rate Case Year BPA shall revise this Exhibit Bto increase «Customer Name»’s CHWM effective for the Rate Period where these loads are forecasted to increase.

1.2.6.3 The total cumulative increase in «Customer Name»’s CHWM over the term of this Agreement shall be limited to the difference between 36.539 aMW and «Customer Name»’s CHWM prior to any subsequent CHWM adjustment.

1.2.6.4 «Customer Name» shall meter loads not related to defense materials activities separately from «Customer Name»’s loads related to defense materials activities. «Customer Name» shall install meters and metering equipment necessary to meter loads not related to defense materials activities at «Customer Name»’s expense.

1.2.6.5 BPA shall only include load growth related to on-going defense materials activities in «Customer Name»’s CHWM adjustments under this section 1.2.6.

1.2.6.6 For purposes of the Tier 1 Marginal Energy True-Up rate, «Customer Name»’s CHWM shall be 36.539 aMW.

*Drafter’s Note: End 1.2.6 for DOE Richland.*

*Drafter’s Note: Include in contracts of qualifying tribal utilities (e.g. Yakama, Kalispel Tribal Utility, and Umpqua Indian Utility Cooperative) and utilities operated pursuant to a P.L. 93-638 contract (e.g. Mission Valley Power):*

1.2.6 **Tribal Utilities**

After the application of any adjustment under section 1.2.5 above, BPA shall adjust «Customer Name»’s CHWM as follows:

1.2.6.1 During each Above-CHWM Load Process, and subject to section 1.2.6.4 below, BPA shall increase «Customer Name»’s CHWM by the amount of «Customer Name»’s Preliminary Net Requirement growth expected during the upcoming Rate Period.

1.2.6.2 If «Customer Name» acquires an Annexed Load from a utility that does not have a CHWM, then BPA shall increase «Customer Name»’s CHWM by the amount of Annexed Load subject to section 1.2.6.4 of this exhibit.

1.2.6.3 If «Customer Name» acquires an Annexed Load from a utility that has a CHWM, and if such Annexed Load exceeds the CHWM amount established by section 1.2.2 of this exhibit, then BPA shall increase «Customer Name»’s CHWM by the difference between the Annexed Load amount and the transferred CHWM amount, minus any annexed NLSLs, subject to section 1.2.6.4 of this exhibit.

1.2.6.4 CHWM adjustments made pursuant to this section 1.2.6 are subject to the following limitations:

1. a cumulative 40 aMW of additional CHWM for qualifying tribal utilities and utilities operating pursuant to a P.L. 93-638 contract over the term of the Agreement,
2. a Rate Period limit of 50 aMW of additional CHWM for all new public utility CHWM Contract holders, or

(3) a cumulative 200 aMW of additional CHWM for all new public utility CHWM Contract holders.

If a proposed CHWM adjustment under this section 1.2.6 would exceed the limits in either (1) or (2) above, then BPA shall reduce such adjustment to an amount that does not exceed the limit. If the limit has been fully exhausted, then the proposed CHWM adjustment under this section 1.2.6 will be reduced to zero and BPA shall make no change to «Customer Name»’s CHWM.

For any Rate Period that the total amount of CHWM adjustments for all tribal utilities and utilities operating pursuant to a P.L. 93-638 contract would exceed either of the limits above, BPA shall proportionally reduce the CHWM adjustments of the tribal and P.L. 93-638 utilities so that each receives a pro rata share of the remaining amount under the applicable limit for that Rate Period. BPA shall determine each utility’s pro rata share as specified in the CHWM Implementation Policy.

1.2.6.5 For any Rate Period that BPA changes «Customer Name»’s CHWM pursuant to this section 1.2.6, BPA shall revise the table in section 1.1. of this Exhibit B with the adjusted CHWM to be effective at the start of the next Rate Period. BPA shall provide «Customer Name» written notice of the CHWM change and revised Exhibit B.

*Drafter’s Note: End 1.2.6 for tribal utilities.*



**2. REVISIONS**

BPA may unilaterally revise this exhibit to the extent allowed in section 1 of this exhibit. All other changes require mutual agreement.

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