BONNEVILLE POWER ADMINISTRATION

RESIDENTIAL EXCHANGE TERMINATION AGREEMENT FOR PUGET SOUND POWER & LIGHT COMPANY

RECORD OF DECISION

January 23, 1997

Record of Decision

Termination of Residential Purchase and Sale
Agreement for Puget Sound Power & Light Company

I. Background

Bonneville Power Administration (Bonneville) was established by the Bonneville Project Act of 1937 (Project Act), 16 U.S.C. § 832 *et seq*. After enactment of the Project Act, Bonneville marketed the low cost hydropower generated by Federal dams in the Pacific Northwest. Section 4(a) of the Project Act requires Bonneville to "give preference and priority to public bodies and cooperatives" when selling power. 16 U.S.C. § 832c(a). This preference had little significance in Bonneville's early years, however, because Bonneville had sufficient power to serve the needs of all its customers in the region. These customers included public bodies and cooperatives, known as "preference customers" because of their statutory first right to Federal power under the preference clause noted above. *Id.* These customers also included investor-owned utilities (IOUs) and direct service industrial customers (DSIs). In 1948, the increasing demand for power caused Bonneville to require that contracts with the DSIs must include provisions to allow the interruption of service when necessary to meet the needs of Bonneville's preference customers. In the 1970's forecasts showed that preference customers would soon require all of Bonneville's power. Therefore, in 1973, Bonneville gave notice that new contracts for firm power for IOUs would not be offered and that as DSI contracts expired between 1981-91, the contracts were not likely to be renewed. *Aluminum Co. of*

America v. Central Lincoln Peoples' Utility Dist., 467 U.S. 380, 383-385 (1984). In 1976 Bonneville advised preference customers that Bonneville would not be able to satisfy preference customer load growth after 1983 and that Bonneville would have to determine how to allocate power among preference customers.

The high cost of alternative sources of power caused Bonneville's non-preference customers to attempt to regain access to low-cost Federal power. Many areas served by IOUs moved to establish public entities designed to qualify as preference customers and be eligible for administrative allocations of power. Because the Project Act provided no clear way of allocating power among preference customers, and because the stakes involved in buying low-cost federal power had become very high, the competition for administrative allocations threatened to produce contentious litigation. The uncertainty inherent in the situation greatly complicated the efforts by all Bonneville customers to plan for their future power needs. In order to avoid the prospect of unproductive and endless litigation regarding access to the Federal power marketed by Bonneville, Congress enacted the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. § 839 *et seq*., in 1980. *Central Lincoln Peoples' Utility Dist. v. Johnson*, 735 F.2d 1101, 1107 (9th Cir. 1984).

The Northwest Power Act expressly reaffirmed the right of Bonneville's preference customers to first call on Federal power before such power could be offered to Bonneville's IOU or DSI customers. 16 U.S.C. § 839g(c). The Act also established the Residential Exchange Program. 16 U.S.C. § 839c(c). As noted above, when Bonneville had insufficient Federal power to meet the needs of investor-owned utilities in the 1970's, such utilities developed their own resources which were generally more costly than Federal hydropower. The Residential Exchange Program provides Pacific Northwest utilities a monetary form of access to low-cost Federal power. *See California Energy Resources Conservation and Dev. Comm'n v. Johnson*, 807 F.2d 1456, 1459-60 (9th Cir. 1986). Under the program, Pacific Northwest utilities may sell power to Bonneville at a rate based on the utility's average system cost (ASC) of its resources. Bonneville is required to purchase that power and sell, in exchange, an equivalent amount of power to the utility at Bonneville's Priority Firm Power (PF) rate. This is the same rate that applies to Bonneville's sales of power to its preference customers, although the Act provides that the PF rate for the Residential Exchange Program may be higher than the PF rate for preference customers due to a rate ceiling for preference customers established in section 7(b)(2) of the Act. 16 U.S.C. §§ 839e(b)(2); 839e(b)(3). The Residential Exchange is not "a mechanism . . . for establishing a traditional cost of purchased power." Federal Energy Regulatory Commission Order No. 400-A, 30 F.E.R.C. ¶61,108, 61,195-96 (1985); *see Central Elec. Cooperative v. Bonneville Power Admin.*, 835 F.2d 199, 200-01 (9th Cir. 1987). No power is actually transferred to or from Bonneville since the "exchange" is simply an accounting transaction: "in practice, only dollars are exchanged, not electric power." *Public Util. Comm'r of Oregon v. Bonneville Power Admin.,* 583 F. Supp. 752, 754 (D. Or. 1984), *aff'd*, 767 F.2d 622 (9th Cir. 1985).

Where a utility's ASC is higher than Bonneville's PF rate, the difference between the rates is multiplied by the utility's jurisdictional residential and small farm load to determine an amount of money that is paid to the utility as Residential Exchange

Benefits. These benefits must be passed through directly to the utility's residential consumers, generally through lower retail rates. 16 U.S.C. § 839c(c)(3). The cost of providing these benefits to exchanging utilities is borne primarily by Bonneville's publicly owned utility and DSI customers, subject to the rate ceiling established in section 7(b)(2) of the Northwest Power Act, which protects Bonneville's preference customers from excessive costs of the Residential Exchange Program. 16 U.S.C. § 839e(b)(2).

The Residential Exchange Program is implemented through contracts called Residential Purchase and Sale Agreements (RPSAs). RPSAs have been executed with Pacific Northwest utilities interested in participating in the Residential Exchange Program, including Puget Sound Power & Light Company. Bonneville and Puget previously executed an RPSA, Contract No. DE-MS79-81BP90604. Puget has been participating in the Residential Exchange Program since the execution of that agreement.

II. Procedural History

In the early summer of 1996 Puget, PacifiCorp and Portland General Electric Company expressed interest to Bonneville regarding the possible buyout of their current RPSAs. As noted above, these agreements establish the terms governing a utility's participation in the Residential Exchange Program. The agreements currently run through June 30, 2001. Joint discussions were mutually suspended in July 1996 pending the acquisition of further data. Discussions with Puget resumed in December 1996.

As a result of recent negotiations, Bonneville and Puget developed a proposed agreement to terminate Puget's participation in the Residential Exchange Program by terminating Puget's RPSA and providing for the payment to Puget of liquidated amounts from Bonneville. In addition, Bonneville and Puget would terminate all pending, and commence no new, litigation, contract disputes, or regulatory or administrative disputes, including ASC determinations, load determinations, billing disputes, or other issues regarding the Residential Exchange Program, with respect to Residential Exchange Benefits (including challenges to Bonneville's 1996 rates for issues related to the Section 7(b)(2) rate test) for the period prior to July 1, 2001.

On January 6, 1997, Bonneville sent a notice to all interested parties announcing a comment period regarding a proposal by Bonneville and Puget to terminate Puget's participation in the Residential Exchange Program through June 30, 2001. Interested parties were encouraged to express their views. Bonneville's notice also described the proposed Agreement. The specific proposed provisions of the buyout Agreement and the reasons for those provisions are summarized below.

III. Summary of Agreement

A. Section 1. Termination of Prior Agreements. This section provides that Puget's RPSA and all amendments thereto would be terminated effective at 2400 hours on the Effective Date of the Agreement.

B. Section 2. Agreement Subject to Final Order. This section provides that the Agreement is subject to a final order by the Washington Utilities and Transportation

Commission (WUTC) in Docket No. 960195 that includes substantially the same retail rate effects specified in Exhibit A to the Stipulation filed on December 11, 1996, and signed by Public Counsel, the WUTC staff, Puget, and Washington Natural Gas.

C. Section 3. Payment by Bonneville. This section provides that Bonneville would, in full and complete satisfaction of all of its obligations for payments to Puget for the Residential Exchange Program under section 5(c) of P.L. 96-501 for the period from and including October 1, 1996, through and including June 30, 2001, pay to Puget the sum of $236,775,688. Payment for the settlement periods would be:

	Settlement Amounts ($)	
Settlement Periods	ASC Benefits	PRAM 4 & 5 True Ups
Oct 1, 1996 through Sept 30, 1997	56,704,830	37,508,402
Oct 1, 1997 through Sept 30, 1998	35,000,000	10,562,456
Oct 1, 1998 through Sept 30, 1999	36,000,000	
Oct 1, 1999 through Sept 30, 2000	36,000,000	
Oct 1, 2000 through June 30, 2001	25,000,000	
Total	188,704,830	48,070,858

Fiscal Year 1997 payments would be 12 monthly payments December 1996 through November 1997 that total $56,704,830. The PRAM 4 and 5 true-up amounts would be paid on or before the last business day of June 1997 and June 1998, respectively. Monthly ASC Benefit Payments for each FY 1998 through 2000 would be in twelve equal monthly payments for each fiscal year beginning in December of each fiscal year. Payments for the period October 1, 2000, through June 30, 2001, would be in nine equal monthly payments beginning in December 2000.

The discounted net present value of Bonneville's payments is $200,000,000 (in 1996 dollars), the same as Puget's projected benefits (including Periodic Rate Adjustment

Mechanism (PRAM) 4 and 5 true-up payments) estimated in BPA's final 1996 Rate Filing. The composition of benefits differs from final rate case estimates, however, with PRAM benefits increased from $31,000,000, and ASC benefits reduced from $212,000,000. The PRAM settlement amount reflects the best current knowledge of the true up. The ASC settlement amount is based on fixing Puget's average system cost at its currently filed level over the settlement term.

D. Section 4. Adjustments to Bonneville's Payment Obligations. This section specifies that Bonneville's payment to Puget could be reduced under two circumstances. First, payments would be reduced if residential and small farm load served by Puget is reduced from the levels shown in Exhibit A to the Agreement (forecast eligible exchange load from BPA's 1996 rate filing), if the reduction is due to the load being served by another provider(s). Puget shall annually report to Bonneville the amount of annual retail load lost as a result of other service providers. BPA's payment reduction would be calculated as the percentage of eligible retail load lost in relation to total eligible load identified in Exhibit A. Second, payments would be reduced if, during the period October 1, 1997, through June 30, 2001, the WUTC by final order reduces Puget's revenue requirement or allowable rates below those set in Docket No. UE-921262 and adjusted through PRAM 5 (excluding PRAM true-ups). The payment reduction would be one-fourth of Puget's annualized revenue requirement reduction.

E. Section 5. Advocacy of Legislative Action. In this section, the Parties recognize that the payments provided by Bonneville to Puget under the Agreement would be for the purpose of buying out Puget's participation in the Residential Exchange

Program through June 30, 2001. The Parties also recognize that Bonneville's financial flexibility is significantly constrained by, among other things, the fact that it has established 5-year rates which cannot be revisited for many customers during the period prior to October 1, 2001. The Parties intend that the payments under the Agreement would constitute a full and complete settlement of all amounts to be paid by Bonneville under the Residential Exchange Program and any appropriations or other legislation that may (as did the Energy and Water Development Appropriations Act, Public Law 104-46) provide for an allocation, increase, or decrease of Residential Exchange Benefits through June 30, 2001. The payments by Bonneville would be in full satisfaction of amounts to be paid to Puget under the RPSA and for the Residential Exchange Program under section 5(c) of P.L. 96-501 for the period October 1, 1996, through June 30, 2001. Because the Agreement establishes total exchange benefits for the period October 1, 1996, through June 30, 2001, Bonneville and Puget agree not to challenge issues within any final actions taken by Bonneville which are rendered moot as to Puget by the Agreement. Nothing in the Agreement precludes any party from pursuing remedies for breaches of the Agreement.

The Parties would agree not to request or advocate, directly or indirectly, any legislative action, including appropriations legislation, to provide greater or lesser monetary payments (or comparable in benefits) under the Residential Exchange Program than are provided for under the Agreement for the period through June 30, 2001.

F. Section 6. Residential Exchange Program After June 30, 2001. Except as otherwise provided in the Agreement, neither the Agreement nor any action taken or not taken by any Party in accordance with matters covered by the Agreement would serve to create any procedural or substantive precedent with respect to implementation of Section 5(c) or any other statutory directive of P.L. 96-501 for the period after June 30, 2001.

G. Section 7. Termination of Filings. This section provides that by terminating its RPSA and participation in the Residential Exchange Program through June 30, 2001, Puget would not be required (a) to file, calculate or track ASC, (b) to submit invoices, or (c) to perform other duties formerly required by the RPSA (except for Bonneville's passthrough audits pursuant to Section 8 of the Agreement and load reporting requirements pursuant to Section 4(a) of the Agreement). The Agreement would satisfy Bonneville's obligations under the PRAM Letter Agreement, and PRAM 4 and PRAM 5 true-ups would not be required or submitted. Bonneville's corresponding rights and obligations would be similarly satisfied through the implementation of the Agreement.

H. Section 8. Passthrough of Benefits. This section provides that amounts received by Puget from Bonneville under the Agreement would be passed through directly (under procedures overseen by the WUTC) to Puget's Residential Loads (as defined in Puget's former RPSA). Such amounts would be identified on Puget's books of account and paid by Puget exclusively to, or credited exclusively against the retail rates of, Puget's Residential Load by October 1, 2002. Notwithstanding the termination of Puget's RPSA, Bonneville would retain the right to audit Puget at Bonneville's expense to determine whether the Residential Exchange Benefits paid to Puget under the

Agreement were provided only to Puget's eligible residential and small farm customers as required by section 5(c)(3) of the Northwest Power Act. The first audit would occur at the time prescribed by the current review cycle. A second audit may occur after the last disbursement of monies under the Agreement. Bonneville may conduct additional audits after the second audit if Puget has not demonstrated the passthrough of such benefits as specified. Bonneville would retain the right to take action consistent with the results of such audits to require the passthrough of such benefits to eligible customers. Bonneville's right to conduct such audits of Puget would expire October 1, 2003 (except for Bonneville's continuing right to assure compliance with such audits). As long as Bonneville has the right to audit Puget pursuant to the Agreement, Puget would agree to maintain records and documents dating back to the Effective Date of the Agreement showing all transactions and other activities pertaining to the terms of the Agreement and Puget's payments of Residential Exchange Benefits to residential and small farm customers. The interest paid to Puget's Residential Loads on any amounts to be credited against retail rates would be calculated by Puget in the manner specified by the applicable retail regulatory authority.

I. Section 9. Settlement of Disputes. This section provides that the Parties would agree to terminate all pending, and to commence no new, litigation, contract disputes, and regulatory or administrative disputes, including ASC determinations, load determinations, billing disputes, and other issues regarding the Residential Exchange Program, with respect to Residential Exchange Benefits (including challenges to

Bonneville's 1996 rates for issues related to the section 7(b)(2) rate test) for the period prior to July 1, 2001, except for claims of breach of the Agreement.

J. Section 10. Survival of Obligations. This section provides that the Agreement sets forth the entire agreement of the Parties with respect to the subject matter of the Agreement and may be amended only by writing signed by each Party. The Agreement would inure to the benefit of, and be binding upon, the respective successors and assigns of the Parties. The Agreement would not be intended to confer any right or remedy upon any person or entity other than the Parties and their respective successors and assigns.

K. Section 11. Final Action. This section provides that Bonneville and Puget would agree that the Agreement implements the Residential Exchange Program pursuant to section 5(c) of the Northwest Power Act and that the Agreement constitutes a final action pursuant to section 9(e)(1)(B) of that Act. Bonneville and Puget further would agree that any action challenging the Agreement must be filed within 90 days of the final action, pursuant to section 9(e)(5) of the Northwest Power Act.

L. Section 12. Enforceability. This section provides that Bonneville and Puget would warrant and certify that the Agreement is binding and enforceable on the Parties and within the Parties' legal authority. Further, Bonneville and Puget would agree to defend any and all challenges to the validity and enforceability of the Agreement or to the rights and duties contained therein. Bonneville would defend lawsuits filed against Bonneville. Puget would defend lawsuits filed against Puget. Bonneville and Puget would agree to cooperate in defending any and all challenges to the Agreement.

M. Section 13. Invalidity. This section provides that in the event it were determined by a court of competent jurisdiction that any Party's duties or obligations under the Agreement were invalid, illegal or unenforceable, and in the further event that such determination were not reversed on appeal, then the Party to whom such duty or obligation is owed would have the right, if exercised within 60 days of the final determination on appeal, to rescind the Agreement, which then would be invalid and void ab initio, and of no force or effect.

N. Section 14. Counterpart Signature. This section provides that the Agreement may be executed by counterparts. Upon execution by Puget and Bonneville, each executed counterpart would have the same force and effect as an original instrument and as if Bonneville and Puget had signed the same instrument.

IV. Review of Comments

Bonneville's January 6, 1997, notice requested written comments by January 17, 1997. Bonneville received two written comments.

The Direct Service Industries, Inc. (DSIs) noted that the Agreement appeared reasonable because the "proposed buyout is equal to Puget's projected benefits estimated in BPA's final 1996 rate decision, on a present value basis," and "the settlement includes provisions to reduce the buyout amount, if Puget's loads or rates change under certain conditions." The DSIs did not raise any objections to the Agreement.

The Public Power Council (PPC) also supports the Agreement. PPC stated, however, that it "fully expects that after the year 2001 the residential exchange will be a relic of the past, consistent with the recommendation of the Comprehensive Regional

Review Steering Committee's final report. We therefore suggest that language in this settlement include a reference to that report and an indication that the region expects the Residential Exchange Program to cease after 2001." BPA understands PPC's interest in attempting to clarify the status, if any, of the Residential Exchange Program after 2001. The "Comprehensive Review of the Northwest Energy System -- Final Report" at page 12 provides that, instead of the Residential Exchange Program, investor-owned utilities would participate in a subscription process for Federal power after 2001. The Final Report (Final Report), dated December 12, 1996, states:

> During the second phase, the direct service industries and the residential and small farm customers of the investor-owned utilities (through their representatives, described below) would be allowed to subscribe with no limitations on term, within the current 20-year maximum. . . . Each investor-owned utility customer subscription would be limited by the average total actual regional exchange load of its residential and small farm customers, again, in the two highest consecutive years between 1997 and 2001. If there is over-subscription, subscription term will serve as the tie breaker, with the longer-term having priority.
>
> For the purposes of the subscriptions, investor-owned utility residential and small farm customers could be represented by investor-owned utilities or other entities that serve Northwest residential or small farm loads, as certified by state regulators. The benefits of purchases for these customers should be passed through to the end users.

The Regional Review Transition Board, led by the governors' representatives, is developing a work plan that will include a proposed collaborative approach for finalizing and implementing the subscription process called for in the Final Report.

While the regional review addressed the future of the Residential Exchange Program, particularly after 2001, PPC recognizes that the buyout Agreement "covers the years 1997 through 2001." The subject matter of the Agreement only concerns the termination of Puget's participation in the Residential Exchange Program prior to July 1,

2001. It is not the purpose of the proposed Agreement to attempt to address or resolve issues regarding the Residential Exchange Program after 2001. While PPC's proposal may reflect many parties' expectations of the resolution of the Residential Exchange Program for the period after 2001, it would be premature to include such language in the buyout Agreement.

CONCLUSION

Based upon the foregoing discussion, the record compiled in this proceeding and all requirements of law, I hereby determine that Bonneville should execute the Residential Exchange Termination Agreement with Puget Sound Power & Light Company.

Issued at Portland, Oregon, on this 23 day of January, 1997.

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By ______________________

Name John S. Robertson

Title Deputy Administrator and Deputy Chief Executive Officer