

Water - City Usage

Prepared By
Approved By

City of Key West	June gallons water	July	Aug	Sept											
350-C-3 City	0	0	0	0											
370-C-3 Concession Stand	0	2310	1160	5220											
460-C-3 Sewer disposal plant	0	300000	239000	250000											
505-C-3 Da-Lawn	0	1050	180	50											
		<u>303360</u>	<u>240340</u>	<u>255270</u>											

Not metered

CITY OF MCMINIVILLE

APR 14 1983

PYI

Mr. Alan H. Jones, General Manager
Water and Light Commission
City of McMinnville
P.O. Box 58
McMinnville, OR 97128

Dear Mr. Jones:

The City of McMinnville, acting by and through its Water and Light Commission (City), on September 15, 1982, requested that Bonneville Power Administration (BPA) make a determination that the load at the Cascade Steel Rolling Mills facility (Cascade) McMinnville, Oregon, is not a New Large Single Load under section 3(13)(A) of the Pacific Northwest Electric Power Planning and Conservation Act. The City requested the determination, on the basis that an increase in load at Cascade's facility was committed to between McMinnville and Cascade as of September 1, 1979. In May 1974 Cascade requested an increase in total load from 85,000 megawatthours in any contract year to a total 167,000 megawatthours in any contract year and had held subsequent conversations with the City on this request.

In making the committed to determination and determining the size of the load committed to at the Cascade facility as of September 1, 1979, the following information was considered:

Contract - Cascade's power sales agreement, with the City executed on April 13, 1976, which established Cascade's contract demand;

Correspondence - Cascade's August 27, 1979, letter to the City requesting an increase from 85,000 megawatthours of contract demand to a total of 167,000 megawatthours of contract demand, or a total of 19.06 average megawatts. An August 27, 1979, BPA memo in which Mr. Clair Loosli, BPA, noted a conversation with the City in which they concurred with Cascade's request for the above increase in load prior to September 1, 1979.

Based on the above, BPA has determined that as of September 1, 1979, a total contract demand of 19.06 average megawatts was agreed to by the City and Cascade.

BPA has determined that the committed to size of the load at Cascade's facility is 19.06 average megawatts and this number is entered on the enclosed Exhibit K, Table 2. Please attach the enclosed Exhibit K, Table 2 to your utility power sales contract dated August 25, 1981.

Sincerely,

(sgd) James J. Jura

ACTING Administrator

Enclosure

Exhibit K
Table 2, Page 1 of 1
Contract No. DE-1579-01R290448
The City of McMinnville
Effective on effective date of
Utility Power Sales Contract

Contracted For, Committed to Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L.
96-501 and section 8 of this contract as of the effective date set forth
above.)

TABLE 2

LIST OF PURCHASER'S LOADS AND AMOUNTS WHICH WERE
CONTRACTED FOR, OR COMMITTED TO, PRIOR
TO SEPTEMBER 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted for or Committed to as of 9/1/79 (Ave. MW)</u>
Cascade Steel Rolling Mill Facility	McMinnville, Oregon	19.06

(WP-FKI-1672c)

Power Manager's
Briefing Memo

Contract: As of September 1, 1979, the City of McMinnville acting by and through its Water and Electric Commission (the City) had a contract in effect with the Cascade Steel Rolling Mills Facility (Cascade). This contract, dated April 13, 1976, had a maximum contract demand of 85,000 megawatthours.

Existing Circumstances: The City has requested that BPA make a determination that the City and Cascade made a commitment to increase the contract demand to 167,000 megawatthours prior to September 1, 1979.

Changes Required/Impact on Existing Circumstances: The impact on existing circumstances is that the City would be able to offer power to Cascade at the PF-2 Rate, or its successor rate, for that block of load found to be committed to.

Policy Implications: This contracted for, or committed to determination represents no change in policy.

Financial Management Concerns: None

General Counsel Concerns: The General Counsel's Office should review the City's contract with Cascade.

NEPA Implications: The Administrator has determined that, pursuant to DOE NEPA guidelines and supplementary information, this action meets the criteria for "clearly not significantly affecting the quality of the human environment." This determination was made in a memorandum dated MAR 09 1983.

Signature Instructions: The Administrator will sign first.

Area Acceptance: Accepted by Phil Livesley, Lower Columbia Area Power Manager,
March 9, 1983.

(WP-PK1-2860b)

DECISION PAPER

REQUEST OF THE CITY OF McMINNVILLE WATER AND LIGHT COMMISSION (THE CITY) THAT THE ADMINISTRATOR DETERMINE THAT THE CASCADE STEEL ROLLING MILLS FACILITY (CASCADE) IS NOT A NEW LARGE SINGLE LOAD AND THE SIZE OF THE LOAD AS OF SEPTEMBER 1, 1979 AT SUCH FACILITY FOR PURPOSES OF EXHIBIT K, TABLE 2.

ISSUE: Was the load at the above facility committed to by the City and Cascade as of September 1, 1979, and if so, what is the size of such load?

BACKGROUND: The City has requested a determination by the Bonneville Power Administration (BPA) that the load at Cascade is not a new large load under section 3(13)(A) of the Pacific Northwest Electric Power Planning and Conservation Act because it was a load which was committed to as of September 1, 1979. By letter dated September 15, 1982, the City forwarded copies of its April 13, 1976, contract with Cascade located at McMinville, Oregon, to BPA together with copies of relevant correspondence. Additional information was provided by Phil Livesley, Lower Columbia Area Power Manager.

The City entered into a power sales contract with Cascade dated April 13, 1976, under the terms of which McMinville agreed to make available power and energy not to exceed 85,000 megawatt-hours in any contract year at a maximum rate of delivery not to exceed 20,000 kilowatts per hour. The City agreed to use "best efforts" to obtain additional power for Cascade. Preliminary discussions to increase plant demand began in 1974. Formal notice of Cascade's intent to proceed with plant expansion and to increase load to

167,000 megawatthours (19.06 average megawatts) was contained in a August 27, 1979, letter from Cascade to the City. BPA, the City, and Cascade had discussions prior to September 1, 1979, which indicated the City had concurred in Cascade's request for an increase in load totaling 19.06 average megawatts in any contract year.

Recommendation: Based on the above recommendation, McMinnville had a commitment which was in effect as of September 1, 1979, with Cascade's facility with a total committed to load of 19.06 megawatts. BPA staff recommends that the BPA Administrator make the determination that the following amount be included in McMinnville's Exhibit K, Table 2, that the committed to load at Cascade's Steel Rolling Mills facility is 19.06 average megawatts.

(WP-PKI-2570b)

CITY OF PORT ANGELES



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

OFFICE OF THE ADMINISTRATOR

In reply refer to: PKL

OCT - 6 1987.

Mr. Robert E. Orton
City of Port Angeles City Light
240 West Front Street
P.O. Box 1150
Port Angeles, WA 98362

Dear Mr. Orton:

Thank you for your letter dated December 31, 1986, requesting that the Bonneville Power Administrator make a Contracted For, Committed To (CFCT) determination, pursuant to Section 8 of BPA's Power Sales Contract with the City of Port Angeles (City), regarding loads of Crown Zellerbach Corporation and ITT-Rayonier served by the City. I apologize for the tardiness of BPA's response and hope that it has not inconvenienced you.

After reviewing the information the City submitted and Bonneville Power Administration's (BPA) own records, BPA concurs that the Crown Zellerbach load was contracted for, or committed to, by the City prior to September 1, 1979, at a level of 40.3 average megawatts.

Bonneville's examination of the documentation for the ITT-Rayonier load, however, suggests that a CFCT level of 22.3 aMW is justified, rather than the 23.1 aMW requested by the City. The City's request for ITT-Rayonier is based primarily on the May 16, 1979 load forecast prepared by ITT-Rayonier for the City pursuant to ITT-Rayonier's power sales contract in effect on September 1, 1987. The forecast predicts a load of 195,100 MWh for 1983 (or 23.1 aMW, based on a year of 8448 hours). The Power Sales Contract and utility general practice define an average megawatt based on 8760 hours. Based on that definition, documentation supports a CFCT determination of 22.3 aMW for the City's ITT-Rayonier load.



Celebrating the U.S. Constitution Bicentennial — 1787-1987

BPA-2023-00499-F 000260

27760078

Enclosed is a revised Power Sales Contract Exhibit K, Table 2, reflecting this CFCT determination.

Sincerely,

(b)(6)

Administrator

Enclosure

ALinehan:jjb:3161 (WP-PKLD-1639b)

cc:

S. Hickok - A
R. Weisberg - APP-12
G. Lenzen - OB
G. Tupper - O
T. Esvelt - OS
G. Reich - OSC
S. Clarke - OSCA
E. Sienkiewicz - P
W. Pollock - P

T. Noguchi - PK
J. Pynch - PK
L. Kitchen - PKL
C. Combs - PKLC
E. Bleifuss - PKLD
R. Aho - PKLD
A. Linehan - PKLD
Official File - PKL

DISCUSSION PAPER
CONTRACTED FOR, COMMITTED TO DETERMINATION
POWER SALES CONTRACT EXHIBIT K, TABLE 2
CITY OF PORT ANGELES
CROWN ZELLERBACH AND ITT-RAYONIER FACILITIES

ISSUE:

Shall the Administrator make the determination that prior to September 1, 1979, the City of Port Angeles (City) contracted for or committed to a level of firm service of 40.3 average megawatts (aMW) for the Crown Zellerbach Corporation (Crown) facility, and of 23.1 aMW for the ITT-Rayonier facility, both located in Port Angeles, Washington?

DISCUSSION:

Crown Zellerbach. Crown Zellerbach was served by the Bonneville Power Administration (BPA) through companion agreements among Crown, the City, and BPA, until July 1, 1975. Since that time, the City has served Crown under a rate schedule. Evidence points to a commitment by the City to serve Crown at a firm load level of 40.3 aMW prior to September 1, 1979. In December 1973, Crown requested (and the City passed on this request to BPA) an increase in firm service from 20.3 aMW to 40.3 aMW. In January 1974, BPA stated to the City BPA's willingness to increase the City's contract demand to accommodate the additional Crown firm load. In October 1974, BPA confirmed the projected increase in City firm load due to the additional 20 aMW Crown firm load, and stated that the addition of such a load was permissible under the Draft Allocation Policy. The City notified Crown of BPA's confirmation in November 1974. In January 1977, the City offered Crown a new power sales contract, which, in an attachment, showed a forecasted load of 40.3 aMW for 1982. Other load forecasts submitted by Crown to the City during the 1970s document a forecasted load of 40.3 aMW.

The City did serve Crown at 43.7 aMW in August 1979. While Crown did not sustain service at this level for a year, service in August 1979 demonstrates that the City had actually served Crown at the requested level, at least for a month, prior to September 1, 1979.

BPA's official load estimate for Crown in effect on September 1, 1979, was prepared on September 19, 1975. This load estimate forecasted 40.3 aMW for Calendar Year 1979 and thereafter.

Port Angeles serves Crown through a dedicated 69 kV feeder with a rated capacity of 72 MW.

ITT-Rayonier. The City signed a contract with ITT-Rayonier on July 17, 1978, (retroactive to July 30, 1975), which was in effect on September 1, 1979. This contract expired on November 1, 1981, with the expiration of the City's pre-Regional Act Power Sales Contract with BPA. Since then the City has served ITT-Rayonier under a rate schedule. The contract in effect on September 1, 1979, did not specify a contract demand, but did obligate the City to supply power equal to ITT-Rayonier's annual estimated load. In a letter to the City dated May 16, 1979, ITT-Rayonier forecasted its projected power requirements.

ITT-Rayonier's load forecast shows a projection of 195,100 MWh for 1983 and later years. The forecast indicates that "based on a year of 8448 hours," the 195,000 MWh would equal 23.1 aMW. However, based on the standard of 8760 hours per year, the 195,100 MWh equals 22.3 aMW. The projection of 22.3 aMW also matches more closely BPA's load forecast prepared August 30, 1979. That forecast projected an ITT-Rayonier load of 196,105 MWh for 1984 and beyond, or 22.4 aMW.

The Power Sales Contract, in section 8(b) states that "The contracted for, or committed to load as of September 1, 1979, shall be the maximum amount of energy specified in such contract or commitment, the maximum energy consumption of the load or the capacity limitation contained in such contract or commitment if energy is not specified or limited." Subsequent paragraphs in section 8, describing how a New Large Single Load should be determined, repeatedly refer to 87,600,000 kWh (10 MW x 8760 hours). It has also been BPA's general practice, in reviewing CFCT documentation, to use the standard utility definition of 1 aMW equaling 8760 MWh. Given the Power Sales Contract's implied definition of 1 aMW, and BPA's standard use of 8760 hours per year, it appears that the City of Port Angeles has demonstrated that it contracted for or committed to an ITT-Rayonier load of 22.3 aMW (22.3 MW X 8760 hours).

The City serves ITT-Rayonier through a dedicated 69 kV feeder with a rated capacity of 72 MW.

RECOMMENDATION:

The Administrator should grant the City of Port Angeles a Contracted-For, Committed-To annual energy level of 40.3 aMW for Crown Zellerbach and of 22.3 aMW for ITT-Rayonier. The attached Exhibit K, Table 2 (New Large Single Load Determinations) should be executed.

Alinehan:jjb:3191 (WP-PKLD-1637b)

Revision No. 1 to
Exhibit K
Table 2, Page 1 of 1
Contract No. DE-MS79-81BP90450
City of Port Angeles
Effective on the effective date
of this contract

New Large Single Load Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of
P.L. 96-501 and section 8 of this contract as of the effective date set forth
above.)

TABLE 2

LIST OF PURCHASER'S LOADS AND AMOUNTS WHICH WERE
CONTRACTED FOR, OR COMMITTED TO PRIOR
TO SEPTEMBER 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted For or Committed to as of September 1, 1979 (Average MW)</u>
Crown Zellerbach	Port Angeles, WA	40.3
ITT Rayonier	Port Angeles, WA	22.3

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

(b)(6)

By

Title Administrator

Date 10-6-87

(WP-PKLD-3438c)

AUTHENTICATED COPY

Revision No. 1 to
Exhibit K
Table 2, Page 1 of 1
Contract NO. DE-MS79-81BP90450
City of Port Angeles
Effective on the effective date
of this contract

New Large Single Load Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of
P.L. 96-501 and section 8 of this contract as of the effective date set forth
above.)

TABLE 2

LIST OF PURCHASER'S LOADS AND AMOUNTS WHICH WERE
CONTRACTED FOR, OR COMMITTED TO PRIOR
TO SEPTEMBER 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted For or Committed to as of September 1, 1979 (Average MW)</u>
Crown Zellerbach	Port Angeles, WA	40.3
ITT Rayonier	Port Angeles, WA	22.3

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By **(b)(6)**
Title Administrator
Date 10-6-87

(WP-PKLD-3438c)

DISCUSSION PAPER
CONTRACTED FOR, COMMITTED TO DETERMINATION
POWER SALES CONTRACT EXHIBIT K, TABLE 2
CITY OF PORT ANGELES
CROWN ZELLERBACH AND ITT-RAYONIER FACILITIES

ISSUE:

Shall the Administrator make the determination that prior to September 1, 1979, the City of Port Angeles (City) contracted for or committed to a level of firm service of 40.3 average megawatts (aMW) for the Crown Zellerbach Corporation (Crown) facility, and of 23.1 aMW for the ITT-Rayonier facility, both located in Port Angeles, Washington?

DISCUSSION:

Crown Zellerbach. Crown Zellerbach was served by the Bonneville Power Administration (BPA) through companion agreements among Crown, the City, and BPA, until July 1, 1975. Since that time, the City has served Crown under a rate schedule. Evidence points to a commitment by the City to serve Crown at a firm load level of 40.3 aMW prior to September 1, 1979. In December 1973, Crown requested (and the City passed on this request to BPA) an increase in firm service from 20.3 aMW to 40.3 aMW. In January 1974, BPA stated to the City BPA's willingness to increase the City's contract demand to accommodate the additional Crown firm load. In October 1974, BPA confirmed the projected increase in City firm load due to the additional 20 aMW Crown firm load, and stated that the addition of such a load was permissible under the Draft Allocation Policy. The City notified Crown of BPA's confirmation in November 1974. In January 1977, the City offered Crown a new power sales contract, which, in an attachment, showed a forecasted load of 40.3 aMW for 1982. Other load forecasts submitted by Crown to the City during the 1970s document a forecasted load of 40.3 aMW.

The City did serve Crown at 43.7 aMW in August 1979. While Crown did not sustain service at this level for a year, service in August 1979 demonstrates that the City had actually served Crown at the requested level, at least for a month, prior to September 1, 1979.

BPA's official load estimate for Crown in effect on September 1, 1979, was prepared on September 19, 1975. This load estimate forecasted 40.3 aMW for Calendar Year 1979 and thereafter.

Port Angeles serves Crown through a dedicated 69 kV feeder with a rated capacity of 72 MW.

ITT-Rayonier. The City signed a contract with ITT-Rayonier on July 17, 1978, (retroactive to July 30, 1975), which was in effect on September 1, 1979. This contract expired on November 1, 1981, with the expiration of the City's pre-Regional Act Power Sales Contract with BPA. Since then the City has served ITT-Rayonier under a rate schedule. The contract in effect on September 1, 1979, did not specify a contract demand, but did obligate the City to supply power equal to ITT-Rayonier's annual estimated load. In a letter to the City dated May 16, 1979, ITT-Rayonier forecasted its projected power requirements.

ITT-Rayonier's load forecast shows a projection of 195,100 MWh for 1983 and later years. The forecast indicates that "based on a year of 8448 hours," the 195,000 MWh would equal 23.1 aMW. However, based on the standard of 8760 hours per year, the 195,100 MWh equals 22.3 aMW. The projection of 22.3 aMW also matches more closely BPA's load forecast prepared August 30, 1979. That forecast projected an ITT-Rayonier load of 196,105 MWh for 1984 and beyond, or 22.4 aMW.

The Power Sales Contract, in section 8(b) states that "The contracted for, or committed to load as of September 1, 1979, shall be the maximum amount of energy specified in such contract or commitment, the maximum energy consumption of the load or the capacity limitation contained in such contract or commitment if energy is not specified or limited." Subsequent paragraphs in section 8, describing how a New Large Single Load should be determined, repeatedly refer to 87,600,000 kWh (10 MW x 8760 hours). It has also been BPA's general practice, in reviewing CFCT documentation, to use the standard utility definition of 1 aMW equaling 8760 MWh. Given the Power Sales Contract's implied definition of 1 aMW, and BPA's standard use of 8760 hours per year, it appears that the City of Port Angeles has demonstrated that it contracted for or committed to an ITT-Rayonier load of 22.3 aMW (22.3 MW X 8760 hours).

The City serves ITT-Rayonier through a dedicated 69 kV feeder with a rated capacity of 72 MW.

RECOMMENDATION:

The Administrator should grant the City of Port Angeles a Contracted-For, Committed-To annual energy level of 40.3 aMW for Crown Zellerbach and of 22.3 aMW for ITT-Rayonier. The attached Exhibit K, Table 2 (New Large Single Load Determinations) should be executed.

ALinehan:jjb:3191 (WP-PKLD-1637b)

Attachment 1

Committed To/Contracted For Determination for Port Angeles City Light
Crown Zellerbach Considerations for Support of Recommendation

The Puget Sound Area reviewed the following information in making its recommendation that the load was committed to by September 1, 1979:

- (1) Contract - Port Angeles did not have a signed a contract with Crown Zellerbach on September 1, 1979. The utility had served Crown Zellerbach under an informal agreement since June 30, 1976. However, several factors point to the fact that Port Angeles had committed itself to serving the requested level.

In 1973 Crown Zellerbach requested an increase of its contract level from 20.3 MW to 40.3 MW, and BPA approved this request in 1974. Crown Zellerbach also submitted several load forecasts to Port Angeles during the 1970's whose requirements support the requested level. Port Angeles well-documents the history of these events in its request.

Furthermore, Port Angeles served Crown Zellerbach at 43.7 MWa in August, 1979. While Crown Zellerbach did not sustain service at this level for a whole year, it demonstrates that Port Angeles had actually served the requested level, at least for a month, prior to September 1, 1979.

- (2) Load Forecast - BPA's official load estimate for Crown Zellerbach in effect on September 1, 1979 was prepared on September 19, 1975. This load estimate forecasted 40.3 MWa for Calendar Year 1979 and thereafter.
- (3) Delivery Facilities - Port Angeles serves Crown Zellerbach through a dedicated 69 kV feeder with a rated capacity of 72 MW.

Attachment 2

Committed To/Contracted For Determination for Port Angeles City Light
ITT Rayonier Considerations for Support of Recommendation

In making the recommendation that the load was committed to by September 1, 1979, the Puget Sound Area has reviewed the following information:

- (1) Contract - Port Angeles signed a contract with ITT Rayonier on July 17, 1978 (effective July 30, 1975) which was in full effect on September 1, 1979 (however, this contract expired on November 1, 1981 with the expiration of Port Angeles' pre-Regional Act Power Sales Contract with BPA). While the contract did not specify a contract demand, it obligated Port Angeles to supply power equal to ITT Rayonier's annual estimated load. ITT Rayonier forecasted power requirements of 23.1 MWa by 1983 in a letter to Port Angeles dated May 16, 1979 (Attachment 2).
- (2) Load Forecast - BPA's official load estimate for ITT Rayonier in effect on September 1, 1979 was prepared on August 30, 1979. This load estimate forecasted power requirements of 22.4 MWa by 1984, which is slightly less than the level requested for this facility by Port Angeles. However, the megawatthours forecasted by BPA in this load estimate tracked closely with the megawatthours presented by ITT Rayonier in its May 16, 1979 letter to Port Angeles (Attachment 2). ITT Rayonier noted in this letter that it determined average load by using 8,448 hours in a year rather than the normal 8,760 hours.
- (3) Delivery Facilities - Port Angeles serves ITT Rayonier through a dedicated 69 kV feeder with a rated capacity of 72 MW.

CLARK COUNTY PUD



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

OFFICE OF THE ADMINISTRATOR

In reply refer to: PKI

APR 18 1984

Mr. James L. Sanders
Assistant Chief of the Engineering-
Power Supply and Planning Branch
Public Utility District No. 1 of Clark County
1200 Fort Vancouver Way, Box 1626
Vancouver, Washington 98668

Dear Mr. Sanders:

On September 27, 1983, Public Utility District No. 1 of Clark County (Clark) requested that Bonneville Power Administration (BPA) determine that the following loads: Vancouver Foundry Co. located at Vancouver, Washington; Union Carbide-Crystal Plant located at Washougal, Washington; International Paper Co. located at Clark County, Washington; Boise Cascade Corp. located at Vancouver, Washington; and AIRCO, Inc. located at Clark County, Washington are not New Large Single Loads under section 3(13)(A) of the Pacific Northwest Electric Power Planning and Conservation Act. Clark requested the determination on the basis that such loads were contracted for as of September 1, 1979.

In making such determination, and in determining the size of the loads contracted for, to establish a floor upon which future increases, if any, at such facility may be measured, the following documents were considered:

Contracts.

- (a) December 10, 1974, power sales contract between Clark and Vancouver Foundry Co.
- (b) January 3, 1978, power sales contract between Clark and Union Carbide to serve their Washougal, Washington plant.
- (c) October 15, 1959, power sales contract, as amended February 21, 1967, between Clark and International Paper Company to serve their lumber and plywood plant in Clark County, Washington.
- (d) January 21, 1975, power sales contract, as amended June 22, 1976, between Clark and Boise Cascade Corporation.
- (e) December 17, 1974, power sales contract between Clark and AIRCO, Inc.

BPA has determined that your contracted for load for purposes of inclusion in your Power Sales Contract No. DE-MS79-81BP90489, Exhibit K, Table 2, is 2.5 average MW for the Vancouver Foundry Co., 4.0 average MW for the Union Carbide-Crystal Plant, 15.0 average MW for the International Paper Co., 22.0 average MW for Boise Cascade Corp., and 10.0 average MW for the AIRCO, Inc. air reduction plant.

Please attach the enclosed Exhibit K, Table 2, to your contract. If you have any questions regarding this determination please contact this office.

Sincerely,

(b)(6)

ACTING Administrator

Enclosure:
Exhibit K, Table 2

Exhibit K
Table 2, Page 1 of 1
Contract No. DE-MS79-81BP90489
Clark County PUD No. 1
Effective on the effective date
of the Power Sales Contract

Contracted For, Committed To Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 8 of this contract as of the effective date set forth above.)

Table 2

List of Purchaser's Loads and Amounts Which Were
Contracted For, or Committed to, Prior
to September 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted for as of 9/1/79 (Avg. MW)</u>
Vancouver Foundry Co. Manufacturing Plant	Vancouver, Washington	2.5
Union Carbide Plant Silicon Crystal Manufacturing Plant	Washougal, Washington	4.0
International Paper Co. Lumber and Plywood Plant	Clark County, Washington	15.0
Boise Cascade Corp. Pulp and Paper Manufacturing Plant	Vancouver, Washington	22.0
AIRCO, Inc., Air Reduction Plant	Clark County, Washington	10.0

(WP-PKI-4181b)

Exhibit K
Table 2, Page 1 of 1
Contract No. DE-MS79-81BP90489
Clark County PUD No. 1
Effective on the effective date
of the Power Sales Contract

Contracted For, Committed To Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 8 of this contract as of the effective date set forth above.)

Table 2

List of Purchaser's Loads and Amounts Which Were
Contracted For, or Committed to, Prior
to September 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted for as of 9/1/79 (Avg. MW)</u>
Vancouver Foundry Co. Manufacturing Plant	Vancouver, Washington	2.5
Union Carbide Plant Silicon Crystal Manufacturing Plant	Washougal, Washington	4.0
International Paper Co. Lumber and Plywood Plant	Clark County, Washington	15.0
Boise Cascade Corp. Pulp and Paper Manufacturing Plant	Vancouver, Washington	22.0
AIRCO, Inc., Air Reduction Plant	Clark County, Washington	10.0

(WP-PKI-4181b)

Power Manager's
Briefing Memo

Contract: Public Utility District No. 1 of Clark County (Clark), Power Sales Contract No. DE-MS79-81BP90489, request for a Regional Act Section 3(13)(A) contracted for or committed to determination.

Existing Circumstances: The Regional Act provides that a load associated with a new facility, an existing facility, or an expansion of an existing facility is not a New Large Single Load, if it was contracted for, or committed to, as determined by the Administrator, prior to September 1, 1979. If served by a public agency customer, such portion of load at the facility is served at the Priority Firm Rate, or successor rate. If served by an investor-owned utility the cost of resources to serve such portion may be included in the utility's Average System Cost for purposes of the Residential Purchase and Sale Agreement. In a letter dated, September 27, 1983, Clark requested that BPA determine that the facility loads at (1) Vancouver Foundry Company; (2) Union Carbide Crystal Plant; (3) International Paper Company; (4) Boise Cascade Corporation; and (5) AIRCO, Inc. were so contracted for and/or committed to.

Changes Required/Impact on Existing Circumstances:

1. A contract dated December 10, 1974, between Clark and Vancouver Foundry Co. established that Clark agreed to furnish 2.5 average MW.
2. A contract dated January 3, 1978, between Clark and Union Carbide established that Clark agreed to furnish 4.0 average MW.
3. A contract dated October 15, 1959, and amended February 21, 1967, between Clark and International Paper Co. established Clark agreed to furnish 15.0 average MW.
4. A contract dated January 21, 1975, and amended June 22, 1976, between Clark and Boise Cascade Corporation established that Clark agreed to furnish 22.0 average MW.
5. A contract dated December 17, 1974, between Clark and AIRCO, Inc. established that Clark agreed to furnish 10.0 average MW.

In the attached Decision Paper BPA staff recommends that the Administrator determine that the contracted for, or committed to load to be entered in Power Sales Contract, Exhibit K, Table for Vancouver Foundry Co. is 2.5 average MW, Union Carbide-Crystal Plant is 4.0 average MW, International Paper Co. is 15.0 average MW, Boise Cascade Corporation is 22.0 average MW, and AIRCO, Inc. is 10.0 average MW.

Policy Implications: This determination represents no change in policy.

Financial Management Concerns: None

General Counsel Concerns: Review documentation.

NEPA Determination: The Environmental Coordinator for the Office of Power and Resources Management has determined that this action is categorically excluded. This action does not individually or cumulatively have a significant effect on the human environment, and may be implemented.

Signature Instructions: The attached letter should be signed by the Administrator. The Power Manager should review the letter, the exhibit, and the Decision Paper.

Area Acceptance: This request was originated in the Lower Columbia Area Office and concurs in this determination.

(WP-PKI-4181b)

RFreeman

Decision Paper

SEPTEMBER 27, 1983, REQUEST BY PUBLIC UTILITY DISTRICT NO. 1 OF CLARK COUNTY (CLARK) THAT THE BONNEVILLE POWER ADMINISTRATION (BPA) DETERMINE THAT AS OF SEPTEMBER 1, 1979, CLARK HAD COMMITTED TO SERVE LOADS AT VANCOUVER FOUNDRY CO. IN THE AMOUNT OF 2.5 AVERAGE MW; UNION CARBIDE-CRYSTAL PLANT IN THE AMOUNT OF 4.0 AVERAGE MW; INTERNATIONAL PAPER CO. IN THE AMOUNT OF 15.0 AVERAGE MW; BOISE CASCADE CORPORATION IN THE AMOUNT OF 22.0 AVERAGE MW; AND AIRCO, INC. IN THE AMOUNT OF 10.0 AVERAGE MW.

ISSUE: Were the Vancouver Foundry Co., Union Carbide-Crystal Plant, International Paper Co., Boise Cascade Corporation and AIRCO, Inc. loads contracted for, or committed to, as of September 1, 1979, by Clark, and if so what was the size of such load for purposes of establishing a floor upon which future increases in load at such facility, if any, can be measured.

BACKGROUND: On September 27, 1983, Clark requested that BPA determine that the Loads at Vancouver Foundry Co., Union Carbide-Crystal Plant, International Paper Co., Boise Cascade Corporation and AIRCO, Inc. are not New Large Single Loads under Section 3(13)(A) of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act). Clark alleges such loads were contracted for prior to September 1, 1979.

In determining whether the loads were contracted for at each facility, as of September 1, 1979, the following information was considered:

CONTRACTS:

An original power sales agreement dated December 10, 1974, between Clark and Vancouver Foundry Co.;

An original power sales agreement dated January 3, 1978, between Clark and Union Carbide;

An original power sales agreement dated October 15, 1959, and amended February 21, 1967, between Clark and International Paper Co.;

An original power sales agreement dated January 21, 1975, and amended June 22, 1976, between Clark and Boise Cascade Corporation; and

An original power sales agreement dated December 17, 1974, between Clark and AIRCO, Inc.

CORRESPONDENCE:

September 27, 1983, letter from David P. Yang, Contracts Coordinator for Clark, to Philip A. Livesley, Area Power Manager BPA.

RECOMMENDATION:

Vancouver Foundry Co.: A December 10, 1974 contract establishes that Clark contracted to serve Vancouver Foundry Co. load in the amount of 2.5 average MW.

Union Carbide-Crystal Plant: A January 3, 1978 contract establishes that Clark contracted to serve the Union Carbide-Crystal Plant load in the amount of 4.0 average MW.

International Paper Co.: An October 15, 1959 contract, and amended February 21, 1967, establishes that Clark contracted to serve the International Paper Co. load in the amount of 15.0 average MW.

Boise Cascade Corporation: A January 21, 1975 contract, and amended June 22, 1976 establishes that Clark contracted to serve the Boise Cascade Corporation load in the amount of 22.0 average MW.

AIRCO, Inc.: A December 17, 1974 contract establishes that Clark contracted to serve AIRCO, Inc. load in the amount of 10.0 average MW.

It is the recommendation of BPA staff, that the Administrator determine that the contracted for load to be entered in Exhibit K, Table 2, of Clark Power Sales Contract, No. DE-MS79-81BP90489 shall be: 2.5 average MW at the Vancouver Foundry Co. facility located at Vancouver, Washington; 4.0 average MW at the Union Carbide-Crystal Plant facility located at Washougal, Washington; 15.0 average MW at the International Paper Co. facility located in Clark County, Washington; 22.0 average MW at the Boise Cascade Corporation facility located at Vancouver, Washington; and 10.0 average MW at the AIRCO, Inc. facility located in Clark County, Washington.

(WP-PKI-4181b)

CLATSKANIE PUD

ABSTRACT
CLATSKANIE PUD and CASCADE GRAIN ETHANOL REFINERY
FACILITY DETERMINATION

In 2006 BPA and Clatskanie PUD (CPUD) began what became a lengthy and rancorous negotiation over the future status of the proposed Cascade Grain ethanol refinery located at Port Westward in Clatskanie, Oregon.

CPUD first approached BPA with a plan to serve a prospective ethanol refinery and axillary facilities with a load totaling about 18 MW but which spread among multiple facilities none of which would grow by 10 aMW in any consecutive 12-month period. In view of these plans CPUD contended that metering limited to the Substation (which is not dedicated to the ethanol plant) would be sufficient for NLSL purposes. CPUD maintained that the facility could only be served through its Substation notwithstanding the presence of a 115 KV line running parallel to the back fence of the plant and which had a tap running to the plant; as well as 4.5 MW of generation built on-site.

Initially CPUD denied BPA access to the site. After doing extensive research into the ethanol business including a site visit and tour of another ethanol plant in Burley, ID, BPA gained access to the site, BPA Power Services arranged for its own meters to be installed at the plant, performed a Facility Determination, determined a single facility was involved, and set the start of the facility's Measurement period, initially June 7, 2008 now June 1 to May 31th of the following year.

Cascade Grain had major problems apart from arguments over NLSLs and shut down during its first Measurement Period without completing 12 consecutive months of operation. Cascade Grain became involved in a dispute with its main contractor, J.H. Hill and subsequently went bankrupt.

The discussion paper below sets out many of the issues related to this project.

ISSUE

Clatskanie PUD (CPUD) has informed BPA that negotiations are progressing concerning the sale of the defunct "Cascade Grain" ethanol plant at the Port Westward industrial park in Clatskanie Oregon. Clatskanie has requested that BPA conclude the initial load measurement process, under BPA's NLSL Policy, begun in 2008 and declare the plant's first year load growth at 6 aMw. CPUD further requests that the 6 aMw be used as the floor from which load growth at the plant be measured when it restarts. It is CPUD's contention that any load growth occurring at the plant before Cascade Grain went out of business should count for measuring subsequent load growth when operated by Cascade Grain's successor in interest.

Such is not the case.

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The current situation with the advent of the Regional Dialog Power Sales Contracts and the Tiered rates Mechanism (TRM) raises an additional parallel issue i.e. does the 6 aMw of load for part of the first 12 months of the Cascade Grain operation have any effect on CPUD's provisional High Water Mark calculations?

The answer to this question is beyond the scope of this paper.

HISTORY

In 2006 CPUD informed BPA that there was a proposed ethanol plant to be constructed at the Port westward site. At that time they estimated total load on site at around 18 aMw, this estimate was later reduced to 9 aMw. The variation in load estimates plus BPA staff research into the ethanol industry raised doubts about CPUD's lower load estimate which in turn led to BPA concerns regarding; metering at the site.

Progress of the Cascade Grain project was impeded by other matters beyond BPA's required metering plan and the plant was not ready for commercial operation until June of 2008.

In a letter dated August 27, 2008) BPA notified CPUD that it had determined to start measuring load growth for NLSL purposes on June 7, 2008 based on Option C – Initial Energization for Test and Start-Up methodology for NLSL determinations as outlined in Attachment 1.

BPA staff monitored the load from meter readings obtained from the BPA mandated meters installed by the then PBL, as TBL declined to do so. The meter readings are contained in a spreadsheet (Attachment 2) and indicate that the plant was on its way to an initial load of 12 aMw when operational problems arose at the plant and it went to "hot standby" and then by June 6, 2009 the end of the first year the plant shut down entirely and has remained so to date.

Load at the plant for the period June 7, 2009 through June 6, 2010 (the second 12-month period) has been around 0.357 aMw. During the same 12-month period Cascade Grain went out of business and the site passed to the majority creditor J.H Kelly Construction, the current owner. J.H. Kelly is in negotiations with an unnamed Canadian firm for the sale of the site to be operated by the Canadian firm.

CPUD has alleged that BPA should count the 6 aMw average load of the first 12- month period as the "floor" from which the load growth at the plant should be measured. Toward that end CPUD has requested that BPA make its formal determination of the load growth in the June 7, 2008 – June 6, 2009 period.

CONCLUSION

1. On the question of the load growth determination for the first 12-month period based on BPA's August 27, 2008 letter, no such determination is warranted as the first 12-month period ended prematurely when Cascade Grain shut down the plant.

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2. On the question of the applicability of the first 12-months period load; regardless of the answer to 1 above; such load measurement is irrelevant because the site has operated at a much lower load level for more than 12 months. The level of load from which load growth under the new owners should be measured if any is the loads recorded in the 2009-2010 time frame and that only comes to 0.357 aMw.
3. Once a new owner is in place and operating the plant BPA, CPUD and the new owner should agree upon a new start date for load growth measurement.
4. Regarding the application of the TRM and Provisional High Water Mark, the NLSL and Rates processes run in parallel and a load level determination in one process need not affect the outcome of the other, from a NLSL Policy perspective.

DISCUSSION

The statute (Section 3(13) of the Regional Act) states that the growth of load associated with a single facility of 10 aMw or more in a consecutive 12-month period constitutes a new large single load. BPA's NLSL Policy defines a consecutive 12-month period to be two dates certain twelve months apart. Ten average megawatts or Annual Average Megawatts, is defined as the accumulation of kWh during a consecutive 12-month period \geq to 87,600,000 kWh.

BPA found the Cascade grain plant to be a single facility. BPA established a start date of 7 JUN 08 for measuring load growth at the facility using the beginning of the test and start up phase to mark the start date for measuring purposes.

BPA's NLSL Policy measures the load growth at a facility in each 12-month period for determining load growth and NLSL status. The NLSL Policy requires that a load being measured remain in operation or at least in business during that period for the meter readings to be used in the NLSL determination process.

These two aspects of the NLSL Policy are significant in this case because,

1. It means load growth at a facility is only significant for NLSL determination purposes if the firm that owns the facility remains in business and retains ownership of the plant. Going out of business or selling the plant, if the plant ceases operations, will end the measuring period. The Parties will have to agree on a new measurement start date once the plant resumes operation either under the old or new ownership.
2. Because the aborted test and startup phase in 2008-2009 was followed by a second 12-month period in shut down mode 2009-2010, the load level from which load growth will be measured at the Cascade grain facility is that established in the 2009-2010 period or 0.327 aMw.

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Therefore because of the foregoing, the loads achieved in the 2008-2009 period have no relevance to the NLSL status of any new operator of the plant, furthermore the load growth at the plant will be measured from the “floor” of the “wheel turning” load recorded in the 2009-2010 period.

N.B. If the language in some of the letters seems unusually forthright it should be borne in mind that the negotiation was a long and difficult one and the tenor of communications with Clatskanie accurately reflects the attitude of BPA management and staff at the time.

CASCADE GRAIN ETHANOL
&
CLATSKANIE PUD
NLSL MONITORING
12 JAN 2009

The position of Clatskanie PUD (CPUD) and Cascade Grain Ethanol (Cascade) as described in the K&L/Gates memo of September 26, 2008 has two parts:

- 1) The proper date for the start of monitoring the growth of load at the plant is either January 23, 2008 or April 15, 2008.
- 2) The fermentation and distillation line and the Distiller’s Grain dryer constitute two separate facilities at the Cascade Grain plant.

K&L/Gates base their position on their interpretation of BPA’s NLSL Policy.

START DATE BACKGROUND

When CPUD first contacted BPA in re a proposed ethanol plant at Port Westward in 2007 it was described as a plant that would eventually grow to about 18 aMw, but would not breach the NLSL barrier. The AE had some considerable difficulty in getting CPUD to agree to a site visit and the first site visit on May 20, 2008 was limited to Bradbury SUB as CPUD “did not have

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permission to enter the Cascade plant. Bradbury SUB has a total of 5 feeders with two dedicated to Cascade, it was CPUD's position that BPA would get all the information it needed under the NLSL Policy from the readings of those meters. When BPA was finally granted access to the plant site but not to Cascade staff, it was determined that there are three "switch yards" or "mini SUBs" that are fed from the two feeders, there are also two stand by generators the output of which totals some 4.5 aMw. It was eventually determined that BPA needed 5 meters on-site to be assured of a complete picture of load at the plant, one in each "switch yard" and one on each of the stand by generators. Final BPA metering was not fully installed until July 11, 2008 for the "mini SUBs" and August 18, 2008 for the stand by generation.

As late as July 11, 2008, metering was not available to accurately monitor what was going on at the Cascade Plant and therefore there was no way to separate out construction load from test and installation load.

In a meeting on July 18, 2008 at the Cascade plant it was revealed by the plant manager in a discussion of the impacts of a power outage on BPA's 115 Kv line on July 3 were that it interrupted the 7-day, 100% load acceptance test that was then underway. Cascade was still in a test and installation mode on July 3, 2008. And for some weeks thereafter as they were not ready for another acceptance test on July 18, 2008. The Cascade plant manager expressed some frustration at the continued construction related delays.

LOAD MONITORING START DATE

CPUD suggests either January 23, 2008 (energization date of Bradbury SUB) or April 15, 2008 (the date of the first partial grain shipment) as the proper date(s) for monitoring the load growth at the plant. However, these dates even if justified under the NLSL Policy are not usable because BPA has no way of separating out the construction load from plant load, furthermore, based on the history gleaned from the Cascade staff in face to face meetings construction was a long drawn out process that ran well over schedule and did not end until the successful acceptance trial in late July 2008.

BPA selected June 7, 2008 based on two points:

- 1) BPA noted an increased load at the plant on that date which we interpreted to mean the start of test and installation.
- 2) The information we received during site visits showed that test and installation was going on in June even if there was no announced start of test and installation.

FACILITY DETERMINATION BACKGROUND

CPUD and Cascade allege that the distillery and the grain dryer constitute two separate facilities because they *could* operate independently of each other. CPUD lays great stress on the fact that

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theoretically Cascade could bring in wet distiller's grain for drying from another facility or that the distillery could send its wet distillers grain out for drying.

Research into the ethanol industry resulted in a trip to Burley ID for a tour of an ethanol plant and some research by the NLSL team (Ryan Sigurdson). The Burley plant is considered rare in that it is located in an area in which it is possible to sell wet distiller's grain at the plant to local farmers without having to dry it. This was touted to us as a major economic advantage for this plant. From a plant manager's viewpoint getting rid of wet distiller's grain before it spoils is a major consideration. Being able to dispose of this waste material with out the expense of drying is very desirable.

We have uncovered a 2008 study by Wichita State University on the transport of wet distiller's grain concluded that the maximum practical "shipping radius" for the material is less than 40 miles. There is no other facility within a 40 mile radius of the Cascade plant to either send wet grain or receive it for drying at Cascade. Our researches have revealed no instances of such off-site drying activities. This raises an issue for the NLSL Policy; is it enough to allege that some activity is possible and therefore supports a facility determination of two facilities or must someone somewhere actually be doing it/ In other words must be merely possible or must it be practical as well?

The Policy does not currently include in its Facility Determination policy a "But for test" but I think it should. In this case but for means that as the industry currently exists you have to have a ready method of disposing of wet distiller's grain either through on site sales or drying. The distillation process produces a great deal of waste (at least 40% of the corn going into the process emerges as wet grain) and it must be disposed of before it spoils. In the general run of plants without a local market for wet grain you cannot make ethanol without a dryer and you can't run a dryer without an ethanol plant to produce the feed stock.

FACILITY DETERMINATION

The NLSL Policy's Criteria for a Facility Determination are:

- 1) Are the putative facilities owned by the same entity and were they built at the same time?
- 2) Are the putative facilities electrically separate and separately metered? Are they billed separately?
- 3) Are the putative facilities geographically/physically separate
- 4) Can the putative facilities operate independently of each other?
- 5) Do the putative facilities sell to separate and distinct markets?
- 6) Is this determination consistent with prior determinations?

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CLATSKANIE PUD and CASCADE GRAIN ETHANOL REFINERY
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FINDINGS

- 1) Both the dryer and the distillery are owned and operated by Cascade.
- 2) The putative facilities are metered and billed together and are not electrically separate.
- 3) The putative facilities are connected to each other at the same plant
- 4) The putative facilities are incapable of operating independently of each other.
- 5) The putative facilities sell to separate and distinct markets
- 6) The precedents cited by CPUD were for the most part a question of production in parallel, i.e. a plant that make both paper and pulp (Ponderay Newsprint) was found to be two separate facilities because there is a market offsite for dried pulp that the pulp mill could serve. These can be called a parallel arrangement in which the facilities can produce either product or both and are thus able to operate independently. An ethanol plant and its dryer are connected in series, one can't operate without the output/production of the other.

CPUD cited one precedent in Carnation potato processing plant in which the plant makes French fries and hash browns and then uses the waste from that line to make potato granules for instant potatoes. This precedent can be distinguished in that the two processing lines were built at different times and there is no evidence that the potato granule line could not be supplied from other sources.

4. The two plants began service at different times, with the main plant starting on January 20, 1971, the granule plant starting on July 1, 1972. The two operations are related because the input to the granule plant is a waste product of the main plant. { NLSL Manual March 1990, Section III, page III-8 }

This file includes:

1. 27 AUG 2008 letter from BPA to CPUD
2. 21 MAR 2008 letter BPA to CPUD

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3. 1 APR 2008 letter CPUD to BPA
4. 18 JUN 2008 letter BPA to CPUD
5. 12 DEC 2008 ADF and other materials for a PDT
6. K&L Gates memo and "a short response"
7. 1 JAN 2009 letter CPUD to BPA
8. General background materials
9. Ethanol production background
10. Pleadings in lawsuit between Cascade Grain and J.H. Hill



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

POWER SERVICES

August 27, 2008

In reply refer to: PSW-6

Mr. Greg Booth, General Manager
Clatskanie People's Utility District
P.O. Box 216
Clatskanie, OR 97016

Dear Greg:

As we have discussed, it is important to establish the date on which we will begin the twelve month measure of energy usage at the Cascade Grain ethanol plant for purposes of the potential New Large Single Load (NLSL) determination. For your records and to attempt to clearly explain this issue as outlined in the Bonneville Power Administration's (BPA) NLSL Policy, I will describe the four Start Date options and then BPA's decision as to the appropriate start date for Cascade Grain.

Under the Northwest Power Act, customer loads associated with a single facility that grow by 10 or more average megawatts (aMW) in any consecutive 12-month period shall be declared NLSL's subject to service with federal power purchased at BPA's New Resources (NR) rate. Measurement of load growth, particularly in the first year of commercial operation, is therefore of paramount importance to all parties concerned. The date used to start the clock running for 12 consecutive months to measure load growth at a new facility becomes very important.

BPA's current NLSL Policy is a combination of contract and policy decisions recorded in several documents: the 1991 NLSL Manual, relevant sections of BPA's 1981 Power Sales Contract and related decisions there under, the 2001 New Large Single Load Policy, the 2002 New Large Single Load Policy Issue Review, and the 2005 Policy for Power Supply Role for Fiscal Years 2007-2011.

BPA's current NLSL Policy provides four alternatives that BPA can use to determine the date to commence its measurement of load growth at a facility for NLSL purposes.

- A) **Prospective Determination** (mutual consent). BPA and the utility agree that the new load will start at 10 aMW or more in its first year of operation so that the load is subject to NLSL treatment from the date it starts operating. (See attached determination for Hyundai)

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- B) **Start of Utility Service.** The date of first utility service to a preexisting load. This option applies in situations in which an existing load of 10 aMW or more is "taken over" in a merger, annexation or similar situation. Here the load is a NLSL from the day the "new" utility begins service. (See 2001 NLSL Policy and attached determinations for Halsey and Plum Creek.)
- C) **Initial Energization.** The date of initial energization (for test and start up) with BPA's consent. In this instance BPA and the utility agree on a date on which the construction at the site is substantially complete and production equipment is being energized for test and startup. (See 2001 NLSL Policy, section V; 1991 NLSL Manual at page 3.)
- D) **Commercial Operation.** The date of commercial operation (actual production). (See section 8(d), 1981 Power Sales Contract, as referenced in the 1991 NLSL Manual at page 3; see also the 2001 NLSL Policy, section V)

BPA's Consideration of the Alternatives to Determine the Start Date for Measuring the Cascade Grain Ethanol Plant Load:

Option A - Prospective Determination.

Although the installed transformation capacity of 32.5 MVA exceeds the NLSL Policy limit of 10 MVA at which load growth at a single facility must be monitored for NLSL purposes, Clatskanie has insisted that the actual load would not result in an NLSL determination. Therefore Option A, requiring mutual agreement, is inapplicable to the Cascade Grain Ethanol plant.

Option B – Start of Service

Clatskanie has suggested that the date of energization of Bradbury Substation constitutes "Start of Service" under BPA's 2001 NLSL Policy (Section II.B.1.a).

The Start of Service Option for selecting a start date only applies in instances in which an existing load is served by a "new" utility, e.g., through annexation or merger. (See attached determinations for Halsey and Plum Creek). The Cascade Grain Ethanol plant is an entirely new facility being built in Clatskanie's service territory. It is not a pre-existing load and therefore Option B is inapplicable.

Option C – Initial Energization for Test and Start-Up

Clatskanie has suggested that the first rail delivery of corn to the plant's site on April 15, 2008 was the first production related activity at the site and therefore should be used as the Start Date. The fact that material for production was on site does not meet the test of Initial Energization for

Test and Start-Up. Rather, the test is that production equipment is being tested for production and that construction at the site is substantially complete.

It is a settled point in BPA's implementation of the Policy that initial energization for test and start up activity in one area of the plant while significant construction activity is going on elsewhere in the facility will not meet the standard (see section II.B, 2001 NLSL policy). It is clear from BPA visits to the site on May 20, 2008 and May 30, 2008 that the general contractor, JH Kelly, was still very much engaged in significant construction activity. In discussions with Clatskanie PUD staff and Ken McFarland, Cascade Grain's plant manager, on May 30, 2008, we learned that JH Kelly had not completed construction and was actually operating under the liquidated damages provisions of their contract with Cascade Grain. Based on this, the start date is clearly not earlier than May 30.

We note that total metered power consumption at the facility was relatively steady and below 3 MW until June 7, consistent with the ongoing construction activity, at which point it began a rapid rise to 12 to 13 MW over the next two weeks. You have indicated to us that the plant was testing production equipment in this period. This suggests that the June 7 to June 21 period is one in which construction was substantially complete and production equipment was being energized for testing and startup.

Option D – Start of Commercial Operation

The start of commercial operation would appear to be shortly after the date of initial energization, as is normally the case. We understand that Cascade Grain began an Acceptance Test (7-day, 100% load) on June 24, 2008. In our meeting at Cascade Grain on July 18, 2008, Ken McFarland told us that Cascade Grain had not accepted title to the plant from JH Kelly and would not do so until the Acceptance Test was successfully passed. If we use the Start of Commercial Operation option, the logical start date is when Cascade Grain began the Acceptance Test that ultimately led to the title being transferred.

Start Date Conclusion: Based on the preceding discussion we believe that application of either Option C or D result in start dates that reasonably apply in this case. BPA has decided the Option C result, June 7, 2008, as the date of initial energization for test and start-up as defined in the NLSL Policy, is the start date on which BPA will begin measuring the Cascade Grain ethanol plant load toward the 10 aMW NLSL limit.

We note that contrary to Clatskanie's initial assurances that the Cascade Grain plant would consume less than 10 aMW, BPA has already measured the load as running at 12 to 13 MW. With a June 7 start date, continued operation at 12 to 13 aMW through the balance of the 12 months would result in the facility exceeding 10 aMW in its first 12 months of operation and designation as an NLSL.

As of August 18, with the final installation of meters on the back up diesel generators, BPA is confident that we have metering installed of a quality and in all places needed to monitor load growth at the facility, including the pumping loads at the storage tank and dock. Absent hearing a compelling argument from Clatskanie that the start date of June 7, 2008 is not appropriate, we will use such date for the purpose of making a NLSL determination. If we have not heard back from you within 30 days we will consider this decision final. Thank you for your assistance in this project.

Sincerely,

(b) (6)

Theresa Rockwood
Account Executive

Three (3) Enclosures:
Determinations for 1) Hyundai, 2) Halsey and 3) Plum Creek

bcc:

R. Davis – KSL-4

T. Johnson – LP-7

T. (Tom) Miller – LP-7

P. Norman – P-6

M. Gendron – PS-6

R. Anderson – PSS-6

A. Quinata – PSS-6

R. Rogers – PSS-6

R. Sigurdson – PSS-6

CCIS – KSC-4 (Clatskanie, 01PB-12220)

Official File – PSW-6 (PM-11)

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Board of Directors
Merle Gillespie
Don Hooper
Stephen D. Petersen
Bob Wiggins
Janet Willey

General Manager
Gregory A. Booth

April 1, 2008

Paul Norman, Senior Vice President
Bonneville Power Administration
Power Services
P.O. Box 3621- P
Portland, Oregon 97298

Dear Paul:

As we discussed, we have reviewed the letter from Theresa Rockwood dated March 21, 2008 spelling out BPA interest and concerns in regard to the New Large Single Load (NLSL) Policy.

We expect that the Cascade Grain Products LLC ("Cascade Grain") plant will not reach the 10 average MW level. Our contract with them limits plant consumption to an amount less than that. Given the efficiency guarantees that are in place for the plant, we do not believe that the threshold will be exceeded. Further, installed transformation capacity is not a direct indicator of energy consumption. The fact that there are approximately 30 MVA of distribution transformation on site or that we have placed a 50 MVA transformer in our new Bradbury Substation is not an indication of energy consumption for the plant. Peak loads will be significantly higher during unusually warm weather, and transformation capacity needs to be in place to accommodate that limited contingency. The Bradbury Substation is sized to meet area loads for reliability and load growth.

However, it is likely that Cascade Grain energy requirements will approach the 10 average MW threshold, and we want to be fully cooperative with you in having a measurement and monitoring plan in place that meets both of our needs. The revenue metering at the Bradbury Substation is now in place and fully functional; it was developed and installed with the full participation and approval of the BPA Transmission Services. Replacement of that metering would be unnecessary and impractical.

We will cooperate fully with you for the installation, at your expense, of metering at the Cascade Grain plant to measure electrical load as necessary for a determination of the plant's status in regards to NLSL policy. This may best be done at the secondary voltage level so that electricity from any alternative service path that might still exist could be fully accounted for. As we

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discussed, we want the installation and access to this metering to be overseen by a reputable third party which both Clatskanie and BPA are comfortable with. We suggest Pacific West, who has worked for both of us in the past. We require equal access provisions for both Clatskanie and BPA and will work with our customer, the Port of St. Helens and Portland General Electric to provide site access for installation and maintenance of this equipment. A confidentiality and non-disclosure agreement between Clatskanie and BPA is also necessary and is enclosed.

If this is acceptable, please let me know and I will direct our Power Management and Engineering staff to work with your staff to proceed accordingly.

Sincerely,

(b) (6)

Greg Booth
General Manager

Enclosure (1) - Confidentiality and Non-Disclosure Agreement

cc: J. Taffe, Power Manager
L. Quiachon, Project Engineer
Theresa Rockwood, BPA-PBL Account Executive



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

POWER SERVICES

March 21, 2008

In reply refer to: PSW-6

Mr. Greg Booth, General Manager
Clatskanie People's Utility District
PO Box 216
Clatskanie, OR 97016

Dear Greg:

We very much appreciate the time and energy you and your staff have devoted to helping us understand the timing and magnitude of the upcoming electrical load at the Cascade Grain ethanol plant at Port Westward. As you know, under section 3(13) of the Northwest Power Act, the Administrator is statutorily obligated to determine whether a new load is a New Large Single Load (NLSL). If it is, then sections 7(b)(4) and 7(f) of the Act require that BPA's rate for firm power to serve the NLSL be priced at the new resource rate, not the PF rate applicable to preference customer general requirements.

BPA's NLSL Policy describes the type and size of loads which will trigger a determination by BPA as to whether or not such load is or is not a NLSL based on monitoring and measurement of the load. To accurately measure a load it is necessary for BPA to obtain accurate metering information at the load's facilities, which requires the cooperation and assistance of BPA's utility customer and the underlying consumer whose load is to be measured. For a consumer load that is expected by BPA to be at or just below the NLSL threshold of 10 aMW or more in a consecutive 12-month period, BPA monitors the consumption of electricity by the consumer load at its facilities. Without access to all actual load data of the consumer, BPA will make a prospective NLSL determination, subject to a review of actual load growth data. BPA must be confident of the accuracy and completeness of such data in making this determination. In past situations the utility and consumer have worked with us to ensure that metering is in place to assure this confidence.

Since January, BPA and Clatskanie have been discussing how arrangements can be made to allow BPA to verify if this new load is a NLSL. As discussed below, several conditions presently exist which raise concerns that this load could exceed the NLSL threshold; however, current metering makes it very difficult for BPA to verify whether the load will actually exceed the threshold. These conditions are:

1. **Plant Size**
The Cascade Grain ethanol plant is a facility planned to produce in excess of 110 million gallons of ethanol per year. It is our understanding that ethanol industry efficiencies vary from 0.8 kWh/gallon to 2.0 kWh/gallon produced. Based on such standards the first year's load growth at Cascade Grain (assuming full production as advertised) could range from 88,000,000 to 220,000,000 kWh. Even the low end of this range exceeds the NLSL threshold of 87, 600,000 kWh. While initial load growth may vary from the expected operating level of the plant, the numbers indicate that there is a real possibility that the load could be greater than the 87, 600,000 kWh NLSL threshold during the first 12 month period of measurement.
2. **Transformation**
Installed transformation at Cascade Grain's plant is sufficient to support a load over three times the NLSL threshold. Transformation at three "power centers" or "mini-sub's" is 10 MVA at two power centers and 12.5 MVA at the third power center for a total of 32.5 MVA of installed transformation capacity. BPA's NLSL Policy limit is 10 MVA total to trigger a NLSL review.
3. **On-site Generation**
During our visit on March 5 we noted the presence of auxiliary generators in each of the mini-sub's with a combined generation nameplate rating of 4.5 MW. For NLSL determination purposes, we must know the actual load of the facility, not counting any apparent reduction due to operation of these generators. The presence of generation capacity "behind the meters" raises questions over the accuracy of load data received by BPA during NLSL monitoring.
4. **Alternate Service Path**
The Cascade Grain plant may also receive service (up to 3 aMw) over the "temporary tap" presently connected to the plant. At this time BPA has no way of measuring how much power is delivered over the "temporary tap" to Cascade Grain.

With BPA proposing to offer new long term power sales contracts and to establish tiered rates, it is extremely important that this load be accurately monitored and the above concerns over Cascade Grain's plant load be addressed and resolved. Under BPA's Regional Dialogue Policy and tiered rates construct, BPA recognizes that the Cascade Grain plant load represents a significant opportunity for Clatskanie to increase its contract high water mark (CHWM). On the other hand, if that load were to be determined a NLSL it would not be added to Clatskanie's CHWM. Whether under a melded or tiered rates regime, the difference in pricing for NLSL's is significant. This makes your cooperation imperative.

In the spirit of cooperation, we would agree with your March 8, 2008 proposal for "one set of meters, which both BPA and Clatskanie can review and access information from." Unfortunately, the meters presently installed at the Bradbury substation neither meet BPA

standards nor allow BPA to monitor or access them. In light of this unique situation, BPA proposes the following metering plan, which we believe is consistent with Clatskanie's proposal.

1. BPA will pay to replace the two installed meters in Bradbury Sub on the feeders that are dedicated to the Cascade Grain plant with BPA revenue quality meters that BPA can electronically monitor, *i.e.*, telemeter. Clatskanie could maintain ownership of the meters.
2. BPA will pay for a similar meter to be installed on the "temporary tap" positioned to capture any flows to the plant, and on any future such connections to the plant.
3. BPA will pay for metering to be placed on each of the auxiliary generators in the mini-subs.
4. Once the meters are installed Clatskanie, Cascade Grain and BPA will agree on a protocol that gives BPA staff unrestricted entry to the relevant facilities for inspection and testing.

With this type of plan and cooperation, BPA, Clatskanie and Cascade Grain will have the most up-to-the-minute accurate and complete information on the progress of load growth at the facility. BPA believes this will create the best opportunity for Clatskanie and Cascade Grain to ensure the new load does not exceed the 10 aMW NLSL threshold, and for BPA to verify that this is the case. On the other hand, if BPA makes a prospective NLSL determination, Clatskanie would have the opportunity to provide clear verifiable evidence that the load did not actually reach the NLSL threshold after the first 12 months of operation. But given the metering problems described above, developing this evidence could be difficult. We therefore believe this after-the-fact approach to be much inferior to the collaborative metering proposal we make above.

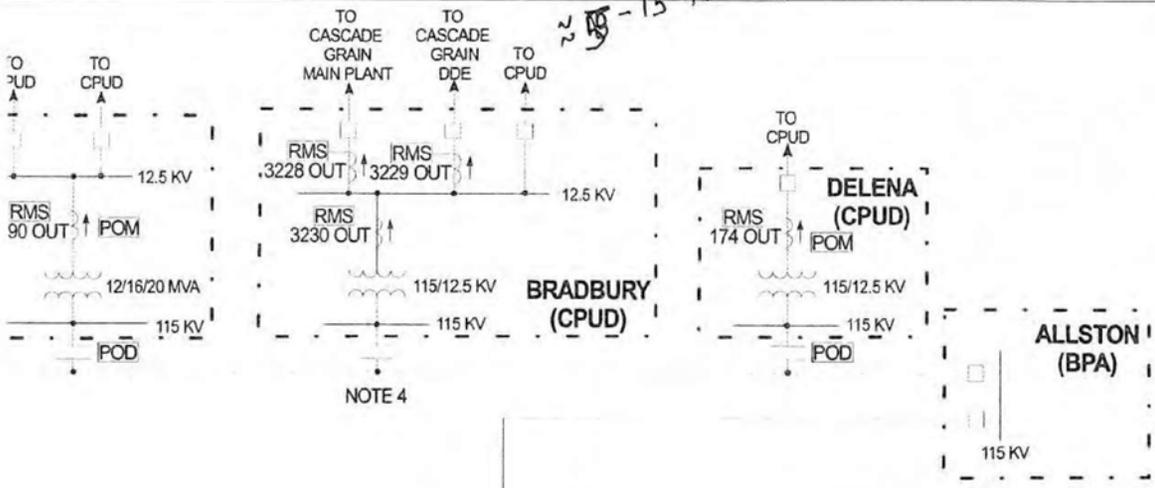
Since it is our understanding that the ethanol plant will go into commercial operation in May, time is of the essence. We request your answer to BPA's proposal by the end of March. If our proposal is acceptable, we will need to work together so that the proposed metering is in place by the end of April to ensure that the load is being measured properly when kWhs begin to be counted against the NLSL threshold. I look forward to your response.

Sincerely,

Theresa Rockwood
Account Executive

cc:
Charles Carlson, President, Cascade Grain Products

28-15 KW

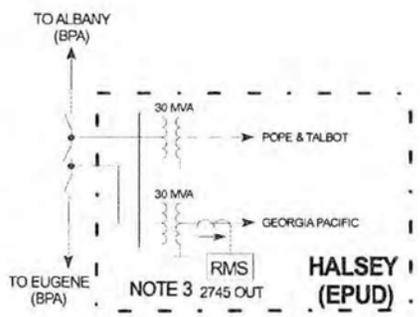
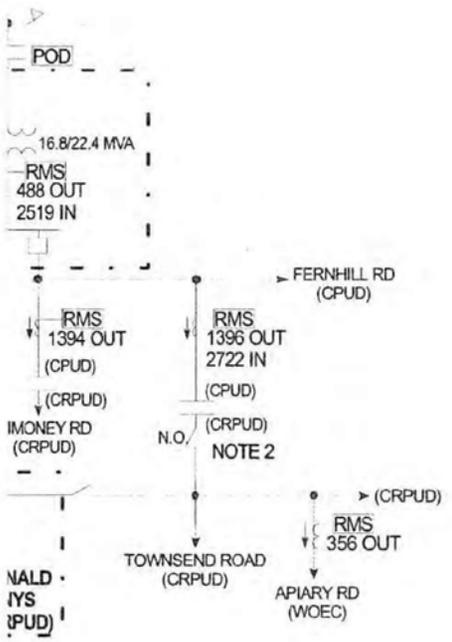


LEGEND
 BPA - BONNEVILLE POWER ADMINISTRATION
 CPUD - CLATSKANIE PUD
 CRPUD - COLUMBIA RIVER PUD
 EPUD - EMERALD PUD

RMS - REMOTE METERING SYSTEM POLLED AUTOMATICALLY BY THE RMS MASTER OR THE MV90 SYSTEM

↓ - ARROWS ADJACENT TO METERS SIGNIFY DIRECTION OF ENERGY FLOW OUT OF TBL.

- NOTES:**
- METER DATA IS SUBTRACTED BASED ON BILLING INSTRUCTIONS.
 - THE DIKE ROAD AND FERNHILL ROAD FEEDERS ARE USED FOR BACKUP FOR BOTH CPUD AND CRPUD.
 - GEORGIA PACIFIC'S HALSEY MILL LOAD IS SERVED BY CPUD.
 - BRADBURY SUBSTATION IS TAPPED ONTO THE ALLSTON-ASTORIA LINE ON AN INTERIM BASIS. CPUD PLANS TO EXPAND THEIR EXISTING CLATSKANIE SUBSTATION TO FEED BRADBURY SUBSTATION OUT OF A NEW 115 KV BAY POSITION. BRADBURY SUBSTATION HAS 4 EXISTING AND 5 FUTURE LOW VOLTAGE FEEDER POSITIONS FOR FUTURE UTILIZATION.



REVISED: 02/05/2008 SHEET 2 OF 2

BONNEVILLE POWER ADMINISTRATION Customer Service Engineering Meter Diagram
CLATSKANIE PUD
Customer # 10105
CUSTOMER SERVICE ENGINEER: KIM GILLILAND - TPC/TPP-4



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

POWER SERVICES

June 18, 2008

In reply refer to: PSW-6

Mr. Greg Booth, General Manager
Clatskanie People's Utility District
P.O. Box 216
Clatskanie, OR 97016-0216

Dear Greg:

This letter is to document the process and next steps of the metering project at Cascade Grain.

Through US&A, you have received a metering plan. I assume the information is clear but if you have any questions please address them to US&A and me.

We are considering setting a date to begin metering for NLSL determination purposes based on the start of commercial operation. While the NLSL Policy calls for mutual agreement on a start date for load growth measurement purposes where possible, in the event the Parties cannot reach agreement BPA reserves the right to select a date it feels is most in keeping with the spirit and letter of the NLSL Policy. During our site visit of Friday May 30, 2008, we noted that a number of fermentation vats were open and there was not a complete connection to the storage tanks for the denatured ethanol, among other factors, which indicated that construction was still ongoing at the plant.

Lack of access to and information on the site earlier in the year make it impossible to arrive at a date of "initial energization" with any degree of confidence. As of June 12, 2008, we are seeing meter readings consistent with what we would assume is close to commercial operation but BPA will require an official statement of notification by Cascade Grain that they are in fact in commercial operation.

Since ethanol storage prior to shipment is an integral part of the production and sale of ethanol fuels; the storage tanks and vapor recovery system remain an integral part of the ethanol plant operations regardless of what ever rate schedule CPUD uses to bill its customer. Also regardless of the fact that part of the facility is up to a mile outside the "plant gates" {See Fac/CF/CT Det -- DOE Richland - March 30, 2005} does not disqualify it as part of a single facility. Before we have meters installed at the storage tanks and dock, please send me weekly meter readings from those two meters.

As regards the "emergency shut down generators", while it is true that the generators primary purpose is emergency shut down that does not preclude their use to reduce consumption of energy used for NLSL load measurement process. The fact the generators are "non-synchronous" with the PUD is irrelevant since the switching facilities we've seen at the plant would facilitate the isolation of part of the plant from the CPUD system with a corresponding apparent reduction in metered load at the plant. Under its policy, BPA must be confident that we know what is going on at the plant under consideration from a NLSL perspective. If BPA is prevented from installing the meters deemed necessary to provide such confidence its remedy is to declare the load a NLSL and place the burden on CPUD and Cascade Grain of proving the opposite is true.

Finally, we are expecting a formal request from you for a facilities determination. If you or your staff would like more information on what is involved with that process, we would be happy to meet with you, in Portland, Clatskanie or via conference call.

Please be aware that based on the complexity and difficulty of revisiting a NLSL or Facility determination after the fact, BPA will not reopen the issue of a load's NLSL status once the Administrator has made a decision.

Sincerely,

(b) (6)

Theresa Rockwood
Account Executive

cc:
Mr. Charles Carlson, CEO, Cascade Grain Products, LLC

bcc:

T. Miller – LP-7

P. Norman – P-6

M. Gendron – PS-6

R. Anderson – PSS-6

J. Kolze – PSS-6

R. Rogers – PSS-6

A. Quinata – PSS-6

S. Coe – PSW-6

CCIS Authentication – KSC-4 (CS_01PB-12220)

Official File – PSW-6 (PM-11)

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Power Decision Team Decision Documentation
12 DEC 11

Chair: Mark Gendron

Other Decision Makers: Garry Thompson, Elly Adelman, Joe Rogers, Scott Coe, Sam Cannady, Timothy Roberts, Larry Kitchen, Chuck Maichel, Ray Bliven, Liz Evans

Presiding Officer: Claire A. Hobson

Presenters: Theresa Rockwood, Robert A. Anderson, Tom Miller

Issue: Determine if the Measurement Interval established for Cascade Grain should be changed for its successor in interest Columbia-Pacific Bio-Refinery (Col-Pac)

After a difficult series of negotiations with CPUD which were complicated by CPUD's extreme reticence regarding any information about the ethanol plant, BPA proposed and Clatskanie PUD (CPUD) acquiesced to, a measurement interval for the Cascade Grain ethanol plant at Port Westward Oregon. of 7 Jun 08 through 6 Jun 09 (since 'rectified' to 1 JUN to the following 31 MAY to coincide with billing intervals). This is the only contractual agreement between BPA and CPUD regarding the ethanol plant.

N.B. Under BPA's NLSL Policy the Measurement Period means two dates certain 12-months apart; the Measurement Interval is the 12-month period specific to the load in question.

BPA (PS) installed 6 meters at the plant to monitor load growth. These meters are still in place and being monitored by PS.

By the end of December 2008 Cascade Grain had ceased production and later in 2009 declared bankruptcy. The plant has been closed with on a maintenance load of less than 1 aMw form early 2009 to date.

A new entity has taken over the plant, Col-Pac, and is in the process of bringing the plant back on line with a projected date of commercial operation of early January 2012. Projected load may be as high as 20 aMw. The question facing BPA is should the measurement interval be adjusted to coincide with the resumption of commercial operations and does that comport with the NLSL Policy? There is a subsidiary question regarding the partial year's load in 2008, should that count as the first year's load growth for NLSL purposes?

The alternatives before the PDT are:

1. Establish a new start date and measurement interval beginning on the date of commercial operation and measure 12-months of load growth as though the Cascade Grain episode never happened. Would require an expansion of the NLSL Policy as BPA has never confronted this issue before.
2. Keep the original start date and measurement interval and start measuring the load growth from zero whenever the plant starts commercial operation. If the plant were to start in January 2012 that would result in 6 months of load counting as the total load growth for year one of the Col-Pac NLSL monitoring exercise. This Alternative comports with the NLSL Policy as it stands today and is the recommended Alternative.
3. Treat the first partial year's load growth as the total for year one of the ethanol plant monitoring period. This is CPUD's preferred alternative and completely goes against the NLSL Policy.

CPUD has approximately 1.9 aMw of Provisional HWM on Path 1, i.e. linked specifically to the ethanol plant load. There is some question regarding CPUD's eligibility for the Provisional HWM under the TRM if the load is deemed a NLSL.

Power Decision Team Decision Documentation
12 DEC 11

NLSL Issues are a hot button item in the Region and this is a particularly complex and difficult issue

Decision Analysis:

The Decision Maker feels the issue is not yet ripe and decided to continue to monitor loads at the site over the BPA installed meters. When and if the load reaches 8aMw for a sustained period the PDT will reconvene to consider this issue.

Decision Follow Up:

Implementation Items:

Delineate the action items to implement the decision and the person responsible (or organization) responsible for the action item.

Include any risk mitigation or contingency planning that is necessary.

Follow Up Date (if necessary):

Define the timeframe or date in which the person responsible for follow up (or delegated presenters) will review the decision with the decision forum.

Person Responsible for Follow Up:

List the person responsible for presenting the follow up materials.

Supplementary Materials and Information:

(Embed any documentation necessary.)



"PBL Decision Support Analysis (Iss
(Required)



"PBL Decision Process Presentation
(if available)



"Decision Support Template_10-3-03.doc
(if necessary)



"Misc. Attachments.doc"
(If necessary)

Agency Decision Framework

Columbia Pacific Bio-Refinery Load Measurement for NLSL Monitoring

The Issue:

How should BPA measure load growth for New Large Single Loads (NLSL) monitoring at the soon-to-be-reopened ethanol plant at the Port Westward site in Clatskanie People's Utility District's (Clatskanie) service territory?

1. Objectives?

- Administer BPA's NLSL Policy in a transparent, consistent and fair manner.
- Encourage economic development in the region consistent with statute and BPA policy.
- Avoid cost shifts between customers and perceived inequities under the Tiered Rates Methodology (TRM).
- Successfully transition BPA's NLSL Policy to operate in the new Tiered Rates environment in accordance with existing precedent.

2. How does the objective connect to agency strategic direction?

S1 – Policy and Regional Actions: BPA policies result in regional actions that ensure adequate, efficient and reliable regional transmission and power service⇒ *Implementation of the New Large Single Load policy is an important BPA legislative obligation.*

S9 - Stakeholder Satisfaction: Customer, constituent and tribal satisfaction with BPA is high⇒ *The greatest customer satisfaction, in the long run, comes from Implementation of BPA policies consistently while being supportive of customer's unique business goals.*

I7 – Risk-Informed Decision Making and Transparency: BPA's processes, decision making and performance are transparent, risk-informed and based on structured analysis⇒ *The decision regarding this potential NLSL is logical and defensible to Clatskanie, other preference customers and stakeholders.*

3. Who is the decision maker(s)?

The Decision Maker is Mark Gendron, VP for Requirements Marketing.

Other Individuals & Groups Consulted:

Legal: Tom Miller – LP-7

NLSL SMEs: Robert Anderson; Lindsay Bleifuss – PSS-6

Account Services: Angie Quinata – PSS-6

Metering: Misty David – KSM-6

Load Forecasting: Sarah Burczak – KSL-4

Transmission Acquisition: Jack Kolze – PST-6

Transmission AE: Blake Weathers – TSE-TPP-2

4. What is the context?

It was not a smooth start in 2008 with the measurement of this potential NLSL.

When Clatskanie first contacted BPA in regard to a proposed ethanol plant at Port Westward in 2007 it was described as a plant that would eventually grow to about 18 aMW, but would not breach the NLSL threshold. The Power Account Executive (AE) had some considerable difficulty in getting Clatskanie to agree to a site visit to the ethanol plant. The first site visit was on May 20, 2008 and was limited to Bradbury Substation as Clatskanie “did not have permission to enter the Cascade plant”. Bradbury Substation has a total of 5 feeders with two dedicated to the ethanol plant; it was Clatskanie’s position that BPA would get all the information it needed under the NLSL Policy from the readings of those meters. When BPA was finally granted access to the plant site but not to Cascade staff, it was determined that there are pump loads that are not fed from the two feeders and there are also two stand by generators with an output that totals some 4.5 aMW. It was eventually determined that BPA needed 6 meters on-site to be assured of a complete picture of load at the plant, one on each feeder, one for each of the two pump sites, and one on each of the stand by generators. Final BPA metering was not fully installed until July 11, 2008 for the “mini SUBs” and August 18, 2008 for the stand by generation.

As late as July 11, 2008, metering was not available to accurately monitor what was going on at the Cascade Plant and therefore there was no way to separate out construction load from test and installation load.

In a meeting on July 18, 2008 at the Cascade plant it was revealed by the plant manager in a discussion of the impacts of a power outage on BPA's 115 kV line on July 3 were that it interrupted the 7-day, 100% load acceptance test that was then underway. Cascade was still in a test and installation mode on July 3, 2008, and for some weeks thereafter, they were not ready for another acceptance test on July 18, 2008. The Cascade plant manager expressed some frustration at the continued construction related delays.

In a letter to Clatskanie dated August, 2008 BPA made a determination of the "Start Date" for NLSL load monitoring purposes; "BPA has decided the Option C result, June 7, 2008, as the date of *initial energization for test and start-up* as defined in the NLSL Policy, is the *start date* on which BPA will begin measuring the Cascade Grain ethanol plant load toward the 10 aMW NLSL limit."

During the first six months after June 2008 the plant had a peak load of approximately 12 aMW but encountered so many problems in its initial start-up phase that it seldom reached its peak. The plant faced a declining market and problems with ethanol contamination such that buyers refused their shipments. The plant was closed by December of 2008.

The plant did not reopen in 2009 or 2010.

Total kWh accumulated at the plant during its first Measurement Period, June 7, 2008 through June 6, 2009, equates to approximately 6.09 aMW.

The plant did not operate for the entire first Measurement Period and did not operate at all in the subsequent Measurement Period, nor in the later 2010-2011 Measurement Period. The plant ultimately went into bankruptcy.

Due to the fact that the Cascade Grain operation never completed its first Measurement Period and that Cascade Grain went out of business, BPA never made a determination of the load growth at the plant and the potential NLSL status remains an open question.

In mid-2011 BPA began hearing rumors of a successor in interest preparing the plant to reopen. Most of the information we received was through the local Clatskanie newspaper.

On inquiry Clatskanie told the AE that Columbia Pacific Bio-Refinery, successor in interest to Cascade Grain, is refurbishing the plant with a projected start date in January 2012.

Clatskanie is a Slice/Block customer with 1.9 aMW of Provisional High Water Mark load. Clatskanie has elected to serve all ARHWM load with non-federal resources in the first Rate Period.

Clatskanie has requested that the total number of kWh accumulated in 2008 (6.09 aMW) be used as the base load from which Columbia Pacific Bio-Refinery load growth be measured.

BPA's NLSL Policy does not provide for preservation of "load growth" for a facility that does not complete its first year of operation for load monitoring purposes. Even if the old Cascade Grain Company had operated for the full 12 months of the first Monitoring Period, the lapse of 2.5 years, bankruptcy and the advent of a new owner, Columbia Pacific Bio-Refinery, would negate the concept of Load Normalization under the Policy.

It should also be noted that just before the plant closed in 2008 the Parties were involved in a contentious Facility Determination process which was never completed. Columbia Pacific Bio-Refinery proposes to produce additional products at the site that were not contemplated by Cascade Grain; a Facility Determination will have to be completed. The result of which may be a facility different from the one contemplated in 2008.

Statements in the press indicate the distillery process at full operation would result in a 12 aMW load. The new plant will also produce "wet cake", Corn Oil and Corn Syrup. Full operational load may be as high as 20 aMW but the history of the plant and the ethanol industry makes it unlikely that it would reach its full potential in the first 12 months.

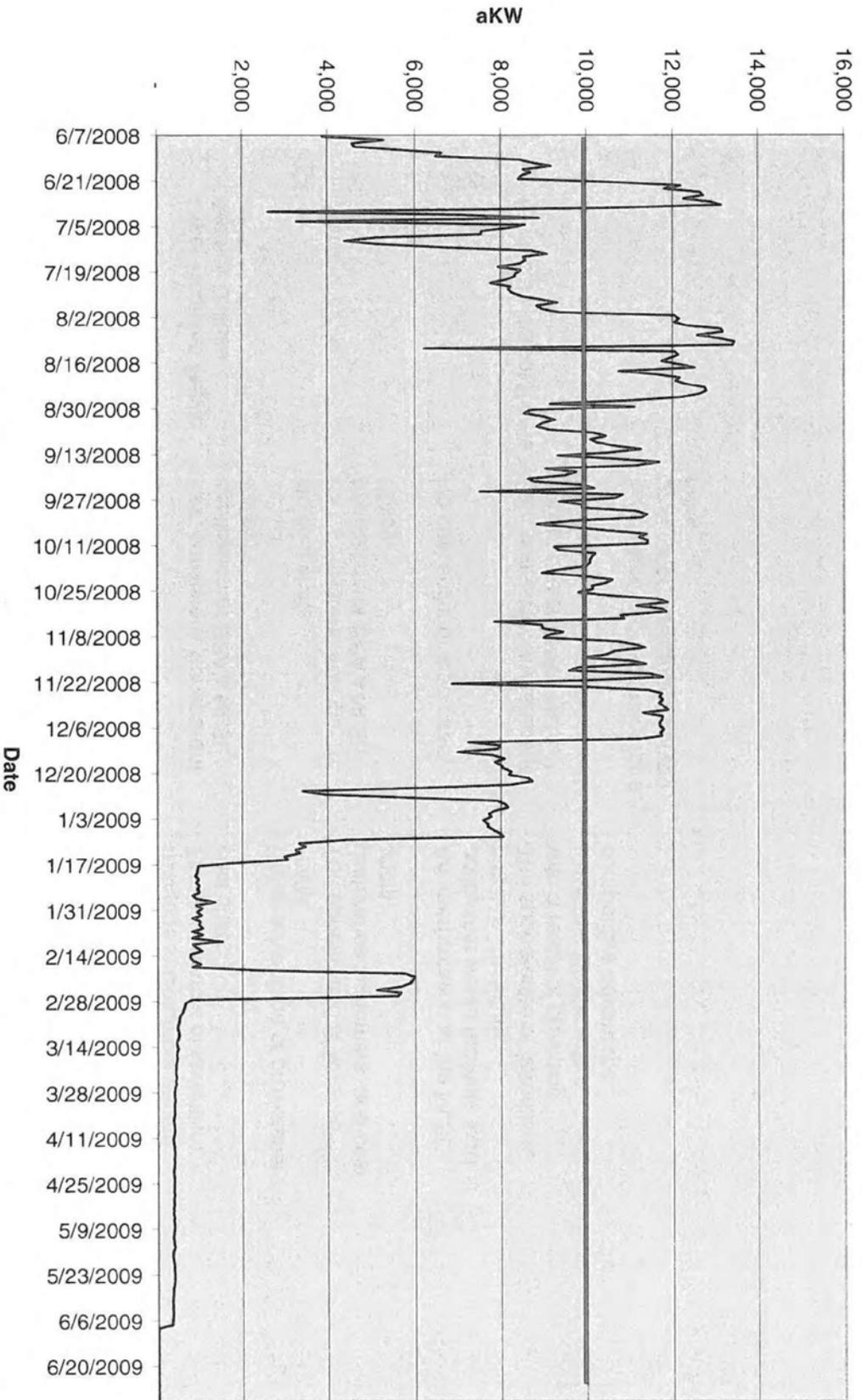
BPA will need to make a plant visit to determine that the plant is essentially the same facility. The alternatives for consideration in this paper assume that it is the same facility.

Other ethanol plants run at about 90% load factor.

Columbia Pacific Bio-Refinery proposes to hire 68 personnel for the site. Such jobs would be an important part of the employment picture in Columbia County, Oregon.

The two largest variables in the cost of ethanol are the cost of corn and the cost of natural gas. Electricity would account for less than 5% of the operating costs of producing ethanol.

Year To Date Daily Average



December 7, 2011

Page 5 of 12

External Stakeholders	What They Want	What They Will Resist
Clatskanie PUD and Columbia Pacific Bio-Refinery	To begin the new measurement period with the 6.09 aMW accounted for in 2008.	Beginning a new measurement period when the plant restarts. BPA's disregard for support of new jobs in Columbia county.
Other Regional Public Agency Utilities	Fair, consistent, transparent application of BPA's NLSL Policy. No cost shifts.	The appearance of favoritism, cost shifts. Unfair advantage of provisional HWM.
Regional IOUs	Fair, consistent, transparent application of BPA's NLSL Policy. No cost shifts or load piracy.	The appearance of favoritism to preference customers, and cost shifts. An interpretation of the NLSL policy that would facilitate load piracy in the future.
Regional Ethanol Plants	Fair, consistent, transparent application of BPA's NLSL Policy. No preferential treatment for a preference customer's served load.	The appearance of favoritism, with a result of providing Columbia Pacific with a competitive advantage.

Internal Stakeholders	What They Want	What They Will Resist
Business/Finance	Minimize any increase in costs or reductions in revenues to BPA.	Setting a precedent exposing BPA to additional risk or costs.
Legal	Awareness of potential precedents. Result consistent with BPA statutory interpretations, and defensible implementation of BPA current NLSL policies.	Precedents or decisions that are contrary to current published policy and will be difficult to defend in subsequent NLSL determinations.
Requirements Marketing	Awareness of potential precedents. Equitable treatment of customers.	Precedents that result in difficult future NLSL implementation. Perception of special treatment for a single customer.
Other BPA's People and Processes	Fair balancing of Customer and BPA business interests. Fair, timely resolution of issues with minimal work impact.	Significant additional workload or indiscriminant regard for BPA policies.

5. What are the decision evaluation criteria?

Does the Alternative deal with the load growth at this facility while following existing precedent under the NLSL Policy?

Does the Alternative allow for the fair application of the TRM, Provisional Load amounts, and the new Regional Dialogue Power Sales Agreements?

Does the Alternative create a result consistent with BPA's statute, the NLSL Policy, and the Power Sales Agreement?

6. What are the risks to meeting the objective?

1. Public utilities or IOU's with either existing or potential NLSLs could challenge a perceived change in policy to accommodate the Columbia Pacific Bio-Refinery.
2. The decision could set a precedent that will make policy decisions more difficult in the future.
3. BPA requirements customers could challenge this decision based on its implication for provisional HWMs.

What are the existing controls?

1. The TRM and Regional Dialogue rate structure make the pricing differential between NLSLs and AHWM load at Tier 2 PF rate less.
2. The NLSL policy is specific on the annual measurement of load once a start date is set but otherwise flexible. BPA has been able to accommodate many different new loads over the years.
3. Clatskanie has 1.9 aMW of provisional CHWM load. Regardless of the size of the new load, the utility will not be eligible for more than that amount of power service at the Tier 1 rate.

What is the likelihood and consequence of the risk?

1. Very unlikely for a formal challenge. Several utilities have experienced recent BPA decisions that have resulted in an avoidance of an NLSL designation. There have been no challenges to those decisions.
2. The likelihood of a similar situation (a plant begins production, a measurement period is established and the plant closes only to be back in production several years later) is very remote.
3. There is a higher probability for this risk. The provisional HWM process is very transparent and all customers have a vested interest in provisional HWMs being fairly granted.

7. Alternatives and Evaluation

Alternative #1 – Reset to Zero and commence measurements when the plant starts commercial operation. This Alternative is least likely to result in the plant avoiding NLSL Status. It is only consistent with the current NLSL Policy if BPA determines that the plant is a new facility. This Alternative gives the Customer nothing of what it has requested.

Alternative #2 – Retain the established Measurement Interval (June 7 to the following June 6). The cumulative take at the plant would begin at about 350 akW and record any load use until June 6. A new 12 month measurement period begins again on June 6.

This Alternative will most likely result in the plant avoiding NLSL Status. It continues to use the established measurement period, and puts the prior period to zero, so that if and when the plant restarts, its load is measured as in the first measurement period. Essentially there are measurements of 6.09; 0; 0; and then actual metered energy consumption for the 6/2011-5/2012 period compared to 0 for the 6/2010-5/2011 period. This approach has never been done in a potential NLSL measurement but is consistent with the current policy. It would be difficult to explain to customers who are not well versed in BPA's interpretation of NLSL policy. This Alternative gives the Customer substance if not the form of what it has requested.

Alternative #3 – Establish a first year measured 1 June, 2008 through 31 March, 2009 (6.09 aMW).

This Alternative is likely to result in the plant avoiding NLSL Status. There is no basis for "normalization" of this load in this amount; it ignores the next two monitoring periods in which the load is zero, and the shut down was due to product quality and errors in production leading to the first owner filing for bankruptcy protection. All these are actions within the consumers control or responsibility. It is inconsistent with the current NLSL Policy. This Alternative gives the Customer what it has requested. This Alternative would require a significant change to the NLSL Policy as it currently stands.

Criteria	Alternative #1 Base Case	Alternative #2	Alternative #3
Business/Finance			
<ul style="list-style-type: none"> Does the alternative result in cost/benefits to BPA? 	If the anticipated load size is forecasted correctly, there is a high probability the load would be designated an NLSL.	The load will most likely avoid the NLSL designation. BPA would provide provisional 1.9 aMWs.	The load will certainly avoid the NLSL designation. BPA would provide provisional 1.9 aMWs.
Legal			
<ul style="list-style-type: none"> Is the alternative consistent with the NLSL legislation and policy? 	A strong legal case can be made that the interval between when the plant stopped production in 2008 and a new start up in 2012 requires a new measurement period.	This alternative has a precedence with the Hynix decision. EWEB asked that we consider a new start date. After review, BPA determined to maintain the original start date.	The measurement period in this alternative is only 9 months. The statute specifically states 12 consecutive months measurement. BPA does not measure loads on less than the one year time period in statute and policy.
Environment			
<ul style="list-style-type: none"> Does this alternative advance BPA's objective of environmental stewardship? 	Based on the assumption that the plant can correct its past QA problems, to the extent that ethanol has a positive environmental effect and the measurement results in an NLSL designation, BPA would not be providing preference power for part of the load and may not be advancing environmental stewardship.	Based on the assumption that the plant can correct its past QA problems, to the extent that ethanol has a positive environmental effect and BPA would be providing preference power for part of the load, this does advance BPA's environmental stewardship.	Based on the assumption that the plant can correct its past QA problems, to the extent that ethanol has a positive environmental effect and BPA would be providing preference power for part of the load, this does advance BPA's environmental stewardship.

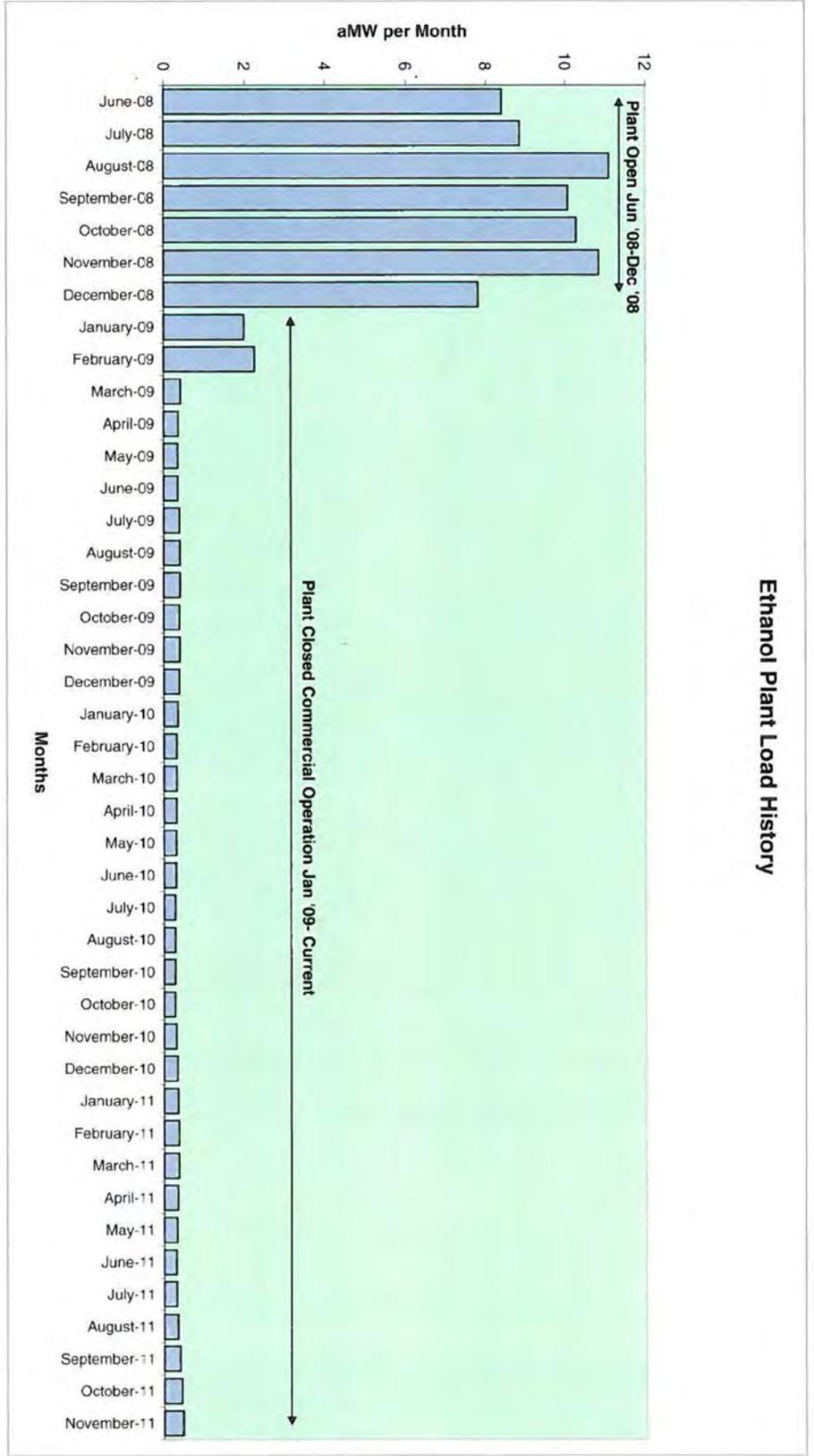
Criteria	Alternative #1 Base Case	Alternative #2	Alternative #3
Climate Change			
<ul style="list-style-type: none"> • CO2 cost (see environment analysis) • Greenhouse gas emissions (see environment analysis) 			
Public Interests			
<ul style="list-style-type: none"> • Clatskanie PUD and Columbia Pacific Bio-Refinery 	The interests of Clatskanie and the owners of the ethanol plant are aligned. They will dislike this alternative. It provides the least chance for 1.9 aMW of PF energy serving their load.	Although not their first choice of options, both parties will appreciate this alternative as it avoids an NLSL designation.	This is the preferred alternative for both parties.
<ul style="list-style-type: none"> • Other Preference Customers and IOUs 	This is the most straight forward and defensible alternative. PF Customers and IOUs will understand and support it.	Difficult to explain and defend. This may appear as a work-around the policy.	Most disregard for the policy. Other BPA customers will object, if they are made aware of this decision.
BPA's People and Processes			
<ul style="list-style-type: none"> • Will the alternative cause significant additional workload for BPA staff? 	Metering and tracking are already in place. No additional work load over the other alternatives.	Metering and tracking are already in place. No additional work load over the other alternatives.	Metering and tracking are already in place. No additional work load over the other alternatives.

8. Recommendation

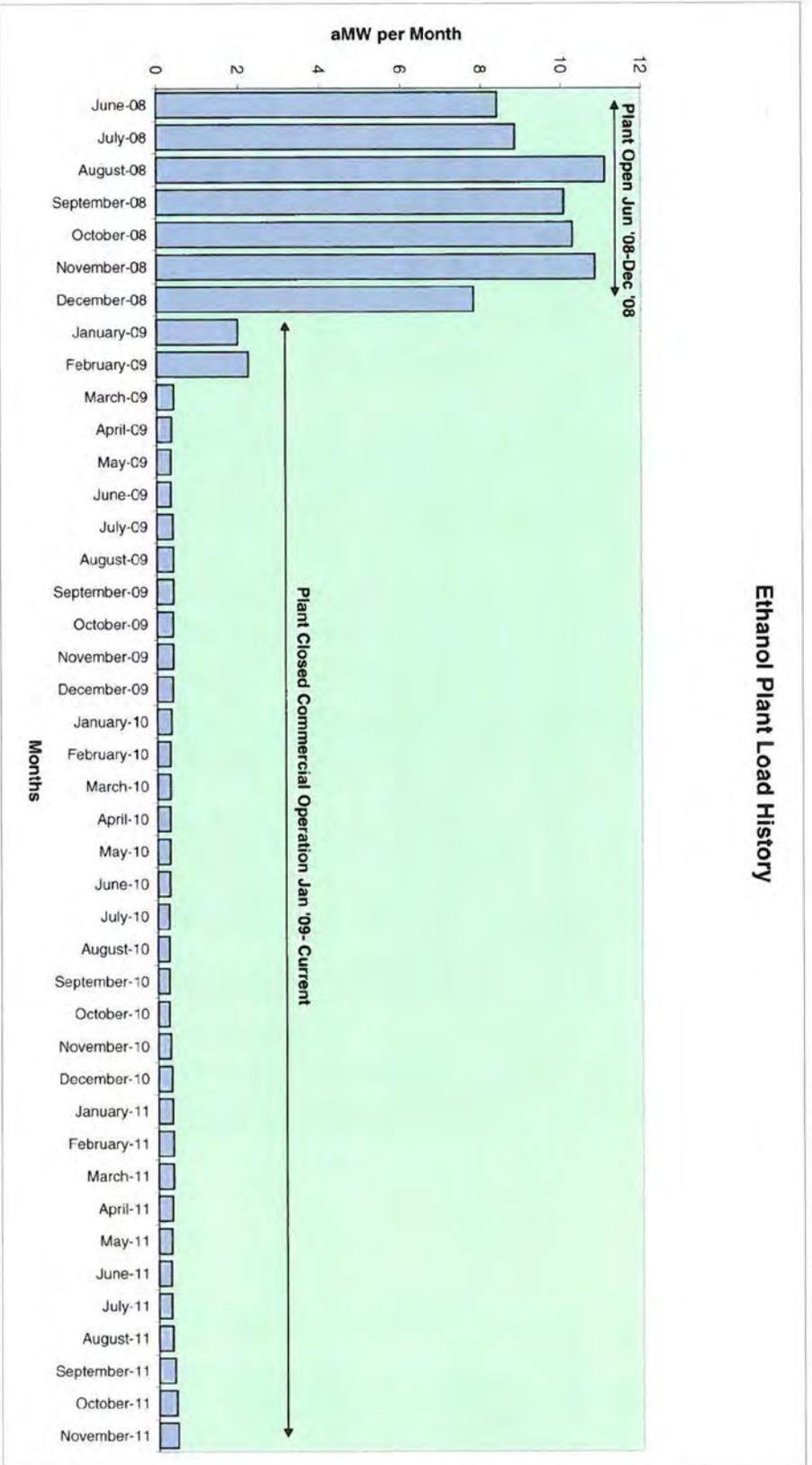
Alternative #2 – Assuming that a facilities determination does not change the status of the plant, this alternative retains the established Measurement Interval (June 7 to the following June 6). The year to date take at the plant will begin at about 350 akW and include any load use until June 6. The new measurement period begins again on June 6, 2012.

This alternative has precedence in a prior NLSL decision (Hynix) to maintain the original start date. The plant will most likely avoid an NLSL determination. It will be difficult for internal staff and customers to understand the rationale and therefore will need to be communicated carefully.

Ethanol Plant Load History



Ethanol Plant Load History



TO: Charles Carlson
FROM: Scott Nelson
DATE: September 26, 2008
RE: Application of BPA NLSL Policy to Clatskanie People's Utility District
Service to Cascade Grain Products, LLC's Facilities

You have asked whether the electric power load of Cascade Grain Products, LLC ("Cascade Grain" or "Cascade") is a New Large Single Load (or "NLSL"), as defined in the Pacific Northwest Electric Power Planning and Conservation Act (the "Northwest Power Act")¹ and in the Bonneville Power Administration's ("BPA") New Large Single Load Policy dated as of April 2001 (the "NLSL Policy") and prior BPA decisions regarding New Large Single Load service (the "Prior Decisions").²

A. Issues

A BPA customer that provides service to a New Large Single Load will not be able to purchase power from BPA for service to such at BPA's wholesale power rate established pursuant to Section 7(b) of the Northwest Power Act. Instead, under Section 3(13) of the Northwest Power Act, if a BPA customer purchases power from BPA to serve an NLSL it must do so at BPA's higher cost rates. This new rate structure was built into the Northwest Power Act due to expected shortfalls in power supply during the late 1970s.³ In addition, inclusion of special provisions for NLSLs was expected to eliminate incentives for industry to move to service areas of BPA preference customers for access to low cost power, preserve low cost BPA power for preference customer's small farm and residential users, and motivate the adoption of energy efficiency and conservation.⁴

¹ "'New Large Single Load' means any load associated with a new facility, an existing facility or an expansion of an existing facility . . . (B) which will result in an increase in the power requirements of such customer of ten average megawatts or more in any consecutive twelve-month period." 16 U.S.C. § 839a(13).

² BPA made case-by-case determinations about whether a particular load was a New Large Single Load during the last twenty-eight years. The NLSL Policy restated conclusions reached in the Prior Decisions. However, the NLSL Policy states that it "in no way attempts to change or implement new policy approaches to new large single loads; it is merely a consolidation of previously announced policies and services (sic) approaches." NLSL Policy at 3. The NLSL Policy states that the Prior Decisions "remain fully in force." NLSL Policy at 13.

³ *Id.* at 3.

⁴ *Id.*

The NLSL Policy prescribes a sequence for BPA's decisions about whether a particular load is a New Large Single Load.⁵ The first issue that must be addressed⁶ is whether Clatskanie People's Utility District ("Clatskanie PUD") is providing service for one Cascade Grain facility or for two Cascade Grain facilities. It is our opinion that Clatskanie PUD is providing service to two Cascade Grain facilities: the ethanol production facility and the DDGS facility, as defined below. Nevertheless, it is also necessary to determine whether Clatskanie PUD's service to Cascade Grain's ethanol production facility will increase by 10 aMW or greater in a twelve month period, thereby causing the ethanol production facility to be an NLSL. This raises a second issue which is the proper start date for an NLSL determination.

B. Background:

1. Clatskanie PUD Service to Cascade Grain

Clatskanie PUD purchases its electric power requirements from BPA to serve Clatskanie's retail load, including the retail load at Cascade Grain's facilities. Cascade Grain owns and operates two facilities located in Columbia County, Oregon. The first facility produces ethanol from corn. Cascade Grain sells the ethanol for use as an additive to transportation fuels. The second facility receives waste product from the ethanol production facility and converts the waste into distillers dried grain with solubles ("DDGS"), which is sold to Cascade Grain's marketing partner, Land O'Lakes, Inc. ("Land O'Lakes"). Land O'Lakes distributes the DDGS for use at feed-lots, dairies, feedmills and export.

2. Ethanol Facility

The basic production process for ethanol at Cascade Grain begins with delivery – typically by rail – and nading and storage of grain. The grain is next put through grinders. The ground grain is mixed with water, cooked and the resulting corn starch is converted to fermentable sugars by the action of enzymes that are added to the slurry. In the fermentation step, sugars are converted to ethanol and carbon dioxide by the action of yeast. The alcohol is further refined through distillation, stored, and then shipped to market.

3. DDGS Facility

DDGS begins as a waste product from the ethanol process. Essentially, the post-fermentation and distillation remains of the grain is collected from the ethanol process as

⁵ *Id.* at p. 5.

⁶ The first item in the NLSL Policy's "Sequence of Decisions", whether Clatskanie PUD's service to Cascade Grain was pursuant to a commitment made prior to September 1, 1979, is not applicable because neither Clatskanie PUD, nor Cascade Grain, claims that service is provided pursuant to such a commitment.

“wetcake.” Although this wetcake can be sold to users such as dairies without further processing, at Cascade Grain’s DDGS facility most of the wetcake is transported to dryers. Once dried, the DDGS is transported to a storage facility adjacent to the dryers before being shipped to marketers or end users such as Land O’ Lakes.

4. Operations At Cascade Grain’s Facilities

There are five factors relevant to the separate facility determination. First, the ethanol production facility does not require the availability of the DDGS facility to produce ethanol. Cascade Grain could sell the ethanol facility’s waste-product to another entity, and the other entity could manufacture DDGS at a location distant from Cascade Grain’s ethanol production facility. Second, the DDGS facility could purchase waste product to convert to DDGS from other sources in the event that the ethanol production facility did not operate. Third, although the DDGS facility is located in a separate building adjacent to the ethanol production facility, the DDGS facility could be located anywhere. Co-location avoids transportation costs, but that is the only synergy arising from Cascade Grain’s operation of both an ethanol production facility and a DDGS facility. Fourth, the two products have entirely different customers, uses and distribution chains. Fifth, the ethanol production facility and the DDGS facility are served from Clatskanie PUD’s substation by separate feeder lines to separate Clatskanie switchyards and Clatskanie is in the process of having distinct metering currently in place for DDGS integrated into Clatskanie’s distribution control system.

On January 23, 2008, the motors in the facilities commenced operation. Clatskanie PUD’s Substation adjacent to the facilities was connected to the main ethanol production building and the DDGS driers by separate feeder lines. The equipment in both facilities started the systematic testing on January 23, 2008. At that time none of the load billed under Cascade Grain’s contract with Clatskanie PUD was related to construction. Some construction did continue on the site, consistent with any start up operation but the construction load was metered separately from the load to the two facilities.

On March 22, 2008, Cascade Grain received a 22-railcar load of grain and on April 15, 2008, it received a 110-railcar load of grain. Grinding of grain began shortly thereafter, although technical issues typical with startup hampered production in May. However, the entire 110 rail-car load was used in the first ethanol production. The first ethanol for commercial sale was produced on June 11 from grain delivered and first ground in April.

C. Separate Facility Determination

The NLSL Policy states that whether a utility provides service to one or multiple facilities depends upon a review of several factors:⁷

⁷ 1981 Power Sales Contract, section 8(a); 1991 NLSL Policy

- Whether the load is operated by a single consumer;
- Whether the load is in a single location;
- Whether the load serves a manufacturing process which produces a single product or type of product;
- Whether the load is contracted for, served or billed a single load under the individual Purchaser's customary billing and service policy;
- Consistent application of the foregoing criteria in similar fact situations; and
- A "catchall" consideration of other relevant factors.⁸

The determination based on these considerations is to be based on the cumulative effect of all the criteria and are not weighted.⁹

1. Products

The ethanol production facility and the DDGS facility produce distinct products using entirely different industrial process. The only connection between the two products is that the DDGS facility uses the waste by-product of the ethanol production facility. Ethanol is shipped to producers of fuels that use the ethanol as an additive. DDGS, a constituent for animal feed, is shipped to Land O'Lakes, which repackages the DDGS for use at feed-lots, dairies, feedmills, and for export. Ethanol and DDGS are entirely different products that are marketed separately to entirely different end users for entirely different purposes -- a fuel and animal feed.

2. Independence

The two facilities are independent from one another. In addition to producing entirely different products sold to different customers for different uses, each facility can be operated without the other facility. Ethanol can continue to be produced even if the DDGS facility is shut down. The DDGS process can operate if the ethanol facility is shut down by securing a new source of wetcake. The two facilities are served with different feeders from Clatskanie PUD's substation, either process could continue if the other were experiencing electrical problems.

3. Separate Service

The loads are metered separately and Cascade Grain plans to have them billed separately. The load had been contracted as a single load only for the administrative convenience of Cascade Grain and Clatskanie PUD.

⁸ *Id.*

⁹ 1991 NLSL Policy at 10.

4. Consistency

This criterion provides that BPA will take into account “similar fact situations”, *i.e.* Prior Decisions with fact situations similar to the facts with respect to Cascade Grain’s facilities. For instance, in one determination, BPA contemplated a narrow view by not applying previous determinations because, although determinations had been made regarding products such as paper pulp and potatoes, no determination had previously been made regarding gold bars.¹⁰ On the other hand, BPA recently compared the virtual products of an internet provider to physical products such as chemicals, pulp, potatoes, and gold bars.¹¹ This letter summarizes Prior Decisions that are factually similar to the ethanol production facility and the DDGS facility.

a. KemaNord

This determination involved two processes that produced liquid sodium chlorate and crystal sodium chlorate.¹² Both operations were located in the same building, had a single owner, and were similar except as to the final stage in which an intermediate compound was either filtered, dried and formed into crystals, or rendered per customer specifications as a liquid. In the event that either operation experienced a shutdown, there could be a “crossover” of materials between the operations. Although the liquid form and the crystal form were nearly identical chemically, BPA noted that KemaNord had identified distinct markets for the products as one was used for wood pulp production and the other was used for a different type of wood pulp production as well as in other products, such as weed killer.¹³ At the time of the determination, the retail electricity supplier said that the two facilities would be served under separate contracts, and metered and billed separately. BPA, noting that this determination was similar with all previous determinations except for the facts that both facilities were in one building and the crossover of materials, nonetheless found the KemaNord operations to constitute two facilities. Presumably, this was based on the analysis that “in all previous cases facilities were found to be separate even though they were in the same “location,” *i.e.*, on the same site.”¹⁴ Further, BPA’s analysis found that “the flow of materials between proposed facilities has not so far been a basis for BPA to determine that operations which supply one another should be determined to be parts of a single facility.”¹⁵

¹⁰ BPA Discussion Paper, NLSL Facility Determination – Newmont Gold Mine

¹¹ BPA Facility Determination, HOYA Technologies LLC (Jan. 18, 2005).

¹² BPA Discussion Paper, NLSL Facility Determination – KemaNord Sodium Chlorate Plants.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

b. Ponderay.

Ponderay Paper operated two adjacent plants, one producing thermomechanical pulp and the other newsprint. The principal input of the newsprint plant was the output from the pulp plant. Notwithstanding this fact, BPA found that even though both products were sold into the paper production market, the market distinguishes between the products because the pulp may be used for production of different kinds of paper than newsprint.¹⁶

c. Carnation.

This determination involved one facility that produced French fries and hash browns and one facility that produced powdered potatoes. The facility that produced the French fries and hash browns also produced a waste product that served as an input for the facility producing powdered potatoes. BPA has noted that “the basic production input for the two product lines was raw potatoes which went through two separate processes to create an end product, French fries, hash browns, and powdered potatoes, each sufficiently distinct from the other and sold differently.”¹⁷ BPA found these facilities to be separate.

d. Newmont.

The Newmont determination involved a gold mining operation and two different processes for producing the same product: gold bars.¹⁸ The entire operation, including a mine, mill, leaching facility, and refinery were all located on the same property. In addition, the operation had a single owner. The two facilities shared a number of resources, including certain personnel, the mine, maintenance and administrative services. In addition, BPA found that Newmont was operating separate facilities even though it operated under a single contract and that the entire site had been billed under a single metering point.¹⁹ Separate billing was to be instituted as expansion plans for the site proceeded.²⁰ As explained in the discussion paper, separate contracts had been prepared but were consolidated into a single contract as a matter of administrative convenience.²¹

¹⁶ HOYA Determination at 10.

¹⁷ HOYA Determination at 10.

¹⁸ BPA Discussion Paper, NLSL Facility Determination – Newmont Gold Mine.

¹⁹ *Id.* See also Letter from Office of the Administrator, Bonneville Power Administration to Daniel M. Kessler, Wells Rural Electric Company (Mar. 20, 1989).

²⁰ *Id.*

²¹ *Id.*

5. Analysis of the Consistency Criterion

Consistent with past determinations, Cascade Grain's operations should be found to be two facilities. With respect to separate products and independence, Cascade Grain's facilities are analogous to the separate facilities described in KemaNord, Ponderay, Carnation and Newmont decisions. They produce distinct products sold to separate markets for different uses. Although the ethanol production facility and the DDGS facility have a common owner and are located on the same property, the separate processes take place in separate structures, this was true in Ponderay, Carnation and Newmont. In KemaNord, the separate facilities were even in the same building.

In KemaNord, BPA found that two products were produced, even though they were nearly indistinct chemically and sold to similar markets. In contrast, ethanol and DDGS are distinct products sold to very different markets. In Carnation, BPA found that hash browns, French fries, and powdered potatoes were potato products, but had separate markets. Although the information was not included in the record, it was presumably the case then, as it is now for Cascade Grain, that the potato products were sold to retail stores and restaurants and, in the case of retail stores, found near each other in the "freezer section." If these potato products were found to be produced by separate facilities that were not together a New Large Single Load, then, ethanol and DDGS are separate products produced in separate facilities.

Although the DDGS process uses a waste product from the ethanol process, use of a waste product from one facility to manufacture a different product in another facility has not resulted in finding that the two facilities were a single facility for New Large Single Load purposes. Both Ponderay and Carnation used waste product from one facility as an input for another facility. In the KemaNord, the flow of materials between proposed facilities was not a basis for BPA to determine two facilities would be treated as a single facility.²²

Finally, just as was the case in Newmont, the facilities could have been served under different contracts, but one contract was used for the purpose of administrative convenience. Also consistent with Newmont, the loads will be separately metered and billed. In addition, although delivery of power is taken from only one substation, the presence of distinct feeder lines, present in this case, has been found consistent with satisfaction of this criterion.²³

D. Start Date For Ethanol Production Facility

²² KemaNord at 3. In addition, BPA noted in a very recent decision that "BPA has applied its NLSL Policy as regards facility determinations based on the separation of the products sold into separate markets or a single market. . . BPA determinations have not focused on the similarity of inputs or intermediate processes in making the product." BPA Facility Determination, HOYA Technologies LLC (Jan. 18, 2005).

²³ See e.g. HOYA Determination at 9.

1. NLSL Policy

The NLSL Policy states that “utility should select, with BPA’s concurrence, either the date of energization, the date of first commercial operation, or date of service from the utility as the start date for measurement.”²⁴ The NLSL Policy does not provide fourth option; BPA cannot impose another, later date.

a. Energization

The NLSL Policy notes that energization must be “based on the consumption of power by a permanent installation (other than substation equipment) owned by the consumer.” The policy does not define “consumption,” “permanent,” or “installation.” Webster’s New Collegiate Dictionary defines consumption as “the act or process of consuming.”²⁵ “Consume” is further defined “to do away with completely.”²⁶ “Permanent” is defined as “continuing or enduring without fundamental or marked change.” Finally, installation is defined as “something that is installed for use.”²⁷ Install is defined as “to set up for use or purpose.”²⁸

The NLSL Policy further states that Construction loads “are not included in first year consumption, and do not establish the energization date.”²⁹ The NLSL Policy notes that the initial energization date includes energization for “testing or startup.”³⁰ Although the NLSL Policy expressly states that construction loads are not included in the determination of consumption, the NLSL Policy does not require that construction loads be zero before “consumption of power by a permanent installation” commences.

b. Commercial Operation

²⁴ NLSL Policy at 6 (emphasis added).

²⁵ Webster’s New Collegiate Dictionary (1981).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ NLSL Policy at 6.

³⁰ Guide to Bonneville Power Administration New Large Single Load Determinations (Mar. 1991)(“1991 NLSL Policy”).

The NLSL Policy speaks to either the first commercial operation or the “commencement of commercial operation” of a facility.³¹ Commercial operation does not appear to be specifically defined in the NLSL Policy or Prior Decisions. The NLSL Policy states that a facility may “phase in” a load, and thus not increase its load by 10 aMW or more in a twelve month period. Therefore, it would be inconsistent with the NLSL Policy to measure an increase in load only from the date a facility first operates at or near capacity.³² As understood in plain English, “commercial operation” means a creating something for the market.”³³

c. Start of Utility Service

The start of utility service option has been determined by BPA to apply to the date of first utility service to a preexisting load.³⁴

2. BPA Tentative Decision

Recently BPA proposed a tentative start date of June 7, 2008.³⁵ BPA rests its decision on the theory that “significant” construction was evident during visits to the Cascade site on May 20, 2008 and May 30, 2008. It thus concludes that the start date, based on either energization or start of commercial operation, could not be before May 30, 2008, because of such construction. BPA then notes that its meters show that the site consumed about 3 MW – an amount it assumes to be consistent with construction at the site, an assertion for which it offers no evidence – until about June 7, 2008, after which the load ramped up to 12 or 13 MW. BPA thus concludes that June 7, 2008 is the date of “initial energization for test and start-up,” and the start date for NLSL purposes.

BPA relies heavily on the fact that it viewed construction at the Cascade site in May and its assertion that it “is a settled point in BPA’s implementation of the [NLSL Policy] that initial energization for test and start up in one area of the plant while significant construction activity is

³¹ See, e.g. NLSL Policy at 2.

³² See, e.g. NLSL Policy at 12.

³³ Webster’s New Collegiate Dictionary, for example, defines “commercial” as “engaged in work designed for the market,” and “operation” as “a method or manner of functioning.”

³⁴ Letter from Steven J. Wright, Bonneville Power Administration to Frank Lambe, Emerald People’s Utility District (May 2, 2003).

³⁵ Letter from Theresa Rockwood, Account Executive, BPA to Greg Booth, General Manager, Clatskanie PUD (Aug. 27, 2008) (“August 27 letter”).

going on elsewhere in the facility will not meet the standard.”³⁶ As support for this assertion, BPA cites section II.B. of the NLSL Policy, which, as noted above, merely states that “[c]onstruction loads are not included in the first year consumption, and do not establish the energization date,” and the “energization date must be based on the consumption of power by a permanent installation (other than substation equipment) owned by the consumer.” As noted above, the construction load need not be zero before a start date is determined for a facility. Rather, construction load may not be included in any consumption used to determine the start date. The test is whether power is being supplied to a permanent facility, even if it is for the purpose of testing and start-up.

3. Analysis of Cascade Grain Start Date Options

a. Start of Utility Service.

The start of utility service option has been determined by BPA to apply to the date of first utility service to a preexisting load. Thus, this option is not available to Cascade Grain as it is an entirely new load.

b. Energization

On January 23, Cascade Grain began receiving service from Clatskanie PUD and began testing its facilities. Construction was ongoing at the site, but Cascade Grain nonetheless met the criteria for energization on that date. Namely, its facilities were the permanent installations that exist today, it owned its facilities and it was consuming energy for the purpose of testing its systems – a consumption of energy not associated with construction. The testing included the use of electricity supplied by Clatskanie PUD to the substation and then to both facilities, to ensure the proper function of ethanol production components such as the grinders and various conveyors as well as DDGS components such as the dryers. These activities constituted consumption of power by a permanent installation for testing and thus should establish the energization date. Specifically, power from the substation was being “done away with completely” by using it for testing. Furthermore, facilities such as the DDGS dryers and the grinders “endure without fundamental change” as they are the same today as they were then and are intended to stay the same way for the life of the facility. Finally, the facilities were “installed” as commonly understood as they were put where they were for a purpose.

c. Commercial Operation

On April 15, 2008, Cascade received its first load of feedstock and loaded the grain into its storage facilities to be ground. This grain was ground, and then fermented to produce Grinding grain for the ethanol production process start on April 15, 2008, and the ethanol that

³⁶ August 27 letter at 3.

was Cascade's first commercial product sold and delivered to its customers. As noted above, commercial operation is not determined by looking to a certain level of production. Rather, it is whether something is being created for the market. In this case, ethanol was being created for the market as of April 15, 2008. Thus, April 15, 2008 should serve as the start date based on the commercial operation that commenced on that date.

E. Conclusion

Based on the foregoing, Cascade's ethanol production facility and its DDGS facility should be viewed as separate facilities. These facilities meet each of the criteria for such a determination under the NLSL Policy and such a conclusion would be consistent with prior practice. In addition, the start date for purposes of an NLSL determination should be either January 23rd, 2008 as a matter of energization or April 15th, 2008 as a matter of commercial production.

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A Short Response to the K&L Gates Memo

This paper addresses the “five factors relevant to the separate facility determination,” as stated in page 3 of the K&L Gates memo. This paper does not address consistency with BPA’s other facility determinations, as I currently lack the materials to compare/contrast past facility determinations with Cascade Grain.

A. “First, the ethanol production facility does not require the availability of the DDGS (dried distillers grain with solubles) facility. Cascade Grain could sell the ethanol’s facility’s waste-product to another entity, and the other entity could manufacture DDGS at a location distant from Cascade Grain’s ethanol production facility.”

Assuming that an ethanol producer wishes to make a profit and assuming that a local market (within 100 miles or 150 miles) cannot be found for WDGS (wet distillers grain with solubles; a.k.a. the “waste product”), ethanol production requires the production of DDGS (drying WDGS). The first assumption is simply inherent in the economics of an ethanol plant. According to a University of California, Davis study, “distillers grains, either DDGS or WDGS, account for 10-20 percent of the total revenue stream for an ethanol plant. Furthermore, as the ethanol industry continues to mature and become more competitive (i.e., profit margins decrease), the importance of marketing co-products likely will increase.”¹

The second assumption is mere practicality and it is also why no “other entity could manufacture DDGS at a location distant from Cascade Grain’s ethanol production facility.” WDGS may only be transported within 100-150 miles from where ethanol is produced without spoiling. However, a 2008 case study on Kansas ethanol plants by

¹ <http://www.agmrc.org/NR/rdonlyres/86C4971C-D8CB-49E8-BE0B-D1E532513226/0/ethanolcalifornia.pdf>

Wichita State University found that the distance that WDGS can be shipped more profitably than DDGS to be only 39.78 miles.² There is a lack of a local market for WDGS even within 100-150 miles of Cascade Grain. Finally, WDGS is simply not manufactured into DDGS at a “location distant” from ethanol production. According to the University of Minnesota, at least 98% of DDGS in North America “comes from plants that produce ethanol for oxygenated fuels.”³ The remaining 1 to 2% of DDGS is produced by the alcohol beverage industry.⁴

B. “Second, the DDGS facility could purchase waste product to convert to DDGS from other sources in the event that the ethanol production facility did not operate.”

Given the above practical and economic limitations regarding transportation of WDGS (the “waste product”), it is not readily apparent as to who or what these “other sources” are. Aside from the small amount of ethanol produced by the alcohol beverage industry, the only potential source of WDGS is from ethanol plants. The only *potential* ethanol plant within 150 miles of Cascade Grain is scheduled to open in Longview, Washington, which is approximately 17 miles from Cascade Grain. But the Longview plant is far smaller than Cascade Grain and it would presumably have its own dryers.

C. “Third, although the DDGS facility is located in a separate building adjacent to the ethanol production facility, the DDGS facility could be located anywhere. Co-location avoids transportation costs, but that is the only synergy arising from Cascade Grain’s operation of both an ethanol production facility and a DDGS facility.”

Again, given the above practical and economic limitations, it is extremely unlikely that WDGS (the “waste product”) is manufactured into DDGS at any other place besides the point of ethanol production.

² <http://soar.wichita.edu/dspace/bitstream/10057/1390/1/grasp-2008-58.pdf>

³ <http://www.ddgs.umn.edu/overview.htm>

⁴ *Id.*

D. “Fourth, the two products have entirely different customers, uses, and distribution channels.”

I must editorialize a bit, even though this factor may be used in past BPA facility determinations. This appears to ensure that nearly every facility that produces two slightly different products can be classified as two facilities. To show the absurdity of such a notion, I will use an absurd example: the womb. A womb may produce two or more children. These children probably will choose different occupations, thus having different customers in our service based economy, and the children may be more or less useful at different activities. Finally, their childhood (or “distribution channel”) may be markedly different due to adoption, divorce, or a great difference in the age of the children. Thus, if this factor is applied, it appears that nearly anything (even a womb) that produces two of something can be considered a separate facility.

E. Fifth, the ethanol production facility and the DDGS facility are served from Clatskanie PUD’s substation by separate feeder lines to separate Clatskanie switchyards and Clatskanie is in the process of having distinct metering currently in place for DDGS integrated into Clatskanie’s distribution control system.

The changes in metering and plan of service are dizzying both to me and Cascade Grain’s attorneys. At one point, Mr. Nelson says that “Clatskanie is in the process of having distinct metering currently in place for DDGS integrated into Clatskanie’s distribution control system.” (see above). But on the very next page, Mr. Nelson claims that the “loads are metered separately.” In the rush to obtain a favorable facility determination from BPA, it appears that the metering occurred in between the writing of pages 3 and 4 of the memo. This may be not as coincidental as Cascade Grain or their attorneys would like for us to believe.

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During the second phase of work there will be additional (Continued on Page 10)

Rainier School Board Adopts Student Athlete Drug Testing Policy

by Amanda Gail Moravec
Rainier School District board of directors adopted a student athlete drug testing program and a policy governing staff dress and grooming at its meeting Monday, Aug.

mayor told the council and the packed house of citizens. "We have a great staff. It's a little bit more work on my

about a city administrator." After issuing a call for applications for an interim city (Continued on Page 9)

November Start-Up Eyed for Ethanol Plant

A front page article in the Aug. 4th issue of The Chief inaccurately stated that the Columbia Pacific Bio-Refinery (former Cascade Grain ethanol plant) at the Port Westward industrial park near Clatskanie was expected to start-up in October.

In fact, General Manager Dan Luckett said that while it is hoped "to start receiving corn and other reagents/feeds and/or products in October, I do not anticipate actual first grind until November... predicated upon settlement with other stake holders."

With the "first grind" in November, the ethanol plant is expected to be "ramping up" to full capacity by January, at which time two or three unit trains per week will be received at the plant.

As of last week, employment at the plant was up to 41, with interviewing of the final 27 employees underway.

While the production capacity of the plant had been stated as 113 million gallons of ethanol per year (mmgpy) while it was owned by Cascade Grain, and that was reported in the article in The Chief last week, Luckett said, "the plant capacity is somewhat undefined at this point, but I believe the ultimate capacity to be 138 mmgpy, based upon the design of the plant and sister plant performance."

Luckett and approximately a dozen other employees of Columbia Pacific Bio-Refinery, owned by Cascade Kelly Holding LLC, have years (Continued on Page 10)

8 Democrats, 5 Republicans File for Vacant Congressional Seat

Filings for major party candidates for the vacant U.S. Representative position from Oregon's First Congressional District closed Monday, Aug. 15, with eight Democrats and five Republican candidates entering the race.

A special primary election has been set for Nov. 8, followed by a special general election Jan. 31 to fill the seat left vacant by the resignation of David Wu, a Democrat, who was elected to his eighth term in Congress last November.

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(Continued on Page 10)

PACIFIC BIO REFINERY
138 mmgpy / 114 MGD 115 GPM
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GM DAN LUCKETT
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corn syrup
corn oil
2.225 million
115 MGD 115 GPM



This Week's Local Forecast					Weather Trivia
					To see a rainbow, where must the sun be? ?
Saturday Partly Cloudy 76/55	Sunday Partly Cloudy 80/56	Monday Partly Cloudy 83/58	Tuesday Mostly Sunny 86/58	Wednesday Mostly Sunny 84/55	
0% Precip Chance: 10% Precip Chance: 10% Precip Chance: 10% Precip Chance: 5% Precip Chance: 5%					Answer: Your back must be toward the sun. www.WhatOurWeather.com

More on Ethanol Plant

(Continued from Page 1)
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Tuesday, January 13, 2009



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Clatskanie ethanol plant halts operations

Friday, January 9, 2009 7:11 PM PST
By Andre Stopankowsky

Printable version E-mail this article 16 comment(s)

Six months after starting up, Clatskanie's new ethanol plant shut down indefinitely Thursday night because technical problems may be contaminating its product.

"We have two independent labs. One lab says we don't have a problem, and another lab says we do have a problem," said Charles Carlson, president and chief executive officer of Cascade Grain LLC.

"At this point we are unsure if we even have a problem. We are trying to examine all aspects of our operation to see if there is a problem in the process, and resolve it if that is the case."

He said the plant's 59 employees will remain on the job for now.

"We don't have intentions to lay people off unless we can't find it (the problem). We're still in the investigative stage."

Shipments of corn, the raw material from which ethanol is produced, will cease until Cascade figures out the situation, Carlson said. Corn shipments come in long unit trains, and the plant only has capacity to store two such shipments on site.

The \$200 million plant, located at Port Westward north of Clatskanie, produces ethanol for use as a gasoline additive. It went into operation June 6 last year.

One lab has found Cascade Grain's finished ethanol contains too high a concentration of sulfate, Carlson said, saying officials have to figure out why there is a discrepancy with tests conducted by another lab. Both laboratories are based in Portland, he said.

Meanwhile, "there's no sense producing a product we can't sell."

He said the production processed used at the Port Westward plant is not known for having sulfate problems, so the development was unexpected.

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- Simpson sells Port of Longview property, port officials looking to get it back (67)
- Oregon joins smoking ban banwagon (61)
- Evacuated Kelso residents bunkered down, worried (59)
- Cancellations, road closures, school updates (58)
- Man with kitchen knife robs Longview credit union (51)
- School closures, no classes Friday for most districts (48)
- State employees' union sues Oregon over pay raises (48)

Previous Article Next Article

DW

written on Jan 9, 2009 4:04 PM

"Ethanol should be outlawed as an additive to gasoline. It takes 1.3 barrels of oil to produce 1 barrel of ethanol, and it reduces the mileage of cars and trucks. It is far more polluting than straight gas. It messes up older cars and trucks fuel system, and when it is spilled into the environment, it is a huge toxin. Also, farmers that should be growing food for people and now growing food for cars, thus driving up the price of all food stuffs. There is no good reason to add this product to fuel. The only people that gain from it are farmers that are seeing a boon with the increased price of corn. This is but another feel good program that our loonie lefty legislators have crammed down the throats of the public."

skibowruiter

written on Jan 9, 2009 5:04 PM

"wow jerry garcia is dead lets go chain ourselves to a tree somewhere"

mary

wrote on Jan 9, 2009 5:11 PM

"Columbia County never thinks before they do any thing. City of Clatskanie was all for this. Most of the people here this was a joke. We need some common sense."

golfer

wrote on Jan 9, 2009 9:26 PM

"Iw. Your facts are not facts. Ethanol is "not" far more polluting than gas. It burns infinitely cleaner than gas itself, it is not a toxin. Maybe we should ban things such as food coloring, perfumes, paints, felt marking pens, syrups, candies, etc. That is just the short list of things that contain ethanol. Only 20% of the corn grown nationally goes into ethanol production, which is used in all the above mentioned. Older cars? Much older. I for one can get by with a miniscule mileage difference when it is good for the Environment. Even Bush is promoting the use of ethanol, so your rhetoric about the "loonie left" being the cause is ludicrous."

Atrucker

wrote on Jan 10, 2009 2:47 AM

"I think using our food supply to make fuel is a dumb idea any time. Corn makes good booze, moonshine, not car fuel. Hydrogen is the best answer, but is not practical yet. Who cares what Bush thinks. That li@#% has got us in the mess we are in now, and let it happen."

South of the river

wrote on Jan 10, 2009 12:17 PM

"The left may be the motivating force behind "environmental" programs, but the lobbyists sold this mess unilaterally and they all bought it. Golfer, he may be exaggerating how bad it is, but it is true that it takes more energy (in this case natural gas, not oil) to convert the corn into ethanol than burning the ethanol produces. Then on top of that you use up corn. It does get worse mileage, but I haven't seen any sign that it pollutes more. As for being a toxin - compared to what? Gasoline? You can drink pure ethanol (due to all regs they have to treat it to make it undrinkable before it leaves the plant), try that with a pint of regular unleaded! On the up side, the "spent" corn is just as useful as animal food as it was to start with. As for farmers getting into the energy business, we'd be a lot better off if they planted vegetable oil crops to run in SVO converted deserts."

DW

wrote on Jan 10, 2009 1:27 PM

"Golfer, South of the river, I hope you are checking up on this article 'cause I would like you to explain your statement. 1. How is ethanol less polluting when it takes more fossil fuel energy to produce ethanol than you get out of it, AND it reduces the mileage on my vehicle by 20 percent, thus forcing me to use MORE fuel to go the same distance which translates into more pollution!! 2. My statement that this is a product of the feel good loonie lefties is a fact. The idea that George Bush supports this product as an additive to gasoline just proves even more so that Bush was never a conservative to start with, and is more like a loonie lefty. please respond."

vikingtwin5

wrote on Jan 10, 2009 4:30 PM

"DW, Thought you were so proud of the 12 mpg you were getting in your big 4x4 Chevy. What happened? Bush jumped on the bandwagon because it benefits the big agri-Business companies like ConAgra."

Kevin_L

wrote on Jan 10, 2009 9:00 PM

"As far as using the food supply for ethanol production. That 20% of corn that is used is not food grade corn, which of course brings some to say that it takes away the feed corn, driving the price of meat up, which is another falsehood, after the corn is used for ethanol it still has all the nutrition content, so it is then dried, & sold as feed for less than the price of whole feed corn. Ethanol is a very low waste product."

trapper

wrote on Jan 12, 2009 5:08 PM

"What follow up has happened with this story? I, for one, would like to know. I want to know how many nights of good quality sleep I'll be able to get while the corn grinder is idling. By the way, are there any numbers for how much energy is used to prepare the fields, plant the corn, water it, harvest and truck to the elevator, ship by train from the mid-west to Port Westward, process it into its different by-products then ship each of them back to the market in which they'll be used? Let's see, the mash is generally sold overseas to feed cattle, the alcohol is shipped out of Oregon and who knows where everything else goes. Seems like an awful lot of diesel, gasoline and natural gas for my loss of gas mileage and need to fill up more often. Oh, and how about the water left in my engine?"

Have something to say about this story? Submit it! The comments approved for posting aren't edited, and don't necessarily represent the views of The Daily News, its owners or employees. See our guidelines for more info and common no-no's. No comments with more than 250 words are posted.

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Contractor's attempt to clear dock stopped

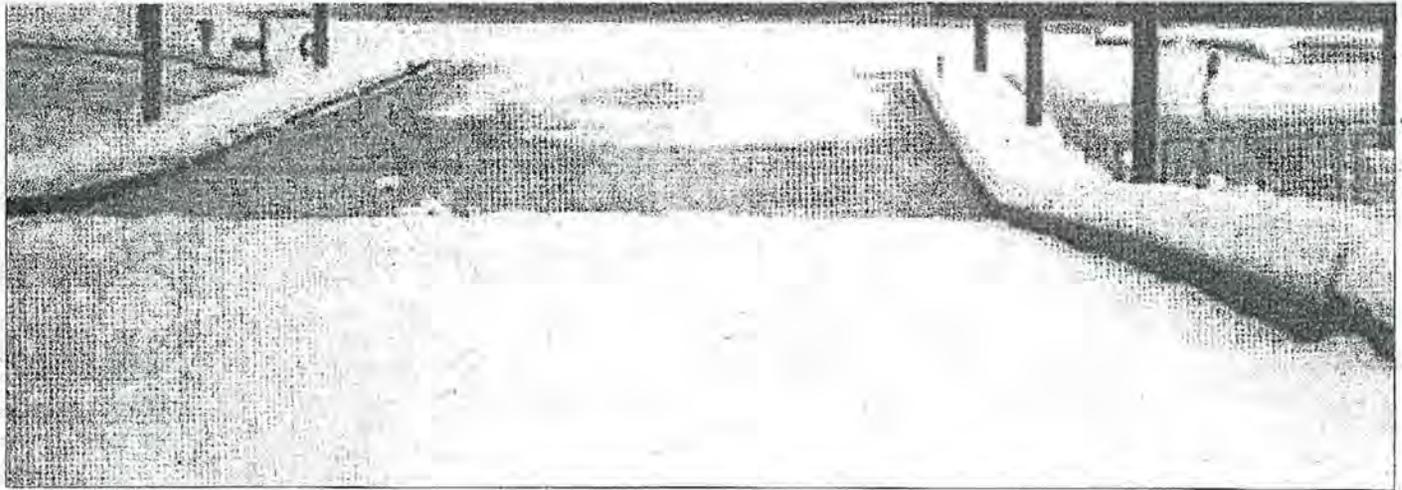
BY APRIL BAMBURG
The Chronicle

The snow has claimed another building. On Tuesday, Dec. 23, the Multnomah Plywood building on property owned by the Port of St. Helens, collapsed due to the heavy snow, according to Port Commission President Robert Keyser.

During an emergency meeting on Wednesday, the Port Commissioner passed a resolution authorizing Keyser to work with Port of St. Helens Executive Director Gerry Meyer to take whatever steps necessary to prevent further structural damage and future injury, although no injuries have been reported.

The collapse occurred at the Multnomah Mill property near Scappoose at approximately 10:15 p.m. on Tuesday, Dec. 23. According to a press release issued by the Port of St. Helens, four trusses failed on the east end of the building's roof system and an 80 x 130 ft. section of the roof collapsed. There

See AIRPORT, Page 3



JIM DILLARD/SUBMITTED TO THE CHRONICLE

The Bayport Marina is sinking under the weight of the snow and ice dumped on the area over the past several days, but they're not the only one that has had some trouble. On Tuesday, McCuddy's Landing, in Scappoose, collapsed, sinking one boat and damaging several others. The Port of St. Helens has also reported damage to their docks at the Scappoose Bay Marina.

5201 5-2-08

Cascade Grain facing foreclosure lien

\$27 million lawsuit filed on unpaid contract

BY APRIL BAMBURG
The Chronicle

On Tuesday, Dec. 23, 2008 attorneys for J.H. Kelly LLC filed a foreclosure complaint against Cascade Grain Products LLC.

Attorney Eric Grasberger, with Stoel Rives, LLP, said Tuesday that on behalf of J.H. Kelly LLC Ethanol, are moving forward with a lawsuit for foreclosure. J.H. Kelly seeks \$27,811,822, from a contract with a total of \$173,260,074.

According to a letter from Stoel Rives, the Claim of Construction Lien encumber-

ing the Cascade Grain Dry Mill Ethanol plant and certain land on which the project is located, was filed with Columbia County on Friday, Aug. 29, 2008.

On Dec. 2, Stoel Rives sent a letter to Columbia County Commissioner Joe Corsiglia giving notice of the claim of construction lien and foreclosure. That letter stated that a suit to foreclose that lien would commence if the matter was not resolved within 10 days, making the dead-

line Dec. 12, 2008.

The foreclosure complaint names J.H. Kelly LLC as plaintiff and several companies and individuals as defendants, including Cascade Grain Products LLC, HSBC Bank (USA) N.A., Marine Midland Trust Co., West LB AG New York Branch, Banco Santander Central Hispanico, Farm Credit Services of America and Westward Energy LLC, among others.

If J.H. Kelly does get a judgment allowing foreclo-

sure on the construction lien, the property could then be sold by the sheriff or his designee and the proceeds split among a number of creditors.

"We believe that some of that should come to us," Grasberger said.

Charles Carlson, President of Cascade Grain Products LLC confirmed that they were in an arbitration dispute with J.H. Kelly over construction but could not comment further

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During the second phase of work there will be additional
(Continued on Page 10)

Rainier School Board Adopts Student Athlete Drug Testing Policy

by Amanda Gail Moravec
Rainier School District board of directors adopted a student athlete drug testing program and a policy governing staff dress and grooming at its meeting Monday, Aug. 15.

For the first time, Rainier Junior/Senior High School (RJSHS) athletes, grades 7-12 may be tested at the beginning of any athletic season in which he or she participates. In addition, random testing will be conducted throughout the year by a method, according to the policy, "determined by the district to assure the integrity, confidentiality, and random nature of the selection process."

The drug testing is aimed at providing for the student athletes' health and safety; undermining the effects of peer pressure, and encouraging participation in treatment programs, at parent expense, "or a combination of public and private expense, for student athletes with substance abuse problems."

The policy states that "no student athlete shall be penalized academically for testing positive for illegal or performance-enhancing drugs. Test results will not be documented in any student's education records. Information regarding the results of drug tests will not be disclosed to criminal or juvenile authorities absent a valid and

(Continued on Page 10)

mayor told the council and the packed house of citizens. "We have a great staff. It's a little bit more work on my

about a city administrator." After issuing a call for applications for an interim city
(Continued on Page 9)

November Start-Up Eyed for Ethanol Plant

A front page article in the Aug. 4th issue of *The Chief* inaccurately stated that the Columbia Pacific Bio-Refinery (former Cascade Grain ethanol plant) at the Port Westward industrial park near Clatskanie was expected to start-up in October.

In fact, General Manager Dan Luckett said that while it is hoped "to start receiving corn and other reagents/feeds and/or products in October, I do not anticipate actual first grind until November... predicated upon settlement with other stake holders."

With the "first grind" in November, the ethanol plant is expected to be "ramping up" to full capacity by January, at which time two or three unit trains per week will be received at the plant.

As of last week, employment at the plant was up to 41, with interviewing of the final 27 employees underway.

While the production capacity of the plant had been stated as 113 million gallons of ethanol per year (mmgpy) while it was owned by Cascade Grain, and that was reported in the article in *The Chief* last week, Luckett said, "the plant capacity is somewhat undefined at this point, but I believe the ultimate capacity to be 138 mmgpy, based upon the design of the plant and sister plant performance."

Luckett and approximately a dozen other employees of Columbia Pacific Bio-Refinery, owned by Cascade Kelly Holding LLC, have years
(Continued on Page 10)

8 Democrats, 5 Republicans File for Vacant Congressional Seat

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(Continued on Page 10)

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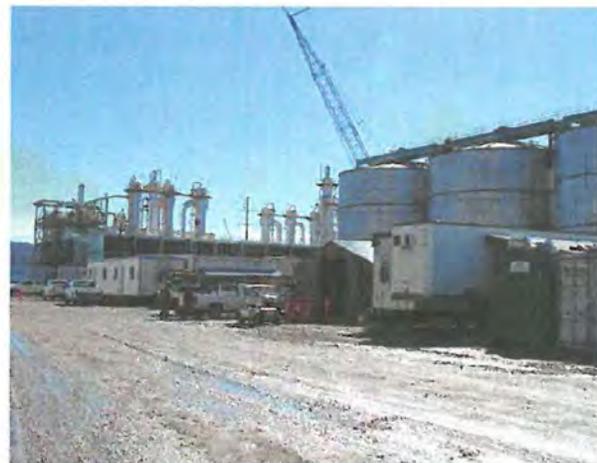
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Date	Total KWH Clatskanie Meter	Total KWH BPA SUB METERS	Total KWH Pump Loads	Total KWH Gen Load	Total Used for NLSL	Hours in Month	Running Total Hours	Month	Running Total KWH	Running Average KWH	Average KWH Per Month
6/7/08 - 7/6/08	6,000,000	N/A	N/A	N/A	6,000,000	720	720	7/7/2008	6,000,000	8,333	8,333
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8/7/08 - 9/6/08	8,000,000	8,000,000	5,000		8,005,000	744	2,208	9/7/2008	21,010,000	9,515	10,759
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11/7/08 - 12/6/08	7,000,000	7,000,000	5,000		7,005,000	720	4,392	12/7/2008	42,528,975	9,683	9,729
12/7/08 - 1/6/2009	7,000,000	7,000,000	5,000	24,870	7,029,870	744	5,136	1/7/2009	49,558,845	9,649	9,449
1/7/09 - 2/6/2009					-	744	5,880	2/7/2009	49,558,845		-
2/7/09 - 3/6/2009					-	672	6,552	3/7/2009	49,558,845		-
3/7/09 - 4/6/2009					-	744	7,296	4/7/2009	49,558,845		-
4/7/09 - 5/6/2009					-	720	8,016	5/7/2009	49,558,845		-
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Construction was completed ten weeks ahead of schedule at Big River Resources, a Fagen/ICM project in West Burlington, IA. Originally a 40 MGY plant, it has since undergone an expansion to 52 MGY.



KAAPA Ethanol, LLC, a 40 MGY plant in Minden, NE, delivers about 38 semi loads of wet distillers grains to local cattle feedlots daily. The plant features ICM's design, conveyor system, and an ICM/Phoenix Bio-Methanator. Less than a month after startup, KAAPA was running at 105% of their nameplate.

To view our most current projects, please visit our "Project Portfolio" at icminc.com.

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- For every bushel of U.S. #2 Yellow Dent corn, ICM-engineered plants produce at least 2.8 gallons of denatured ethanol (5%).
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- Electrical usage of 0.75 kilowatt-hours per gallon of denatured ethanol.
- Emissions will be in compliance with regulations during construction as well as after startup, based on the regulations in place at the time of permitting.

G U A R A N T E E D

2003



Focused on the worldwide success of ethanol, ICM's Business Development Department began to focus internationally and also facilitated Kansas' second E85 pump.

2003



ICM spun off its Marketing Division, and United Bio Energy was formed.

MTBE was banned in 18 states.

2003



Ethanol leaders united with Paul Dana to promote ethanol through racing.

2003



ICM held its first Managers' Meeting. For more of the story, visit icminc.com.

2003



2003

ICM travel needs spurred the creation of a separate travel department.

2003



Dave Vander Griend received the industry's Distinguished Service Award.



For Immediate Release
Contact: Thomas Corle
Public Relations
Office: (717) 626-0557
Fax: (717) 627-1480
E-Mail: tcorle.ptd.net

July 20, 2006

Groundbreaking marks the largest production of fuel-ethanol on the West Coast

Berggruen Holdings broke ground on its corn-based dry mill biorefinery. It will be one the country's highest-tech bio fuels plant to provide clean renewable fuel to the west coast. The plant will produce 113.4 million gallon per year of fuel-ethanol and distillers' grain, a high-protein feed for livestock, and carbon dioxide (CO2) to carbonate beverages.

The ethanol produced at the Cascade Grain's renewable bio refinery would be sold mainly at Oregon, Washington, and California fuel pumps as a high-octane fuel that delivers improved vehicle performance while reducing emissions and improving air quality. By reducing foreign oil imports, ethanol would create Oregon jobs and provide value-added markets to bolster U.S. agriculture and give farmers more stable grain prices and lower feed costs.

"Cascade Grain just didn't pick any ethanol plant design we went for the green. We chose a Delta-T designed plant because it uses less water and energy to produce a gallon of ethanol than most plants built in the world. And water conservation is one of our top priorities," states Charles Carson, a principal and the lead project developer. "Over the past 4-years Delta-T has halved the plant's water usage. And is the only design that touts zero process wastewater. Oregon's renewable energy production will take a giant leap ahead of the world because it starts with greener technology."

Delta-T is a biorefinery designer based in Williamsburg, Virginia. They have been the major leader in developing new technologies to make fuel ethanol a viable energy source to cut green house gassing. Construction will be completed by JH Kelly LLC Ethanol, a joint venture between TIC – The Industrial Company, headquartered in Steamboat Springs, Colorado, and JH Kelly Construction, out of Longview, Washington.

The new facility is located at the Port Westward Energy Park owned by the Port of St. Helens. The Port Westward Energy Park is the result of the long term partnership between the Port of St. Helens, Portland General Electric, and the community of Clatskanie.

Cascade Grain is the initial plant in Berggruen's strategy to construct a series of strategically located plants with superior logistics and broad product options. "Berggruen Holdings and our management team at Cascade Grain Products have established a platform with knowledgeable and high quality partners, positioning the firm to be a leader on the West Coast," observed Nicolas Berggruen,

President of Berggruen Holdings. "Our team has developed this strategy over the past two years and we believe that this will provide Cascade Grain the flexibility to manage its business during all phases of the commodity cycle. Berggruen Holdings is committed to being a long term player in the renewable fuels sector and will continue to pursue additional opportunities in the ethanol and biofuels markets with similar high quality characteristics".

The plant will serve the West Coast, the largest ethanol market in the U.S. It will readily access the primary markets of Washington, Oregon and California, and the secondary markets of Alaska, Hawaii, and the Pacific Rim. Located at Port Westward on the Columbia River, the plant will receive corn via 110-car unit trains, minimizing transportation costs. Cascade Grain has access to water transportation and expects to ship the majority of its ethanol via barges and will export a significant amount of DDGS both in bulk and containerized shipments as well as serving the local dairy industry.

Headquartered in Williamsburg, VA, Delta-T is a design-build firm that provides technology, plants, systems, and services to the fuel, beverage, industrial, and pharmaceutical alcohol markets. Delta-T has provided alcohol production, dehydration, and purification solutions to more than 120 clients worldwide in five continents. Delta-T designed plants are considered to be the most environmentally friendly with zero wastewater discharge and the lowest water and energy consumption. For more information go to: www.deltatcorp.com Delta-T Corporation is located at 323 Alexander Lee Parkway, Williamsburg, VA 23185, USA. Telephone (757) 220-2955.

WANT ADS Work Wonders!

EXPERIENCED HANDY-MAN wanted for on-call basis. Must have own transportation and tools and be willing to travel between Clatskanie and St. Helens. Paid on a per project basis. Please send resume to HTPM, PO Box 1624, Rainier, OR 97048. 12-7-tfc

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THE CHIEF?



If you have left pictures
of loved ones at the

More on Clatskanie PUD Board Meeting

(Continued from Page 1)

from residential customers, \$1,273,000 from general service, \$28,750,000 from industrial customers, \$8,900,000 from extended industrial customers, \$86,000 from security lighting. \$400,000 is subtracted from those figures to account for the cogeneration benefits credited to non-industrial customers.

Wholesale revenues for 2007 are predicted at \$3,635,000 including \$254,000 in transmission resales and wheeling charges, \$2,675,000 in secondary power sales, \$306,000 in rate stabilization, and \$400,000 in cogeneration funds received.

Interest and other income (connection fees and miscellaneous billings) are expected to total \$372,000.

Operating expenses for 2007 are projected at \$44,212,000, allowing for \$1,290,000 in net operating income.

The largest share of expenses are power supply costs which are expected to total \$37,807,000 including \$34,000,000 for purchased power, \$100,000 for power generation (natural gas supply, transport, operation and maintenance); \$2,150,000 for transmission and ancillary services, and \$557,000 for power operations including power management personnel costs, contracts for dispatching and scheduling, legal, and other generation expenses including those associated with the Western Generation Agency - the partnership between CPUD and the Eugene Water and Electric Board that owns and operates the co-generation facility at the Wauna Mill in combination with Georgia-Pacific Corporation.

Other operating expenditures include \$442,000 for distribution operations including mapping maintenance (\$20,000); \$705,000 for general distribution maintenance including supervision/engineering, maintenance of structures, substations, overhead and underground lines, transformers, street lights, meters, warehousing and testing; \$280,000 for contract tree trimming; \$119,000 for pole testing, treatment and inspections; \$471,000 for customer service, billing and meter reading; \$238,000 for customer services including energy services activities and electrical service assistance; \$10,000 for economic development - funds for work aimed at attracting new customers and assisting public infrastructure including the continuation of coordination efforts related to the construction of the Cascade Grain ethanol plant at Port Westward; \$781,000 for administration including most management expenses, copying machine, office supplies and utilities; \$55,000 for employee training; \$65,000 for outside professional services such as attorney fees, consultants, engineering not specified to a capital project; \$88,000 for property insurance; \$104,000 for the safety program; \$757,000 for pension and benefits expenses including PERS (Public Employee Retirement System), medical and dental health insurance premiums not assigned to capital projects; \$27,000 for advertising; \$21,000 in general expenses including auditor's costs; \$21,000 for board wages and travel; \$119,000 for memberships in various organizations including the Oregon PUD Association, the Northwest Public Power Association, the American Public Power Association, etc.; \$32,000 for maintenance of the general plant including computers, software, ra-

goods by special procurement for the two 4160 volt 5 MVA transformers with disconnects, nine 480 volt 2.5 MVA transformers with disconnects, and two switchgear cabinet breakers - roughly \$1.5 million worth of equipment, Booth said.

He explained that the purpose of the exemption was not to "go single source," but to approve an alternative competitive process as opposed to formal competitive bidding. "We know which firms have this equipment, and we have gone out to as many as possible for competitive quotes," the general manager told the board. "There are three or four that have competitive equipment."

Salary Increase Granted in Split Decision

The board split over the granting of a 3.5 percent increase for non-union employees of CPUD.

Booth stated that the district's non-union personnel's salary adjustments have traditionally reflected the union agreements, and the union contract calls for a 3.5 percent raise.

Gillespie moved and Hooper seconded to adopt the proposed salary revision.

Director Sutfin moved to amend Gillespie's motion to change the increase rate from 3.5 percent to 3 percent. After clarifying that she could second the amendment without supporting the main motion, Piercy seconded.

After making the motion to lower the salary increase, Sutfin explained his belief that "I feel that the price that the non-union gets in relation to the union is not relevant. The non-union get more and more and more because they have more of a salary...I think we should whittle that down."

However, Booth noted that "there are considerable union employees who have higher salaries than some of the non-union employees." He stated his belief that it is appropriate to keep CPUD salaries "competitive to what other utilities are and right now we're about medium for the Northwest."

Sutfin's amendment failed by a 3-2 margin with Sutfin and Piercy in favor and Hooper, Gillespie and Nakkela opposed. The main motion for the 3.5 percent increase passed with Gillespie, Hooper and Nakkela in favor, and Sutfin and Piercy opposed.

Storm Report

CPUD staff gave a detailed report of damage and power outages resulting from the Dec. 14th windstorm.

At 3:37 p.m. on the 14th, the Bonneville Power Administration (BPA) had the first (a momentary interruption) of 15 trips and closes on its Alston/Astoria 115 KV transmission line. "They had the trouble spot isolated and closed in the feeder for the last time at 8:41 p.m. There were four fault operations and 11 operations that were done to trouble shoot, trying to find the area of bad line," according to a written report submitted to the board. "Each time the line interrupted service, it affected 2,774 customers. At approximate 1700 hours (5 p.m.) the first major outage began."

In the first 24 hours of the storm, all 4,370 Clatskanie PUD customers, with the exception of one (the Georgia-Pacific Wauna Mill) had experienced an interruption of service.

of loved ones at the Chief for articles or advertisements, please stop by the office during business hours (Mon. and Tues., 9 a.m.-9 p.m., Wed., Thurs. and Fri. 9 a.m. - 5 p.m.) and pick them up.

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Handwritten signatures and scribbles, including the word 'TIPPY' and 'W'.

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ia River Hwy.
ing Numbers
 Connie Leinonen.....503-728-2726
 Colleen Moore.....503-728-2158
 503-396-2677
 503-728-2863
 Real Estate, Inc.
 Clatskanie Office
 Halens Office
 Appoose Office

of the general plant including computers, software, radios and other equipment as well as the maintenance of the office building; \$1,416,000 in depreciation; \$405,000 in property taxes, social security, unemployment taxes, Oregon Department of Energy Assessment; \$69,000 in the Rainier system acquisition amortization, and \$180,000 in interest on debt.

In his written overview of the budget, Booth noted that average or better water conditions would increase wholesale sales significantly.

Capital expenditures in the budget include the replacement of two vehicles for a total of \$105,000. Personnel levels are expected to remain at the 2006 level.

The rebuilding of the Clatskanie substation and facilities at Bradbury to serve Cascade Grain are expected to total \$9.7 million. Cascade Grain will pay a direct charge to repay the cost of the distribution system, with a letter of credit covering the cost of constructing it (primarily transformers) and the 115 kilovolt line extension.

The sources and uses of funds statement in the budget shows the use of \$10 million in financing next year. This financing could be either through long term bonds or short-term borrowing to augment the district's \$5 million line of credit, which will probably be inadequate to maintain the district's desired reserve levels, Booth stated. "A thorough discussion early in the year in regard to finance options will be necessary, prior to the board's adoption of a financing alternative," he wrote in his budget overview.

**Exemption from Formal Bidding
on Project Approved**

In regard to the distribution system for Cascade Grain, the CPUD board, acting as a local contract review board, voted unanimously to exempt the district from the competitive bidding process and authorize the purchase of

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tion of service. CPUD crews were dispatched into service at 5 p.m., and 12 minutes later, as the storm worsened, 598 Rainier customers lost power when the "F" feeder line tripped open due to trees in the line.

At 6 p.m. the night of the storm, "we began to assist BPA with switching their Alston/Astoria 115 KV line to locate the fault. There were a few tests that were completed which required dropping the Clatskanie and Delena substations in order to find and isolate the location of the bad line," Booth reported.

Ironically, he told the board, he had been talking to BPA representatives that day, about the problems Clatskanie experiences because of the BPA 115 KV line.

By sectionalizing the line at the upgraded Clatskanie substation, the problems with outages caused by issues with the BPA line would be limited considerably, Booth said.

"It's ludicrous the way it tripped in and out," Gillespie said, criticizing the "archaic" BPA procedures in regard to problems with its Alston/Astoria line.

At 6:54 p.m. the "F" and "G" feeders lost power due to the BPA 115 KV line dropping out of service, taking out the power for 911 customers for one hour and 17 minutes.

In the meantime, trees and branches were being blown into CPUD lines, primarily in the rural areas. As reported in an article, captions and pictures in last week's *Chief*, a pole fell onto a PUD utility truck at 10:18 p.m., and two minutes later a tree fell on the pickup being driven by Operations Manager Keene Basso, who required a trip to the hospital for numerous stitches. He was back at work on the 16th.

Shortly after midnight, the crew was instructed to stand down until the winds subsided, then returned to work. By 5 p.m. on Friday, Dec. 15, 50 percent of the district's customers had their power restored. At 11 p.m. the crews were sent home to rest, returning at 7 a.m. Saturday, Dec. 16. After 48 hours, at 5 p.m. on Dec. 16, 80 percent of customers' power was restored.

At 10 a.m. on Sunday, Dec. 17, a three-man crew from Columbia River PUD arrived to assist with damage repairs. By 5 p.m. that day 99 percent of customers' power was restored. The CRPUD crews left for home at 1 a.m. Monday, Dec. 18, and at 9 a.m. a six-man crew from the BPA arrived to assist.

At 7:30 p.m. on Monday, Dec. 18, 98.5 hours after the initial outage, the last customer that service could be restored to was re-powered. There were six others who could not be energized due to the condition of customer-owned equipment, or the meter base either had to be reattached or completely replaced.

On Tuesday, Dec. 19, a three-man crew from CPUD traveled to the Vernonia area to assist the hard-hit West Oregon Electric Cooperative (see separate story). Not including incidentals such as insulators, pins, bolts, etc., the district losses included the two damaged vehicles, seven transformers, six cross arms, and three poles - one on Riverfront Road, one on Taylorville Road and one on Swedetown Road - the one that hit the utility vehicle.

"We fared better than most," Booth said. Basso estimated additional labor costs because of the storm at roughly \$70,000.

If Federal Emergency Management Agency funds become available because of disaster declarations from the county and the state, CPUD could be reimbursed (Continued on Page 4)

nday at Clatskanie Woods



CELEBRATION of Phase 1A of the Clatskanie Woods subdivision. The public is invited to the celebration which will mark the phase of what is planned to be a four-phase development in the Pictured above in front of the first new house nearing completion Ann'ette Pedigo, co-listing agents Peter McWilliams and Beau o will be hosting Sunday's event, and Susie Conley of American ders" who will be on-site Sunday to help with matching loan eferred lender" Phil Sheridan.

be bringing this much needed new housing to the area," said hood blends in numerous green belts and nature areas that will to expect in the peaceful town of Clatskanie." Lot sizes in Phase e feet, and a few "estate lots" at over half an acre, said Weidman. n Homes, have purchased lots and are starting to build the first gh quality and affordable value to the Clatskanie marketplace.

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Pictured above in front of the first new house nearing completion are Ann Pedigo, co-listing agents Peter McWilliams and Beau Weidman who will be hosting Sunday's event, and Susie Conley of American Home Bank, "preferred lender" Phil Sheridan.

"We are bringing this much needed new housing to the area," said Weidman. "The homes blend in with the numerous green belts and nature areas that will be expected in the peaceful town of Clatskanie." Lot sizes in Phase 1 range from a few "estate lots" at over half an acre, said Weidman. The homes have purchased lots and are starting to build the first high quality and affordable value to the Clatskanie marketplace. Standards are standard with Pac Rim Homes, creating value and instant

designs that maximize the use of light and the natural features of the area. Attached along with Weidman for Clatskanie Woods.

Attached homes that range from 1783 to 2700 square feet. Attached homes, will range from 1500 to 2200 square feet. All of them will fit the typical lifestyle of the 21st century." The Pac Rim model home is expected to be finished in mid-May. Pac Rim home prices are standard with Pac Rim Homes, creating value and instant

Homes is building and developing major projects in Longview, Astoria and Tigard. Pac Rim principal members are Chuck Eng,

and homes ranging from 1700 to 2133 square feet with three-car garages for \$339,900. Fredrickson Homes is a father and son building team based in Washington, recently finishing 41 homes in St. Helens.

The first subdivision to be built in Clatskanie in over 30 years, will also include \$175,000 for the estate size lots. Lot buyers may have their homes built within a year of the purchase of the lot and construction must

Purchased, unconstructed lots must be maintained and all homes must meet the CC&Rs adopted for the development. Homes are on a lot basis, said Weidman and McWilliams.

"Celebration" will include refreshments and door prizes. The entire event will be held at the Jeraldine Drive off of NE 5th Street just west of the Swedetown area. For more information, visit www.PacRimHomes.com or contact Beau Weidman at [mail: Beau@EquityGroup.com](mailto:Beau@EquityGroup.com).

Chief Photo by Deborah Steele Hazen

Water Treatment Projects

to serve customers. The council will vote on the necessary zoning changes for the PUD to allow for the building permits, and the council will vote on the matter. The council will vote on the recommendation of staff on a bid of \$102,261.44 from the contractor, Astoria Water Treatment, Inc. of Astoria to excavate the water main which runs under the PUD property between 1st Street and S. Nehalem

was the lowest bidder on the project. The PUD will pay \$102,261.48 for the work, while the city will pay the remaining \$96,000.

By unanimous votes, the council will award the bid and the capital improvement project for the 2006-07 fiscal year. The project is for \$9,000 previously allocated for outside city water treatment. (Continued on Page 10)

At the end of the March 21st discussion, the PUD board asked the attorneys to meet with Carlson and his attorneys prior to a special meeting called for 7 a.m. on Friday, March 23. By a 3-0 vote the board approved the consent agreement contingent upon the board's determination that payment guarantees were satisfactory.

More Assurances, Praise for Cooperative Effort

Friday morning, after more discussion with the attorneys, and after being presented by a letter from Berggruen Holdings, Inc., which owns the controlling interest in Cascade Grain and to date has invested approximately \$80 million, the three-man board found the financial commitment satisfactory and approved the assignment agreement unanimously.

The letter from Berggruen Holdings read in part: "We understand that your concern is that, prior to the completion of construction of Cascade's ethanol facility, Cascade may fail to fulfill its obligations under the power and service contract at a time when PUD is acquiring and installing electrical transmission, distribution and related facilities necessary for the PUD to fulfill its obligations under the power and service contract.

"Berggruen hereby states that, prior to the completion of construction of Cascade's ethanol facility, it will cause Cascade to fulfill its obligations under the power and service contract, so long as the PUD fulfills its own obligations in accordance with the schedule contemplated by the power and service agreement.

"We would also like to note that Berggruen is very positive about the Cascade ethanol project in which we have invested so much time and money and we look forward to continuing to work with the PUD and Cascade's other suppliers and customers."

Following Friday's meeting which saw the approval of the contracts, Carlson issued the following statement:

"Cascade Grain has always enjoyed the working relationship that we have had with the Clatskanie PUD. Cascade Grain looks forward to having the PUD serve our plant and other industries that will come to Port Westward. The infrastructure that has been put in place at Port Westward by the PUD, Columbia County and the Port of St. Helens along with the help of PGE and Summit Power has made huge strides in bringing in potential industry and local jobs to the area."

Paul Pulliam, commission president of the Port of St. Helens said, "The Clatskanie PUD is a valuable partner in the development taking place at Port Westward. We appreciate the hard work the PUD has put into the

Cascade Grain project from the beginning and look forward to a continued positive working relationship with them as we all work to bring family wage jobs to the Port Westward Energy Park.

Speaking at Friday morning's meeting, Clatskanie Mayor Diane Pohl said she, members of the Clatskanie City Council and community leaders have followed the development of the Cascade Grain ethanol plant closely. "I have watched them travel through mine fields to get where they are today. We believe Cascade Grain is solid and viable. The minimal risk the PUD is taking to provide electrical service to the facility will bring maximum benefit," said Mayor Pohl.

"I appreciate the time and effort and hard work that went into this agreement," said Columbia County Commissioner Tony Hyde. "The expertise and vision of Clatskanie PUD is one of the reasons industry is choosing to invest in Port Westward."

PUD Recall Confirmed... Filling of Vacancies on Agenda for Thursday's CPUD Meeting

The confirmation of results of the March 20th recall election of CPUD directors Lori Piercy and Keith Sutfin, and the review and possible appointment of candidates to fill the two vacancies on the PUD board is on the agenda for a special meeting of the Clatskanie PUD board this Thursday, March 29, at 7 p.m. in the Cedar Room at the Clatskanie River Inn. The meeting is open to the public.

Columbia County elections officials certified the recall vote Friday, confirming that Piercy, who represented subdivision 5 - Rainier's 1940 city limits, was recalled by a margin of 258 to 161, and Sutfin, who represented subdivision 1 - Westport, Marshland and North Clatskanie, was recalled by a margin of 434 to 204.

With the certification the recall is official, and Piercy and Sutfin are no longer on the CPUD board.

State law provides that the three remaining directors fill the vacancies, and letters were sent to PUD customers in subdivisions 1 and 5, inviting interested persons to apply no later than Wednesday, March 28.

As of Tuesday evening, several applications had been received from subdivision 1 and two from subdivision 5.

In addition to the confirmation of the recall election results and dealing with the vacancies on the board, the CPUD directors were also expected to consider taking action to allow for a sole source purchase of power cable for the Cascade Grain project.



JAN 20 2009

Board of Directors
Merle Gillespie
Don Hooper
Stephien D. Petersen
Bob Wiggins
Janet Willey

General Manager
Gregory A. Boom

January 9, 2009

Theresa Rockwood
Account Executive
Bonneville Power Administration
PO Box 3621
Portland, OR 97208

RE: New Large Single Load ("NLSL") Determination of a Facility Request

Dear Theresa,

Clatskanie People's Utility District ("Clatskanie") requests and commits, pursuant to Contract No. 01PB-12220 (the "Contract"), *Section 15(c)(2) Determination of a Facility*, to enter into consultation with the Bonneville Power Administration ("BPA") in order to make a reasonable determination of what constitutes a single facility, for purposes of indentifying a New Large Single Load ("NLSL"), based upon the criteria and procedures set forth therein. The consultation is for the examination of service by Clatskanie to facilities owned or leased by the Cascade Grain Products, LLC ("Cascade"), all located within the Port of St. Helens' Port Westward Industrial Park.

Specifically the District requests examination of Clatskanie service to Cascade as two separate and distinct facilities producing two distinct products provided to two distinct markets; one facility producing ethanol for the transportation industry and the separate facility producing distiller's dried grain with solids for the livestock industry. The focus of the consultation will be the Determination of a Facility process but Clatskanie anticipates the consultation also addressing (i) examination of the date of start of the 12-month NLSL load measurement period, (ii) treatment of the operation of non-synchronous emergency shutdown generators, (iii) treatment of certain off-site facilities under lease by Cascade and (iv) a load data measurement, analysis and certification protocol.

Time is of the essence, as a to prompt consultation will best assure a full and fair examination of Clatskanie's service to Cascade in a manner that will allow service to be managed in the best interest of BPA, Clatskanie and Cascade. To help expedite the consultation process the District is enclosing a report, *NLSL Power Summary*, dated November 12, 2008 and a memorandum entitled *Application of BPA NLSL Policy to Clatskanie People's Utility District Service to Cascade Grain Products, LLC's Facilities*, dated September 26, 2008, prepared by K&L Gates as counsel for Cascade.

Clatskanie looks forward to working in consultation with BPA to identify loads associated with specific facilities and develop the necessary energy use data monitoring, analysis and certification protocol.

Please contact Joe Taffe of my staff at your earliest convenience to set a schedule for consultation.

Sincerely,

(b) (6)

Greg Boom
General Manager

enclosures (2)

cc: Charles Carlson, Cascade Grain Products, LLC
Larry Cable, Cable Huston Benedict Haagensen, Lloyd
Scott Anderson, K&L Gates
Joe Taffe, Power Manager

469 N. Nehalem St., P.O. Box 216, Clatskanie, Oregon 97016
(503) 728-2163 • Fax (503) 728-2812 • E-Mail clatspud@clatskaniepud.com
www.clatskaniepud.com

BPA-2023-00499-F 000354

27760014

New Large Single Load

The Pacific Northwest Electric Power Planning and Conservation Act (the “Act”) of 1980, P.L. 96-501, stipulates that electric utility service to loads related to new consumer facilities or increase of loads at existing consumer facilities of more than 10 average megawatts in any 12 month period are to be declared a New Large Single Load (“NLSL”) and, if served using firm power produced by the Columbia River Federal Power system (“CRFPS”) provided to the serving utility by the Bonneville Power Administration (“BPA”), eligible for firm service only at a New Resource (“NR”) rate rather than a Priority Firm (“PF”) rate unless these facilities have been determined by BPA to be sheltered under a site specific Contract For and Committed To (“CFCT”) determination. BPA is directed by statute, policy and contract to identify any potential NLSL and monitor the loads associated with the facility.

NLSL Review

Based primarily on preliminary information BPA obtained regarding the capacity of distribution system transformers installed by Clatskanie, service to Cascade Grain Products LLC (“Cascade”) facilities at Port Westward was identified by BPA as subject to review under Contract 01PB-12220 (the “Contract”), Section 15(c), New Large Single Loads and related documents¹. Contract supremacy establishes that this examination of service to Cascade should be in the first instance under terms of the Contract with the related documents providing context and clarification as needed.

Section 15(c)(1), General:

Clatskanie notified BPA of impending service to Cascade through numerous discussions and items of correspondence, multiple collaborative load forecast processes, as well as through funding of and assistance with studies of and the design and completion of interconnection with BPA’s 115 kV transmission system. As part of the interconnection of new Clatskanie facilities required for service to Cascade with the BPA 115 kV transmission system, Clatskanie worked with BPA to specify, inspect, and calibrate meters and associated metering equipment and provide data acquisition capabilities so BPA could monitor service to Cascade for NLSL examination purposes.

After this interconnection and installation of the BPA compliant metering equipment and establishment of communication capabilities for remote data acquisition, BPA requested and were granted, over protest by Clatskanie, access to Cascade and Clatskanie facilities and the rights to install additional parallel metering. Loads metered under BPA’s provisional metering scheme include two remote, off-site facilities used for storage and shipping of ethanol, and two on-site, non-synchronous generators used during power outages for emergency shutdown of critical processes.

The configuration of the additional parallel metering installed by BPA implies a set of loads that do not match Clatskanie’s determination of which loads were subject to review under the Contract. This disparity led to Clatskanie’s dispute of the loads being metered for review and a written request September 26, 2008 to limit the loads included for review and determine under Section 15(c)(2) which loads reasonably constitute a single facility subject to review under the Contract.

Section 15(c)(2), Determination of a Facility:

To date BPA has not entered into consultation with Clatskanie to perform a Determination of a Facility in order to make a reasonable determination of what constitutes a single facility, for purposes of indentifying a NLSL, based upon the criteria and procedures set forth in Section 15(c)(2). A request, in writing, for BPA to enter into

¹ Related documents include the 1991 NLSL Manual, relevant sections of the 2001 Power Sales Contract No. DE-MS79-81PB90490 and related decisions there under, the April 2001 New Large Single Load Policy, the 2002 New Large Single Load Policy Issue Review, and the July 2005 Policy for Power Supply Role for Fiscal Years 2007 – 2011 and various prior BPA decisions regarding NLSL facilities.

consultation with Clatskanie and apply the criteria of Section 15(c)(2) to the facts as known of the construction, service to and commercial operation and testing of Cascade's facilities at Port Westward. Since Cascade produces two distinct products for two distinct markets, application of the criteria of Section 15(c)(2) will in the final analysis result in the loads associated with the production of ethanol from corn for the transportation industry constituting a single facility and the loads associated with production of Dried Distiller's Grain with Solubles ("DDGS") constituting a separate single facility. The three transformers that Clatskanie added to the originally agreed plan of service that serve the DDGS facility have total connected transformer capacity of 10 MVA rendering this second facility not subject to NLSL examination.²

Section 15(c)(3), Determination of Ten Average Megawatt Increase:

The determination of whether a load exceeds the NLSL 10 average megawatt increase limit derives from energy consumption at a single facility during the immediately past 12 month period that exceeds by 10 average megawatts or more the energy consumption of that facility for the consecutive 12 month period one year earlier. Obviously the critical aspect of this determination is when each of the twelve month periods begins.

Clatskanie began delivery of electrical service to Cascade under contract rate 07CI (CGP1) on January 23, 2008. BPA began collecting and storing data representing energy delivery to Cascade as early as February 1, 2008. Even though BPA has historical energy delivery and use data beginning February 1, 2008, BPA contends that they cannot determine with confidence when Cascade's facilities were energized and instead have chosen to construct a date of commercial operation and testing to begin the 12 month period of review.

During discussions with BPA regarding NLSL metering and review, Clatskanie provided hourly, non-construction energy delivery data beginning with data for February 1, 2008 which shows significant loads well in excess of a megawatt making Cascade Clatskanie second largest load. Clatskanie also provided details of the operation and testing of Cascade's facilities including delivery and processing of significant volumes of raw materials in April 2008. Despite these data and details of operation and testing, BPA contends that the date that Cascade began operation and testing of its facilities at Port Westward is June 7, 2008. Shortly after June 7, 2008 Cascade performed a peak capacity test of their facilities operating all systems simultaneously, an event that will rarely repeat, to assure sufficient capacity and controls for absolute peak load which, although a normal part of commercial operation and testing, serves to skew the NLSL examination load data upward.

By dismissing the date the facilities were energized and the early months of commercial operation and testing, BPA's arbitrary June 7, 2008 commercial operation and testing date serves to increase the average load over the ensuing 12 month period. While we have not made the case, should the June 7, 2008 date be upheld, by the authority of last resort, to be the definitive date for NLSL review the energy deliveries for the period of February 1, 2008 through June 6, 2008 would logically establish the baseline use for the 12 month period preceding NLSL examination from which the NLSL 10 average megawatt increase would be measured. I expect these energy delivery data to be challenged as unreliable for NLSL examination purposes in that they represent energy used for activities prior to BPA's determination of the date of commercial operation and testing even though this energy was used to receive, handle, store, grind, pulverize and otherwise process corn and to test all systems within the facilities up to and including the pumping of ethanol off site and the testing of blowers, driers and conveyers that are part of the separate DDGS facility.

Metered Loads:

As noted, BPA chose to install parallel metering on Clatskanie's distribution feeders providing service to each of Cascade's facility. Additionally BPA installed parallel metering on two off-site locations; storage tanks and docking facilities under lease by Cascade. Clearly neither of these facilities can be reasonably construed to be at a single location in that they are some distance from both the ethanol facility and the DDGS facility. The ethanol facility has on site storage capability which is used as primary storage and has transport capabilities by both rail and truck directly from the ethanol facility. The off-site storage and docking facilities are not a necessary part of the

² 10 MVA of transformation capacity would require 100% loading for each hour of any 12 month period to equate to 10 average megawatts and thus cannot reasonably represent a NLSL.

production process but are leased by Cascade to allow flexibility in marketing and a third method of shipping. Service to these small loads in under the separate General Service rate rather than the Contract Industrial rate for service to the ethanol facility and to the DDGS facility does not satisfy the criteria of Section 15(c)(2).

BPA also installed metering to measure power produced by on-site, non-synchronous, emergency shut-down generators contending that power thus produced was for load that could potentially be placed on Clatskanie. The Act establishes that load for purposes of NLSL review is load that is placed by the consumer (Cascade) on the customer (Clatskanie). Since these generators can only deliver power when Clatskanie's system is inoperative, generally due to the failure of the BPA 115 kV transmission system, they cannot serve power to load that could logically be placed on Clatskanie. These generators are not large and their operation is constrained to short periods so they will not represent a large amount of energy.

Clatskanie has disputed the inclusion of off-site loads and on-site, non-synchronous, emergency shut-down generators as relevant to the NLSL review and requested that the data acquired from metering these facilities be segregated from commercial service to Cascade's ethanol and DDGS facilities, so that service in the final instance can be correctly construed.

Data Management and Certification:

With the installation of parallel meters by BPA two sets of energy delivery data are being collected and stored by BPA and one of these two sets is being collected and stored by Clatskanie. These data sets will not match due to the laws of physics, meter accuracy and timing issues. Data collected by the parallel BPA metering is available for review by Clatskanie.

Reconciliation of these data and agreement between BPA and Clatskanie as to the actual loads measured for each period of time is of critical importance. Clatskanie should request from BPA a certified data set for the period of June 7, 2008 through December 31, 2008. Once Clatskanie has received these data, it can be reconciled with data collected via Clatskanie's Supervisory Control and Data Acquisition ("SCADA") system. If acceptable to Clatskanie, acceptance can be documented of the BPA metering data in writing such that it is both known and unchangeable.

Analysis of these data will necessarily require comparison of hourly data obtained from the parallel BPA meters installed on the disputed off-site loads to monthly meter readings performed by Clatskanie and comparison of the hourly data obtained from the parallel BPA meters installed on the on-site, non-synchronous, emergency shut-down generators to periods of de-energization of Clatskanie facilities due to outages. These data and the loads and generation they represent should be small but need to be addressed and understood in the unlikely event that they are required as part of the NLSL examination and determination process.

Absent a set of agreed upon procedures and agreed upon data determination of the actual load for purposes of NLSL determination and management of service to the Cascade facilities will be problematic.

Conclusion:

Clatskanie should correspond with BPA requesting a Determination of a Single Facility and request adjustment of both the starting date and meters included for purposes of NLSL examination. Clatskanie should include as you decide this *New Large Single Load ("NLSL") Power Summary* and the K&L Gates memorandum of September 26, 2008, subject noted as *Application of BPA NLSL Policy to Clatskanie People's Utility District Service to Cascade Grain Products, LLC's Facilities*

Date: December 29, 2008
To: Greg Booth, General Manager
From: Joe Taffe, Power Manager
Subject: NLSL; Cascade Grain Products LLC, Next Steps
Comments: After review and analysis I recommend the following as the best path forward for the Clatskanie People's Utility District for management of the New Large Single Load ("NLSL") issues related to Cascade Grain Products LLC's operations at Port Westward.

The next step should be to correspond with BPA requesting a consultation to finalize activities necessary for a *Determination of a Facility* per the District's *Block & Slice Contract No. 01PB-12220, Section 15 (c)(2), Determination of a Facility*. Should the consultation reasonably result in a determination that there are two facilities determination of other issues such as the correct date operations began, treatment of the emergency shutdown generation and off-site loads will be less critical.

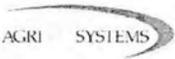
The letter should specifically cite multiple facilities based on the manufacture of two distinct products for two distinct markets; ethanol for transportation and DDGS for agriculture. The criteria under the NLS Policy of 2001 and Contract No. 01PB-12220 clearly state that to constitute a single facility "... *the load serves a manufacturing process which produces a single product or type of product*".

Enclosed with the letter certain supportive documents could be submitted such as my NLSL Power Summary analysis of pertinent facts and general timeline of events related to construction, energizing and operation of the Cascade facilities and the final K&L Gates legal analysis memorandum prepared for and provided through Cascade. The letter should also identify data management issues and request a separate work team to finalize data collection, sharing, analysis, reconciliation and certification protocol.

A draft letter, the NLSL Power Summary and K&L Gates memorandum are attached.



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From the August 2006 Issue



Current Issue

Site work begins on West Coast's first giant dry mill

Cascade Grain Products LLC, a Clatskanie, Ore.-based ethanol plant, has begun initial site work on its 108 MMgy ethanol plant. According to Charles Carlson, CEO of Cascade Grain Products, temporary access roads for the Clatskanie plant site were being constructed the week of June 19, nearing press time. [The week of June 26,] we'll begin stabilization work, which will be a three- to four-month process," Carlson told EPM.

Cascade Grain Products is owned by Berggruen Holdings, an international investment firm with offices in Los Angeles, New York, London and Berlin. The holdings company secured \$100 million of senior debt through WestLB, Carlson said. The state of Oregon has also issued a \$20 million loan for the project, Carlson confirmed.

The giant plant, designed by Williamsburg, Va.-based Delta-T Corp., has been engineered to produce 108 MMgy of the near 200-proof, undenatured fuel alcohol. The plant will be pumping out in excess of 113 MMgy of denatured ethanol, Carlson said. A joint venture operation between The Industrial Company Inc. and JH Kelly Construction, named JH Kelly Ethanol, is the general contractor of the project.

ConAgra has been contracted to procure the plant's feedstock, which will be corn railed in via 110-car unit trains from the Midwest, Carlson said.

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OTHER ARTICLES OF INTEREST:

- Big River Resources expands capacity, acquires second project
- Construction nears for Iowa wet mill ethanol plant
- Trenton Agri Products finishes expansion




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Arrangements have been made for Eco-Energy to market Cascade Grain Products' ethanol primarily to the West Coast, the largest U.S. ethanol market. Berggruen Holdings' June press release stated, "[Cascade Grain Products] will readily access the primary markets of Washington, Oregon and California, and the secondary markets of Alaska, Hawaii and the Pacific Rim."

Cascade Grain Products' project site is located on the Columbia River at Port Westward. With adequate waterway access, Berggruen Holdings and Cascade Grain Products expect to ship a majority of the ethanol produced in Clatskanie via barge up and down the coast.

Land O' Lakes is set to market the plant's DDGS to both the export and domestic markets.

According to Carlson, this first major dry-mill ethanol production facility on the West Coast is expected to be up and running by the fourth quarter of 2007 or the first quarter of 2008. "Our team has developed this strategy over the past two years, and we believe that this will provide Cascade Grain the flexibility to manage its business during all phases of the commodity cycle," said Berggruen Holdings president Nicolas Berggruen. "Berggruen Holdings is committed to being a long-term player in the renewable fuels sector and will continue to pursue additional opportunities in the ethanol and biofuels markets with similar high-quality characteristics."

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USDA

United States
Department
of Agriculture

Agricultural
Economic
Report
Number 841

July 2005

USDA's 2002 Ethanol Cost-of-Production Survey

Hosein Shapouri and Paul Gallagher

**U.S. Department of Agriculture,
Office of the Chief Economist,
Office of Energy Policy and New Uses**

Abstract

In 2003, the U.S. Department of Agriculture surveyed 21 dry-mill ethanol plants to estimate their 2002 production costs, including both variable (feedstock and plant operation) and capital expenses. These plants produced about 550 million gallons of ethanol in 2002. Net feedstock costs for the surveyed plants ranged from 39 to 68 cents per gallon in 2002. For cash operating expenses, the average energy expenditure was 17.29 cents per gallon. Labor costs ranged from 3 to 11 cents per gallon, maintenance costs from 1 to 7 cents, and administrative costs from 1 to 18 cents. For capital expenditures, new plant construction costs from \$1.05 to \$3.00 per gallon of ethanol. Average investment to expand existing ethanol production capacity was 50 cents per gallon; hence, expansion tends to cost less than new capacity. Comparison with a 1998 survey of ethanol producers showed that total operating costs in 2002 had changed very little from 1998. It also showed that the average cost of building new plants had dropped, possibly due to designs that emphasize economies of scale.

Keywords: Ethanol costs of production, net corn costs, operating costs, dry mills, wet mills.

About the Authors

Hosein Shapouri is an economist with the Office of Energy Policy and New Uses in USDA's Office of the Chief Economist. Paul Gallagher is a professor at Iowa State University, Ames.

Input Requirements and Productivity

Ethanol processors have improved their cost performance because new technology enables processors to obtain more output with the same inputs and to produce the same output using less inputs. We report the results of survey respondents' standard physical performance measures in ethanol processing.

Feedstock Use and Ethanol Yield

Corn was the main feedstock for production of ethanol in 2002 for the ethanol plants surveyed. Only 1 of 21 ethanol plants used a mixture of feedstocks such as of corn, sorghum, and wheat starch for production of ethanol (fig. 5).

Ethanol yield per bushel of corn varied among the ethanol plants. Ethanol yield per bushel of corn was directly related to the amount of fermentable starch in the corn kernels, the plant's efficiency, the plant's age, types of equipment, and plant management. In addition, new ethanol plants have very high ethanol yield per bushel of corn. For the ethanol plants surveyed, ethanol yields in 2002 ranged from 2.5 to 2.8 gallons per bushel, with a weighted average of 2.68 gallons per bushel (fig. 6).

Energy Use in Ethanol Plants

Dry-mill ethanol plants use electrical and thermal energy. Electrical energy is used in motors and pumps, while thermal energy, in the form of steam and hot air, is used in liquefaction, fermentation, distillations, and drying byproducts. On average, the ethanol plants surveyed used 1.19 kilowatt hours (kWh) of electricity per gallon of ethanol in 2002. Individual ethanol plant electricity use ranged from 0.6 to more than 2.0 kWh per gallon of ethanol (fig. 7).

113.4 MILLION GAL, 10 MW MAX, 0.77 kWh/GAL

Figure 5
Types of feedstock used in production of ethanol, 2002

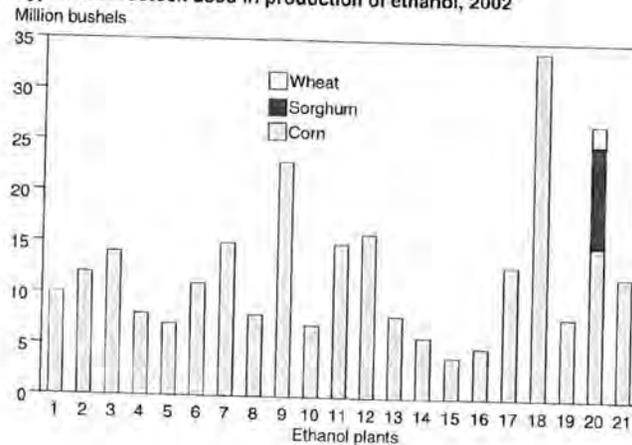


Figure 6
Ethanol yield per bushel of corn and ethanol production, 2002

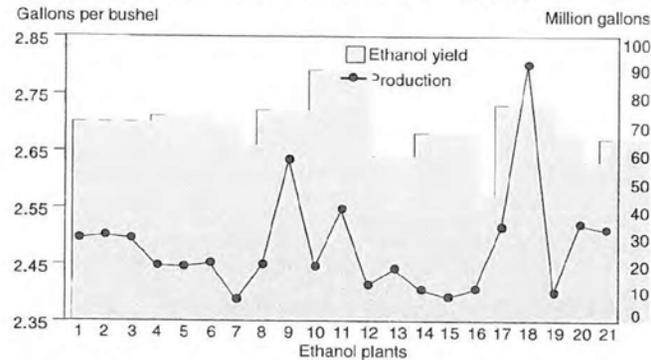
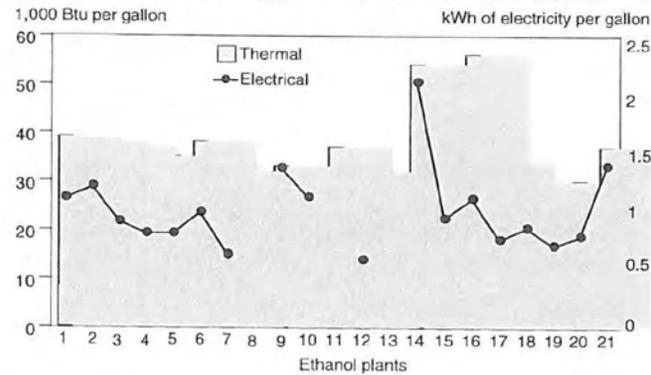


Figure 7
Thermal and electrical energy used in production of ethanol, 2002



Ethanol plants use natural gas to produce steam to convert corn to ethanol. On average, the surveyed ethanol plants used 34,800 Btu of thermal energy per gallon of ethanol. Thermal energy used per gallon of ethanol varied among ethanol plants and ranged from 26,000 to 54,000 Btu per gallon in 2002 (fig. 7).

Due to high prices of natural gas, some ethanol plants recently reduced their energy consumption by partially removing the moisture from distiller's grains. Production of wet distiller's grains (WDG) and modified distiller's grains (MDG) instead of distiller's dried grains (DDG) lowers the plant's energy requirements.

Also, each ethanol plant has a yearly allowance of volatile organic compound (VOC) emissions according to Environmental Protection Agency (EPA) standards. VOC emissions are directly related to the drying of distiller's grains. Since some larger dry mills are near the VOC limit, a plant's shift to MDG or WDG may also be aimed at reducing emissions, especially when there is a local market for the livestock feed.



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

POWER SERVICES

June 18, 2008

In reply refer to: PSW-6

Mr. Greg Booth, General Manager
Clatskanie People's Utility District
P.O. Box 216
Clatskanie, OR 97016-0216

Dear Greg:

This letter is to document the process and next steps of the metering project at Cascade Grain.

Through US&A, you have received a metering plan. I assume the information is clear but if you have any questions please address them to US&A and me.

We are considering setting a date to begin metering for NLSL determination purposes based on the start of commercial operation. While the NLSL Policy calls for mutual agreement on a start date for load growth measurement purposes where possible, in the event the Parties cannot reach agreement BPA reserves the right to select a date it feels is most in keeping with the spirit and letter of the NLSL Policy. During our site visit of Friday May 30, 2008, we noted that a number of fermentation vats were open and there was not a complete connection to the storage tanks for the denatured ethanol, among other factors, which indicated that construction was still ongoing at the plant.

Lack of access to and information on the site earlier in the year make it impossible to arrive at a date of "initial energization" with any degree of confidence. As of June 12, 2008, we are seeing meter readings consistent with what we would assume is close to commercial operation but BPA will require an official statement of notification by Cascade Grain that they are in fact in commercial operation.

Since ethanol storage prior to shipment is an integral part of the production and sale of ethanol fuels; the storage tanks and vapor recovery system remain an integral part of the ethanol plant operations regardless of what ever rate schedule CPUD uses to bill its customer. Also regardless of the fact that part of the facility is up to a mile outside the "plant gates" {See Fac/CF/CT Det -- DOE Richland - March 30, 2005} does not disqualify it as part of a single facility. Before we have meters installed at the storage tanks and dock, please send me weekly meter readings from those two meters.

As regards the "emergency shut down generators", while it is true that the generators primary purpose is emergency shut down that does not preclude their use to reduce consumption of energy used for NLSL load measurement process. The fact the generators are "non-synchronous" with the PUD is irrelevant since the switching facilities we've seen at the plant would facilitate the isolation of part of the plant from the CPUD system with a corresponding apparent reduction in metered load at the plant. Under its policy, BPA must be confident that we know what is going on at the plant under consideration from a NLSL perspective. If BPA is prevented from installing the meters deemed necessary to provide such confidence its remedy is to declare the load a NLSL and place the burden on CPUD and Cascade Grain of proving the opposite is true.

Finally, we are expecting a formal request from you for a facilities determination. If you or your staff would like more information on what is involved with that process, we would be happy to meet with you, in Portland, Clatskanie or via conference call.

Please be aware that based on the complexity and difficulty of revisiting a NLSL or Facility determination after the fact, BPA will not reopen the issue of a load's NLSL status once the Administrator has made a decision.

Sincerely,

(b) (6)

Theresa Rockwood
Account Executive

cc:
Mr. Charles Carlson, CEO, Cascade Grain Products, LLC

bcc:

T. Miller – LP-7

P. Norman – P-6

M. Gendron – PS-6

R. Anderson – PSS-6

J. Kolze – PSS-6

R. Rogers – PSS-6

A. Quinata – PSS-6

S. Coe – PSW-6

CCIS Authentication – KSC-4 (CS_01PB-12220)

Official File – PSW-6 (PM-11)

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Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

POWER SERVICES

August 27, 2008

In reply refer to: PSW-6

Mr. Greg Booth, General Manager
Clatskanie People's Utility District
P.O. Box 216
Clatskanie, OR 97016

Dear Greg:

As we have discussed, it is important to establish the date on which we will begin the twelve month measure of energy usage at the Cascade Grain ethanol plant for purposes of the potential New Large Single Load (NLSL) determination. For your records and to attempt to clearly explain this issue as outlined in the Bonneville Power Administration's (BPA) NLSL Policy, I will describe the four Start Date options and then BPA's decision as to the appropriate start date for Cascade Grain.

Under the Northwest Power Act, customer loads associated with a single facility that grow by 10 or more average megawatts (aMW) in any consecutive 12-month period shall be declared NLSL's subject to service with federal power purchased at BPA's New Resources (NR) rate. Measurement of load growth, particularly in the first year of commercial operation, is therefore of paramount importance to all parties concerned. The date used to start the clock running for 12 consecutive months to measure load growth at a new facility becomes very important.

BPA's current NLSL Policy is a combination of contract and policy decisions recorded in several documents: the 1991 NLSL Manual, relevant sections of BPA's 1981 Power Sales Contract and related decisions there under, the 2001 New Large Single Load Policy, the 2002 New Large Single Load Policy Issue Review, and the 2005 Policy for Power Supply Role for Fiscal Years 2007-2011.

BPA's current NLSL Policy provides four alternatives that BPA can use to determine the date to commence its measurement of load growth at a facility for NLSL purposes.

- A) **Prospective Determination** (mutual consent). BPA and the utility agree that the new load will start at 10 aMW or more in its first year of operation so that the load is subject to NLSL treatment from the date it starts operating. (See attached determination for Hyundai)

- B) **Start of Utility Service.** The date of first utility service to a preexisting load. This option applies in situations in which an existing load of 10 aMW or more is “taken over” in a merger, annexation or similar situation. Here the load is a NLSL from the day the “new” utility begins service. (See 2001 NLSL Policy and attached determinations for Halsey and Plum Creek.)
- C) **Initial Energization.** The date of initial energization (for test and start up) with BPA’s consent. In this instance BPA and the utility agree on a date on which the construction at the site is substantially complete and production equipment is being energized for test and startup. (See 2001 NLSL Policy, section V; 1991 NLSL Manual at page 3.)
- D) **Commercial Operation.** The date of commercial operation (actual production). (See section 8(d), 1981 Power Sales Contract, as referenced in the 1991 NLSL Manual at page 3; see also the 2001 NLSL Policy, section V)

BPA’s Consideration of the Alternatives to Determine the Start Date for Measuring the Cascade Grain Ethanol Plant Load:

Option A - Prospective Determination.

Although the installed transformation capacity of 32.5 MVA exceeds the NLSL Policy limit of 10 MVA at which load growth at a single facility must be monitored for NLSL purposes, Clatskanie has insisted that the actual load would not result in an NLSL determination. Therefore Option A, requiring mutual agreement, is inapplicable to the Cascade Grain Ethanol plant.

Option B – Start of Service

Clatskanie has suggested that the date of energization of Bradbury Substation constitutes “Start of Service” under BPA’s 2001 NLSL Policy (Section II.B.1.a).

The Start of Service Option for selecting a start date only applies in instances in which an existing load is served by a “new” utility, e.g., through annexation or merger. (See attached determinations for Halsey and Plum Creek). The Cascade Grain Ethanol plant is an entirely new facility being built in Clatskanie’s service territory. It is not a pre-existing load and therefore Option B is inapplicable.

Option C – Initial Energization for Test and Start-Up

Clatskanie has suggested that the first rail delivery of corn to the plant’s site on April 15, 2008 was the first production related activity at the site and therefore should be used as the Start Date. The fact that material for production was on site does not meet the test of Initial Energization for

Test and Start-Up. Rather, the test is that production equipment is being tested for production and that construction at the site is substantially complete.

It is a settled point in BPA's implementation of the Policy that initial energization for test and start up activity in one area of the plant while significant construction activity is going on elsewhere in the facility will not meet the standard (see section II.B. 2001 NLSL policy). It is clear from BPA visits to the site on May 20, 2008 and May 30, 2008 that the general contractor, JH Kelly, was still very much engaged in significant construction activity. In discussions with Clatskanie PUD staff and Ken McFarland, Cascade Grain's plant manager, on May 30, 2008, we learned that JH Kelly had not completed construction and was actually operating under the liquidated damages provisions of their contract with Cascade Grain. Based on this, the start date is clearly not earlier than May 30.

We note that total metered power consumption at the facility was relatively steady and below 3 MW until June 7, consistent with the ongoing construction activity, at which point it began a rapid rise to 12 to 13 MW over the next two weeks. You have indicated to us that the plant was testing production equipment in this period. This suggests that the June 7 to June 21 period is one in which construction was substantially complete and production equipment was being energized for testing and startup.

Option D – Start of Commercial Operation

The start of commercial operation would appear to be shortly after the date of initial energization, as is normally the case. We understand that Cascade Grain began an Acceptance Test (7-day, 100% load) on June 24, 2008. In our meeting at Cascade Grain on July 18, 2008, Ken McFarland told us that Cascade Grain had not accepted title to the plant from JH Kelly and would not do so until the Acceptance Test was successfully passed. If we use the Start of Commercial Operation option, the logical start date is when Cascade Grain began the Acceptance Test that ultimately led to the title being transferred.

Start Date Conclusion: Based on the preceding discussion we believe that application of either Option C or D result in start dates that reasonably apply in this case. BPA has decided the Option C result, June 7, 2008, as the date of *initial energization for test and start-up* as defined in the NLSL Policy, is the *start date* on which BPA will begin measuring the Cascade Grain ethanol plant load toward the 10 aMW NLSL limit.

We note that contrary to Clatskanie's initial assurances that the Cascade Grain plant would consume less than 10 aMW, BPA has already measured the load as running at 12 to 13 MW. With a June 7 start date, continued operation at 12 to 13 aMW through the balance of the 12 months would result in the facility exceeding 10 aMW in its first 12 months of operation and designation as an NLSL.

As of August 18, with the final installation of meters on the back up diesel generators, BPA is confident that we have metering installed of a quality and in all places needed to monitor load growth at the facility, including the pumping loads at the storage tank and dock. Absent hearing a compelling argument from Clatskanie that the start date of June 7, 2008 is not appropriate, we will use such date for the purpose of making a NLSL determination. If we have not heard back from you within 30 days we will consider this decision final. Thank you for your assistance in this project.

Sincerely,

Theresa Rockwood
Account Executive

Three (3) Enclosures:

Determinations for 1) Hyundai, 2) Halsey and 3) Plum Creek

bcc:

R. Davis – KSL-4

T. Johnson – LP-7

T. (Tom) Miller – LP-7

P. Norman – P-6

M. Gendron – PS-6

R. Anderson – PSS-6

A. Quinata – PSS-6

R. Rogers – PSS-6

R. Sigurdson – PSS-6

CCIS – KSC-4 (Clatskanie, 01PB-12220)

Official File – PSW-6 (PM-11)

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TRIAL COURT ADMINISTRATION

BY _____ KIRK

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COLUMBIA

CASCADE GRAIN PRODUCTS, LLC, an
Oregon limited liability company,

Plaintiff,

v.

JH KELLY LLC, ETHANOL,

Defendant.

Case No. 08-2042
COMPLAINT TO DISCHARGE LIEN

Plaintiff, CASCADE GRAIN PRODUCTS, LLC ("Cascade"), by way of this
complaint, alleges as follows:

NATURE OF ACTION

1. This is an action to discharge a Claim of Construction Lien that was
overstated as a result of fraud or gross and palpable negligence.

THE PARTIES

2. Cascade is, and at all times mentioned in this Complaint was, a
limited liability company organized and existing under the laws of the State of
Oregon, with its principal place of business located at 81200 Kallunki Road,
Clatskanie, Columbia County, Oregon.

34

1 3. JH KELLY LLC, ETHANOL (“Kelly”) is a joint venture between The
2 Industrial Company, a Delaware corporation, and JH Kelly Holdings, LLC, a limited
3 liability company existing under the law of Washington.

4 **VENUE**

5 4. This Court has venue because Kelly claimed a lien in the amount of
6 \$27,811,822 (plus certain additional bond premiums and interest) on Cascade’s
7 land, which is located in Columbia County.

8 **BACKGROUND**

9 5. This action arises from the construction of a dry mill ethanol plant
10 located in Clatskanie, Oregon (the “Project”). It is one of the largest plants of its
11 type on the West Coast. Cascade is the owner of the plant. Kelly is the
12 design/build contractor. The Project cost exceeds \$150 million.

13 6. The parties are currently arbitrating various claims, which will be
14 described below, before an American Arbitration Association (“AAA”) Panel (the
15 “Panel”) in Oregon under the caption JH Kelly LLC, Ethanol v. Cascade Grain
16 Products, LLC, AAA Case No. 75 110 Y 00374 07 JRJ.

17 7. The Court in Multnomah County has ruled on two prior petitions by
18 Cascade -- the first seeking to stay the pending arbitration between the parties,
19 and the second seeking to enforce a subpoena duces tecum on third parties in a
20 case captioned Cascade Grain Products, LLC v. JH Kelly LLC, Ethanol, Case No.
21 0710-12073.

22 8. On August 29, 2008, Kelly filed a Claim of Construction Lien (the
23 “Lien”) in the amount of \$27,811,822 (plus accumulated bond premiums and
24 interest, and recording fees) on Cascade’s land in connection with Kelly’s work on
25 the Project without regard to the fact that the amount due to Kelly under the
26 contract between Kelly and Cascade is hotly disputed and the subject of the

1 arbitration . Exh. A.

2 9. Kelly's Lien is overstated as a result of fraud or gross and palpable
3 negligence and, therefore, must be discharged in its entirety.

4 **A. The Dispute as to Soils Improvements Work**

5 10. Cascade and Kelly entered into a contract (the "Contract") on April 7,
6 2006. Exh. B. Under the Contract, Kelly was required to, among other things,
7 "perform all work and services in connection with the engineering, design,
8 procurements and construction of the Cascade Plant" for the lump-sum contract
9 price of \$139,191,988. The Contract provided for a "Guaranteed Substantial
10 Completion Date" of March 6, 2008 (Exh. B, Article 6.1.1), and imposed
11 substantial, daily liquidated damages (\$40,000/day) upon Kelly in the event that
12 the Project was completed beyond that date (Exh. B, Article 7.4).

13 11. In addition to the lump-sum price, the Contract provided "allowances"
14 for certain additional work items. One of these allowance items was "soils
15 improvements." The allowance price for the soils improvements work was
16 \$5,875,650 (Exh. B, at Exh. M attached thereto), which the Contract states
17 represents "approximate pricing" (Exh. B, Article 9.2). The Contract further
18 provided that if Cascade timely elected to have Kelly perform the soils
19 improvements work (which Cascade did), then Kelly was required to complete the
20 Project by the March 6, 2008 Guaranteed Substantial Completion Date. Exh. B,
21 Article 9.2.

22 12. A Notice to Proceed was issued on June 6, 2006 and soils stabilization
23 was one of the first work items that Kelly was required to perform. Exh. C.

24 13. In October 2007, Kelly claimed that the scope of the soils
25 improvements work greatly exceeded what Kelly had anticipated and that the cost
26 would substantially exceed the \$5,875,650 allowance provided in the Contract.

1 14. Kelly sought additional payments from Cascade for the soils
2 improvements work, which will be detailed below.

3 15. Cascade disputed (and continues to dispute) that it was responsible
4 for the additional soils improvements costs, alleging, among other things, that
5 Kelly negligently estimated the soils improvements allowance by failing to properly
6 evaluate certain geotechnical reports.

7 16. Article 13.2.2 of the Contract provides that, in the event of unresolved
8 disputes during the project concerning the scope of Kelly's work or payment for
9 Kelly's work, Kelly is required to provide a "good faith estimate of the costs to
10 provide the disputed services" and, until the dispute is resolved, Cascade is
11 responsible to pay 50% of Kelly's "estimated direct costs" and "reasonable time
12 estimated to perform the services." All payments made by Cascade under this
13 provision are subject to an unqualified reservation of rights.

14 17. In January, 2007, Kelly provided its first "good faith" estimate of the
15 total costs for the soils improvements work: \$22 million. Contrary to Article 13.2.2
16 of the Contract, Kelly began invoicing Cascade for 100% of the soils improvements
17 work.

18 18. Kelly's "good faith" estimate has continued to evolve, notwithstanding
19 Cascade's payments based on prior estimates. By August 13, 2007, Kelly had
20 significantly reduced its estimate to \$12,905,920. Exh. D. By April 30, 2008,
21 Kelly claimed that its costs for the soils improvements work (and alleged delays
22 caused by Cascade) totaled \$18,233,296 -- \$11,183,577 of which represented
23 direct costs for soil improvements work and \$7,049,720 of which represented
24 indirect costs due to alleged soil improvements, water, electrical, and rail delays.
25 Exh. E, at Exh. 2 thereto.

26 19. To date, according to Kelly's own documents, Cascade has paid

1 \$11,475,898 on account of the disputed claim related to the soils improvements
2 work. Exh. F. Because Kelly's claim for the direct costs related to this work is
3 \$11,183,577, Cascade has actually paid Kelly more than 100% of this disputed
4 claim, thereby unjustly enriching Kelly by \$5,884,109.50 (because Kelly is only
5 entitled to 50% of the disputed direct costs, in accordance with the Contract).

6 **B. The Dispute Resolution Process**

7 20. Article 19 of the Contract, entitled "Dispute Resolution," provides,
8 among other things, that:

9 If disputes or disagreements do arise, EPC Contractor and
10 Owner each commit to resolving such disputes or disagreements in
11 an amicable, professional and expeditious manner so as to avoid
unnecessary losses, delays and disruptions to the Work.

12 21. Article 19.1 sets forth a dispute resolution process under which the
13 parties are initially required to attempt to resolve disputes at the field level via
14 discussions between the parties' field representatives; if that is unsuccessful, then
15 senior executive officers from each party are required to meet in an effort to resolve
16 the dispute; if that is unsuccessful, the parties are required to submit the dispute
17 to non-binding mediation conducted in Portland, Oregon.

18 22. Article 19.2 of the Contract provides that the parties are entitled to
19 have disputes decided by AAA arbitration if the disputes "have not been resolved in
20 accordance with the procedures set forth in Section 19.1" Exh. B.

21 23. Kelly exhausted the dispute resolution provisions of Section 19.1 with
22 regard to the soils improvements dispute.

23 24. On September 28, 2007, after the dispute resolution efforts failed,
24 Kelly filed an arbitration demand seeking compensation for "all costs and damages
25 caused by the soil stabilization work ..." and "delays caused and/or anticipated to
26 be caused by Cascade." Exh. G. The arbitration demand states that Kelly cannot

1 quantify its claims because: “Construction of the plant is ongoing and the full
2 amount of the claim is unknown at this time.” Id.

3 25. At the time the demand was filed, the Project was neither at nor near
4 substantial completion. In fact, substantial completion of the Project was not
5 achieved until August 11, 2008, which will be discussed below.

6 26. On April 30, 2008, Kelly filed its Preliminary Statement of Claims. At
7 that time, Kelly’s total damages claim, projected through June 16, 2008, was
8 \$17,708,226. Exh. E, at Exh. 2 thereto.

9 27. On May 30, 2008, Cascade filed its Response to Kelly’s Preliminary
10 Statement of Claims, including its affirmative defenses, and counterclaims.
11 Cascade’s counterclaims included counts for Schedule Liquidated Damages,
12 Performance Liquidated Damages, Recoupment of Overpayments/Unjust
13 Enrichment, Breach of Contract/Intentional Misrepresentation, and Attorneys Fees
14 and Expenses. Cascade’s full damages were not yet ascertainable at that time
15 because they are tied to the dates of Substantial and Final Completion of the
16 Project, which had not yet occurred. Exh. H.

17 **C. Kelly’s Failure to Pay Liquidated Damages**

18 28. The Contract provides for two types of liquidated damages: schedule
19 and performance liquidated damages. See Exh. B, Article 7.4. Performance
20 Liquidated Damages are not determinable until after the Project achieves
21 “substantial completion,” and are available to Cascade if Kelly, among other things,
22 fails to meet its “performance guaranty.” Exh. B, Article 7.1.

23 29. The Contract imposes “Schedule Liquidated Damages” of \$40,000 per
24 day upon Kelly for each day beyond the Guaranteed Substantial Completion Date
25 that Kelly fails to achieve substantial completion. Specifically, Article 7.4.1
26 provides, in relevant part:

1 Schedule Liquidated Damages. EPC Contractor
2 understands that if Substantial Completion is not attained by the
3 Guaranteed Substantial Completion Date, Owner will suffer damages
4 which are difficult to determine and accurately specify. EPC
5 Contractor agrees that if Substantial Completion is not attained by
6 the end of the Guaranteed Substantial Completion Date, EPC
7 Contractor shall pay Owner \$40,000 as liquidated damages
8 (“Schedule Liquidated Damages”) for each day that Substantial
9 Completion extends beyond the Guaranteed Substantial Completion
10 Date

11 See Exh. B, Article 7.4.1. The Contract further provides that:

12 Schedule Liquidated Damages shall be paid by EPC Contractor by the 15th
13 day of the month following the month in which such damages were incurred,
14 except as set forth in Section 10.2.7.

15 *Id.* Cascade’s right to collect liquidated damages under the Contract is not
16 conditioned upon any of Cascade’s performance of contractual obligations. See,
17 *generally, id.*, Article 7.4 (“Liquidated Damages”).

18 30. The Contract also expressly states that Cascade is entitled to withhold
19 “all or part” of any application for payment made by Kelly:

20 [I]f Owner determines that EPC Contractor is not entitled to all
21 or part of an Application for Payment, it will notify EPC Contractor in
22 writing within ten (10) days after receipt of Application for Payment.
23 The notice shall indicate the specific amounts Owner intends to
24 withhold, the reasons and contractual basis for the withholding, and
25 the specific measures EPC Contractor must take to rectify Owner’s
26 concerns. EPC Contractor and Owner will attempt to resolve Owner’s
concerns prior to the date payment is due. If the parties cannot
resolve such concerns, each party may pursue its rights under the
Contract Documents, including those under Article 19.
Notwithstanding anything to the contrary in the Contract Documents,
Owner shall pay EPC Contractor all undisputed amounts in an
Application for Payment within the times required by this Agreement.

See Exh. B, Article 10.2.3.

31. By April 15, 2008, the Project had still not reached substantial
completion and Kelly, therefore, was obligated to pay Cascade \$1 million in
Schedule Liquidated Damages incurred for the prior month (March 6 - March 31,
2008). Kelly failed to pay these damages to Cascade as required by the Contract.

1 32. On April 21, 2008, Cascade provided Kelly with written notice that it
2 intended to withhold the Schedule Liquidated Damages that were payable to
3 Cascade by April 15, 2008, but were not paid from the March, 2008 payment
4 application. Exh. I. In response to the notice, Kelly failed to pay the Schedule
5 Liquidated Damages owed.

6 33. As a result, pursuant to Article 10.2.3 of the Contract, Cascade
7 deducted \$1 million of the Schedule Liquidated Damages owed by Kelly from the
8 payments owed to Kelly. Subsequently, after Kelly continued to fail to pay the
9 Schedule Liquidated Damages, Cascade deducted additional liquidated damages
10 from progress payments due to Kelly under the Contract pursuant to Article 10.2.3
11 until Substantial Completion occurred on August 11, 2008. Exh. J.

12 34. On May 30, 2008, Kelly filed a Motion for Cease and Desist Order and
13 Order to Show Cause and Alternative Motion for Partial Summary Judgment, all of
14 which sought to enjoin Cascade from withholding liquidated damages from
15 progress payments. On July 18, 2008, the Panel found that Cascade did not have
16 the right to withhold liquidated damages from progress payments -- although, the
17 Panel unequivocally stated that it was in no way foreclosing Cascade's ability to
18 ultimately recover such damages at the final arbitration hearing:

19 The arbitration panel has concluded that Cascade does not
20 have the contractual right to withhold monies for potential Schedule
Liquidated Damages....

21 * * *

22 [T]he arbitration panel is making no determination ... as to the
23 contractual validity of the assessment of Schedule Liquidated
damages.

24 * * *

25 The Panel wishes to emphasize that it makes no decision (either
26 legal or factual) with regard to any other issue or claim of Kelly or the
defenses thereto asserted by Cascade, or with regard to Cascade's

1 counterclaims or the defenses thereto asserted by Kelly. Those
2 matters are left for resolution in the final arbitration hearing.

3 Exh. K, at p. 3 (underlined emphasis in original; bold emphasis added).

4 35. Kelly failed to reach substantial completion until over 5 months after
5 the Guaranteed Substantial Completion Date set forth in the Contract. The parties
6 memorialized substantial completion by the signing of a Certificate of Substantial
7 Completion, which established August 11, 2008 as the mutually agreed upon
8 substantial completion date. Exh. J.

9 36. On August 18, 2008, in accordance with the Panel's July 18, 2008
10 order, Cascade credited Kelly for all previously withheld Schedule Liquidated
11 Damages, together with interest on such unpaid amounts through August 11,
12 2008 at the contractual rate. Cascade reserved its right to recoup this credit based
13 upon the Panel's final rulings. Exh. L.

14 37. Contemporaneously with crediting Kelly for the previously withheld
15 Schedule Liquidated Damages, Cascade exercised its right to withhold unpaid
16 Schedule Liquidated Damages as part of the retainage portion of the Contract,
17 which, pursuant to Article 10.2.7, allows Cascade to retain 5% of each payment
18 (with certain exceptions) plus an additional \$150,000 from the payment made
19 upon the Notice to Proceed. Article 10.2.7 of the Contract also allows Cascade to
20 withhold money for, among other things, unpaid Schedule Liquidated Damages:

21 Upon Substantial Completion of the Work and the preparation
22 of the Punch List pursuant to Section 6.4.6, Owner shall release to
23 EPC Contractor retained amounts relating to the Work less an
24 amount equal the sum of (i) 200% of the value of all remaining or
25 incomplete items of Work as noted in the Punch List, (ii) the Potential
26 Performance Liquidated Damages that EPC Contractor may be
required to pay pursuant to Section 7.4.2 hereof and (iii) any unpaid
Schedule Liquidated Damages that EPC Contractor is required to pay
pursuant to Section 7.4.1 hereof. If the sum of amounts described in
items (i) through (iii) in the immediately preceding sentence exceeds
the aggregate retained amounts held by Owner, EPC Contractor shall,

1 simultaneous with Substantial Completion, pay such excess amount
2 to Owner.

3 38. On August 27, 2008, despite Cascade's contractual right to withhold
4 unpaid Schedule Liquidated Damages from retainage, the Panel entered an interim
5 award in favor of Kelly in the amount of \$4,640,000 (plus interest), requiring that
6 Cascade return the money it withheld as Schedule Liquidated Damages from
7 retainage. Exh. M. In its written opinion, the Panel again reiterated that its
8 interim decision as to Cascade's right to liquidated damages had no prospective
9 effect: "at this stage of the arbitration proceedings Cascade has not proved that
10 Kelly is required to pay Schedule Liquidated Damages." Exh. N, at p. 2 (underlined
11 emphasis in original; bolded emphasis added).

12 **D. The Lien**

13 39. On August 29, 2008, despite the Panel's repeated statements that it
14 was making no final determinations as to the assessment of liquidated damages (or
15 any other issues for that matter) and that Kelly's rights to payment under the
16 Contract would be determined at the final arbitration hearings, Kelly filed the Lien
17 for \$27 million on Cascade's property. Exh. A.

18 40. In addition the Lien is grossly at \$27,811,822 -- an amount that is
19 more than 57% greater than the amount stated in Kelly's Preliminary Statement of
20 Claims, which included projected damages through June 16, 2008. Exh. E, at
21 Exh. 2 thereto. The filing of the Lien in that amount is an attempt by Kelly to exert
22 leverage against Cascade in the arbitration.

23 41. Kelly's "Breakdown of Claim" states that the "Total Contract Amount"
24 is \$173,260,074. To date, Cascade has paid Kelly \$151,074,583. Therefore, the
25 most the Lien could possibly be for is the difference between those numbers:
26 \$22,185,491 (although Cascade disputes that same is owed). However, Kelly's Lien

1 is \$5,626,331 greater than that amount, which can only be explained by Kelly's
2 fraudulent or grossly negligent conduct.

3 42. For instance, the Lien includes \$5,387,789 that Cascade has already
4 paid Kelly for the soils improvements work -- a fact that Kelly readily concedes.
5 Indeed, Kelly expressly acknowledges payment of this amount, but attempts to
6 justify not including it in the "Payments Received" section of its "Breakdown of
7 Claim" because "Cascade Grain paid it under protest and is currently seeking to
8 recover that amount in [the arbitration]." Exh. A.

9 43. Kelly also included indirect costs and other contractual damages in
10 the Lien, contrary to the Oregon Lien Law.

11 44. For instance, in a chart attached to its "Breakdown of Claim," Kelly
12 includes charges for "Soils Stabilization Work and Delays; Water, Electrical and
13 Rail Delays." Exh. A, at Exh. C-1 thereto (emphasis added). Kelly makes no
14 attempt to delineate direct costs from indirect costs (although it previously made
15 such delineations in its Preliminary Statement of Claims); rather, it impermissibly
16 combines all alleged costs together for a total of \$13,495,173.

17 45. One of those indirect costs that is presumably included in the Lien is
18 "Projected Productivity Loss through Estimated Substantial Completion," which
19 was a line item in Kelly's Preliminary Statement of Claims in the amount of
20 \$4,578,958. Exh. E, at Exh. 2 thereto. Cascade has no reason to believe that this
21 expense was not included as part of Kelly's Lien, given Kelly's unequivocal
22 admission that its Lien includes delay damages. This line item is non-lienable
23 pursuant to Oregon law.

24 46. Kelly also recognizes that the costs comprising over half of its Lien
25 have not been authorized pursuant to the Contract. Indeed, in its "Breakdown of
26 Claim," Kelly states that "[u]napproved change orders and extra work increased the

1 Contract Price by an additional \$14,126,408....” Exh. A, at Exh. C thereto
2 (emphasis added). As Kelly recognizes, to date, there has been no signed change
3 order relating to soils improvements work -- therefore, making the inclusion of
4 those costs for “unapproved” change orders and extra work improper.

5 47. Finally, the Lien includes \$631,235 in “startup and commission costs”
6 incurred after June 29, 2008. Exh. A, at Exh. C-1 thereto. This sum is improperly
7 based on Kelly’s prior, unilateral claim that substantial completion occurred on
8 June 29, 2008. Kelly previously claimed that any work it performed after June 29,
9 2008 would be provided at an additional cost to Cascade because, in Kelly’s view,
10 substantial completion was already achieved and, therefore, it was not obligated to
11 perform any additional work -- a claim that Cascade entirely rejected.

12 48. Since then, Kelly has conceded that substantial completion was not
13 achieved until August 11, 2008 when the parties executed a Certificate of
14 Substantial Completion. Exh. J.

15 49. Accordingly, the “startup and commission costs” included in the Lien
16 were incurred as part of bringing the Project to the point of substantial completion,
17 which was Kelly’s obligation under the terms of the Contract -- for which Kelly is
18 not entitled to any additional compensation.

19 **E. Cascade’s Damages as a Result of the Overstated Lien**

20 50. As a result of the Lien, Cascade has suffered immediate damage.

21 51. In order to obtain financing for the Project, on June 2, 2006, Cascade
22 entered into a \$100 million loan agreement with various lenders. Exh. O.

23 52. Pursuant to Section 7.02(b) of the loan agreement: “The Borrower shall
24 not create, incur, assume or suffer to exist any Lien upon any of its property,
25 revenues or assets (including its Equity Interests)....” Exh. O, Section 7.02(b).

26 53. Consequently, the mere filing of the Lien by Kelly is an event of default

1 under the loan documents pursuant to which Cascade obtained financing for the
2 Project.

3 54. The loan agreement further provides that during the continuation of
4 such event of default, the interest rate paid by Cascade on loans outstanding is
5 increased by 2% per annum. Exh. O, Section 3.06(b).

6 55. Furthermore, the loan agreement provides that Cascade's lenders may
7 accelerate Cascade's loan obligations or exercise other remedies granted to such
8 lenders under the loan documents, resulting in severe consequences to Cascade.
9 Exh. O, Section 8.03(a).

10 **FIRST CLAIM FOR RELIEF**

11 (Discharge of Lien Pursuant to O.R.S. 87.001 et seq.)

12 56. Cascade realleges and incorporates by reference all the preceding
13 paragraphs.

14 57. Kelly fraudulently and/or through gross negligence overstated the
15 amount of the Lien in at least the following ways:

16 (i) it filed a Lien in an amount that is \$5,626,331 greater than the
17 total contract amount less payments made by Cascade;

18 (ii) it expressly failed to account for payments it has already
19 received from Cascade, namely the \$5,387,789 for the soils improvement work;

20 (iii) it included nonlienable claims (as set forth in O.R.S. 87.010) in
21 its calculation of the Lien including, but not limited to, claims for damages due to
22 delay and other contractual damages;

23 (iv) it included additional charges of \$631,235 for work that was to
24 be performed under the Contract, namely startup and commission work that
25 occurred before Kelly achieved substantial completion; and
26

1 (v) it included claims of \$14,126,408 for “unapproved” change
2 orders and extra work not authorized by the Contract.

3 58. As a result of the filing of the Lien, Cascade has been damaged
4 because the mere filing of the Lien is a default under Cascade’s loan financing,
5 which has resulted in increased interest charges as well as the ability of Cascade’s
6 lenders to exercise various remedies, as set forth above.

7 59. Because Kelly’s Lien is overstated through fraud or gross and palpable
8 negligence, it should be discharged in its entirety.

9 **SECOND CLAIM OF RELIEF**

10 (Reformation/Reduction of Lien Pursuant to O.R.S. 87.001 et seq.)

11 60. Cascade realleges and incorporates by reference all the preceding
12 paragraphs.

13 61. On August 27, 2008, the Panel issued an interim award to Kelly in the
14 amount of \$4,640,000 (plus interest). The award related to the limited issue of
15 Cascade’s right to withhold liquidated damages.

16 62. In fact, the Panel stated that it was not making any determination on
17 any other legal or factual issue until the final hearing.

18 63. Accordingly, the Lien should be reduced to the amount of \$4,640,000
19 (plus interest), which represents the only amount that Kelly has any entitlement to
20 based on the Panel’s Orders.

21 64. Additionally, the Lien should be further reduced on account of: (i) the
22 \$5,387,789 that Cascade has already paid Kelly for the soils improvements work
23 (which Kelly concedes it received payment for); (ii) the \$631,235 in “startup and
24 commission costs” incurred after June 29, 2008; and (iii) the \$14,126,408 in
25 “unapproved” change orders and extra work not authorized by the Contract.

26 65. As a result of the filing of the Lien, Cascade has been damaged

1 because the mere filing of the Lien is a default under Cascade's loan financing,
2 which has resulted in increased interest charges as well as the ability of Cascade's
3 lenders to exercise various remedies, as set forth above.

4 65. Consequently, the Lien should be discharged in its entirety given the
5 appropriate reductions and credits awarded to Cascade.

6 **PRAYER**

7 WHEREFORE, Cascade demands judgment against Kelly, directing:

8 1. That the Court discharge the Lien in its entirety with prejudice;

9 2. That the Court require Kelly to pay Cascade for all damages resulting
10 out of the filing of the Lien including, but not limited to, the following:

11 (i) All expenses, fees, and interest charges incurred by Cascade as
12 the result of obtaining a bond;

13 (ii) All expenses and fees expended by Cascade in filing this lawsuit;

14 and

15 (iii) Any and all other damages incurred by Cascade as a result of
16 Kelly improperly encumbering Cascade's land; and

17 3. That Cascade be granted such other relief as this Court deems just
18 and proper.

19 Dated: September 16, 2008.

20 GARVEY SCHUBERT BARER

(b) (6)

21 By

22 Keith S. Dubanevich, OSB #975200
23 Email: kdubanevich@gsblaw.com
24 121 SW Morrison, 11th Floor
25 Portland, OR 97204
26 Phone: 503-228-3939
Fax: 503-226-0259

Of Attorneys for Plaintiff

05/20/23 11:30:01

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COLUMBIA

JH KELLY LLC, ETHANOL,

Plaintiff,

v.

CASCADE GRAIN PRODUCTS, LLC, an Oregon limited liability company;
WILMINGTON TRUST COMPANY, a Delaware corporation; BRUCE L. BISSON, an individual; HSBC BANK USA, NA f/k/a THE MARINE MIDLAND TRUST COMPANY OF NEW YORK, a Maryland corporation; WESTLB AG, NEW YORK BRANCH, a foreign banking organization; BANCO SANTANDER CENTRAL HISPANO, S.A., a foreign financial holding company; FARM CREDIT SERVICES OF AMERICA, FLCA, a Nebraska farm credit system institution; WESTWARD ENERGY, LLC, an Oregon limited liability company,

Defendants.

No. 18-2954

COMPLAINT

(Foreclosure of Construction Lien; Breach of Contract; and Quantum Meruit/Constructive Change)

NOT SUBJECT TO MANDATORY ARBITRATION, EXCEPT BY CONTRACT

STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

Plaintiff alleges as follows,

PARTIES

1.

Plaintiff JH Kelly LLC, Ethanol is the assumed business name of JH Kelly Holdings LLC & TIC – The Industrial Company (“Kelly”), a joint venture which is licensed as a construction contractor by the Oregon Construction Contractors Board.

/////

/////

1

2.

2

Defendant Cascade Grain Products, LLC (“Cascade Grain”) is an Oregon limited

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liability company.

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Defendant Wilmington Trust Company (“Wilmington Trust”) is a Delaware

6

corporation.

7

4.

8

Defendant Bruce L. Bisson is an individual, who, on information and belief, resides

9

in Delaware.

10

5.

11

Defendant HSBC Bank USA, N.A. f/k/a The Marine Midland Trust Company of New

12

York (“HSBC Bank”) is a Maryland corporation.

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6.

14

Defendants WESTLB AG, New York Branch, (“WESTLB”) is a foreign banking

15

organization; Banco Santander Central Hispano, S.A. (“Banco Santander”) is a foreign

16

financial holding company; and Farm Credit Services of America, FLCA, (“FCSA”) is a

17

Nebraska farm credit system institution.

18

7.

19

Defendant Westward Energy, LLC (“Westward Energy”) is an Oregon limited

20

liability company.

21

STATEMENT OF FACTS

22

8.

23

Kelly and Cascade Grain entered into an Engineering Procurement and Construction

24

Contract dated April 7, 2006 (the “Contract”). The Contract is attached hereto as **Exhibit 1**,

25

and incorporated herein by this reference.

26

////

1

9.

2 Kelly agreed to furnish services, labor, materials, and equipment in connection with
3 the engineering, design, procurement, and construction of the Cascade Dry Mill Ethanol
4 Plant (“Improvement”).

5

10.

6 The Improvement is situated upon a certain site (“Site”) which is situated on certain
7 land (“Land”) located in the County of Columbia, State of Oregon, with addresses of 81200
8 Kallunki Road, Clatskanie, OR 97016 and 80997 Kallunki Road, Clatskanie, OR 97016. The
9 location of the Improvement, Site, and Land is described in detail in the construction lien
10 (“Claim of Lien”) attached hereto as **Exhibit 2** and incorporated herein by reference.

11

11.

12 Cascade Grain was responsible for providing soil testing, subsurface investigations
13 and geotechnical evaluations, all of which Kelly was “entitled to rely upon in performing the
14 Work.” (Contract ¶ 4.2 and Exhibit C.).

15

12.

16 Substantial portions of the work necessary to construct the Improvement were
17 expressly excluded from Kelly’s scope of work under the Contract and were instead set forth
18 as “Allowance” items. The scope and cost of these Allowance items were generally
19 undeveloped or unknown, and Kelly was directed by Cascade Grain to remove the items
20 from the base scope and to place them “below the line.” Soils improvement work was one of
21 the Allowance items. Cascade Grain expressly reserved the right to “perform [any]
22 Allowance item itself.” (Contract ¶ 9.2.). If Cascade Grain wanted Kelly to perform any
23 Allowance item, Cascade Grain had to “elect” to do so in accordance with specific
24 procedures discussed below. Absent such an election, Cascade Grain was obligated to
25 perform the Allowance item. (Contract ¶ 4.7.).

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The Contract contained the list of Allowance items along with estimated non-binding prices that were based on information provided to Kelly by Cascade Grain. (Contract, Exh. M). The Contract also provided specific dates by which Cascade Grain was required to elect to have Kelly perform the Allowance items. (*Id.*). If the election was timely made, the Contract's original substantial completion date of March 7, 2008 could be preserved. In the case of soils improvement, the election deadline date was the same date as the Contract -- April 7, 2006.

14.

The Contract further provided that in order for an election to add any Allowance item to Kelly's scope of work, Kelly and Cascade Grain had to timely execute a change order "at a mutually agreed price." (Contract ¶ 9.2.).

15.

Prior to entering the Contract, Cascade Grain supplied Kelly with preliminary geotechnical studies, soils data and cost estimates prepared for Cascade Grain by others, and Kelly relied on such documents. As stated above, the soils improvement work was designated as an Allowance item in large part due to the inadequate, defective, deficient and/or incomplete nature of these geotechnical investigations. In fact, the Contract documents provided, in relevant part:

Preliminary Geotechnical information has been provided by the Owner and Contractor has relied upon same for foundation design and soil improvements provided in the proposal. Presently the proposal base bid does not include any soil improvements . . .

After preliminary review with soils improvement consultant it has been determined additional soils investigation will be necessary to confirm specific characteristics and appropriate solutions per the site general arrangement drawing developed specific to Contractor's design for the site. In addition, the allowance cost presently carried and option pricing does not guarantee zero settlement or differential

1 settlement . . . Soil stabilization and foundation costs will be
2 updated upon a final geotechnical report and will be based on
3 those findings.

4 (Contract Exhibit B.)

5 16.

6 After Contract execution, and after the election deadline date for the soils
7 improvement Allowance passed, additional geotechnical investigation disclosed subsoil
8 conditions that required work far exceeding the amount originally contemplated by Cascade
9 Grain or Kelly.

10 17.

11 On or about September 15, 2006, approximately five months after the Contract was
12 signed, Cascade Grain, for the first time, signed a change order log (not a change order)
13 which authorized payment of \$5,875,650. The change order log explicitly described the soils
14 work as “first pass” only, which was limited to the cost of installing stone columns as an
15 initial attempt to stabilize the foundation soils. Because of the poor soils conditions,
16 however, it was determined that stone columns alone were inadequate and that substantial
17 additional stabilization work, including over excavation, backfill and surcharging, was
18 necessary to compliment the stone columns and stabilize the site.

19 18.

20 At Cascade Grain’s request in December 2006 and January 2007, Kelly provided two
21 bids to cover both the first pass stone columns (which had then already been completed) and
22 the additional stabilization work required to proceed with the Improvement. Kelly’s
23 December 20, 2006 bid totaled \$17,937,120 and was expressly conditioned on approximately
24 ninety one (91) days of additional Contract time. At Cascade Grain’s request, Kelly provided
25 a second bid on January 10, 2007, which included accelerated work necessary to remove the
26 91 day delay and meet the original substantial completion date of March 7, 2008, assuming

1 that no additional impacts or Cascade Grain-caused delays were incurred. That bid totaled
2 \$21,980,568.

3 19.

4 Cascade Grain failed to accept either bid and failed to execute a soils change order.
5 Cascade Grain took the position that Kelly's soils work and/or estimated work was defective,
6 deficient, and/or inadequately performed and that Kelly should bear the added expense of the
7 soils work. Cascade Grain nevertheless directed Kelly to perform the soils work necessary to
8 stabilize the site and contested any proposed delay. To date, Cascade Grain has tendered
9 (under a reservation of rights) only an additional \$5,387,789 for completion of all required
10 soils work. Nonetheless, Kelly proceeded with due diligence to complete the work, and
11 mitigated its cost and schedule impacts, with a complete reservation of its rights for full
12 payment and reasonable time extensions.

13 20.

14 During the soils improvement efforts, Cascade Grain employed its own consultants to
15 investigate and analyze the work necessary to stabilize the site. Neither Cascade Grain nor
16 any of its consultants discovered and/or directed Kelly to pursue less costly or less time-
17 consuming engineering methods for stabilizing Cascade Grain's site than those actually
18 utilized by Kelly.

19 21.

20 Kelly experienced delays and productivity impacts caused by Cascade Grain's failure
21 to timely deliver potable and process water, electrical power and rail car service to the
22 Project, all as required by the Contract. (Contract, Exh. C.). The defects, deficiencies,
23 and/or inadequacies in Cascade Grain's performance of these supply terms caused delays
24 which, coupled with the soils delays, extended the project's substantial completion date to
25 June 29, 2008.

26 // // //

1 22.

2 Cascade Grain also failed to provide Kelly with utilities of sufficient quality
3 necessary to start-up, test and operate the plant. In fact, Cascade Grain's own testing of the
4 process water at the site showed that the water was defective in that it materially failed
5 quality specifications contained in the Contract. Project equipment was damaged because of
6 Cascade Grain's actions.

7 23.

8 During construction of the Improvement, Cascade Grain began to illegally withhold
9 liquidated damages from Kelly's pay application. Cascade Grain's withholdings were not
10 permitted by the Contract.

11 24.

12 On September 28, 2007, before the substantial completion of the Improvement, Kelly
13 filed a Demand for Arbitration ("Demand") with the American Arbitration Association
14 ("AAA"). Kelly filed its demand pursuant to the broad arbitration provision set forth in the
15 Contract, which provides:

16 **Arbitration.** Any claims, disputes or controversies
17 between the parties arising out of or relating to the Agreement,
18 or the breach thereof, which have not been resolved in
19 accordance with the [dispute resolution] procedures set forth in
20 Section 19.1 above shall be decided in arbitration in
21 accordance with the Construction Industry Arbitration Rules of
22 the AAA then in effect[.]

23 (Contract ¶ 19.2).

24 25.

25 On July 18, 2008, the AAA panel (the "Panel") held that Cascade Grain could not
26 withhold liquidated damages pursuant to the Contract prior to substantial completion of the
27 Improvement. The Panel ordered Cascade Grain to return the liquidated damages withheld.
28 Cascade Grain has refused to return the money despite additional orders from the Panel to do
29 so.

1 26.

2 On June 29, 2008, Kelly achieved substantial completion of the Improvement
3 pursuant to the Contract. Despite Kelly's satisfaction of the Contract requirements, Cascade
4 Grain refused to certify substantial completion. Instead, Cascade Grain directed Kelly to
5 perform additional tests not required by Contract.

6 27.

7 Kelly incurred significant damages associated with the soils work; Cascade Grain's
8 delays in delivering non-defective water and adequate electrical power and rail, and
9 commissioning; and the additional work Cascade Grain required after substantial completion.
10 Kelly's damages include, but are not limited to, (i) additional subcontractor costs, (ii)
11 additional material costs, (iii) additional labor costs, (iv) additional third party equipment
12 costs, (v) delay and productivity impacts, (vi) mark-up and bond premium on Kelly's
13 additional costs; (viii) liquidated damages wrongfully withheld by Cascade Grain and (viiii)
14 retention amounts wrongfully withheld by Cascade Grain as offsets to alleged defects in
15 Kelly's design and/or construction of the Improvement. In addition, Kelly incurred
16 significant costs remedying operational problems caused by Cascade Grain's inability to
17 properly operate the plant after substantial completion, and to provide quality water pursuant
18 to the contract.

19 28.

20 Kelly provided services, labor, transported or furnished materials, and/or rented
21 equipment used in the construction of an Improvement. Kelly was not fully paid for this
22 work, which constituted a breach of the Contract or unjust enrichment. Therefore, on August
23 29, 2008, within 75 days after substantially completing the work under the Contract, Kelly
24 filed with the Recording Officer of Columbia County, Oregon, the Claim of Lien attached
25 herein as **Exhibit 2**, which asserted a construction lien ("Lien") and contained (i) a true
26 statement of Kelly's demand, after deducting all known offsets and credits; (ii) the names of

1 the owners in fee or reputed owners in fee of the Improvement, Site, and Land; (iii) the
2 names of owners or reputed owners of leasehold and other interest in the Improvement, Site,
3 and Land; (iv) the name of the entity to whom Kelly furnished the materials; and (v) a
4 description of the Improvement, Site, and Land to be charged with the Lien sufficient for
5 identification. The Lien was for \$27,811,822, plus accumulated interest and attorney's fees.
6 Kelly provided a breakdown of the amount of the Lien. The Claim of Lien was duly verified
7 and recorded in the Lien Book of Columbia County, Oregon, as Document No. 2008-008485.

8
9 29.

10 On September 18, 2008, within 20 days after the date of the filing of said Claim of
11 Lien, Kelly mailed a notice of the Claim of Lien filing in writing to those having interests in
12 the Site, Improvement, and Land, including without limitation all Defendants.

13 30.

14 On December 2, 2008, more than 10 days prior to filing this lawsuit, Kelly mailed a
15 notice in writing to those having interests in the Site, Improvement and Land, including
16 without limitation all Defendants, stating its intent to file this lawsuit unless payment was
17 made within 10 days.

18 **FIRST CLAIM FOR RELIEF**
19 **AGAINST ALL PARTIES**
20 **(Foreclosure of Construction Lien)**

21 31.

22 Kelly realleges paragraphs 1 through 30 above.

23 32.

24 Kelly provided services, labor, transported or furnished materials, and/or rented
25 equipment used in the construction of an Improvement.

26 33.

The whole of the Site and Land is necessary for the convenient use and occupancy of
the Improvement.

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1 34.

2 Kelly has performed all conditions precedent required of it under the Contract. The
3 total amount due and owing under the Contract – for labor, services, materials, and/or rented
4 equipment used in the construction of an Improvement – is \$27,811,822, plus accumulated
5 interest.

6 35.

7 Cascade Grain is now and at all material times has been the owner in fee, or reputed
8 owner in fee, of the Improvement.

9 36.

10 Kelly has performed all conditions precedent to foreclosing on its Lien. Subsequent
11 to the recording of the Claim of Lien, Kelly has received no additional payments from
12 Cascade Grain, despite demand, and the amount of claim due and owing is \$27,811,822, plus
13 accumulated interest.

14 37.

15 Pursuant to ORS 87.060(5), Kelly is entitled to costs and disbursements paid for
16 filing or recording the Lien and all moneys paid for title reports required for preparing and
17 foreclosing the Lien.

18 38.

19 Kelly is unaware of any other entities that have filed claims of construction lien on
20 the Improvement.

21 39.

22 The Port of St. Helens, Portland General Electric Company, and Cascade Grain are
23 owners in fee or purported owners in fee in the Site and Land. The Port of St. Helens and
24 Portland General Electric Company may have leasehold or other interests in the
25 Improvement. The Claim of Lien does not attach to the Port of St. Helens' or Portland
26 General Electric Company's interests in the Improvement, Site, and Land.

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1

40.

2 Cascade Grain, WESTLB, Banco Santander, FCSA, Westward Energy, Wilmington
3 Trust, Bruce Bisson, and HSBC Bank may claim some right, title, or interest in the
4 Improvement, Site, or Land, but any such interest is junior and subordinate to Kelly's. The
5 State of Oregon, acting by and through the Department of Energy, may claim some right,
6 title, or interest in the Improvement, Site, or Land, but the Lien does not attach to any such
7 interest of that party.

8

41.

9 As and to the extent provided by the Contract (Contract ¶ 10.4) and by law, including
10 ORS 701.630(5), Kelly is entitled to interest on the amount due and unpaid at the rate of 1.5
11 percent per month.

12

42.

13 Pursuant to ORS 87.057(3), 87.060, and the Contract, (Contract ¶ 19.2), Kelly is
14 entitled to recover its reasonably attorneys' fees and expenses incurred in preparing and
15 foreclosing the Lien.

16

43.

17 Kelly has no plain, adequate, or speedy remedy at law. In order to satisfy the Lien, it
18 will be necessary to sell the Improvement, Site, and Land which the Lien attaches.

19

44.

20 This claim is subject to the arbitration provision in the Contract. (Contract ¶ 19.2).

21

**SECOND CLAIM FOR RELIEF
AGAINST CASCADE GRAIN
(Breach of Contract)**

22

23

45.

24 Kelly realleges paragraphs 1 through 44 above.

25 /////

26 /////

1 46.

2 Cascade Grain breached the Contract, including only its duty of good faith and fair
3 dealing, by, among other things, failing to pay Kelly for the reasonable value of Kelly's work
4 and failing to provide a reasonable extension of time for completion of the Improvement.

5 47.

6 Cascade Grain breached the Contract by, among other things, failing to timely deliver
7 potable and process water, electrical power and rail service to the Improvement. These
8 failures affected the schedule, delayed the substantial completion date, and caused Kelly to
9 incur costs and labor productivity impacts. Cascade Grain also failed to provide utilities of a
10 quality required by the Contract.

11 48.

12 Cascade Grain breach the Contract by, among other things, wrongfully withholding
13 payments to Kelly in the amount of \$40,000 per day in liquidated damages.

14 49.

15 Cascade Grain breached the Contract by, among other things, refusing to certify
16 substantial completion of the Improvement and causing Kelly to perform additional work not
17 required by Contract after substantial completion.

18 50.

19 Cascade Grain breached the Contract by, among other things, directing Kelly to
20 remedy problems at the Improvement caused by Cascade Grain's improper operation of the
21 Improvement. Cascade Grain's improper operation of the Improvement also damaged
22 equipment.

23 51.

24 Cascade Grain breached the Contract by, among other things, failing to release
25 retention due and owing to Kelly.

26 /////

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1 52.

2 Kelly incurred significant damages caused by Cascade Grain's breaches.

3 53.

4 Article 19.2 of the Contract provides that in the event of any dispute, the prevailing
5 party is entitled to recover reasonable attorneys' fees and expenses. Kelly is entitled to
6 attorneys' fees pursuant to the Contract and under applicable law. Kelly is also entitled to
7 reasonable attorneys' fees under ORS 87.060 and applicable lien law.

8 54.

9 This claim is subject to the arbitration provision in the Contract.

10 **THIRD CLAIM FOR RELIEF**
11 **AGAINST CASCADE GRAIN**
12 **(Quantum Meruit/Constructive Change)**

13 55.

14 Kelly realleges paragraphs 1 through 54 above.

15 56.

16 Cascade Grain directed Kelly to perform work for the design and construction of the
17 Improvement.

18 57.

19 The work performed by Kelly provided a significant benefit to Cascade Grain and the
20 other Defendants, who were well aware of the scope of work performed by Kelly.

21 58.

22 Kelly reasonably anticipated that Cascade Grain would pay for the work performed
23 on Cascade Grain's behalf and the other Defendants' behalves. The scope of the work
24 performed by Kelly was reasonable under the circumstances.

25 59.

26 Kelly has demanded payment from Cascade Grain and the other Defendants for the
unpaid labor performed, materials furnished, and equipment provided in performing the work

1 on the Improvement. The amount of payment sought by Kelly is reasonable under the
2 circumstances.

3 60.

4 Kelly incurred significant damages caused by Cascade Grain's and the other
5 Defendants' failure and refusal to pay for the unpaid work on the Improvement, which
6 should be paid by Cascade Grain and the other Defendants to avoid an unjust enrichment.

7 61.

8 This claim is subject to mandatory arbitration provision in the Contract.

9 **WHEREFORE**, Kelly prays for judgment of the Court as follows:

10 A. On Kelly's First Claim for Relief:

11 1. A personal judgment against Cascade Grain:

- 12 a. For the sum of unpaid amounts due and owing under the
- 13 Contract or based on unjust enrichment as reflected in the
- 14 Claim of Lien;
- 15 b. For the further costs incurred by Kelly in preparing and
- 16 foreclosing the Lien;
- 17 c. For accrued interest on the above sums, as and to the extent
- 18 provided by the Contract or by law;
- 19 d. For Kelly's reasonable attorneys' fees under ORS 87.060
- 20 incurred herein; and
- 21 e. For Kelly's other costs and disbursements incurred herein; and

22 2. A judgment:

- 23 a. Foreclosing the Lien for the above sums against all interests in
- 24 the Improvement, Site, and Land to which the Lien attaches;
- 25 b. Declaring the Lien to be a first, valid, and subsisting Lien
- 26 against all interests in the Improvement, Site, and Land to

- 1 which the Lien attaches, or any part thereof, except for the
2 statutory right of redemption;
- 3 c. Foreclosing forever any and all right, title, and interest, legal
4 and equitable, of all defendants and all persons claiming by or
5 through them, in the Improvement, Site, and Land, or any part
6 thereof, except for the statutory right of redemption, and
7 excluding rights, titles, and interests to which the Lien does not
8 attached;
- 9 d. Directing the Sheriff of Columbia County, Oregon to sell all
10 interest in the Improvement, Site, and Land to which the Lien
11 attaches in the manner provided by law as an execution to
12 satisfy the above sums;
- 13 e. Permitting Kelly to purchase at the sale;
- 14 f. Directing that the proceeds of the sale be applied as follows:
15 (1) To the payment of the costs of the sale;
16 (2) To the payment of the above sums owed to Kelly; and
17 (3) The balance, if any, to the Clerk of Court for
18 application as provided by law;
- 19 g. Directing that if the proceeds of the sale are insufficient to
20 satisfy the judgment of Kelly, then any such deficiency may be
21 enforced by execution against Cascade Grain as provided by
22 law; and
- 23 h. Directing that execution and order of execution issue to enforce
24 this decree; and
- 25 3. Such other relief as the Court deems just and equitable.
- 26 B. On Kelly's Second Claim for Relief:

- 1. A personal judgment against Cascade Grain:
 - a. For the sum of unpaid amounts due under the Contract;
 - b. For accrued interest on the above sum, as allowed under the Contract or applicable law;
 - c. For Kelly's reasonable attorneys' fees incurred herein and as set forth in § 19.2 of the Contract; and
 - d. For Kelly's costs and disbursements incurred herein; and
 - 2. Such other relief as the Court deems just and equitable.
- C. On Kelly's Third Claim for Relief:
- 1. A personal judgment against Cascade Grain and all other Defendants:
 - a. For the sum of the unpaid amounts due and owing;
 - b. For interest as allowed under applicable law from the date each separate billing was due until paid; and
 - c. For Kelly's costs and disbursements incurred herein; and
 - 2. Such other relief as the Court deems just and equitable.
- D. Such other relief as the Court deems just and equitable.

DATED: December 23, 2008.

STOEL RIVES LLP
(b) (6)

Eric A. Grasberger, OSB No. 912899
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Andrew R. Gardner, OSB No. 792306
argardner@stoel.com
Attorneys for Plaintiff



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

September 1, 1989

Enclosure PMC

Mr. Liston C. Darby
General Manager
Clatskanie People's Utility District
P.O. Box 216
Clatskanie, Oregon 97016

Dear Mr. Darby:

The purpose of this letter is to correct a mathematical error in Bonneville Power Administration's (BPA) determination of the amount of the load at the millsite at Wauna, Oregon, which BPA previously determined to be a "contracted for" load under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).

By a letter dated August 30, 1982, BPA made a determination that the Wauna millsite, then owned by Crown Zellerbach, and now owned by the James River Corporation, was a load which had been contracted for prior to September 1, 1979, and therefore was not a new large single load under the Northwest Power Act. The amount of the contracted for load was listed in Table 2 of Exhibit K to Clatskanie PUD's power sales contract with BPA as 113.8 average megawatts (aMW).

Subsequently, in October 1983, BPA agreed to apply a 100 percent load factor to a number of contracted for or committed to loads, including the Wauna millsite, and to revise the contracted for or committed to amounts previously established for those loads. Unfortunately, the amount listed in the revised Exhibit K sent to you in November, 1983, did not reflect a 100 percent load factor for the entire load included in the original determination, but applied the 100 percent load factor only to the portion of the contracted for amount attributed to the planned new paper machine.

The two elements of the Wauna load which were considered in establishing the contracted for amount were: (1) the consumer's load, as forecasted by Crown Zellerbach in a letter forecast sent to Clatskanie on October 12, 1979; plus (2) an additional expansion for the new paper machine, not part of the letter forecast, requested by Crown and approved by BPA in March of 1978. The original amounts of these elements of the load were 101.6 and 12.2 aMW, respectively. The total of these amounts is the 113.8 aMW shown in Exhibit K, Table 2 as revised in August 1982.

When Exhibit K was again revised in November, 1983, to reflect a 100 percent load factor, the 12.2 aMW element of the load was increased to 14 aMW (the peak demand which had been identified for the expansion), but the 101.6 aMW element was not changed in calculating the total contracted for amount.

(The total listed in "Revision No. 1" of Exhibit K, Table 2, transmitted to you in November 1983, was shown as 115.8 aMW rather than 115.6 aMW due to a typographical error.) The correct amount for the forecasted load at a 100 percent load factor, not including the expansion, as shown in Crown's October 12, 1979, forecast letter to Clatskanie, is 112.9 aMW. Therefore, the correct total contracted for amount for the Wauna millsite, based on a 100 percent load factor, is 112.9 aMW for the forecasted load plus 14 aMW for the expansion, for a total of 126.9 aMW.

Enclosed is a revised signed and dated Exhibit K, Table 2, showing the correct amount, 126.9 aMW, for the contracted for load at Wauna. This amended Exhibit should be attached to your utility power sales contract.

Your existing Exhibit K, Table 2, may be discarded. Should you have any questions regarding this exhibit revision, please contact Bill Schulenberg of our Lower Columbia Area Office at (503) 230-4556.

Sincerely,

(b)(6)

Edward W. Stenkiewicz
Senior Assistant Administrator
for Power Management

Enclosure:
Exhibit K, Table 2

Revision No. 3
Exhibit K
Table 2
Page 1 of 1
Contract No. DE-MS79-81BP90490
Clatskanie People's Utility
District
Effective on the date of the
above power sales contract

Contracted For, Committed To Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 8 of this contract as of the effective date set forth above.)

TABLE 2

LIST OF PURCHASER'S LOADS AND AMOUNTS WHICH WERE
CONTRACTED FOR, OR COMMITTED TO, PRIOR
TO SEPTEMBER 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of firm Energy Contracted for or Committed to as of 9/1/79 (Ave. MW)</u>
James River Corporation's (formerly Crown Zellerbach's) Wauna Millsite Facility	Wauna, Oregon	126.9

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By

(b)(6)

Senior Assistant Administrator
for Power Management

Date September 1, 1989

(VS6-PMC-5776b)

POWER CONTRACT
Briefing Memo

Contract: Revision No. 3 to Exhibit K, Table 2 (Contracted For, Committed To Determinations), Clatskanie PUD, Contract No. DE-MS79-81BP90490.

Existing Circumstances: The current Exhibit K, Table 2, signed November 17, 1983, shows a CF/CT amount of 115.8 aMW, which was intended to reflect a 100 percent load factor for the contract demand at the site. The calculation of the CF/CT amount at a 100 percent load factor failed to apply the 100 percent load factor to a major portion of the load, thus the exhibit understates the CF/CT amount by 11.1 aMW.

Changes Required/Impact on Existing Circumstances: The amount should be changed to list the correct amount of CF/CT load. The amount of load eligible for "grandfathered" PF service under the Northwest Power Act, which is exempt from New Large Single Load (NLSL) status, will increase, consistent with the amount the PUD is allowed under BPA's NLSL practices.

Policy Implications: The revision will increase slightly the total loads eligible for grandfathered PF service, which otherwise could potentially become NLSL's and pay the new resources rate for BPA power. Even without this change, increases in the load above the CF/CT amount could receive PF service if increases in load were managed to amounts less than 10 aMW each 12-month measuring period.

Financial Management Concerns: None.

General Counsel Concerns: None.

NEPA Determination: CF/CT determinations are purely factual determinations, which do not involve decisions whether to take an action, and are therefore outside the ambit of NEPA. No NEPA clearance is required.

Signature Instructions:

The Senior Assistant Administrator for Power Management will sign the letter and two originals of the revised Exhibit K, Table 2. No signature is required from the customer.

Area Acceptance: The Lower Columbia Area Office concurs with this revision.

Attachments

DWolfe:dvw:3556 (VS6-PMC-5776b)



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

OFFICE OF THE ADMINISTRATOR

In reply, refer to: PKI

NOV 17 1983

Mr. Liston C. Darby
General Manager
Clatskanie PUD
P. O. Box 216
Clatskanie, OR 97016

Dear Mr. Darby:

On October 6, 1983, the Bonneville Power Administration (BPA), after consultation with representatives of each of BPA's customer groups, agreed to apply a 100 percent load factor to all Regional Act, section 3(13)(A) contracted for, or committed to determinations involving contract demand contracts. Previously, as part of a negotiated agreement with the Public Power Council, BPA had applied a 100 percent load factor to consumers of public agency customers with contract demand contracts. This action reflects recognition of changed conditions since passage of the Regional Act and BPA's desire to play a positive role in the economic recovery of the region. This criteria change will allow a consumer's facility which had a contract or commitment, prior to September 1, 1979, to achieve the maximum contracted for, or committed to load floor without triggering the New Large Single Load consequences of the Regional Act. BPA will retroactively apply a 100 percent load factor to all past determinations with contract demand contracts or commitments.

Enclosed is a revised signed and dated Exhibit K, Table 2, reflecting the increase in your previous contracted for, or committed to determination. The increase results from application of a 100 percent load factor to the load BPA determined was contracted for, or committed to prior to September 1, 1979. This amended Exhibit should be attached to your utility power sales contract.

Your existing Exhibit K, Table 2, may be discarded. Should you have any questions regarding this exhibit revision please contact your BPA Area or District office.

Sincerely,

(b)(6)

Administrator

Enclosure

(AUTHENTICATED COPY)

Revision No. 1
Exhibit K
Table 2, Page 1 of 1
Contract No. DE-MS79-81BP90490
Clatskanie People's Utility
District
Effective on the date of the above
power sales contract

Contracted For, Committed to Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 8 of this contract as of the effective date set forth above.)

TABLE 2

LIST OF PURCHASER'S LOADS AND AMOUNTS WHICH WERE
CONTRACTED FOR, OR COMMITTED TO, PRIOR
TO SEPTEMBER 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted for or Committed to as of 9/1/79 (Ave. MW)</u>
Crown Zellerbach's Wauna Millsite facility	Wauna, Oregon	115.8

/s/ Peter T. Johnson
Bonneville Power Administrator

Nov. 17, 1983
Date

(WP-PKI-3627b)

Revision No. 1
Exhibit K
Table 2, Page 1 of 1
Contract No. DE-HS79-81BP90490
Clatskanie People's Utility
District
Effective on the date of the above
power sales contract

Contracted For, Committed to Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 6 of this contract as of the effective date set forth above.)

TABLE 2

LIST OF PURCHASER'S LOADS AND AMOUNTS WHICH WERE
CONTRACTED FOR, OR COMMITTED TO, PRIOR
TO SEPTEMBER 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted for or Committed to as of 9/1/79 (Ave. MW)</u>
Crown Zellerbach's Wauna Millsite facility	Wauna, Oregon	115.8

(b)(6)

Bonneville Power Administrator

NOV 17 1983

Date

(WP-PKI-3627b)

D. Q. - PKI -

AUG 30 1982

PKI

Mr. Liston C. Darby
General Manager
Clatskanie PUD
P.O. Box 216
Clatskanie, OR 97016

Dear Mr. Darby:

Clatskanie PUD (Clatskanie) in February 1982 contacted BPA's Lower Columbia Area Office with a request that the Bonneville Power Administration (BPA) make a determination that Crown Zellerbach's (Crown) load at its Wauna millsite facility is not a New Large Single Load under section 3(13)(A) of the Pacific Northwest Power Planning and Conservation Act. Clatskanie requested the determination, on the basis that the load at Crown's Wauna millsite facility was contracted for between Clatskanie and Crown as of September 1, 1979, and that two letters had requested additional power for the facility, an October 12, 1979 power forecast letter and a March 6, 1978, letter from Crown to Clatskanie requesting an additional 14 megawatts of demand starting by May 1, 1979, which was subsequently approved by EPA.

In making the "contracted for" determination and the size of load contracted for at Crown's Wauna millsite as of September 1, 1979, the following information was considered: (1) Contract - Clatskanie's 20-year power sales contract with Crown, executed September 1, 1964, which establishes Crown's contract demand; Forecasts - (2) forecasts, including a EPA May 1979 forecast, and Crown's October 1979 Letter forecast which notes a downward revision with no major expansion reflected; Correspondence - Crown's March 6, 1978, letter to Clatskanie requesting an additional 14 MW of demand. Clatskanie's March 16, 1978, letter to EPA informing BPA of Crown's request for 14 additional megawatts to start May 1, 1979, with a load factor of 87 percent or 12.2 average megawatts. BPA's March 22, 1978, letter to Clatskanie noting that the notification of the 14 MW of demand was approved. Clatskanie's letter to BPA notifying EPA that Crown would require 3.0 average megawatts from Clatskanie in 1981 and 10.6 average megawatts in 1982. Crown's March 5, 1982, letter to Clatskanie giving a chronology of events from Crown's March 1978 request to the present. Meetings - Also taken into consideration were the discussions held between EPA staff, Clatskanie, and Crown at meetings held on February 26 and August 17, 1982.

Based on the above, I have determined that as of September 1, 1979, Crown's requests and its projected loads for Crown's Wauna millsite facility were contracted for by Clatskanie. As part of this determination, it is necessary to establish the size of these loads as of September 1, 1979. I have determined that there were two parts to the planned expansion at the Wauna millsite which were contracted for. The amount of load for the first portion of the planned expansion is 101.6 average megawatts as forecasted and requested by Crown in their October 12, 1979, letter forecast sent to Clatskanie. The second part of the planned expansion is 12.2 average megawatts (14 peak megawatts at a 87 percent load factor), which had been approved by BPA in March 1978, delayed in 1979, and which Crown now expects to be used by 1988 for a total of 113.8 average megawatts. The size of the contracted for load entered in the enclosed Exhibit K, Table 2, is 113.8 average megawatts. Please attach the enclosed Exhibit K to your utility power sales contract dated August 25, 1981.

There were two areas of potential misunderstanding raised in the August 17, 1982, meeting between EPA, Crown, and Clatskanie which EPA must clarify. The first question concerns the relationship between an increase in load of up to 9.9 average megawatts per year at EPA's Priority Firm Power Rate to the amount of contracted for load specified in Exhibit K, Table 2. The amount of load in Exhibit K, Table 2 establishes a floor from which future increases in load are monitored and measured. (See section 8(b) of the utility power sales contract offered August 28, 1981.) Once the load at the Wauna millsite facility exceeds 113.8 average megawatts, monitoring on a rolling 12-month basis will begin. At the time monitoring begins, Crown will have had 113.8 average megawatts at BPA's Priority Firm Power Rate, and may increase the load at the Wauna millsite facility by 9.9 average megawatts in any consecutive 12-month period at that rate. If an increase exceeds 9.9 average megawatts in any 12-month period, such increase and future increases would become a new large load at the New Resource Firm Power Rate.

The second question concerned the 14 peak megawatts associated with the tissue machine. EPA has included the 12.2 average megawatts for this machine as part of the 113.8 average megawatts in Exhibit K, Table 2. Crown may choose to add the tissue machine as an increase at the Priority Firm Power Rate within the limits of this determination on size of load, or Crown may choose to increase its load for other purposes. If Crown increases its load by the 12.2 average megawatts after the 113.8 has been utilized for other purposes, the 12.2 average megawatt increase would be a New Large Single Load. Any increase over 9.9 average megawatts in any 12 consecutive months added to the 113.8 average megawatts will be considered a New Large Single Load. EPA understands that the actual date of installation of this specific machine at the Wauna millsite

facility is tied to market conditions. Based on Crown's March 5, 1982, letter, the installation of this machine is anticipated by the end of 1988, which coincides with Crown's 1979 requested power forecast.

Sincerely,

(SGD) PETER T. JOHNSON

Administrator

Enclosure:
Exhibit K, Table 2

Knoxness:10 (WP-PKI-2158b)

- bcc:
- P. Johnson - A
- E. Gjelde - A
- Adm. Chron. File - A
- J. Jura - AD
- P. Eiguren - AL
- H. Spigal - AP
- G. Tupper/F. Rettenmund - O
- G. Gwinnutt/P. Livesley - OP
- E. Sienkiewicz/J. McLennan - P
- T. Noguchi - PK
- D. J. Anderson - PKI
- S. Melton - PL
- Official File - PKI

Exhibit K
Table 2, Page 1 of 1
Contract No. DE-KS79-E1EP90490
Clatskanie People's Utility
District
Effective on the effective date
of this amendment

Contracted For, Committed to Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 8 of this contract as of the effective date set forth above.)

TABLE 2

LIST OF PURCHASER'S LOADS AND AMOUNTS WHICH WERE
CONTRACTED FOR, OR COMMITTED TO PRIOR
TO SEPTEMBER 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted for or Committed to as of 9/1/79 (Ave. kW)</u>
Crown Zellerbach's Wauna millsite facility	Wauna, Oregon	113.8

(WP-PCI-2158b)

DECISION PAPER

REQUEST OF CLATSKANIE PEOPLE'S UTILITY DISTRICT THAT THE ADMINISTRATOR DETERMINE AN INCREASE IN CONTRACT DEMAND AT THE CROWN ZELLERBACH-WAUNA MILLSITE FACILITY WAS CONTRACTED FOR PRIOR TO SEPTEMBER 1, 1979, AND IS NOT A NEW LARGE SINGLE LOAD.

ISSUE: Whether the Crown Zellerbach increase in load at the Wauna Millsite facility of 12.2 average megawatts together with the requested contract demand in 1988 was contracted for by Clatskanie PUD prior to September 1, 1979.

Background:

Clatskanie PUD has requested a determination by the Administrator that the load at Crown Zellerbach's Wauna Millsite which included a planned expansion of 14 peak megawatts at 87% load factor for a tissue machine is not a New Large Single Load under section 3(13)(A) of the Pacific Northwest Electric Power Planning and Conservation Act. By letter dated February 4, 1981, Clatskanie PUD forwarded copies of its contract with Crown Zellerbach. Other correspondence and materials between Crown Zellerbach and Clatskanie PUD have been received. BPA has collected materials relevant to the development of the load at the Wauna Mill site. A summary timeline has been prepared and is attached. BPA has reviewed these materials and the Administrator has made the following determination.

Clatskanie PUD and Crown Zellerbach entered into a contract for the sale and purchase of electric power for Crown Zellerbach manufacturing facility at Wauna, Oregon (the Wauna Millsite) on September 1, 1964. This contract, as amended, has been in effect since that date and has not been revoked by the parties. The contract provides under paragraph 4 that firm power in the amount of the contract demand shall be sold by Clatskanie PUD and purchased by Crown Zellerbach. Crown Zellerbach may increase the contract demand by written request to Clatskanie PUD, subject to the requirements of BPA approval under Clatskanie PUD's power sales contract with BPA, Contract No. 14-03-46482.

Crown Zellerbach requested an additional 14 megawatts (MW) of demand for planned equipment installation from Clatskanie PUD by letter dated March 6, 1978. The increase in demand would raise the then current maximum contract level from 77 MW to 91 MW starting on May 1, 1979. The letter requests assurance that the additional demand would be available. On March 16, 1978, Clatskanie PUD notified BPA of the Crown Zellerbach request, stating that an additional 14 MW demand with a load factor of 87 percent was being requested starting May 1, 1979. On March 21, 1978 BPA's Portland Area Power Manager responded to Clatskanie PUD stating the March 16 letter notification complied with Section 23 of the general contract provisions on limitations in increases in loads under Clatskanie PUD power sales contract with BPA. The increase would be reflected in the Clatskanie/BPA load forecast submitted for Clatskanie's approval. The increase was included in Clatskanie PUD load forecast for 1978.

In 1979, Clatskanie PUD and Crown Zellerbach informed BPA of a delay in the start up of the additional 14 MW demand. In May, 1979, BPA's Portland Area informed Clatskanie PUD that BPA understood the change to be a delay of start up from July 1979 to July 1980 and BPA requests approval to change the 1978 load forecast. BPA's May, 1979 load forecast reflected the change. On October 12, 1979, a Crown Zellerbach letter to Clatskanie PUD later communicated to BPA, requested a power forecast for the Wauna Millsite beginning at 76.2 average MW and increasing to 101.6 in 1988. The letter notes that this forecast is a significant change and does not reflect the 14 MW planning increase. A November, 1979 newspaper article confirms that expansion of the Wauna Mill was planned for 1980. The 1980 load forecast did not reflect the 14 MW planned increase in the forecast was based on the October 12, 1979 Crown Zellerbach letter. In January, 1981 Clatskanie PUD notified BPA of requests for additional service of 3 average MW and 10.6 average MW under the forecasted load at the Wauna Millsite. A March 5, 1982 Crown Zellerbach letter states that the anticipated expansion planned for 1980 will take place sometime prior to the end of 1988.

RECOMMENDATION: From the above history, Crown Zellerbach had planned and currently expects to complete expansion of the Wauna Millsite. Part of this expansion was reflected in the October, 1979 letter requesting Crown Zellerbach power forecast for the Wauna Millsite specifically of 101.6 average MW by 1988. This load growth was requested under the Crown Zellerbach-Clatskanie PUD contract existing on September 1, 1979. BPA had notice of this requested power forecast. The other part of the planned expansion was the Crown Zellerbach and Clatskanie PUD notification to BPA of a 14 MW demand increase at 87% load factor in 1978 and 1979. This request was also made under the contract existing on September 1, 1979 between Clatskanie PUD and Crown Zellerbach. Crown Zellerbach currently expects to complete the 14 MW expansion at the Wauna Millsite by 1988, which coincides with their October 1979 requested power forecast through 1988. Because both parts of this planned expansion were contemporaneous with or predated September 1, 1979, and because the Clatskanie PUD-Crown Zellerbach contract predated September 1, 1979, the planned expansion and increases in contract demand stated in the March 1978 and October 1979 letters were loads contracted for by Clatskanie PUD. The contract demand of 14 MW at 87% load factor, or 12.2 average MW, together with the projected load of 101.6 average MW by 1988 was contracted for. BPA should enter a total of 113.8 average MW as contracted for under Table 1 of Exhibit k to the BPA new Power sales contract.

Timeline for Clatskanie PUD - Crown Zellerbach Determination

- Sept 1, 1964 Electric Service Agreement between Crown Zellerbach and Clatskanie PUD. Provides for sale of power in amount of Crown Zellerbach's contract demand, as requested in writing by Crown Zellerbach and contingent upon BPA's power sales contract with Clatskanie PUD.
- Mar 6, 1978 Letter of Beckyto, Crown Zellerbach to Westlind, Clatskanie PUD. States plans for installation of additional equipment at Wauna Mill site have been developed and requests an increase in contract demand of 14 MW starting May 1, 1979. Increase in contract demand will raise present maximum from 77 MW to 91 MW requests assurance of increase.
- Mar 16, 1978 Letter of Westlind, Clatskanie PUD to Phillips, Portland Area, BPA notifies BPA of Crown Zellerbach request for additional 14 MW demand with a load factor of 87% starting May 1, 1979. Request that additional demand be made available.
- Mar 22, 1978 Letter of Phillips, Portland Area BPA to Westlind, Clatskanie PUD. Notes receipt of letter regarding Crown Zellerbach's plans and states the notification complies with GCP Section 23 on limitations on increases in load. Notes the Clatskanie/BPA load forecast will be revised to reflect the increase and submitted for Clatskanie PUD's approval.
- Aug 14, 1978 BPA Memorandum notes Clatskanie PUD provisional load estimate was approved for future planning purposes.
- May 14, 1979 Letter of Loosli, Portland Area, BPA to Westlind, Clatskanie PUD. Notes revised load estimates for Crown Zellerbach Wauna Mill delays. 14 MW demand increase from July 1979 to July 1980. Notes increase in contract demand of 8 MW due to change in operation of ground wood mill. Requests approval of change from 1978 forecast.
- Oct 12, 1979 Letter of Neelley, Crown Zellerbach to Westlind, Clatskanie PUD. Lists power forecast for Wauna Mill site beginning in 1979 at 76.2 Average MW and increasing to 101.6 in 1988. Notes that this is a significant change in prior forecasts.
- Nov 13, 1979 The Columbian, newspaper article notes \$17 million increase in production at Wauna Mill and Camas Mill with Wauna Mill to begin in early 1980.
- Mar 31, 1980 Letter of Darby, Clatskanie PUD to Loosli, Portland Area, BPA. Forwards 10/12/79 letter of Crown Zellerbach and notes earlier meeting with Crown. States assumption for 1980 load forecast.

- June 6, 1980 Letter of Westlind, Clatskanie PUD to Loosli, Portland Area, BPA. States load forecast for Clatskanie PUD forwarded by BPA is acceptable based on earlier discussions with BPA and current known growth factors.
- June 13, 1980 BPA Memorandum on 1980 Clatskanie PUD load estimate includes most recent operating plans for the Wauna Mill. Attaches the 1979 Crown Zellerbach letter and the provisional load estimate for Clatskanie PUD, as well as 4/29/80 and 4/30/80 BPA estimates, and 3/31/80 letter of Darby.
- Jan __, 1981 Letter of Westlind, Clatskanie to Phillips, Portland Area, BPA. States need for additional service to Crown Zellerbach of 3.0 average MW in 1981 and 10.6 average MW in 1982. States Clatskanie PUD is committed to supply additional firm power in accordance with Clatskanie PUD's power sales contract with BPA.
- Mar 5, 1982 Letter of Neelley, Crown Zellerbach to Darby, Clatskanie PUD. States that the 14 MW increase in 1978 was for equipment which is anticipated to be installed at Wauna ". . . sometime prior to the end of 1988." and notes that the October, 1979 power forecast from Crown did not reflect this increase because an installation date had not been chosen.



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

OFFICE OF THE ADMINISTRATOR

In reply refer to: PKI

NOV 17 1983

Mr. Liston C. Darby
General Manager
Clatskanie PUD
P. O. Box 216
Clatskanie, OR 97016

Dear Mr. Darby:

On October 6, 1983, the Bonneville Power Administration (BPA), after consultation with representatives of each of BPA's customer groups, agreed to apply a 100 percent load factor to all Regional Act, section 3(13)(A) contracted for, or committed to determinations involving contract demand contracts. Previously, as part of a negotiated agreement with the Public Power Council, BPA had applied a 100 percent load factor to consumers of public agency customers with contract demand contracts. This action reflects recognition of changed conditions since passage of the Regional Act and BPA's desire to play a positive role in the economic recovery of the region. This criteria change will allow a consumer's facility which had a contract or commitment, prior to September 1, 1979, to achieve the maximum contracted for, or committed to load floor without triggering the New Large Single Load consequences of the Regional Act. BPA will retroactively apply a 100 percent load factor to all past determinations with contract demand contracts or commitments.

Enclosed is a revised signed and dated Exhibit K, Table 2, reflecting the increase in your previous contracted for, or committed to determination. The increase results from application of a 100 percent load factor to the load BPA determined was contracted for, or committed to prior to September 1, 1979. This amended Exhibit should be attached to your utility power sales contract.

Your existing Exhibit K, Table 2, may be discarded. Should you have any questions regarding this exhibit revision please contact your BPA Area or District office.

Sincerely,

(b)(6)

Administrator

Enclosure

COWLITZ PUD



"CUSTOMER-OWNED for CUSTOMER BENEFIT"

Public Utility District No. 1 of Cowlitz County, WA
961 12th Avenue ♦ PO Box 3007
Longview, WA 98632
(360) 423-2210 ♦ WA Toll Free (800) 631-1131
Fax: (360) 577-7559 ♦ Web: www.cowlitzpud.org

Board of Commissioners

Merritt H. (Buz) Ketcham Edward M. (Ned) Piper John M. Searing

General Manager

Brian L. Skeahan

FEB 07 2005

February 2, 2005

Charles W. Forman
Account Executive
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

Dear Chuck:

As you are aware, the District is currently taking actions to prepare for the start-up of *Equapac*, a new Chlor-Alkali production facility on a portion of the Weyerhaeuser mill site. I believe you already know most or all currently available details of this new company, as BPA and Cowlitz have been in close contact regarding this. We understand that at a forecasted load level of 25 average MW, they will be classified as a New Large Single Load, and we are generally aware of the basic implications involved. There will be some fine details that we will need answers to as we progress closer to the projected start-up date, and some of those answers you have already provided. We appreciate your quick response to our prior questions.

This letter is mainly intended to satisfy the contractual requirement that we notify BPA of any new significant loads. Please consider this formal notification that, at this time, we believe Equapac will begin commercial operations on January 1, 2006 at a load level of approximately 25 average MW. As we have discussed recently, they are currently in the construction mode and no major stumbling blocks that would halt or delay progress have been identified at this time.

Thanks again for your continued assistance with coordinating service to this new load.

Sincerely,

(b)(6)

Robert Essex
Power Resource Engineer

II.PR.RJE.Forman.Equapac

ABSTRACT CAMERON FAMILY GLASS FACILITY DETERMINATION

In 2005 BPA was approached by Public Utility No. 1 of Cowlitz County (Cowlitz) about the proposed construction and operation of wine bottle manufacturing plant in the Kalama business park operated by the Port of Kalama, WA. The project presented some novel aspects as it was planned around an electric furnace to melt glass, this electric furnace was presented to Cowlitz and BPA as the “leading edge” of glass technology. The Cameron Family Glass Company, the former manufacturer of all Coca Cola bottles in North America was enthused about making high end wine bottles using electricity from hydro projects to minimize the plant’s carbon footprint.

The plant’s fully operational load was projected to run between 9.5 and 10.5 aMW and electric transformation capacity dedicated to the plant exceeded 10 MVA. The project thus fell within the purview of the NLSL Team. In the event, once the metering and Measurement Period issues were dealt with and the plant had started its first Measurement Period but before actual bottle production had started, the melter failed catastrophically and the plant was closed. See the report of the plant site visit below.

SITE VISIT

On 17 SEP 08 Tina Ko, Robert Anderson and Kim Gilliland visited the Cameron Glass facility in Kalama WA. This facility is a potential NLSL. The goal of the visit was to apprise the utility and its consumer of the NLSL issues relating to the advent of the wine bottle plant.

ISSUES

1. Does the Cameron Glass wine bottle plant constitute a potential NLSL on Cowlitz PUD?
2. Can BPA use the 1 AUG 08 date as an initial energization for test and start up to commence measuring load growth for NLSL purposes?

BACKGROUND

The 175,000 square foot Kalama facility will be the largest all-electric eco-friendly wine bottle manufacturing facility in the world [Cameron Publicity]. It will also be the first new glass plant built in the U.S. in 30 years that will manufacture glass exclusively for the wine industry. The plant will make up to 11 million cases of wine bottles a year in full production. The process is

ABSTRACT
CAMERON FAMILY GLASS
FACILITY DETERMINATION

intended to use between 25% & 60% recycled materials in production. The plant will also buy finished bottles, repackage them and resell the result. The plant is expected to create 100 “high paying” jobs in the Port of Kalama area [Cameron Publicity]

The plant will work on a “continuous batch” process; raw materials (recycled glass or virgin materials) are introduced to the melter on a continuous basis and drawn off to the molds. The molds and the color of the glass are varied without changing the operating temperature or load of the furnace itself. We were told that in the event the facility loses power for an extended period the melter will have to be rebuilt after the waste glass is removed with jack hammers. (the backup generator were sized at 800 KW and 60 KW). Once the melter is up and running the operating cycle is expected to be 5-7 years, at which time the plant will shut down and the melter will be rebuilt. There are no plans for annual maintenance outages. Plant output and load factor are controlled by varying the rate at which bottles come off the line. In this respect the glass plant operates much like an aluminum smelter.

The plant is served by two feeders and an auxiliary feeder. BPA will install BPA revenue quality meters that BPA can read for monitoring load grow at the plant. When fully operational service to the plant will be divided between the two feeders with one dedicated to the melter (expected load 7-8 MW) and the other to ancillary equipment (expected load 2-3 MW). Ancillary equipment includes bottle handling, inspection and materials handling operations. Full operating load at the plant is expected to be between 9 and 11 aMw. N.B. There was some discussion at our site visit of adding a second melter and auxiliary equipment at some future date.

Cowlitz reported that it energized the main feeder in the Kalama SUB on 1 AUG 08 and that the power was used for the test and installation of the ancillary equipment. [Substation was built for this and other load growth at industrial park.] The melter is expected to start up for final acceptance tests on 23 SP 08. The melter will have to run for 24 hours at 100% output for Cameron Glass to accept the melter. Full commercial production is expected on 1 NOV 08.

Cameron Family Glass has two products:

- 1) Bottles made of glass smelted on site - primary product
- 2) Bottles purchased elsewhere and repackaged on site - secondary product

ABSTRACT

CAMERON FAMILY GLASS FACILITY DETERMINATION

Ancillary (bottle handling) equipment accounts for about 25% of the total plant load. The ancillary equipment can be used for both newly smelted bottles and bottle repackaging.

Primary (the melter) equipment is 75% of total load. The primary equipment is the *sine qua non* for Cameron Family Glass' primary mission of making high quality wine bottles for the up-market wineries in the Pacific Northwest.

CONCLUSIONS

1. The Cameron Glass wine bottle plant is a potential NLSL. The transformation installed at the substation over which Cowlitz serves the facility exceeds 10 MVA making the load a potential NLSL under the policy. (in looking for clarity on this I discovered we may not have seen all of the transformers. I have a question into Cowlitz [Gilliland])
2. Load growth at the plant should be measured from September 23, 2008 (the date planned for testing the melter) as it conforms with the NLSL Policy standard of initial energization for test and start up.
3. BPA will install BPA revenue quality, remotely readable meters at all relevant feeders, primary and auxiliary at the site.

DISCUSSION

Because transformation available to serve the Cameron Glass facility exceeds 10 MVA the load falls into the category of Potential NLSL under BPA's NLSL Policy. Since the load qualifies as a Potential NLSL it must be properly metered and monitored to determine if the load growth at the facility equals or exceeds 10 aMw in a consecutive 12-month period. This raises two questions:

- 1) When should BPA establish the "start date" for the measurement period?
- 2) What sort of metering should be used to monitor the load growth?

**ABSTRACT
CAMERON FAMILY GLASS
FACILITY DETERMINATION**

OPTIONS -- START DATE

1. 1 AUG 08 -- (requested by Cowlitz) this is the date Cowlitz energized the main feeders to Cameron Glass in the substation and is also the date that the auxiliary equipment was first energized. At that time the melter (75% of the total load) was still under construction. While it is true the auxiliary equipment was energized on this date and some business (in repackaged bottles) is currently being conducted at the plant the fact remains that the main equipment at the site is still under construction and was some 50 days from completing on 1 AUG 08. While the policy speaks of "initial energization for test and start up" of production equipment and allows for some ongoing construction work during that "initial energization" in this case the bulk of the load and equipment (by weight, volume, and contribution to Cameron Glass' main mission was still under construction. The balance of activities on that dates appears to be on the construction side, not test and start up.
2. 23 SEP 08 – expected start-up test date for the melter; on this date we expect Cameron Glass to start the acceptance trials of the melter. Once acceptance trials begin on the melter we can be sure the entire plant has moved out of the construction phase and into the test and startup phase.
3. 1 NOV 08 – projected date for commercial operation of the plant/melter, the start date for commercial operation clearly qualifies as the start date for load growth measurement. This date is nearly 40 days later than the first date the Policy supports establishing a start date.

OPTIONS – METERING

1. Cowlitz metering with access/reports to BPA.

Cowlitz has suggested that BPA rely on reports by Cowlitz of the meter readings that Cowlitz is currently recording to bill Cameron Glass. BPA would be receiving reports, not raw data with no way to check the accuracy of the meters or the reports.
2. BPA metering installed and owned by BPA. If BPA installs its own meters that it can remotely monitor BPA will be assured of the accuracy of the meters and the

**ABSTRACT
CAMERON FAMILY GLASS
FACILITY DETERMINATION**

comprehensive nature of the data. Current monitoring plans at other utilities require BPA meters and provide ample precedent.

Draft letter to Cowlitz establishing start date for load growth measurement purposes.

TO: Gary Heuta

PUD No. 1 of Cowlitz County

Longview WA

Dear Mr. Heuta

This letter is intended to communicate BPA's response to issues raised by Cowlitz and Cameron Family Glass Packaging (Cameron) during our meeting and site visit on September 17 of this year. The outstanding issues are:

- 1) Will Cowlitz granting BPA unrestricted access to the Cowlitz meter readings on the three feeders to the Cameron facility be adequate under BPA's NLSL Policy for monitoring load growth at the facility for NLSL purposes?
- 2) On what date will BPA start monitoring load growth at the Cameron facility for NLSL purposes?

BPA has determined that the Cowlitz meters at the Cameron facility meet BPA revenue quality standards and that with unrestricted remote access to the meter data they will be adequate for BPA to monitor load growth at the facility.

Furthermore, based on the actual pace of equipment installation and testing at the Cameron facility BPA has determined that October 16, 2008 is the date of initial energization test and installation for load growth monitoring purposes. Consequently the interval for monitoring load growth at the Cameron facility will be from October 16, 2008 through October 15, 2009 and will remain so for all subsequent years.

Finally since Tina Ko will be on a detail in BPA's Rates organization for the next 120 days I will be acting as you AE. If you have a questions please feel free to call me at (503) 230-3432.

**ABSTRACT
CAMERON FAMILY GLASS
FACILITY DETERMINATION**

Sincerely

Chuck Forman

Included Materials

5 DEC 2008 – Background Materials

8 AUG 2008 – Request from Cowlitz for 1 AUG 2008 Start Date

Yazzolino,Traci J - PSW-6

From: Ko,Tina G - PSW-6
Sent: Friday, December 05, 2008 11:00 AM
To: Yazzolino,Traci J - PSW-6
Subject: FW: For our meeting on Friday re: Cameron Glass

Attachments: Cameron Information

Hi Traci!

Could you make 6 copies of this email (and the documents attached to Kim's email) for our meeting Monday morning?

Thank you!
T

From: Gilliland,Kimberly D - TPC-TPP-4
Sent: Friday, December 05, 2008 10:42 AM
To: Ko,Tina G - PSW-6
Cc: Anderson,Robert - PSS-6; Sweeney,Charles R - TSE-TPP-2; Rogers,Robert A (Joe) - PST-6; Tieu,Henry - KSSM-6; Rice,Kris - KSSM-6
Subject: RE: For our meeting on Friday re: Cameron Glass

Tina,

I am sorry it has taken so long, but attached are the materials that Cowlitz finally provided to me for the Cameron Glass interconnection. I believe that they covered the information you were looking for, but we can go over it during our call on Monday. Let me know if you have any concerns before then.



Cameron
Information

*Thanks,
Kim*

From: Ko,Tina G - PSW-6
Sent: Friday, November 07, 2008 5:14 PM
To: Gilliland,Kimberly D - TPC-TPP-4
Cc: Anderson,Robert - PSS-6; Sweeney,Charles R - TSE-TPP-2; Rogers,Robert A (Joe) - PST-6; Tieu,Henry - KSSM-6; Rice,Kris - KSSM-6
Subject: RE: For our meeting on Friday re: Cameron Glass

Hi Kim!

Henry, Joe and I met this morning to get a start on the BPA requirements in order for us to close this out with Cowlitz. Below are my notes from the meeting (Henry/Joe - please correct as necessary!) -

BPA is planning on sending a letter to Cowlitz confirming the start date of October 15, 2008 and the usage of Cowlitz meters. In order to do that, BPA (TX, PST, KSM) must approve the metering plan, meter specifications and meter data. In order to do so, we need at least the following:

- A meter diagram of the Cameron Glass facility, showing the location of Cowlitz' meters (main meters + alternate feed)
 - BPA will need to confirm that Cameron Glass is being served off the 115 kv line out of Cardwell
 - BPA will also need to confirm that the alternate feed is NOT below the main meters
- The MV90 master file with phone number and password
- Meter data from September 1, 2008 through November 1, 2008
 - BPA will need to confirm that the melter was indeed taking service as of 10/15/08.

Kim - we felt that you were in the best position to work with Cowlitz in compiling this data - does that work?

After we've received the data, I will schedule a meeting of this team to confirm BPA's review and approval.

I am scheduled to meet with Kim, Charles and Robert next week and can confirm this plan and/or add to the list of items above.

Let me know if I've missed anything!

Thanks!
Tina

From: Ko,Tina G - PSW-6
Sent: Wednesday, October 29, 2008 2:39 PM
To: Gilliland,Kimberly D - TPC-TPP-4; Anderson,Robert - PSS-6; Sweeney,Charles R - TSE-TPP-2; Rogers,Robert A (Joe) - PST-6; Tieu,Henry - KSSM-6
Subject: For our meeting on Friday re: Cameron Glass

Some notes to work off of on Friday at our meeting.

<< File: Cowlitz Cameron Glass Implementation.doc >>

See you then!

Thanks!
Tina

Tina G. Ko
Customer Account Executive, PSW-6
503.230.3555 office
(b)(6) cell

Yazzolino,Traci J - PSW-6

From: Tim Johnston [tjohnston@cowlitzpud.org]
Sent: Friday, December 05, 2008 9:32 AM
To: Gilliland, Kimberly D - TPC-TPP-4
Subject: Cameron Information
Attachments: metering point map.pdf; PK Meter 11-18-08.xls; MV-90 for SEL 734.pdf

Kim,

I've attached files showing a map of our metering locations, the metering data, and an instruction for MV-90 with our meter in the substation. I need to verify the meter type we have at the alternate location. I requested a phone circuit to the main and alternate meter for communication from Cameron. The alternate will be challenging because of the location. We have not used the alternate feed since Cameron energized their meter.

I know that Cameron has requested the phone circuit installation from their contractor for the main feed. I do not know exactly when it will be installed. Once installed, I expect we can configure the meter and get it on your MV-90 system quickly. I'll let you know as soon as I hear from them on schedule.

Thanks,

Tim Johnston P.E.
Manager, Substation Engineering
Cowlitz PUD
360-577-7501
tjohnston@cowlitzpud.org

12/5/2008

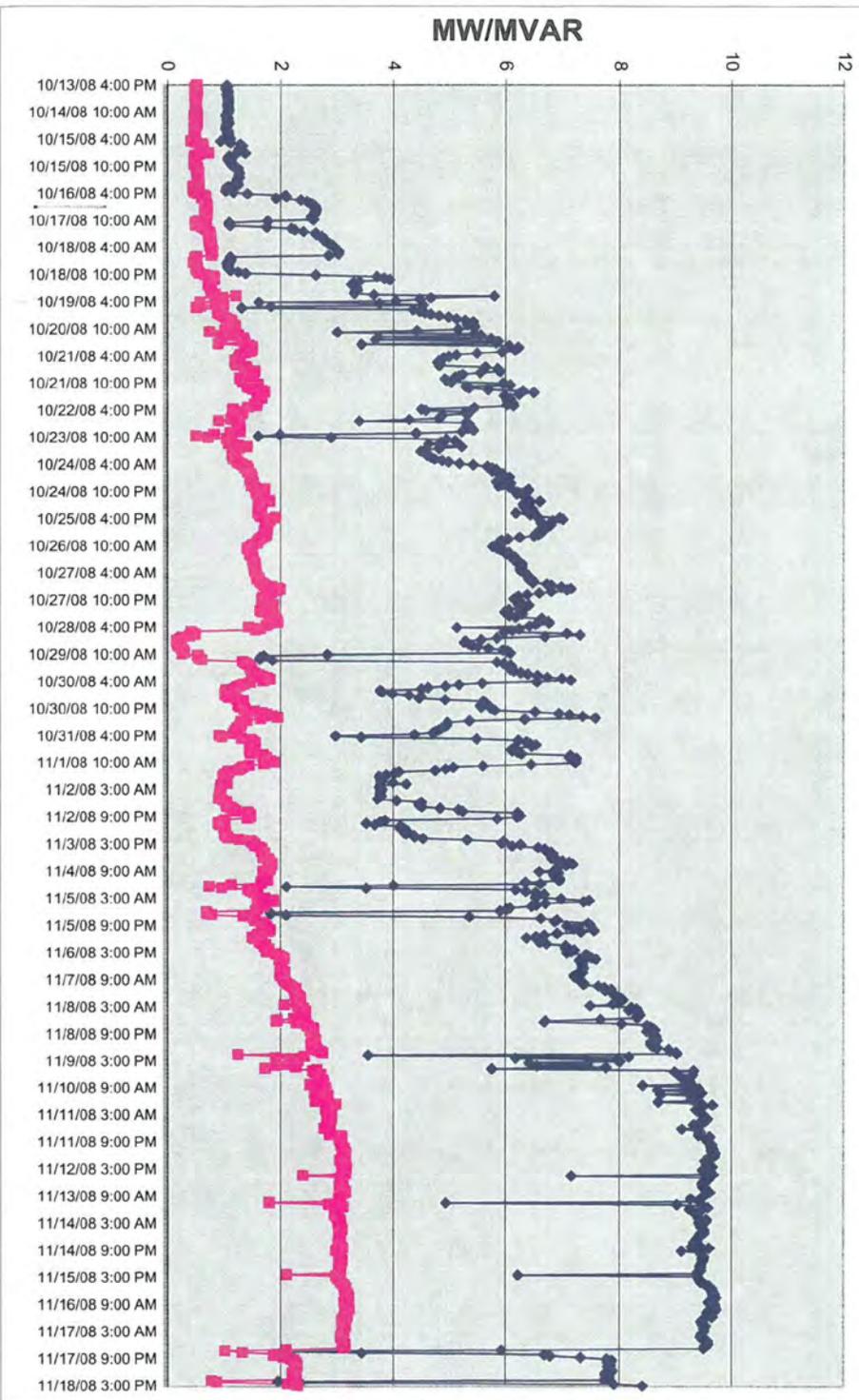
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27760010

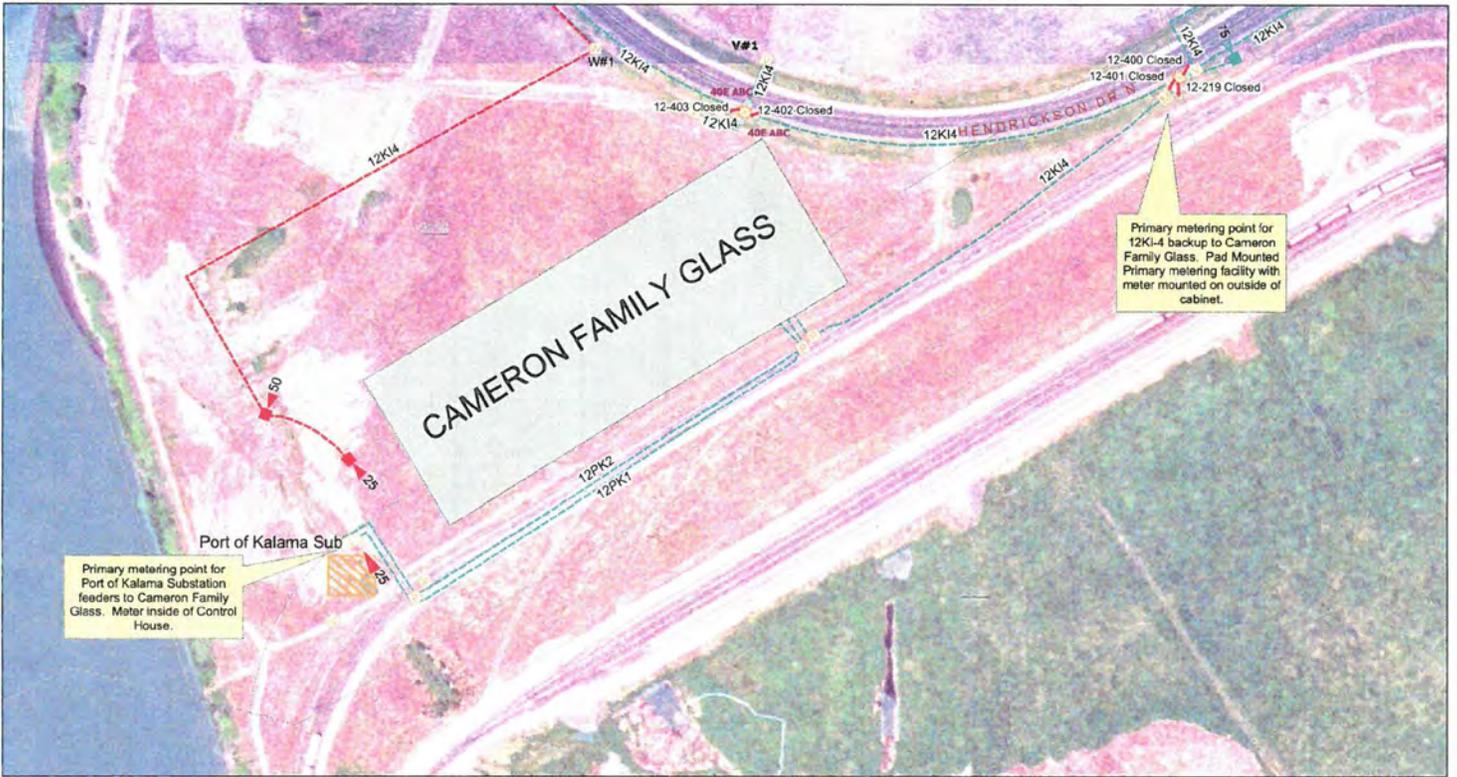
◆ MWH
■ MVARH

CAMERON FAMILY GLASS

12-11-08 F-0075



7.
8.



0 37.575 150 225 300 Feet



This map is not a survey, and the property and utility lines are not to be construed as being accurate. This map is to be used as a reference tool only and is not to be relied upon. While this map shows the approximate utility and property line locations, the lines as shown may not be the actual location of said lines. There may also be utility lines on the property that do not show on this map. Finally, the utility line locations do not necessarily detail the District's easement locations, nor does the number of utility lines on the property represent the number of easements encumbering the property. Cowlitz PUD is providing this information "as is" and without warranty of any kind, expressed or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of this information.



MV-90 Integration With an SEL-734 Meter

Bruce Scallorn and Eddie Schweitzer

INTRODUCTION

This application guide presents an example of how to configure an SEL-734 Meter to function with the Itron MV-90[®] meter reading software. MV-90 is an automated software suite that collects metering and load profile data from multiple vendor meters. In this example, MV-90 accesses the SEL-734 through the internal modem on the meter. This document demonstrates how to configure the TIM_S734 (the TIM compatible with SEL-734 meters) to read delivered and received megawatt-hours and megavar-hours from an SEL-734. Experienced users can use Table 1–Table 3 to configure the SEL-734 and MV-90 software quickly. See sections *SEL-734 Meter Setup* and *MV-90 Setup* in this application guide for a thorough discussion of each setting.

OVERVIEW OF REQUIRED SETTINGS

Table 1–Table 3 show example settings necessary for the SEL-734 and Itron MV-90 software. In practice, you may need to alter some of these settings to suit your specific installation.

Table 1 SEL-734 Settings

Setting Group	Setting	Value
General	MID	FEEDER 1
Load Profile	LDLIST	MWH3I, MWH3O, MVRH3I, MVRH3O
Load Profile	LDAR	15
Port 4, Communications	PROTO	MV90
Port 4, Communications	COMMINF	Modem
Port 4, Communications	RDRPWD	1

Table 2 MV-90 TIM Settings

Setting Group	Setting	Value
General	Device ID Length	20
General	Device ID Type	Alphanumeric
General	Password Length	10
General	Password Type	Alphanumeric
General	Default Config File	S734.CFG
Comm Parameters	Call-in Baud Rate	9600
Comm Parameters	Last Try Baud Rate	9600

Table 3 MV-90 Master File Settings

Setting Group	Setting	Value
Add Recorder	New Recorder ID	User defined, does not affect setup
Add Recorder	New Device ID	FEEDER 1
Add Recorder	Number of Channels to Add	4
New Master File Entry—Comm	Phone # - MV90	User Defined
New Master File Entry—Comm	Baud Rate	9600
New Master File Entry—Comm	Reader Password	1
New Master File Entry—More	TIM Number	01
New Master File Entry—Recorder	Call/Ret Mode	AN Answer Mode
New Master File Entry—Recorder	Intervals Per Hr	4
New Master File Entry—Recorder	Device ID	FEEDER 1
Channel (Meter)	Meter S/N	One of the following for each LDP channel: MWH3I, MWH3O, MVRH3I, MVRH3O
Channel (Meter)	Unit of Measure	1 for MWH values; 3 for MVRH values
Multipliers & Readings	Meter Multiplier	1
Multipliers & Readings	Pulse Multiplier	1
Std. Checks	Tolerance Type	D - dual method, P then M

SEL-734 METER SETUP

General Settings

Use ACSELERATOR® QuickSet™ SEL-5030 Software or a terminal emulation program to configure the SEL-734 settings. For detailed software and communications information, see *Section 3: PC Software* and *Section 10: Communications* in the *SEL-734 Revenue Metering System Instruction Manual*. The SEL-734 uses a 20-character Meter Identifier (*MID*) string to create a unique name. MV-90 uses the *MID* to identify each connected device and associate meter readings with that device. The default *MID* setting, **FEEDER 1**, can be changed in ACSELERATOR QuickSet as shown in Figure 1. This setting must match the MV-90 *Device ID* setting.

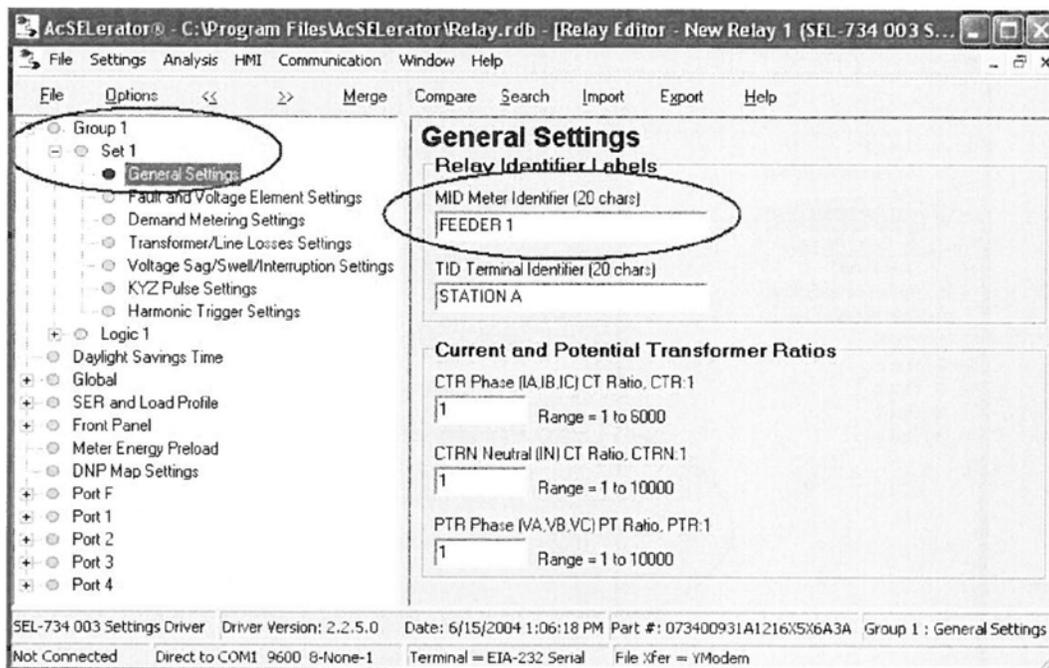


Figure 1 General Settings

Load Profile Setup

The SEL-734 records as many as 12 load profile (LDP) channels selected from the LDP list in *Appendix I: Analog Quantities* of the *SEL-734 Revenue Metering System Instruction Manual*. Megawatt- and megavar-hour elements are listed in *Appendix I: Analog Quantities* of the *SEL-734 Revenue Metering System Instruction Manual*.

Use ACSELEATOR QuickSet to set the Load Profile Data Acquisition Rate (*LDAR*) to 15 minutes, and set *LDLIST* to **MWH3I**, **MWH3O**, **MVRH3I**, and **MVRH3O**. By default, *LDAR* is set for 15-minute intervals. See Figure 2.

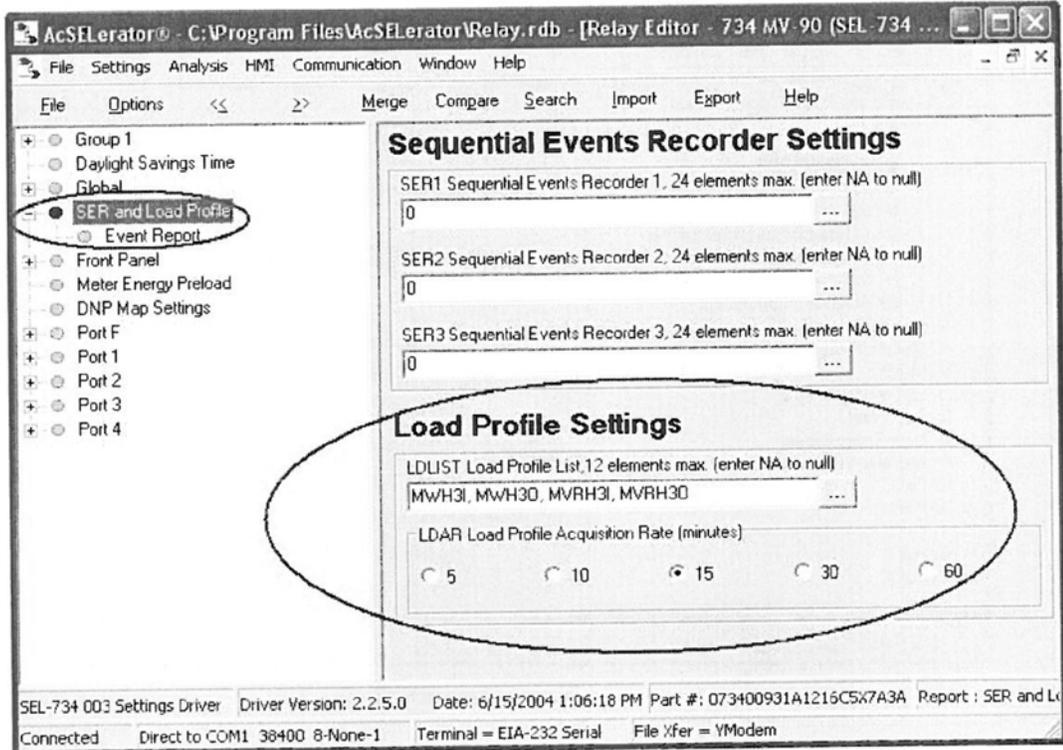


Figure 2 Load Profile Settings

Use the **LDP D** command in a terminal emulation program to determine the number of days that LDP will record data to memory before overwriting old data. Figure 3 demonstrates the **LDP D** command and its response. The command must be issued from the first access level (ACC) or higher.

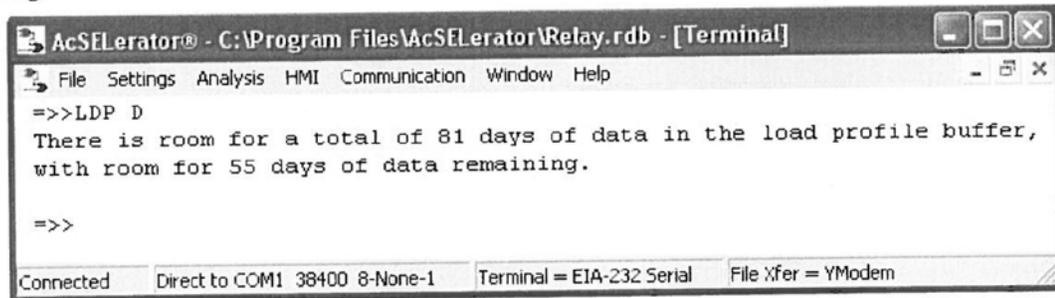


Figure 3 LDP D Command

Communications Settings

Configure the internal SEL-734 modem for use with MV-90 by using ACSELEATOR QuickSet to change the Port 4 settings listed in Table 4 and shown in Figure 4.

Table 4 Communications Settings

Setting	Value	Description
PROTO	MV90	To ensure proper communications, set the Port 4 protocol to MV90.
RDRPWD	1	For proper communication, must match Reader Password in MV-90 master file.

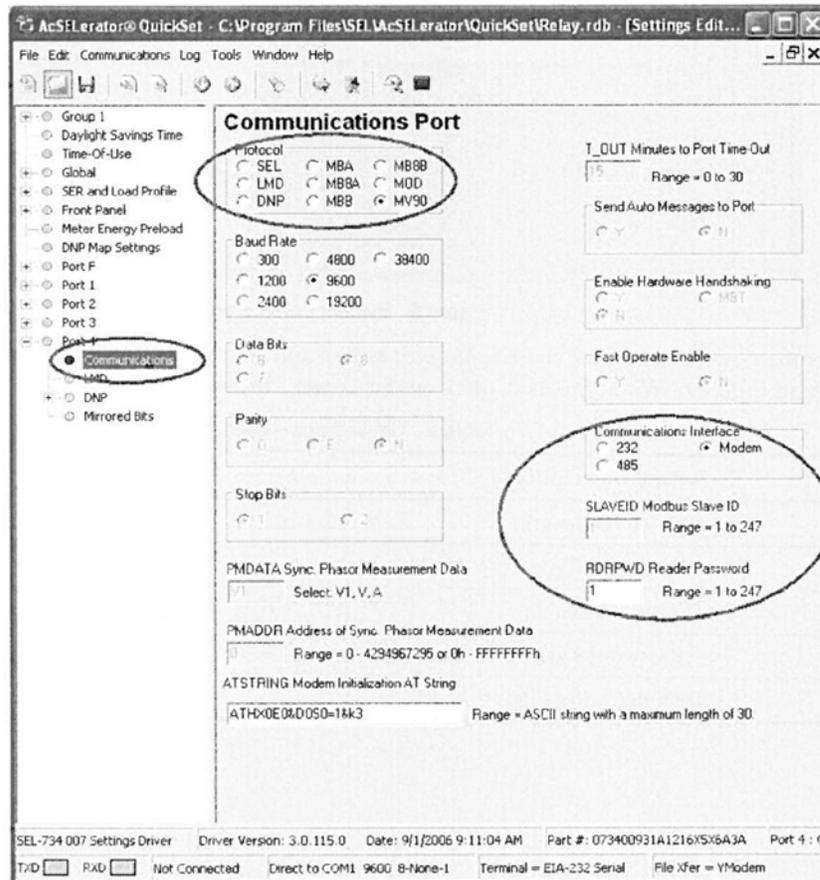


Figure 4 Port 4 Communications Settings

MV-90 SETUP

TIM Setup

Some default values shipped with the MV-90 Translation Interface Module (TIM) `tim_s734.exe` must be edited for compatibility with an SEL-734. The following section describes how to configure the MV-90 TIM.

Select the *System Parameters* tab in the *Monitor - WkStn: MV* window as shown in Figure 5. Select the *TIM Assignments* folder and select "XX: SEL-734", where XX is the number corresponding to the SEL-734 TIM.

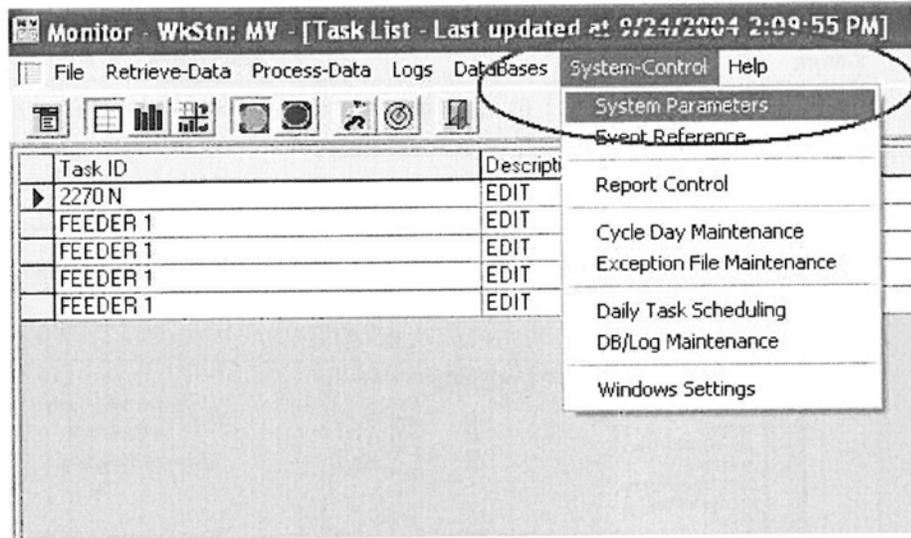


Figure 5 System Parameters

Under the *General* tab, click the *Enable Edit* button and edit the settings listed in Table 5 and shown in Figure 6. When finished, click on the *Comm Parameters* tab.

Table 5 TIM Settings—General

Setting Description	Value
Device ID Length	20
Device ID Type	Alphanumeric
Password Length	10
Password Type	Alphanumeric
Default Config File	S734.CFG

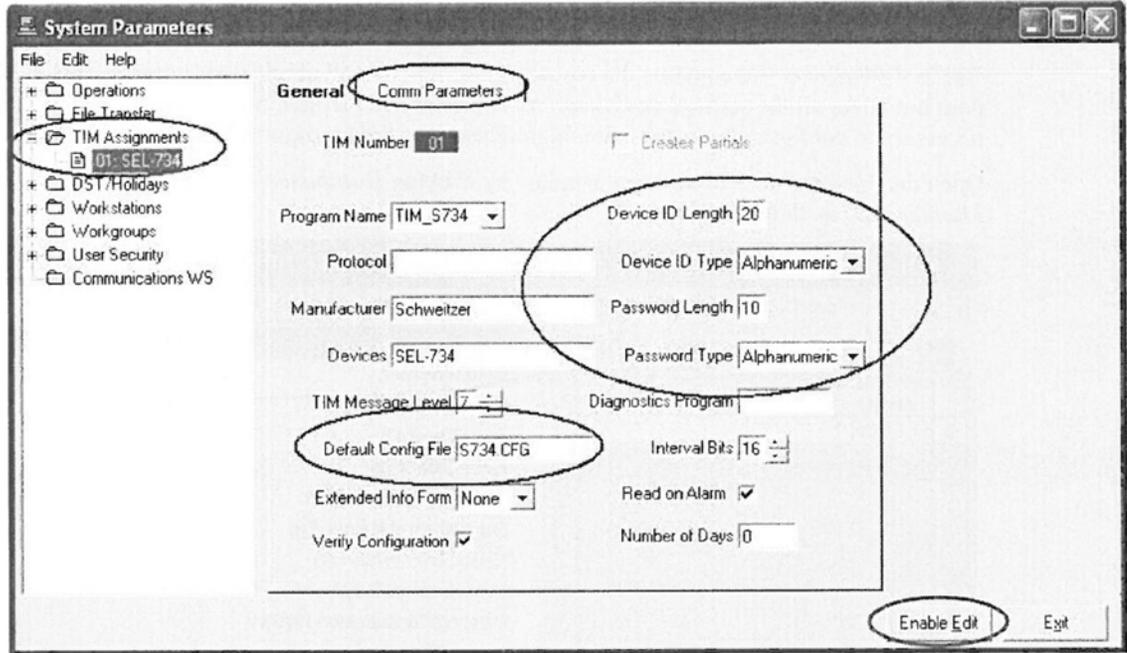


Figure 6 System Parameters

Set the *Comm Parameters* baud rates shown in Figure 7 to **9600** baud or to the rate necessary for your system. After configuring the *Comm Parameters*, click the Save then Exit buttons.

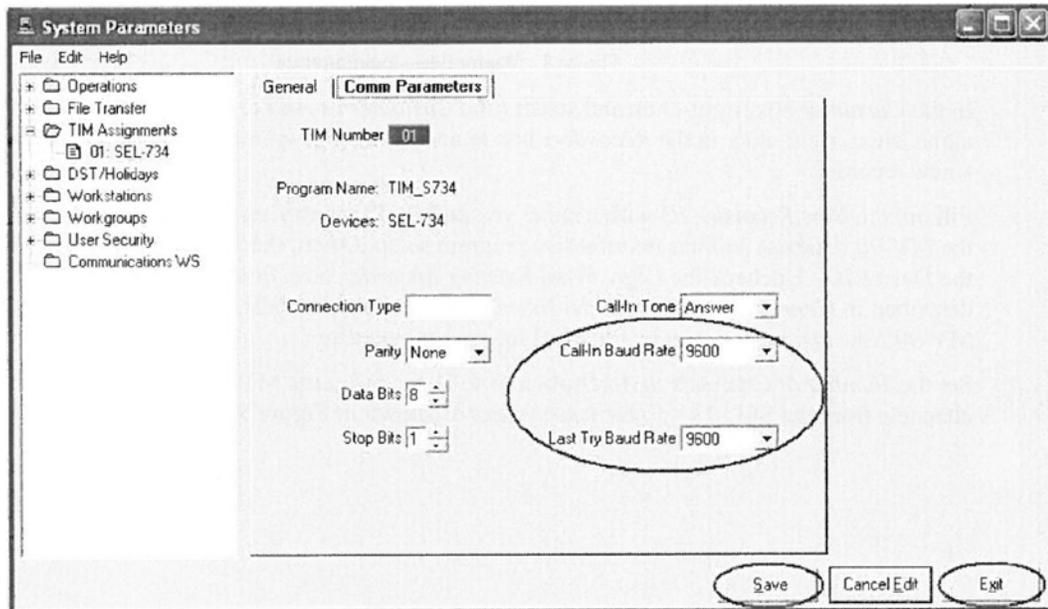


Figure 7 Comm Parameters

Master File Setup

The MV-90 master file contains the recorder descriptions and channel definitions. This discussion does not cover all the settings contained in the master file records, but instead explains the steps necessary to configure the master file, highlighting the fields important to the SEL-734.

Open the *Master File Maintenance* window by clicking *Databases -> Master File -> Maintenance* as shown in Figure 8.

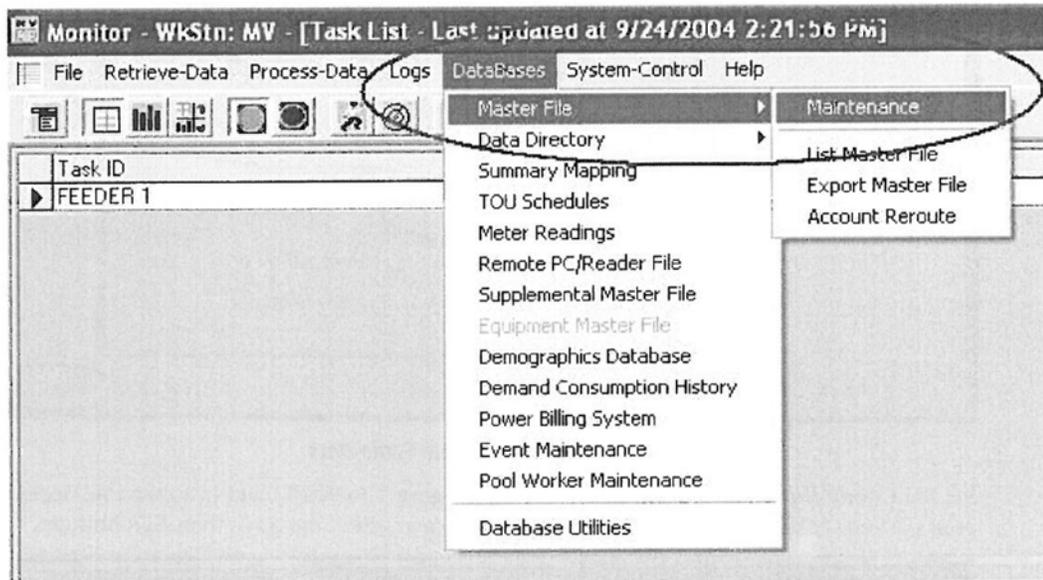


Figure 8 Master File—Maintenance

In the *Customer* box, right-click and select *Find Customer* or *Add* to select or create the customer name. Next, right-click in the *Recorders* box to access the pop-up menu, and select *Add* to create a new recorder.

Fill out the *New Recorder ID* with a name you define. This entry serves solely as a nametag for the MV-90 database and has no effect on program setup. Often, the *Recorder ID* is the same as the *Device ID*. Uncheck the *Copy From Existing Recorder* box. Enter the SEL-734 *MID* as described in **General Settings** into the *New Device ID* box. The SEL-734 *MID* setting and the MV-90 *New Device ID* must be identical for proper operation.

Set the *Number of Channels to Add* option to **4**. This configures MV-90 to read four LDP channels from the SEL-734. Enter these values as shown in Figure 9 and click the OK tab.

Add Recorder

Existing Customer ID: SEL

Add New Recorder

New Recorder ID: FEEDER 1

Copy From Existing Recorder

New Device ID: FEEDER 1

Number of Channels to Add: 4

Log Chan	Phys Chan	Meter S/N	Create From...
1	1		default values
2	2		previous channel
3	3		previous channel
4	4		previous channel
0	0		
0	0		
0	0		
0	0		
n	n		

OK Cancel

Figure 9 Add Recorder

After you click **OK** in the *Add Recorder* window, a *Master File Maintenance* window appears. Use Table 6 and Figure 10–Figure 12 to edit the settings under the *Comm.*, *More*, and *Recorder* tabs. When finished, click on the save icon .

Table 6 Master File Settings—New Master File Entry

Tab	Setting	Value	Description
Comm.	Phone # - MV90	xxx-xxx-xxxx	When connection to the meter by modem, enter the phone number that MV-90 will dial.
		xx.xx.xx.xx/502	When connecting to the meter over Ethernet, enter the meter IP address and "/502" for MV-90 port.
Comm.	Baud Rate	9600; or as required	Sets MV-90 dial-out baud rate.
Comm.	Phone Password 1	xxxxxxx (Default is BLONDEL)	Enter the meter's EACcess password if using the MV-90 Time Set or Auto Time Set functions.
Comm.	Reader Password	XXX (Default is 1)	Match to the SEL-734 RDRPWD setting configured in <i>SEL-734 Meter Setup, Communications Settings</i> . Range = 1 to 247.
More	TIM Number	TIM S734	TIM number of the S734 TIM.

Tab	Setting	Value	Description
More	Auto Timeset	Check	MV-90 automatically sets meter time when interrogating the meter.
Recorder	Intervals Per Hr	4; or as required	Number of LDP intervals recorded per hour. Equal to 60 divided by <i>LDAR</i> as configured in <i>SEL-734 Meter Setup, Load Profile Setup</i> . Value is 4 if the SEL-734 LDAR setting is 15 minutes.
Recorder	Call/Ret Mode	AN Answer Mode	MV-90 will initiate calls to collect data.
Recorder	Device ID	Same as <i>MID</i> in the SEL-734	Match to the SEL-734 MID as configured in <i>SEL-734 Meter Setup, General Settings</i> .

Master File Maintenance

File Edit Navigate Search Help

New Master File Entry

Current: Recorder ID FEEDER 1

Remaining: Recorder ID FEEDER 1
 Phys Chan 1 for Recorder FEEDER 1 (from default values)
 Phys Chan 2 for Recorder FEEDER 1 (from default values)
 Phys Chan 3 for Recorder FEEDER 1 (from default values)

Recorder More Comm. Plugging Route Inputs/Relays

Phone # - MV90 509-332-1890 Phone # - RPC

Baud Rate 9600 Remote PC #

Unit Address Phone Home No. 1

Phone Password 1 BLONDEL Call Time (hhmm) 0000

Phone Password 2 Call In Period 0

Reader Password 1

Answer Window 00012400 Days A

Answer Rings 0 Connect Type

Figure 10 New Master File Entry—Comm

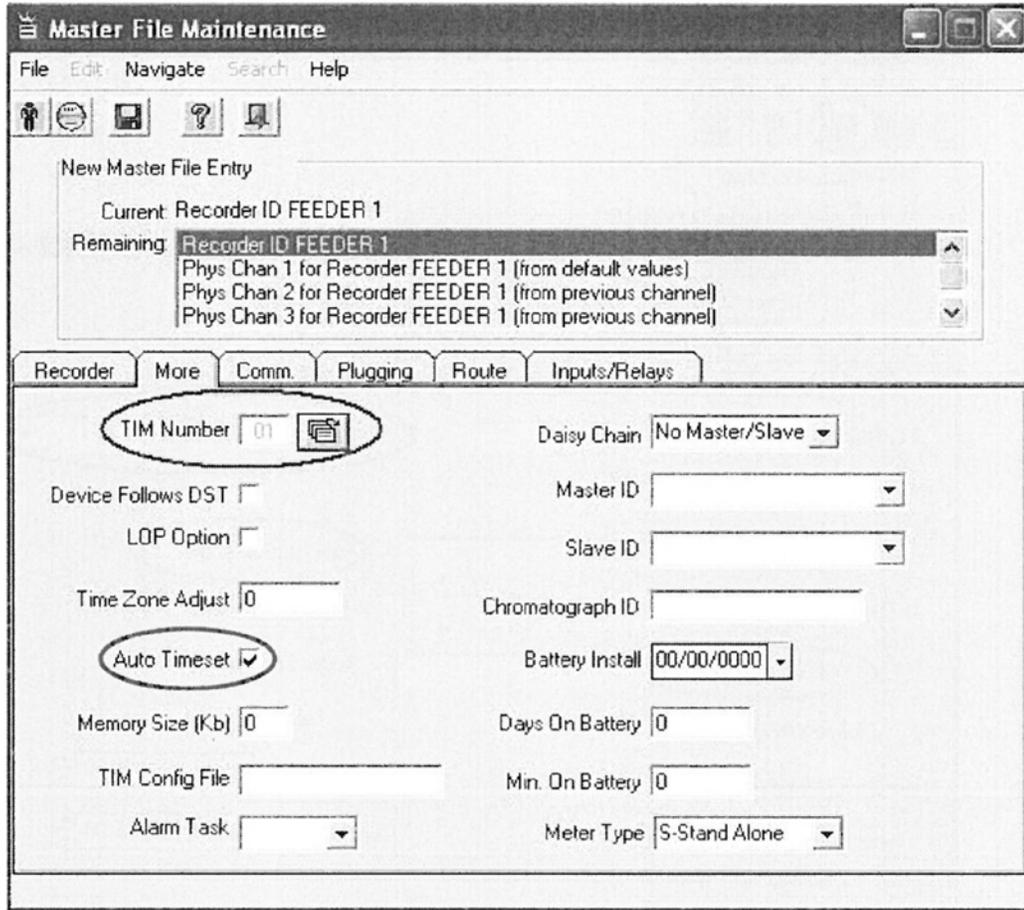


Figure 11 New Master File Entry—More

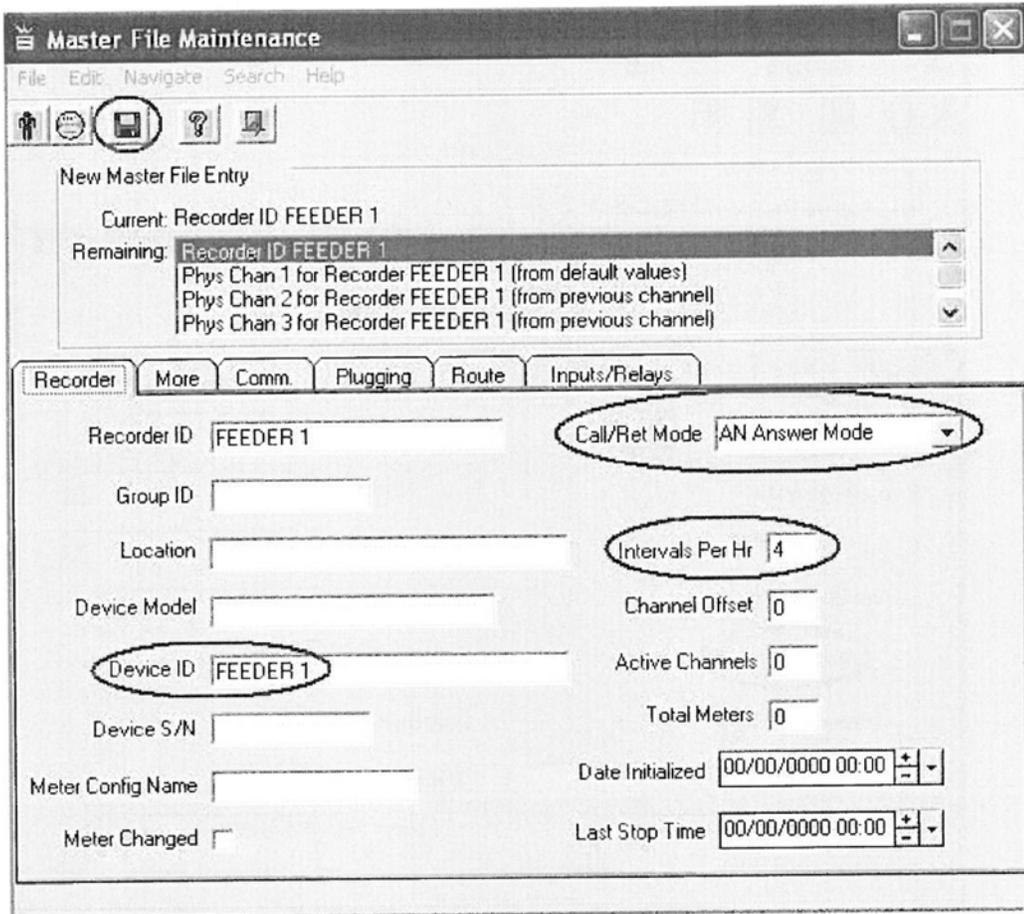


Figure 12 New Master File Entry—Recorder

After you click the save icon, MV-90 displays the four LDP channels needing configuration, namely the megawatt- and megavar-hours delivered and received. Configure the watt-hour channels identically to the var-hour channels, with the exception of the *Unit of Measure*, which you should set to 3 for megavar-hours. The difference is illustrated in Table 7 and Figure 13–Figure 16.

Configure the *Phys Chan* list in the same order that you configured the SEL-734 *LDLIST*: **MWH3I, MWH3O, MVRH3I, and MVRH3O**. The *Meter S/N* field configures the nametag for each of the four LDP channels. Use Table 7 and Figure 13–Figure 16 to complete the *Recorder* fields for each channel. Verify that the megawatt-hour channels are set to 1 and that megavar-hour channels are set to 3, as shown in Table 7.

Table 7 New Master File Settings—Recorder

Tab	Settings	Value	Description
Channel (Meter)	Unit of Measure (UOM) Code	1 for MWH values; 3 for MVRH values	UOM must be set to 1 for Watts and 3 for Vars. The default setting is 1.
Channel (Meter)	Meter S/N	MWH3I, MWH3O, MVRH3I, or MVRH3O	User defined. Configures the nametag for each channel. Match this field to the corresponding LDP channel of the SEL-734.

Tab	Settings	Value	Description
Multipliers & Readings	Meter Multiplier	1	Engineering unit meters do not need a multiplier.
Multipliers and Readings	Pulse Multiplier	1	Engineering unit meters do not need a multiplier.
Std. Checks	Tolerance Type	D - dual method, P then M	Validation reports a percentage verification that reverts to a multiplier method. See the MV-90 documentation for a thorough description.

The screenshot shows the 'Master File Maintenance' application window. The 'New Master File Entry' dialog is open, with the 'Channel (Meter)' tab selected. The 'Remaining' list shows 'Phys Chan 1 for Recorder FEEDER 1 (from default values)' selected. The 'Meter S/N' field is circled in red and contains the text 'MWH31'. Other visible fields include: Physical Channel (1), Logical Channel (1), Channel Mapping # (0), Group ID, Register Type (Visual Usage Readings), Encoder Type, Number Of Dials (5), Pulse Contact Type (C Form (three wire)), Meter Install Date (00/00/0000 00:00), Service Type (WYE), XFER Account, Power Flow (Delivered), Omit on Upload, and Perform Extended Validation.

Figure 13 New Master File Entry—Channel (Meter) MWH Settings

The screenshot shows a software window titled "Master File Maintenance" with a menu bar (File, Edit, Navigate, Search, Help) and a toolbar. The main area is titled "New Master File Entry" and contains the following information:

- Current: Phys Chan 3 for Recorder FEEDER 1 (from previous channel)
- Remaining: Phys Chan 3 for Recorder FEEDER 1 (from previous channel)
- Phys Chan 4 for Recorder FEEDER 1 (from previous channel)

Below this is a tabbed interface with the following tabs: Channel (Meter), Multipliers & Readings, Losses, Std. Checks, and TOU Checks. The "Channel (Meter)" tab is active and contains the following fields:

- Physical Channel: 3
- Logical Channel: 3
- Channel Mapping #: 0
- Group ID: [empty]
- Register Type: Visual Usage Readings
- Meter S/N: MVRH3I
- Encoder Type: [empty]
- Unit of Measure: 3
- Number Of Dials: 5
- Set Number: 0
- Pulse Contact Type: C Form (three wire)
- Meter Install Date: 00/00/0000 00:00
- Service Type: WYE
- XFER Account: [empty]
- Power Flow: Delivered
- Omit on Upload:
- Perform Extended Validation:

Figure 14 New Master File Entry—Channel (Meter) MVRH Settings

The screenshot shows the 'Master File Maintenance' application window. At the top, there is a menu bar with 'File', 'Edit', 'Navigate', 'Search', and 'Help'. Below the menu bar is a toolbar with icons for user, help, save, and other functions. The main area is titled 'New Master File Entry' and contains a list of entries. The first entry is 'Current: Phys Chan 1 for Recorder FEEDER 1 (from default values)'. The 'Remaining' list includes 'Phys Chan 1 for Recorder FEEDER 1 (from default values)', 'Phys Chan 2 for Recorder FEEDER 1 (from previous channel)', 'Phys Chan 3 for Recorder FEEDER 1 (from previous channel)', and 'Phys Chan 4 for Recorder FEEDER 1 (from previous channel)'. Below this list are five tabs: 'Channel (Meter)', 'Multipliers & Readings', 'Losses', 'Std. Checks', and 'TOU Checks'. The 'Multipliers & Readings' tab is active. It contains several input fields: 'Enter Meter Readings' (checkbox), 'PT/CT Ratio' (0), 'Meter Read Decimal' (empty), 'Start Meter Reading' (0), 'Encoder Base Reading' (0), 'Meter Multiplier' (1, circled), 'Pulse Multiplier' (1), 'Pulse Offset' (0), and 'Total Pulses' (0). To the right, there is a 'Non-Recording KVARH' section with a dropdown menu set to 'None', 'Meter S/N' (empty), 'Multiplier' (1), 'Number Of Dials' (5), and 'Start Reading' (0).

Figure 15 New Master File Entry—Multipliers & Readings

The screenshot shows the 'Master File Maintenance' application window. The 'New Master File Entry' section is active, displaying a list of channels. The 'Std. Checks' tab is selected, showing various configuration options. The 'Tolerance Type' dropdown menu is circled in red, showing the selected option 'D - dual method. P then M'. Other visible fields include 'Readings vs Pulses Tol.' (100%), 'Interval Min. & Max.' (0 to 0), 'Usage Min. & Max.' (0 to 0), 'Interval Change Tol.' (0%), 'Load Factor Tol.' (0%), 'Redundant/Check' (0), 'Channel Tolerance' (0%), 'Absolute Difference' (0), 'Power Factor Tol.' (0%), and 'Zero Interval' (0).

Figure 16 New Master File Entry—Std. Checks

CONCLUSION

This document has described how to configure an SEL-734 and MV-90 to function together. Upon completion of the preceding steps, verify that the setup works.

To test the setup, perform a status check of the meter; configure MV-90 to perform a manual read. When configuring MV-90 to perform the manual read, deselect all other read options other than "Status Check." A status check will dial the meter and attempt to read the meter registers. This step will verify that MV-90 can call the meter, that the modem on the meter is configured properly, and that the communications channel functions correctly. If you are using MVWin, you can see the values that MV-90 reads from the meter registers. If MV-90 is unable to connect or unable to read the meter registers, consult the *Troubleshooting Guide*.

After MV-90 has successfully completed a status check, again schedule a manual read. This time, perform an all read. This will cause MV-90 to read both the meter registers and the load profile information. You can verify that the read completed successfully by entering the MV-90 database and viewing the details of the complete read. If you encounter problems while trying to perform the all read, see the *Troubleshooting Guide*.

SUGGESTED SETTINGS

Firmware

SEL suggests that you use firmware versions R121 (Form 9) or R521 (Form 5) or newer with MV-90. Earlier versions of the firmware will increase read times. Table 8 lists SEL-734 firmware releases that improve the SEL-734 interaction with MV-90.

Table 8 Firmware Revision History

Firmware Version	Enhancement
R108/R508	Reduces MV-90 read times.
R118/R518	Adds MV-90 protocol that improves communications reliability over modems.
R120/R520	Resolves missing "Time Set Flag" IRIG-B with connections.
R121/R521	Resolves "Communications: Value Not Supported in Register" error when SEL-734 contains more than 512 SER records.
R122/R522	Resolves "Command Was Not Ok'd" error message that occurs in the middle of a read.

Daylight Savings Time and Automated Clock Sets

If using the *Auto Timeset* option as an MV-90 Master File setting, SEL suggests that you do not use the *Enable Daylight Savings* option in the SEL-734. This keeps the clock of the meter in synchronization with the PC clock and MV-90.

MV-90 Validation Settings

SEL recommends that you enable MV-90 validation settings for demand validation. MV-90 calculates demand using the energy registers read from the SEL-734. If the SEL-734 time is changed, MV-90 may report an incorrect demand reading during one interval. Use the MV-90 *Time Reset Occurred* validation flag to ensure that demand reports flag invalid data.

Configure a S734.CFG File:

1. In the MV-90 Master File, add "S734.CFG" to the *TIM Config File* setting.
 - a. Navigate *Databases-->Master File-->Maintenance*
 - b. Right-click in *Recorder* box, and select the device that you'll modify.
 - c. Click the edit box on the top of the *Maintenance* window so you can add settings.
 - d. Add **S734.CFG** to the *TIM Config File* setting as shown in Figure 17.

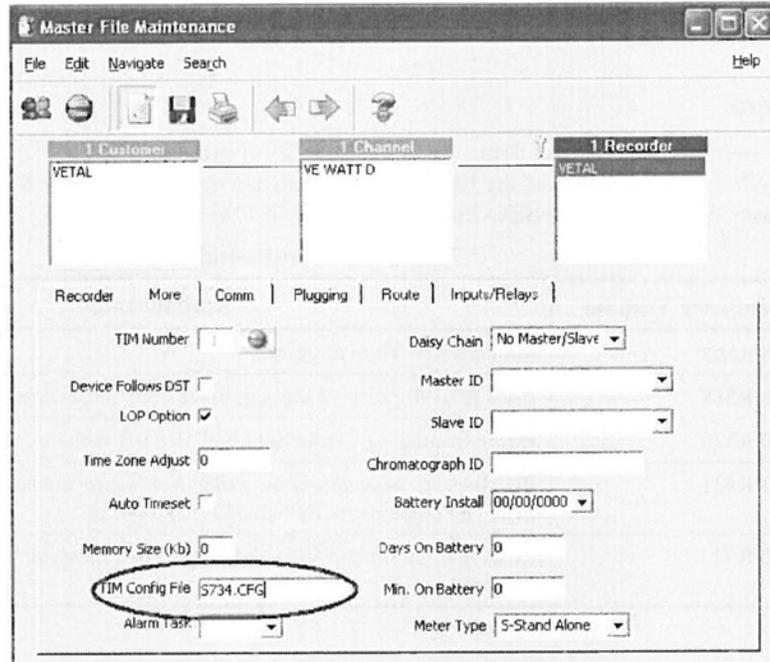


Figure 17 TIM Config File

2. Create a text file named S734.CFG and save it to C:\MV90\master or C:\MV90xi\master.
3. Open the empty S734.CFG text file and add the following as shown in Figure 18.

TO=1200

ITO=1000

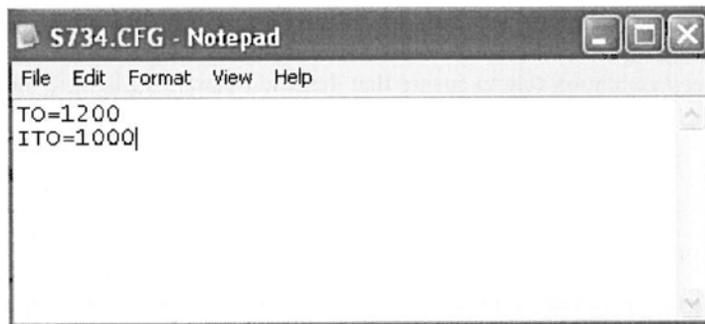


Figure 18 S734.CFG File Addition

4. Save the S734.CFG file and restart MV-90.

TROUBLESHOOTING GUIDE

Introduction

MV-90 uses the Modbus[®] protocol to communicate with the SEL-734 to collect load profile data and read registers. Modbus works on a request/response basis. MV-90 requests information from

the SEL-734, and the SEL-734 responds with the requested data. Modbus uses a CrC (Cyclic Redundancy Check) to detect errors in transmission.

Modbus slave devices use an inter-character time-out to detect end-of-data requests. Once a slave detects a transmission, it enters a wait state, pausing for receipt of the complete requests. Once a slave detects a transmission, it enters a wait state, pausing for receipt of the complete request. The slave uses an inter-character time-out to detect a complete response from the slave. This is similar to an oral discussion; each person knows when to speak because of the pause when the other finishes speaking.

Because of this time-out, the Modbus protocol is sensitive to inter-character delays induced by the communications equipment between the master and slave devices. Many of the communication problems listed below are a result of timing delays between MV-90 and the SEL-734.

For a more detailed description of the Modbus protocol, see *Appendix G: Modbus RTU Communications Protocol* in the *SEL-734 Revenue Metering System Instruction Manual*.

Modem Fails to Pick Up When Dialed

Failure of the modem to pick up is often an SEL-734 modem configuration issue. The two settings described below enable a connection between the internal modem of the SEL-734 and the MV-90 modem.

1. Install the Port 4 jumper.

The Port 4 jumper, **J7**, found on the circuit board, must be installed. This jumper switches between modem and EIA-485 communications and, by default, is shipped in the “ON” position.

2. Set Port 4 to **MODEM**.

Set the *Port 4 COMINF* setting to **MODEM**. The *COMINF* setting selects from among the EIA-232, EIA-485, and modem ports of the SEL-734.

Both Modems Connect, But Nothing Happens

Check that Port 4 is set to use the MV-90 (MV90) protocol.

RI-COMM Reports “Command Was Not Ok’d”

RI-COMM reports “Command was not OK’d” when the SEL-734 does not acknowledge a data request with a valid response. Many different problems cause this general error. The most common reasons for this error are listed below.

- **Port 4 Settings.** The “Command was not OK’d” error can occur if MV-90 does not receive a response from the SEL-734. Configure the Port 4 setting, *PROTO*, to the MV-90 protocol, **MV90**.
- **Baud Rate Mismatch.** As a default, the SEL-734 modem operates at 9600 baud. The modem auto negotiates if the MV-90 Baud Rate setting is at a different rate. MV-90 data requests are sensitive to inter-character delays, and auto negotiated connections can increase these timing delays. Change the MV-90 dial-out *Baud Rate* setting to match that of the SEL-734. Find this setting on the *Comm* tab of the *Recorder* page in the *Master File*.

- **S734.CFG File Settings.** The S734.CFG file found in the MV-90 software directory contains two settings, which affect communications timeouts. See *Configuring a S734.CFG File* for details on how to change these timeouts.
 - **Time-Out (TO):** The default value is 1200 (12 seconds). Try increasing this time to 9999 MV-90 reads fail during a read.
 - **Inter-Character Time-Out (ITO):** The default value is 1000 (10 seconds). Try increasing this time to 9999 if MV-90 reads fail during a read

After completing a successful read, try reducing the **TO** and **ITO** settings to the minimum values that allow a successful read.
- **Modem AT Settings.** We suggest that you configure the MV-90 modem through use of one or more of the following **AT** settings. Some **AT** settings, such as error correction, introduce timing delays in the communications channel. The **AT** settings listed below alter these timing delays. The required use, or dismissal, of these settings is dependent on line quality and modem manufacturer. Test these settings before implementing any devices in the field.
 1. Disable ARQ: **&M0**
 2. Enable or disable Hardware Handshaking: **&K3** or **&K0**
 3. Disable data compression: **%CO**
 4. Disable error correction: **&Q6**
- **Reader Password Mismatch.** Ensure that the *RDRPWD* setting of the SEL-734 matches the MV-90 *Reader Password* setting. The Reader Password uniquely identifies each device connected to a communications channel. Configure MV-90 for the correct Reader Password, to guarantee that each device responds to the appropriate data request.

“ERROR—Mismatch Between TIM and Meter Identifier”

Match Device ID to MID. Ensure that the *MID* of the SEL-734 matches the *Device ID* of MV-90. MV-90 compares the *Device ID* to the *Meter Identifier (MID)* of the SEL-734. This guarantees that MV-90 associates the collected load profile data with the correct recorder.

“ERROR—Intervals Per Hour Does Not Match TIM!”

Match Intervals Per Hr to LDAR. Match the MV-90 *Intervals Per Hr* setting to the Load Profile Acquisition Rate (*LDAR*) of the SEL-734. The *LDAR* setting defines the time between each record, while the *Intervals Per Hr* setting configures the number of records per hour. If *LDAR* is set to 15 minutes, the *Intervals Per Hr* setting should be 4.

“ERROR—Channels Do Not Match TIM!”

Match LDLIST channels configured for the record. Count the number of channels listed in the *LDLIST* setting of the SEL-734 and verify that the *Recorder* in the MV-90 *Master File* is configured for the same number of channels (see the screen capture in Figure 12).

“ERROR—Write Next Call-in Time !Function Not Available!”

Set Call/Ret Mode to “AN Answer Mode”. The *Call/Ret Mode* setting of MV-90 configures the SEL-734 to originate a call or wait for a call. Correct this error by setting the *Call/Ret Mode* to **AN Answer Mode**.

MV-90 Validation Errors

Set Tolerance Type. Set *Tolerance Type* to **D - dual method, P then M**. MV-90 reports two methods of register data: **percent method (P)** and **multiplier method (M)**. The percent method reports the data as a real number. The multiplier method uses pulse counts, each weighted by a *pulse multiplier* constant. The SEL-734 reports its register values in engineering units. Therefore, MV-90 must validate the load profile and register reads of the SEL-734 through use of the **D - dual method, P then M** validation method. The **D - dual method, P then M** method calculates a percentage difference between the load profile data and register reads. The validation passes if the percent difference is less than the percent configured in the *Std. Checks* section of the MV-90 master file. If the percent difference validation fails, MV-90 attempts a **multiplier-type validation**.

The multiplier method takes pulse counts multiplied by KE and compares this to the register reads. If the difference is greater than setting values you have established for *Std. Checks* (see Figure 16) the validation fails. Verify that the **D - dual method, P then M** validation method is selected if the validation errors occur.

FACTORY ASSISTANCE

We appreciate your interest in SEL products and services. If you have questions or comments, please contact us at:

Schweitzer Engineering Laboratories, Inc.
2350 NE Hopkins Court
Pullman, WA USA 99163-5603
Telephone: (509) 332-1890
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Date Code 20070920

SCHWEITZER ENGINEERING LABORATORIES, INC.

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SEL Application Guide 2005-01

August 4, 2008

AUG 05 2008

AUG 05 2008

Tina Ko
Bonneville Power Administration
P.O. Box 3621 – PSW-6
Portland, OR 97208-3621

Subject: Start of Measuring Period for Cameron Family Glass Packaging, LLC

Dear Ms. Ko:

As you are aware, the District is providing electric service to a new industrial facility that manufactures and packages glass wine bottles for sale in the Northwest and California. The name of this new facility is Cameron Family Glass Packaging, LLC (Cameron Glass). The District constructed a new substation (Port of Kalama) to provide service to this new load, as well as future load growth in the Kalama industrial area.

On August 1, 2008, the District closed the breaker on the main power feed and began providing electric service to permanent facility operations. The District has an electric revenue meter measuring the facility's consumption. With BPA's concurrence, the District desires to designate August 1, 2008 as the start of the measuring period for Cameron Glass as it relates to BPA's New Large Single Load (NLSL) Policy.

While the District does not anticipate the electric consumption of Cameron Glass to exceed the NLSL limit of ten average megawatts, the District is notifying BPA to seek BPA's concurrence of the start of the measuring period nonetheless.

At your earliest convenience, the District looks forward to receiving BPA's concurrence of the August 1, 2008 start of the measuring period. If you have any questions don't hesitate to contact me at (360) 577-7527 or Gary Huhta at (360) 577-7513.

Very truly yours,

(b)(6)

Brian L. Skeahan
General Manager

cc: Bob Essex
Brian Booth
Gary Huhta
Rick Syring
Bill Spear, Cameron Glass

Cameron signed a 50-year lease for the 13-acre plot at the port in 2007 and had planned to begin producing bottles late last year. Port officials are reviewing the lease to determine whether Cameron must continue to pay while the plant is not operating, Linqvist said.

The company owes about \$50,000 in missed lease payments dating back to the accident, according to the port.

Longview-based contractor JH Kelly completed construction of the facility in late 2008, the first of its kind in 35 years on U.S. soil.

The \$109 million plant had struggled to restart production for market after the molten glass leak.

Port officials hope they can entice another manufacturer to the building.

"Once the dust settles, we'll definitely be able to market the building," Linqvist said.

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*1 H50 - 27 - Skelly Vgaddel -
HL Rep - 5817*



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

JUN 21 1989

In reply refer to: PMC

Mr. Robert L. McKinney
General Manager
Cowlitz County PUD
960 Commerce Avenue
Longview, Washington 98632

Dear Mr. McKinney:

On July 6, 1982, Cowlitz County PUD (Cowlitz) requested that Bonneville Power Administration (BPA) determine that the loads at Longview Fibre, located at Longview, Washington, and Kalama Chemical Company, located at Kalama, Washington, are not New Large Single Loads under section 3(13)(A) of the Pacific Northwest Electric Power Planning and Conservation Act. Cowlitz requested the determination on the basis that such loads were contracted for, or committed to, between Cowlitz and Longview Fibre, and between Cowlitz and Kalama Chemical, as of September 1, 1979.

In making such determination, and in determining the size of the loads contracted for, or committed to, which will establish a floor upon which future increases, if any, at such facility may be measured, the following documents were considered:

1. Contracts.

(a) An Electric Service Agreement, designated Supplemental Agreement No. 5 - ES62, between Cowlitz and Longview Fibre, dated February 12, 1975, defining Contract Demand and Operating Demand.

(b) An Electric Service Agreement, designated Supplemental Agreement No. 8 - ES62, between Cowlitz and Longview Fibre, dated May 30, 1979, establishing a Contract Demand of 97,000 kW effective June 1979.

(c) An Electric Service Agreement, designated Supplemental Agreement No. 9 - ES62, between Cowlitz and Longview Fibre, dated November 14, 1979, establishing a Contract Demand of 103,000 kW effective December 1979.

(d) An Electric Service Agreement, designated Supplemental Agreement No. 2 - ES401, between Cowlitz and Kalama, dated April 27, 1977, establishing a Contract Demand of 15,000 kW effective May 1977.

2. Correspondence.

(a) An April 27, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of May 1979.

(b) A May 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of June 1979.

(c) A June 28, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of July 1979.

(d) A July 27, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of August 1979.

(e) An August 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of September 1979.

(f) A September 28, 1979 letter from N. H. Anderson of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of October 1979.

(g) An October 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of November 1979.

BPA has determined that Cowlitz and Kalama Chemical had an executed contract for 15 MW of demand on September 1, 1979. Cowlitz and Longview Fibre had an executed contract for electric service as of September 1, 1979 in the amount of 97 MW. In addition, based upon consistent individual monthly requests for additional service up to 103 MW between April 1979 and October 1979, Cowlitz and Longview Fibre had a course of dealing indicating a commitment to an additional 6 MW of service. The fact that Longview Fibre's requests for 103 MW of service were confirmed in a November 1979 contract amendment increasing Cowlitz' contractual obligation to 103 MW weighs in favor of finding a commitment in this case. The contracted for, or committed to loads for purposes of inclusion in your Power Sales Contract No. DE-MS79-81BP90493, Exhibit K, Table 2, are 103 average MW for Longview Fibre, and 15 average MW for Kalama Chemical.

Please attach the enclosed Exhibit K, Table 2, to your contract. If you have any questions regarding this determination, please contact this office.

Sincerely,

(b)(6)

Edward W. Sienkiewicz
Senior Assistant Administrator
for Power Management

Enclosure:
Exhibit K, Table 2

Revision No. 3
Exhibit K, Table 2, Page 1 of 1
Contract No. DE-MS79-81BP90493
Cowlitz County Public Utility
District No. 1
Effective on the effective date
of the Power Sales Contract

Contracted For, Committed To Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 8 of this contract as of the effective date set forth above.)

Table 2

List of Purchaser's Loads and Amounts Which Were
Contracted for, or Committed to, Prior
to September 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Energy Contracted for or Committed to as of 9/1/79 (Avg. MW)</u>
Weyerhaeuser's Longview Millsite Facility	Cowlitz County Longview, Washington (Present Longview Millsite facility)	405
Longview Fibre Company	Longview, Washington	103
Kalama Chemical Company	Kalama, Washington	15

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

(b)(6)

By _____
Title Senior Assistant Administrator
for Power Management
Date June 21, 1989

(VS6-PMCG-5426b)

POWER CONTRACT
Briefing Memo

Contract: Revision No. 3 to Exhibit K, Table 2 (Contracted For, Committed To Determinations), Cowlitz County PUD No. 1, Contract No. DE-MS79-81BP90493.

Existing Circumstances: The current Exhibit K, Table 2 lists the Weyerhaeuser Longview millsite as Cowlitz County's only contracted for, committed to (CF/CT) load.

Changes Required/Impact on Existing Circumstances: Cowlitz has requested CF/CT determinations for two additional industrial loads in its service area, Longview Fibre and Kalama Chemical, to establish the loads Cowlitz was obligated to serve prior to September 1, 1979, the cutoff date for CF/CT loads under the Northwest Power Act.

Policy Implications: This determination is consistent with BPA's previous CF/CT determinations. This will be the 32nd CF/CT determination BPA has made.

Financial Management Concerns: None.

General Counsel Concerns: The requested amount was based on a 1977 BPA/utility forecast of the amounts of the two loads. In previous CF/CT determinations, forecast amounts have been used only where there was a contractual obligation on the utility to provide power in amounts forecast by the consumer. Because there was no contractual obligation on Cowlitz to serve the forecast amounts, the CF/CT amounts listed are those which were established by contract, and not the amounts forecast.

NEPA Determination: The Coordination and Review Manager for the Office of Power Sales has determined CF/CT determinations are purely factual determinations and are therefore outside the ambit of the National Environmental Policy Act. Therefore, an environmental clearance is not required for this CF/CT determination.

Signature Instructions:

The Senior Assistant Administrator for Power Management will sign the letter and two originals of the revised Exhibit K, Table 2. No signature is required from the customer.

Area Acceptance: The Lower Columbia Area Office concurs with this determination.

DWolfe:3556 (VS6-PMC-5434b)

Decision Paper

JULY 6, 1982 REQUEST BY COWLITZ COUNTY PUBLIC UTILITY DISTRICT NO. 1 (COWLITZ) THAT BONNEVILLE POWER ADMINISTRATION (BPA) DETERMINE THAT AS OF SEPTEMBER 1, 1979, COWLITZ HAD COMMITTED TO SERVE LOADS AT LONGVIEW FIBRE COMPANY (LONGVIEW FIBRE) IN THE AMOUNT OF 100 AVERAGE MEGAWATTS AND KALAMA CHEMICAL, INC., (KALAMA) IN THE AMOUNT OF 26 AVERAGE MEGAWATTS.

ISSUE: Were the Longview Fibre and Kalama loads contracted for, or committed to as of September 1, 1979, by Cowlitz, and, if so, what was the size of each load for purposes of establishing a floor upon which future increases in load at each facility, if any, can be measured?

BACKGROUND: On July 6, 1982, Cowlitz requested a contracted for, committed to (CF/CT) determinations for its retail customers, Longview Fibre and Kalama, under Section 3(13)(A) of the Pacific Northwest Electric Power Planning and Conservation Act. No action was taken on the request until the summer of 1988, when Cowlitz expressed renewed interest in obtaining CF/CT determinations in light of planned load increases by Longview Fibre.

In determining whether the loads were contracted for or committed to as of September 1, 1979, the following information was considered:

Contracts:

Longview Fibre:

An Electric Service Agreement, designated Supplemental Agreement No. 5 - ES62, between Cowlitz and Longview Fibre, dated February 12, 1975, defining Contract Demand and Operating Demand.

An Electric Service Agreement, designated Supplemental Agreement No. 8 - ES62, between Cowlitz and Longview Fibre, dated May 30, 1979, establishing a Contract Demand of 97,000 kW effective June 1979.

An Electric Service Agreement, designated Supplemental Agreement No. 9 - ES62, between Cowlitz and Longview Fibre, dated November 14, 1979, establishing a Contract Demand of 103,000 kW effective December 1979.

Kalama:

An Electric Service Agreement, designated Supplemental Agreement No. 2 - ES401, between Cowlitz and Kalama, dated April 27, 1977, establishing a Contract Demand of 15,000 kW effective May 1977.

Correspondence:

Longview Fibre:

An April 27, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of May 1979.

A May 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of June 1979.

A June 28, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of July 1979.

A July 27, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of August 1979.

An August 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of September 1979.

A September 28, 1979 letter from N. H. Anderson of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of October 1979.

An October 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of November 1979.

Printouts provided by Cowlitz, dated March 15, 1989, showing operating demand and actual consumption at Longview Fibre from January 1977 through February 1989.

Both Longview Fibre and Kalama:

A February 16, 1977, report by Cowlitz, "Load Forecast for the Period 1977-78 through 1996-97."

DISCUSSION:

The evidence supporting contracted for or committed to amounts for Longview Fibre included a contract demand of 97 MW in effect on September 1, 1979, an operating demand of 103 MW in effect from May 1979 through November 1979, an increase in contract demand to 103 MW adopted in November 1979 to go into effect in December 1979, and a forecast by Cowlitz from 1977 showing an anticipated maximum load of 100 MW at Longview Fibre in 1977.

Cowlitz serves Longview Fibre under a contract which provides for contract demand and operating demand. The contract demand is specified in the contract, and changed by amendment, and establishes Cowlitz's obligation to supply power and the minimum operating and billing demand. Longview Fibre can establish an operating demand above the contract demand by notice prior to each billing period, and Cowlitz is required to accept the request if it believes power is available. An operating demand is a month-to-month agreement on the amount of power Cowlitz will supply, and does not establish any obligation on the part of Cowlitz to supply power at levels above the contract demand in subsequent months.

The evidence of contracted for or committed to load at Kalama included a contract demand of 15 MW in effect on September 1, 1979, and the 1977 Cowlitz forecast showing an anticipated load of 26 MW over a ten-year period from the date of the forecast.

RECOMMENDATION:

Longview Fibre: The letters requesting an operating demand of 103 MW from May through November 1979 establish a course of dealing between Cowlitz and Longview Fibre that Cowlitz would serve an operating demand of 103 MW at Longview Fibre. Each time Longview Fibre requested an operating demand of 103 MW, Cowlitz provided service in that amount. There is no evidence that Cowlitz refused any of Longview Fibre's requested operating demands. Service to this level of demand was made permanent by an amendment to the electric service agreement between Cowlitz and Longview Fibre on November 14, 1979. Although a month by month agreement would not normally be used to establish a commitment because of its limited duration, in this case it manifests an understanding between the two parties of the level of demand to be supplied at Longview Fibre, both before and after the September 1, 1979 statutory date for CF/CT loads. An obligation may be inferred from this understanding because it directly led to an amendment to their long term electric service agreement only two months after the statutory date. By an amendment in November 1979 which increased Longview Fibre's contract demand to 103 MW, Cowlitz acknowledged and confirmed its previous commitment to serve the Longview Fibre load at up to 103 MW.

Kalama: The contract demand set forth in the April 27, 1977 amendment to the electric service agreement between Kalama and Cowlitz establishes the contracted for amount as of September 1, 1979.

The BPA load forecast of Cowlitz loads does not provide sufficient information to infer any commitment by the utility to either consumer.

It is the recommendation of BPA staff that the Administrator determine that the contracted for, committed to load to be entered in Exhibit K, Table 2, of the Cowlitz County Public Utility District No. 1 Contract, No. DE-MS79-81BP90493 shall be 103 average MW for Longview Fibre Company, and 15 average MW for Kalama Chemical, Inc.

DWolfe:dvw:3556 (VS6-PMCG-5371b)
6/15/89

Correspondence Timeline

<u>Date</u>	<u>Document</u>	<u>Notation</u>
	<u>Longview Fibre Company</u>	
2-12-75	Electric Service Agreement, Supplemental Agreement No. 5 - ES62, between Cowlitz and Longview Fibre	Defines Contract Demand and Operating Demand.
5-30-75	Electric Service Agreement, Supplemental Agreement No. 8 - ES62, between Cowlitz and Longview Fibre	Establishes Contract Demand of 97,000 kW.
2-16-77	Cowlitz load forecast	States expected eventual demand of 100 MW at Longview Fibre.
4-27-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of May 1979.
5-29-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of June 1979.
6-28-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of July 1979.
7-29-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of August 1979.
8-29-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of September 1979.
9-28-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of October 1979.
10-29-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of November 1979.
11-14-79	Electric Service Agreement, Supplemental Agreement No. 9 - ES62, between Cowlitz and Longview Fibre	Establishes Contract Demand of 103,000 kW.

<u>Date</u>	<u>Document</u>	<u>Notation</u>
	<u>Kalama Chemical</u>	
2-16-77	Cowlitz load forecast	States expected eventual demand of 26 MW at Kalama Chemical.
4-27-77	Electric Service Agreement, Supplemental Agreement No. 2 - ES401, between Cowlitz and Kalama	Establishes a Contract Demand of 15,000 kW, effective May 1977.

DWolfe:dvw:3556 (VS6-PMCG-5371b)
6/2/89



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

JUN 21 1989

In reply refer to: PMC

Mr. Robert L. McKinney
General Manager
Cowlitz County PUD
960 Commerce Avenue
Longview, Washington 98632

Dear Mr. McKinney:

On July 6, 1982, Cowlitz County PUD (Cowlitz) requested that Bonneville Power Administration (BPA) determine that the loads at Longview Fibre, located at Longview, Washington, and Kalama Chemical Company, located at Kalama, Washington, are not New Large Single Loads under section 3(13)(A) of the Pacific Northwest Electric Power Planning and Conservation Act. Cowlitz requested the determination on the basis that such loads were contracted for, or committed to, between Cowlitz and Longview Fibre, and between Cowlitz and Kalama Chemical, as of September 1, 1979.

In making such determination, and in determining the size of the loads contracted for, or committed to, which will establish a floor upon which future increases, if any, at such facility may be measured, the following documents were considered:

1. Contracts.

(a) An Electric Service Agreement, designated Supplemental Agreement No. 5 - ES62, between Cowlitz and Longview Fibre, dated February 12, 1975, defining Contract Demand and Operating Demand.

(b) An Electric Service Agreement, designated Supplemental Agreement No. 8 - ES62, between Cowlitz and Longview Fibre, dated May 30, 1979, establishing a Contract Demand of 97,000 kW effective June 1979.

(c) An Electric Service Agreement, designated Supplemental Agreement No. 9 - ES62, between Cowlitz and Longview Fibre, dated November 14, 1979, establishing a Contract Demand of 103,000 kW effective December 1979.

(d) An Electric Service Agreement, designated Supplemental Agreement No. 2 - ES401, between Cowlitz and Kalama, dated April 27, 1977, establishing a Contract Demand of 15,000 kW effective May 1977.

2. Correspondence.

(a) An April 27, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of May 1979.

(b) A May 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of June 1979.

(c) A June 28, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of July 1979.

(d) A July 27, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of August 1979.

(e) An August 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of September 1979.

(f) A September 28, 1979 letter from N. H. Anderson of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of October 1979.

(g) An October 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of November 1979.

BPA has determined that Cowlitz and Kalama Chemical had an executed contract for 15 MW of demand on September 1, 1979. Cowlitz and Longview Fibre had an executed contract for electric service as of September 1, 1979 in the amount of 97 MW. In addition, based upon consistent individual monthly requests for additional service up to 103 MW between April 1979 and October 1979, Cowlitz and Longview Fibre had a course of dealing indicating a commitment to an additional 6 MW of service. The fact that Longview Fibre's requests for 103 MW of service were confirmed in a November 1979 contract amendment increasing Cowlitz' contractual obligation to 103 MW weighs in favor of finding a commitment in this case. The contracted for, or committed to loads for purposes of inclusion in your Power Sales Contract No. DE-MS79-81BP90493, Exhibit K, Table 2, are 103 average MW for Longview Fibre, and 15 average MW for Kalama Chemical.

Please attach the enclosed Exhibit K, Table 2, to your contract. If you have any questions regarding this determination, please contact this office.

Sincerely,

(b)(6)

Edward W. Sienkiewicz
Senior Assistant Administrator
for Power Management

Enclosure:
Exhibit K, Table 2

Revision No. 3
Exhibit K, Table 2, Page 1 of 1
Contract No. DE-MS79-81BP90493
Cowlitz County Public Utility
District No. 1
Effective on the effective date
of the Power Sales Contract

Contracted For, Committed To Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 8 of this contract as of the effective date set forth above.)

Table 2

List of Purchaser's Loads and Amounts Which Were
Contracted for, or Committed to, Prior
to September 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Energy Contracted for or Committed to as of 9/1/79 (Avg. MW)</u>
Meyerhaeuser's Longview Millsite Facility	Cowlitz County Longview, Washington (Present Longview Millsite facility)	405
Longview Fibre Company	Longview, Washington	103
Kalama Chemical Company	Kalama, Washington	15

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By (b)(6)
Title Senior Assistant Administrator
for Power Management
Date June 21, 1989

(V56-PMCG-5426b)

POWER CONTRACT
Briefing Memo

Contract: Revision No. 3 to Exhibit K, Table 2 (Contracted For, Committed To Determinations), Cowlitz County PUD No. 1, Contract No. DE-MS79-81BP90493.

Existing Circumstances: The current Exhibit K, Table 2 lists the Weyerhaeuser Longview millsite as Cowlitz County's only contracted for, committed to (CF/CT) load.

Changes Required/Impact on Existing Circumstances: Cowlitz has requested CF/CT determinations for two additional industrial loads in its service area, Longview Fibre and Kalama Chemical, to establish the loads Cowlitz was obligated to serve prior to September 1, 1979, the cutoff date for CF/CT loads under the Northwest Power Act.

Policy Implications: This determination is consistent with BPA's previous CF/CT determinations. This will be the 32nd CF/CT determination BPA has made.

Financial Management Concerns: None.

General Counsel Concerns: The requested amount was based on a 1977 BPA/utility forecast of the amounts of the two loads. In previous CF/CT determinations, forecast amounts have been used only where there was a contractual obligation on the utility to provide power in amounts forecast by the consumer. Because there was no contractual obligation on Cowlitz to serve the forecast amounts, the CF/CT amounts listed are those which were established by contract, and not the amounts forecast.

NEPA Determination: The Coordination and Review Manager for the Office of Power Sales has determined CF/CT determinations are purely factual determinations and are therefore outside the ambit of the National Environmental Policy Act. Therefore, an environmental clearance is not required for this CF/CT determination.

Signature Instructions:

The Senior Assistant Administrator for Power Management will sign the letter and two originals of the revised Exhibit K, Table 2. No signature is required from the customer.

Area Acceptance: The Lower Columbia Area Office concurs with this determination.

DWolfe:3556 (VS6-PMC-5434b)

Decision Paper

JULY 6, 1982 REQUEST BY COWLITZ COUNTY PUBLIC UTILITY DISTRICT NO. 1 (COWLITZ) THAT BONNEVILLE POWER ADMINISTRATION (BPA) DETERMINE THAT AS OF SEPTEMBER 1, 1979, COWLITZ HAD COMMITTED TO SERVE LOADS AT LONGVIEW FIBRE COMPANY (LONGVIEW FIBRE) IN THE AMOUNT OF 100 AVERAGE MEGAWATTS AND KALAMA CHEMICAL, INC., (KALAMA) IN THE AMOUNT OF 26 AVERAGE MEGAWATTS.

ISSUE: Were the Longview Fibre and Kalama loads contracted for, or committed to as of September 1, 1979, by Cowlitz, and, if so, what was the size of each load for purposes of establishing a floor upon which future increases in load at each facility, if any, can be measured?

BACKGROUND: On July 6, 1982, Cowlitz requested a contracted for, committed to (CF/CT) determinations for its retail customers, Longview Fibre and Kalama, under Section 3(13)(A) of the Pacific Northwest Electric Power Planning and Conservation Act. No action was taken on the request until the summer of 1988, when Cowlitz expressed renewed interest in obtaining CF/CT determinations in light of planned load increases by Longview Fibre.

In determining whether the loads were contracted for or committed to as of September 1, 1979, the following information was considered:

Contracts:

Longview Fibre:

An Electric Service Agreement, designated Supplemental Agreement No. 5 - ES62, between Cowlitz and Longview Fibre, dated February 12, 1975, defining Contract Demand and Operating Demand.

An Electric Service Agreement, designated Supplemental Agreement No. 8 - ES62, between Cowlitz and Longview Fibre, dated May 30, 1979, establishing a Contract Demand of 97,000 kW effective June 1979.

An Electric Service Agreement, designated Supplemental Agreement No. 9 - ES62, between Cowlitz and Longview Fibre, dated November 14, 1979, establishing a Contract Demand of 103,000 kW effective December 1979.

Kalama:

An Electric Service Agreement, designated Supplemental Agreement No. 2 - ES401, between Cowlitz and Kalama, dated April 27, 1977, establishing a Contract Demand of 15,000 kW effective May 1977.

Correspondence:

Longview Fibre:

An April 27, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of May 1979.

A May 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of June 1979.

A June 28, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of July 1979.

A July 27, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of August 1979.

An August 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of September 1979.

A September 28, 1979 letter from N. H. Anderson of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of October 1979.

An October 29, 1979 letter from G. E. Schwartz of Longview Fibre to Cowlitz requesting an operating demand of 103,000 kW for the month of November 1979.

Printouts provided by Cowlitz, dated March 15, 1989, showing operating demand and actual consumption at Longview Fibre from January 1977 through February 1989.

Both Longview Fibre and Kalama:

A February 16, 1977, report by Cowlitz, "Load Forecast for the Period 1977-78 through 1996-97."

DISCUSSION:

The evidence supporting contracted for or committed to amounts for Longview Fibre included a contract demand of 97 MW in effect on September 1, 1979, an operating demand of 103 MW in effect from May 1979 through November 1979, an increase in contract demand to 103 MW adopted in November 1979 to go into effect in December 1979, and a forecast by Cowlitz from 1977 showing an anticipated maximum load of 100 MW at Longview Fibre in 1977.

Cowlitz serves Longview Fibre under a contract which provides for contract demand and operating demand. The contract demand is specified in the contract, and changed by amendment, and establishes Cowlitz's obligation to supply power and the minimum operating and billing demand. Longview Fibre can establish an operating demand above the contract demand by notice prior to each billing period, and Cowlitz is required to accept the request if it believes power is available. An operating demand is a month-to-month agreement on the amount of power Cowlitz will supply, and does not establish any obligation on the part of Cowlitz to supply power at levels above the contract demand in subsequent months.

The evidence of contracted for or committed to load at Kalama included a contract demand of 15 MW in effect on September 1, 1979, and the 1977 Cowlitz forecast showing an anticipated load of 26 MW over a ten-year period from the date of the forecast.

RECOMMENDATION:

Longview Fibre: The letters requesting an operating demand of 103 MW from May through November 1979 establish a course of dealing between Cowlitz and Longview Fibre that Cowlitz would serve an operating demand of 103 MW at Longview Fibre. Each time Longview Fibre requested an operating demand of 103 MW, Cowlitz provided service in that amount. There is no evidence that Cowlitz refused any of Longview Fibre's requested operating demands. Service to this level of demand was made permanent by an amendment to the electric service agreement between Cowlitz and Longview Fibre on November 14, 1979. Although a month by month agreement would not normally be used to establish a commitment because of its limited duration, in this case it manifests an understanding between the two parties of the level of demand to be supplied at Longview Fibre, both before and after the September 1, 1979 statutory date for CF/CT loads. An obligation may be inferred from this understanding because it directly led to an amendment to their long term electric service agreement only two months after the statutory date. By an amendment in November 1979 which increased Longview Fibre's contract demand to 103 MW, Cowlitz acknowledged and confirmed its previous commitment to serve the Longview Fibre load at up to 103 MW.

Kalama: The contract demand set forth in the April 27, 1977 amendment to the electric service agreement between Kalama and Cowlitz establishes the contracted for amount as of September 1, 1979.

The BPA load forecast of Cowlitz loads does not provide sufficient information to infer any commitment by the utility to either consumer.

It is the recommendation of BPA staff that the Administrator determine that the contracted for, committed to load to be entered in Exhibit K, Table 2, of the Cowlitz County Public Utility District No. 1 Contract, No. DE-MS79-81BP90493 shall be 103 average MW for Longview Fibre Company, and 15 average MW for Kalama Chemical, Inc.

DWolfe:dvw:3556 (VS6-PMCG-5371b)
6/15/89

Correspondence Timeline

<u>Date</u>	<u>Document</u>	<u>Notation</u>
	<u>Longview Fibre Company</u>	
2-12-75	Electric Service Agreement, Supplemental Agreement No. 5 - ES62, between Cowlitz and Longview Fibre	Defines Contract Demand and Operating Demand.
5-30-75	Electric Service Agreement, Supplemental Agreement No. 8 - ES62, between Cowlitz and Longview Fibre	Establishes Contract Demand of 97,000 kW.
2-16-77	Cowlitz load forecast	States expected eventual demand of 100 MW at Longview Fibre.
4-27-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of May 1979.
5-29-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of June 1979.
6-28-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of July 1979.
7-29-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of August 1979.
8-29-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of September 1979.
9-28-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of October 1979.
10-29-79	Letter from Longview Fibre to Cowlitz	Requests an operating demand of 103,000 kW for the month of November 1979.
11-14-79	Electric Service Agreement, Supplemental Agreement No. 9 - ES62, between Cowlitz and Longview Fibre	Establishes Contract Demand of 103,000 kW.

<u>Date</u>	<u>Document</u>	<u>Notation</u>
	<u>Kalama Chemical</u>	
2-16-77	Cowlitz load forecast	States expected eventual demand of 26 MW at Kalama Chemical.
4-27-77	Electric Service Agreement, Supplemental Agreement No. 2 - ES401, between Cowlitz and Kalama	Establishes a Contract Demand of 15,000 kW, effective May 1977.

DWolfe:dvw:3556 (VS6-PMCG-5371b)
6/2/89



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

OFFICE OF THE ADMINISTRATOR

In reply refer to: PKI

NOV 17 1983

Mr. Robert L. McKinney
General Manager
Cowlitz County PUD
P. O. Box 1279
Longview, WA 99832

Dear Mr. McKinney:

On October 6, 1983, the Bonneville Power Administration (BPA), after consultation with representatives of each of BPA's customer groups, agreed to apply a 100 percent load factor to all Regional Act, section 3(13)(A) contracted for, or committed to determinations involving contract demand contracts. Previously, as part of a negotiated agreement with the Public Power Council, BPA had applied a 100 percent load factor to consumers of public agency customers with contract demand contracts. This action reflects recognition of changed conditions since passage of the Regional Act and BPA's desire to play a positive role in the economic recovery of the region. This criteria change will allow a consumer's facility which had a contract or commitment, prior to September 1, 1979, to achieve the maximum contracted for, or committed to load floor without triggering the New Large Single Load consequences of the Regional Act. BPA will retroactively apply a 100 percent load factor to all past determinations with contract demand contracts or commitments.

Enclosed is a revised signed and dated Exhibit K, Table 2, reflecting the increase in your previous contracted for, or committed to determination. The increase results from application of a 100 percent load factor to the load BPA determined was contracted for, or committed to prior to September 1, 1979. This amended Exhibit should be attached to your utility power sales contract.

Your existing Exhibit K, Table 2, may be discarded. Should you have any questions regarding this exhibit revision please contact your BPA Area or District office.

Sincerely,

(b)(6)

Administrator

Enclosure

Revision No. 1
Exhibit K
Table 2, Page 1 of 1
Contract No. DE-MS79-81BP90493
Cowlitz County Public Utility
District No. 1
Effective on the date of the above
power sales contract

Contracted For, Committed to Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 8 of this contract as of the effective date set forth above.)

TABLE 2

LIST OF PURCHASER'S LOADS AND AMOUNTS WHICH WERE
CONTRACTED FOR, OR COMMITTED TO, PRIOR
TO SEPTEMBER 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted for or Committed to as of 9/1/79 (Ave. MW)</u>
Weyerhaeuser's Longview Millsite facility	Cowlitz County Longview, Washington (Present Longview Millsite facility)	405

(b)(6)

Bonneville Power Administrator

NOV 17 1983

Date

(WP-PKI-3627b)

JUL 20 1982

PY1

Mr. Robert L. McKinney
General Manager
Cowlitz County PUD
P.O. Box 1279
Longview, WA 98632

Dear Mr. McKinney:

Cowlitz County PUD (Cowlitz) requested a determination by the Bonneville Power Administration (BPA) Administrator that the Weyerhaeuser Company load at Weyerhaeuser's Longview Millsite facility, including Weyerhaeuser's development program, is not a new Large Single Load under section 3(13)(A) of the Pacific Northwest Power Planning and Conservation Act. Cowlitz asked for this determination based on the fact that the above load was contracted for between Cowlitz and Weyerhaeuser as of September 1, 1979.

In reaching my determination, I have considered the following information. I reviewed the Cowlitz Electric Service Contract with Weyerhaeuser (Contract EC-42), and Supplemental Agreement No. 9 to that contract (executed in September 1978), which sets forth the specific dates and contract demand for development, together with copies of the official minutes of Cowlitz's Board of Directors. I also considered the data Cowlitz had submitted regarding the Weyerhaeuser Longview Millsite facility and correspondence between Cowlitz and Weyerhaeuser as well as correspondence between BPA and Cowlitz relevant to the development of the load at that facility, including letters from two BPA Administrators addressing BPA's commitment to such load.

Based on the above, I have determined that prior to September 1, 1979, the contracts between Cowlitz and Weyerhaeuser as amended by Supplemental Agreement No. 9 set forth a contract demand of 405 peak megawatts for the Weyerhaeuser Longview Millsite facility, scheduled for June 1, 1983. Because the contracted for, or committed to determinations are stated in average megawatts in Exhibit K, Table 2 of BPA's utility power sales contract with its customers, I have determined that the load factor at such facility is 56 percent based upon the Weyerhaeuser Longview Millsite facility's average actual monthly demand over calendar year 1981. Therefore, the size of the load contracted for in Exhibit K shall be 226.80 average megawatts.

Over the years Cowlitz, Meyerhaeuser, and EPA have committed resources to meet the load at Meyerhaeuser's Longview Millsite facility. EPA anticipates that these resources will continue to be dedicated to serving such facility.

EPA understands that Cowlitz may have other loads that need to be submitted for determination under section 3(13). These will be considered as each request is received.

Sincerely,

(SGD) PETER T. JOHNSON
Administrator

Exhibit K
Table 2, Page 1 of 1
Contract No. DE-MS79-81BP90493
Cowlitz County Public Utility
District No. 1
Effective on the effective date
of Amendatory Agreement No. 1

Contracted For, Committed to Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 8 of this contract as of the effective date set forth above.)

TABLE 2

LIST OF PURCHASER'S LOADS AND AMOUNTS WHICH WERE
CONTRACTED FOR, OR COMMITTED TO PRIOR
TO SEPTEMBER 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted for or Committed to as of 9/1/79 (Ave. MW)</u>
Weyerhaeuser's Longview Millsite facility	Cowlitz County, Longview, Washington (Present Longview Millsite facility)	388.80

1340 c

DECISION PAPER

REQUEST OF COWLITZ COUNTY PUD THAT THE ADMINISTRATOR DETERMINE THAT THE WEYERHAEUSER COMPANY LOAD AT THE LONGVIEW MILLSITE FACILITY WAS CONTRACTED FOR PRIOR TO SEPTEMBER 1, 1979, AND IS NOT A NEW LARGE SINGLE LOAD

ISSUE: Is the Weyerhaeuser Company load at its Longview Millsite of 405 MW contract demand in 1983 a load that was contracted for by Cowlitz County PUD prior to September 1, 1979?

BACKGROUND: Cowlitz County PUD (Cowlitz) has requested a determination by the Administrator that the Weyerhaeuser Company (WeyCo) load at Weyerhaeuser's Longview Millsite, including Weyerhaeuser's development program is not a New Large Single Load under Section 3(13)(A) of the Pacific Northwest Power Planning and Conservation Act. By letter dated December 16, 1981, Cowlitz forwarded copies of its electric service contract with WeyCo (Contract ES-63), and a Supplemental Agreement No. 9 to Contract ES-63, together with copies of the official minutes of Cowlitz's Board of Directors. Cowlitz has also submitted charts and data regarding the Weyerhaeuser Mill Load. BPA has collected or received correspondence between Cowlitz and BPA, and Cowlitz and WeyCo, relevant to the development of the load at the Longview Millsite facility. A summary Timeline of this correspondence is attached. BPA has reviewed these materials and the Administrator has made the following determination.

Contract ES-63 between Cowlitz and WeyCo, providing for the sale and delivery of Firm, Modified Firm, and Nonfirm power to WeyCo, was executed on December 14, 1966, by WeyCo and on January 9, 1967, by Cowlitz. The duration of the contract is until December 31, 1980, or the end of any month specified by either Cowlitz, or WeyCo upon giving 24 months' written notice of termination. Contract ES-63 has not been terminated and was in force as of September 1, 1979.

Contract ES-63 provided for the sale of firm power in an amount stated as a contract demand. Under section 3(b) of Contract ES-63 the contract demand for firm power was 45 MW per month after November 30, 1967 for the term of the contract.

This contract demand was in effect until Cowlitz and WeyCo executed Supplemental Agreement No. 9 to Contract ES-63, which amended section 3(b) to state a different contract demand. Supplemental Agreement No. 9 provided for specific increases in the Contract Demand of the WeyCo for each month of the term of Contract ES-63, in the following amounts:

		102 MW	?
July 1, 1976	147 MW	3 MW	29 mo
December 1, 1978	150 MW	31 MW	3 mo
March 1, 1979	181 MW	19 MW	3 mo
June 1, 1979	200 MW	25 MW	4 mo
October 1, 1979	225 MW	1 MW	8 mo
June 1, 1980	226 MW	20 MW	7 mo
January 1, 1981	246 MW	5 MW	5 mo
June 1, 1981	251 MW	40 MW	6 mo
December 1, 1981	291 MW	34 MW	6 mo
June 1, 1982	325 MW	40 MW	7 mo
January 1, 1983	365 MW	40 MW	5 mo
June 1, 1983	405 MW		

These amounts were agreed to by Cowlitz and WeyCo on September 20, 1978. The Supplemental Agreement was the result of and reflected WeyCo's ten-year development plan initiated in 1974.

On April 4, 1974 Cowlitz had notified BPA of the proposed WeyCo development plan and the additional load or increases in contract demand that was expected to be served. BPA replied on April 12, 1974 that BPA had not previously approved directly or indirectly service to the load. The letter notes that the regional power supply situation was difficult to assess, and requests information from Cowlitz on any agreed upon commitments prior to BPA consideration to approve service to loads in excess of 10 MW demand. The Cowlitz 1973-83 load forecast based on the development program showed an increased demand of some 347 MW over ten years with increases varying between 0 and 71 MW, but averaging 34.7 MW. Following conference and consideration, BPA by letter of May 16, 1974, stated "we do acquiesce in your service to the 34 MW per year load shown in your forecasts for Weyerhaeuser Company. Based on BPA's letter of May 16, 1974, Cowlitz and WeyCo developed and executed Supplemental Agreement No. 9 to Contract ES-63 on Sept. 20, 1978.

On September 26, 1978, Cowlitz forwarded both the supplement and agreement and a load forecast to BPA. BPA's Lower Columbia Area Office replied to Cowlitz by two letters dated October 17, 1978 and January 9 1979, stating that Section 23 of BPA's contract with Cowlitz limited BPA's obligation to serve increases in demand to 35 MW in an operating year, and that if Cowlitz agrees to serve such loads, it should plan to serve amounts in excess of 35 from non-Federal resources. This letter also noted an estimated load factor of 85 percent and increases indicated at 63 average megawatts for 1981-1982, and 68 average MW for 1982-1983.

On January 10, 1979, Cowlitz wrote to BPA stating that Cowlitz's position was that Cowlitz and WeyCo had received prior approval from BPA to serve the load, that service commitments were discussed, and the letter requested an early meeting to resolve what Bonneville's service commitments were. A meeting was held between Cowlitz and BPA to discuss prior correspondence and meetings regarding the rights and obligations of each party regarding service of power to WeyCo. BPA sent a March 1, 1979, letter to Cowlitz following the meeting which set out the understanding of the parties. As regards BPA's service to Cowlitz for WeyCo load, BPA would provide

increases in firm power for the constant demand of no more than 35 MW per year between 1979 and 1983. Any additional power requirements of WeyCo above that amount may be served from sources on an as available basis, that is, nonfirm power. Additionally, BPA and Cowlitz discussed other steps, including service of amounts of firm power from non-Federal sources, such as Cowlitz's Priest Rapids, Wanapum, or CSPE resources. Shifts in energization dates and other load management techniques were acceptable to BPA. BPA stated it would have preferred to advise Cowlitz that BPA had adequate power to supply the total Weyerhaeuser load.

On March 16, 1979, Cowlitz wrote to WeyCo and met with WeyCo to review BPA's position. Cowlitz stated that BPA's limitations would place certain operating conditions on Cowlitz for service to the WeyCo load under Contract ES-63, which would permit service to WeyCo's development plan by requiring minor shifts in energization dates and supplementation with firm power from non-Federal resources. Cowlitz proposed to meet the operating conditions in fulfilling Cowlitz's contractual commitment to deliver firm power to WeyCo under Contract ES-63.

RECOMMENDATION: Cowlitz and WeyCo have had an electric service contract for service to WeyCo's Longview Millsite since 1966 without cancellation. Pursuant to WeyCo's 1974 10-year development plan, Cowlitz twice sought confirmation from BPA that this plan's increases in contract demand would be met by BPA under Cowlitz's power sales contract with BPA. Twice in 1974 and 1979 BPA limited its obligation under its power sales contract to increases in contract demand of no more than 35 megawatts per operating year. Following a January 17, 1979, meeting in which several alternatives for service to WeyCo's increases in contract demand beyond BPA's 35 MW were discussed, Cowlitz reaffirmed with WeyCo its intent to serve the increased contract demands in excess of 35 MW within BPA operating conditions by shifting energization dates and providing amounts of firm power from non-Federal resources.

Because Cowlitz affirmed its obligations under Contract ES-63 as amended by Supplement Agreement No. 9 prior to September 1, 1979, the contract demand of 405 MW by June 1983 for the WeyCo Longview facility was contracted for, and since the contract demand of ~~805~~ 405 MW is a peak demand, BPA will compute the average energy for this load based upon an actual average monthly load factor for calendar year 1981 of 96 percent for the facility, or 388.80 average megawatts.

405

Fig - see my notations on last page. I'm drafting a decision.

CORRESPONDENCE TIMELINE: COWLITZ/WEYERHAEUSER

<u>Date</u>	<u>From/To</u>	<u>Contents</u>
1. 4/4/74	McKinney/Hodel Letter	<p>Recites past course of dealings between parties.</p> <p>Recites "substantial financial commitments" in reliance on BPA consent to forecast.</p> <p>Are proceeding on opinion that consent is there.</p> <p>Recites assurances given by BPA at 8-17-73 meeting that estimated needs of Weyerhaeuser would be met under PSC.</p> <p>Recites representation by BPA on 3-5-74 that joint load forecast with Cowlitz related only to chlorine plant. <u>Note</u> - Not true. "aggregate of all loads" is included in joint load forecast.</p> <p>Attached is: Fig. 1 - showing 73-83 load forecast broken down by equipment and by year. Dated 3-21-74.</p> <p>Fig. 2 - showing 73-83 graph of load forecast as of 9-20-73.</p>
2. 4-8/74	Actng Adm/Inter Staff Memo	<p>Asks review of proposed reponse to Cowlitz.</p> <p>Asks for reviewers to keep in mind (1) 10 MW limitation in GCP, (2) power supply picture in PNW, (3) whether annual increments just under 35 MW subvert the spirit of new provision in GCP's (35 MW limit).</p>
3. 4-12-74	Hodel/McKinney Letter	<p>Recites that BPA has not directly or indirectly agreed to services to Weyerhaeuser.</p> <p>Recites regional power supply difficulties, delay in plants, future loads higher than estimated, forecasts possible defects, etc.</p> <p>Asks for copies of contracts with Weyerhaeuser.</p> <p>Recites need for discussions.</p>

<u>Date</u>	<u>From/To</u>	<u>Contents</u>
4. 5-16-74	Hodel/McKinney Letter	Acquiesces to 34 MW per year load for Meyerhaeuser as shown in forecast.
5. 5-20-74	McKinney/Robison' (Meyerhaeuser) Letter	Informs Meyerhaeuser that 5-16-74 letter approves plans for Cowlitz to serve "scheduled electric power requirements" of Meyerhaeuser in the Longview area.
6. ES63 (1967)	Cowlitz/Meyerhaeuser	Electric Service Agreement.
7. ES63(9/20/78)	Cowlitz/Meyerhaeuser	Supplemental Agreement No. 9.
8. 9-26-78	McKinney/Phillips Letter	Encloses amendment No. 9 Recites BPA approval of load by 5-16-74 letter.
9. 10-17-78	Phillips/McKinney Letter	Recites current forecast of energy deficiencies. Recites BPA not approving commitments of firm power to serve load increases greater than 35 MW average in any one year.
10. 11-6-78	Phillips/Durocher Memo	Recites background of Cowlitz/Meyerhaeuser issue and asks for meeting.
11. 11-29-78	Hughes (Engr.&Planng.Mgr./McKinney	Concludes that Longview Millsite load increases should be approved as they occur, rather than by rigid control of 12-month increases.
12. 1-10-79	Hill/Munro Letter	Recites Cowlitz' understanding of prior approval by BPA to serve Meyerhaeuser load. Recites substantial investments. Requests meeting.
13. 3-1-79	Munro/Hill Letter	Recites meeting on 1-17-79. Recites BPA would provide firm power to Cowlitz for service to Meyerhaeuser by no more than 35,500 kilowatts in any operating year (July 1 through the following June 30) between now and June 30, 1983. Recites that Regional Act should help attain BPA service to "total Meyerhaeuser load as it occurs."

<u>Date</u>	<u>From/To</u>	<u>Contents</u>
12-16-81 215.	Smith/Livesley Letter	Recites 8-13-81 submittal of Exhibit K, Table 2 (copy). Encloses ES-63 contract between Cowlitz/Weyerhaeuser and Supplemental Agreement No. 9 to that contract.
1-6-82 216	Livesley/Smith Letter	Recites that BPA should be able to decide NLSL issue re: Weyerhaeuser load within 60 days.

KMoxness:1o (WP-PKI-1891b)

14. ? McKinney/Wilkinson Letter
(date?)

Supplemental

Recites copy of ~~letter~~ ^{Supplemental} agreement sent to Weyerhaeuser and to BPA ~~in accordance with BPA contract~~

Recites ~~the~~ meeting between McKinney and Meuro and ^{3/1/79 letter} ~~states~~ the ~~letter~~ ^{states} ~~the~~ ^{letter} ~~has~~ ^{has} been reviewed by the district and Weyerhaeuser. Interprets the letter and meeting "to place certain operating conditions on Cowlitz PUD and Weyerhaeuser for service which we have agreed to provide under contract 2563. Notes shifts in energization dates and supplementing BPA firm power with nonfederal power would be needed. Does not specify when or if nonfederal power would be available. Notes "... subject to new regional legislation, if enacted, we propose that the operating conditions set forth in Zornville's letter of March 1, 1979 will be met in fulfilling the district's contractual commitment to deliver firm power to the Company..."



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

OFFICE OF THE ADMINISTRATOR

In reply refer to: PKI

NOV 17 1983

Mr. Robert L. McKinney
General Manager
Cowlitz County PUD
P. O. Box 1279
Longview, WA 99832

Dear Mr. McKinney:

On October 6, 1983, the Bonneville Power Administration (BPA), after consultation with representatives of each of BPA's customer groups, agreed to apply a 100 percent load factor to all Regional Act, section 3(13)(A) contracted for, or committed to determinations involving contract demand contracts. Previously, as part of a negotiated agreement with the Public Power Council, BPA had applied a 100 percent load factor to consumers of public agency customers with contract demand contracts. This action reflects recognition of changed conditions since passage of the Regional Act and BPA's desire to play a positive role in the economic recovery of the region. This criteria change will allow a consumer's facility which had a contract or commitment, prior to September 1, 1979, to achieve the maximum contracted for, or committed to load floor without triggering the New Large Single Load consequences of the Regional Act. BPA will retroactively apply a 100 percent load factor to all past determinations with contract demand contracts or commitments.

Enclosed is a revised signed and dated Exhibit K, Table 2, reflecting the increase in your previous contracted for, or committed to determination. The increase results from application of a 100 percent load factor to the load BPA determined was contracted for, or committed to prior to September 1, 1979. This amended Exhibit should be attached to your utility power sales contract.

Your existing Exhibit K, Table 2, may be discarded. Should you have any questions regarding this exhibit revision please contact your BPA Area or District office.

Sincerely,

(b)(6)

Administrator

Enclosure

Revision No. 1
Exhibit K
Table 2, Page 1 of 1
Contract No. DE-MS79-81BP90493
Cowlitz County Public Utility
District No. 1
Effective on the date of the above
power sales contract

Contracted For, Committed to Determinations Exhibit

(This exhibit reflects determinations made pursuant to section 3(13) of P.L. 96-501 and section 8 of this contract as of the effective date set forth above.)

TABLE 2

LIST OF PURCHASER'S LOADS AND AMOUNTS WHICH WERE
CONTRACTED FOR, OR COMMITTED TO, PRIOR
TO SEPTEMBER 1, 1979

<u>Description of Facility</u>	<u>Location</u>	<u>Amount of Firm Energy Contracted for or Committed to as of 9/1/79 (Ave. MW)</u>
Weyerhaeuser's Longview Millsite facility	Cowlitz County Longview, Washington (Present Longview Millsite facility)	405

(b)(6)

Bonneville Power Administrator

NOV 17 1983

Date

(WP-PKI-3627b)

JUL 20 1982

PY1

Dr. Robert L. McKinney
General Manager
Cowlitz County PUD
P.O. Box 1279
Longview, WA 98632

Dear Mr. McKinney:

Cowlitz County PUD (Cowlitz) requested a determination by the Bonneville Power Administration (BPA) Administrator that the Meyerhaeuser Company load at Meyerhaeuser's Longview Millsite facility, including Meyerhaeuser's development program, is not a new Large Single Load under section 3(13)(A) of the Pacific Northwest Power Planning and Conservation Act. Cowlitz asked for this determination based on the fact that the above load was contracted for between Cowlitz and Meyerhaeuser as of September 1, 1979.

In reaching my determination, I have considered the following information. I reviewed the Cowlitz Electric Service Contract with Meyerhaeuser (Contract EC-63), and Supplemental Agreement No. 9 to that contract (executed in September 1978), which sets forth the specific dates and contract demand for development, together with copies of the official minutes of Cowlitz's Board of Directors. I also considered the data Cowlitz had submitted regarding the Meyerhaeuser Longview Millsite facility and correspondence between Cowlitz and Meyerhaeuser as well as correspondence between EPA and Cowlitz relevant to the development of the load at that facility, including letters from two EPA Administrators addressing EPA's commitment to such load.

Based on the above, I have determined that prior to September 1, 1979, the contracts between Cowlitz and Meyerhaeuser as amended by Supplemental Agreement No. 9 set forth a contract demand of 405 peak megawatts for the Meyerhaeuser Longview Millsite facility, scheduled for June 1, 1983. Because the contracted for, or committed to determinations are stated in average megawatts in Exhibit K, Table 2 of BPA's utility power sales contract with its customers, I have determined that the load factor at such facility is 56 percent based upon the Meyerhaeuser Longview Millsite facility's average actual monthly demand over calendar year 1981. Therefore, the size of the load contracted for in Exhibit K shall be 226.80 average megawatts.

Over the years Cowlitz, Meyerhaeuser, and PPA have committed resources to meet the load at Meyerhaeuser's Longview Millsite facility. PPA anticipates that these resources will continue to be dedicated to serving such facility.

BPA understands that Cowlitz may have other loads that need to be submitted for determination under section 3(13). These will be considered as each request is received.

Sincerely,

(SGD) PETER T. JOHNSON

Administrator

Exhibit K
Table 2, Page 1 of 1
Contract No. DE-MS79-81BP90493
Cowlitz County Public Utility
District No. 1
Effective on the effective date
of Amendatory Agreement No. 1

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Weyerhaeuser's Longview Millsite facility	Cowlitz County, Longview, Washington (Present Longview Millsite facility)	388.80

1340 c

DECISION PAPER

REQUEST OF COWLITZ COUNTY PUD THAT THE ADMINISTRATOR DETERMINE THAT THE WEYERHAEUSER COMPANY LOAD AT THE LONGVIEW MILLSITE FACILITY WAS CONTRACTED FOR PRIOR TO SEPTEMBER 1, 1979, AND IS NOT A NEW LARGE SINGLE LOAD

ISSUE: Is the Weyerhaeuser Company load at its Longview Millsite of 405 MW contract demand in 1983 a load that was contracted for by Cowlitz County PUD prior to September 1, 1979?

BACKGROUND: Cowlitz County PUD (Cowlitz) has requested a determination by the Administrator that the Weyerhaeuser Company (WeyCo) load at Weyerhaeuser's Longview Millsite, including Weyerhaeuser's development program is not a New Large Single Load under Section 3(13)(A) of the Pacific Northwest Power Planning and Conservation Act. By letter dated December 16, 1981, Cowlitz forwarded copies of its electric service contract with WeyCo (Contract ES-63), and a Supplemental Agreement No. 9 to Contract ES-63, together with copies of the official minutes of Cowlitz's Board of Directors. Cowlitz has also submitted charts and data regarding the Weyerhaeuser Mill Load. BPA has collected or received correspondence between Cowlitz and BPA, and Cowlitz and WeyCo, relevant to the development of the load at the Longview Millsite facility. A summary Timeline of this correspondence is attached. BPA has reviewed these materials and the Administrator has made the following determination.

Contract ES-63 between Cowlitz and WeyCo, providing for the sale and delivery of Firm, Modified Firm, and Nonfirm power to WeyCo, was executed on December 14, 1966, by WeyCo and on January 9, 1967, by Cowlitz. The duration of the contract is until December 31, 1980, or the end of any month specified by either Cowlitz, or WeyCo upon giving 24 months' written notice of termination. Contract ES-63 has not been terminated and was in force as of September 1, 1979.

Contract ES-63 provided for the sale of firm power in an amount stated as a contract demand. Under section 3(b) of Contract ES-63 the contract demand for firm power was 45 MW per month after November 30, 1967 for the term of the contract.

This contract demand was in effect until Cowlitz and WeyCo executed Supplemental Agreement No. 9 to Contract ES-63, which amended section 3(b) to state a different contract demand. Supplemental Agreement No. 9 provided for specific increases in the Contract Demand of the WeyCo for each month of the term of Contract ES-63, in the following amounts:

		102 MW	?
July 1, 1976	147 MW	3 MW	29 mo
December 1, 1978	150 MW	31 MW	3 mo
March 1, 1979	181 MW	19 MW	3 mo
June 1, 1979	200 MW	25 MW	4 mo
October 1, 1979	225 MW	1 MW	8 mo
June 1, 1980	226 MW	20 MW	7 mo
January 1, 1981	246 MW	5 MW	5 mo
June 1, 1981	251 MW	40 MW	6 mo
December 1, 1981	291 MW	34 MW	6 mo
June 1, 1982	325 MW	40 MW	7 mo
January 1, 1983	365 MW	40 MW	5 mo
June 1, 1983	405 MW		

These amounts were agreed to by Cowlitz and WeyCo on September 20, 1978. The Supplemental Agreement was the result of and reflected WeyCo's ten-year development plan initiated in 1974.

On April 4, 1974 Cowlitz had notified BPA of the proposed WeyCo development plan and the additional load or increases in contract demand that was expected to be served. BPA replied on April 12, 1974 that BPA had not previously approved directly or indirectly service to the load. The letter notes that the regional power supply situation was difficult to assess, and requests information from Cowlitz on any agreed upon commitments prior to BPA consideration to approve service to loads in excess of 10 MW demand. The Cowlitz 1973-83 load forecast based on the development program showed an increased demand of some 347 MW over ten years with increases varying between 0 and 71 MW, but averaging 34.7 MW. Following conference and consideration, BPA by letter of May 16, 1974, stated "we do acquiesce in your service to the 34 MW per year load shown in your forecasts for Weyerhaeuser Company. Based on BPA's letter of May 16, 1974, Cowlitz and WeyCo developed and executed Supplemental Agreement No. 9 to Contract ES-63 on Sept. 20, 1978.

On September 26, 1978, Cowlitz forwarded both the supplement and agreement and a load forecast to BPA. BPA's Lower Columbia Area Office replied to Cowlitz by two letters dated October 17, 1978 and January 9 1979, stating that Section 23 of BPA's contract with Cowlitz limited BPA's obligation to serve increases in demand to 35 MW in an operating year, and that if Cowlitz agrees to serve such loads, it should plan to serve amounts in excess of 35 from non-Federal resources. This letter also noted an estimated load factor of 85 percent and increases indicated at 63 average megawatts for 1981-1982, and 68 average MW for 1982-1983.

On January 10, 1979, Cowlitz wrote to BPA stating that Cowlitz's position was that Cowlitz and WeyCo had received prior approval from BPA to serve the load, that service commitments were discussed, and the letter requested an early meeting to resolve what Bonneville's service commitments were. A meeting was held between Cowlitz and BPA to discuss prior correspondence and meetings regarding the rights and obligations of each party regarding service of power to WeyCo. BPA sent a March 1, 1979, letter to Cowlitz following the meeting which set out the understanding of the parties. As regards BPA's service to Cowlitz for WeyCo load, BPA would provide

increases in firm power for the constant demand of no more than 35 MW per year between 1979 and 1983. Any additional power requirements of WeyCo above that amount may be served from sources on an as available basis, that is, nonfirm power. Additionally, BPA and Cowlitz discussed other steps, including service of amounts of firm power from non-Federal sources, such as Cowlitz's Priest Rapids, Wanapum, or CSPE resources. Shifts in energization dates and other load management techniques were acceptable to BPA. BPA stated it would have preferred to advise Cowlitz that BPA had adequate power to supply the total Weyerhaeuser load.

On March 16, 1979, Cowlitz wrote to WeyCo and met with WeyCo to review BPA's position. Cowlitz stated that BPA's limitations would place certain operating conditions on Cowlitz for service to the WeyCo load under Contract ES-63, which would permit service to WeyCo's development plan by requiring minor shifts in energization dates and supplementation with firm power from non-Federal resources. Cowlitz proposed to meet the operating conditions in fulfilling Cowlitz's contractual commitment to deliver firm power to WeyCo under Contract ES-63.

RECOMMENDATION: Cowlitz and WeyCo have had an electric service contract for service to WeyCo's Longview Millsite since 1966 without cancellation. Pursuant to WeyCo's 1974 10-year development plan, Cowlitz twice sought confirmation from BPA that this plan's increases in contract demand would be met by BPA under Cowlitz's power sales contract with BPA. Twice in 1974 and 1979 BPA limited its obligation under its power sales contract to increases in contract demand of no more than 35 megawatts per operating year. Following a January 17, 1979, meeting in which several alternatives for service to WeyCo's increases in contract demand beyond BPA's 35 MW were discussed, Cowlitz reaffirmed with WeyCo its intent to serve the increased contract demands in excess of 35 MW within BPA operating conditions by shifting energization dates and providing amounts of firm power from non-Federal resources.

Because Cowlitz affirmed its obligations under Contract ES-63 as amended by Supplement Agreement No. 9 prior to September 1, 1979, the contract demand of 405 MW by June 1983 for the WeyCo Longview facility was contracted for, and since the contract demand of 805 MW is a peak demand, BPA will compute the average energy for this load based upon an actual average monthly load factor for calendar year 1981 of 96 percent for the facility, or 388.80 average megawatts.

*Fig -
see my
notations on last page
I'm drafting a
decision.*

CORRESPONDENCE TIMELINE: COWLITZ/WEYERHAEUSER

<u>Date</u>	<u>From/To</u>	<u>Contents</u>
1. 4/4/74	McKinney/Hodel Letter	<p>Recites past course of dealings between parties.</p> <p>Recites "substantial financial commitments" in reliance on BPA consent to forecast.</p> <p>Are proceeding on opinion that consent is there.</p> <p>Recites assurances given by BPA at 8-17-73 meeting that estimated needs of Weyerhaeuser would be met under PSC.</p> <p>Recites representation by BPA on 3-5-74 that joint load forecast with Cowlitz related only to chlorine plant. <u>Note</u> - Not true. "aggregate of all loads" is included in joint load forecast.</p> <p>Attached is: Fig. 1 - showing 73-83 load forecast broken down by equipment and by year. Dated 3-21-74.</p> <p>Fig. 2 - showing 73-83 graph of load forecast as of 9-20-73.</p>
2. 4-8/74	Actng Adm/Inter Staff Memo	<p>Asks review of proposed reponse to Cowlitz.</p> <p>Asks for reviewers to keep in mind (1) 10 MW limitation in GCP, (2) power supply picture in PW, (3) whether annual increments just under 35 MW subvert the spirit of new provision in GCP's (35 MW limit).</p>
3. 4-12-74	Hodel/McKinney Letter	<p>Recites that BPA has not directly or indirectly agreed to services to Weyerhaeuser.</p> <p>Recites regional power supply difficulties, delay in plants, future loads higher than estimated, forecasts possible defects, etc.</p> <p>Asks for copies of contracts with Weyerhaeuser.</p> <p>Recites need for discussions.</p>

<u>Date</u>	<u>From/To</u>	<u>Contents</u>
5-16-74	Hodel/McKinney Letter	Acquiesces to 34 MW per year load for Weyerhaeuser as shown in forecast.
5. 5-20-74	McKinney/Robison ¹ (Weyerhaeuser) Letter	Informs Weyerhaeuser that 5-16-74 letter approves plans for Cowlitz to serve "scheduled electric power requirements" of Weyerhaeuser in the Longview area.
6. ES63 (1967)	Cowlitz/Weyerhaeuser	Electric Service Agreement.
7. ES63(9/20/78)	Cowlitz/Weyerhaeuser	Supplemental Agreement No. 9.
8. 9-26-78	McKinney/Phillips Letter	Encloses amendment No. 9 Recites BPA approval of load by 5-16-74 letter.
9. 10-17-78	Phillips/McKinney Letter	Recites current forecast of energy deficiencies Recites BPA not approving commitments of firm power to serve load increases greater than 35 MW average in any one year.
10. 11-6-78	Phillips/Durocher Memo	Recites background of Cowlitz/Weyerhaeuser issue and asks for meeting.
11-29-78	Hughes (Engr.&Planng.Mgr./ McKinney	Concludes that Longview Millsite load increases should be approved as they occur, rather than by rigid control of 12-month increases.
12. 1-10-79	Hill/Munro Letter	Recites Cowlitz' understanding of prior approval by BPA to serve Weyerhaeuser load. Recites substantial investments. Requests meeting.
13. 3-1-79	Munro/Hill Letter	Recites meeting on 1-17-79. Recites BPA would provide firm power to Cowlitz for service to Weyerhaeuser by no more than 35,500 kilowatts in any operating year (July 1 through the following June 30) between now and June 30, 1983. Recites that Regional Act should help attain BPA service to "total Weyerhaeuser load as it occurs."

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