Department of Energy

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

PUBLIC AFFAIRS

November 4, 2009

In reply refer to: DK-7

Dan Seligman
Attorney at Law
Columbia Research Corporation
P.O.Box 99249
Seattle, WA 98139

RE: FOIA #09-0048 (BPA-2009-2010-F)

Dear Mr. Seligman:

This letter is your final response to your request for information that you made to the Bonneville Power Administration (BPA), under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

You had requested the following:
A copy of all communications between BPA and Alcoa, and between BPA and Columbia Falls Aluminum Co. ("CFAC"), since February 20, 2009.

Response:
The enclosed documents are provided to you in their entirety or with portions withheld under Exemption 4 of the FOIA, 5 U.S.C. § 552 (b)(4). The only information redacted under Exemption 4 is conference call numbers with passcodes, because it relates to business activities.

If you are dissatisfied with this determination, you may make an appeal within thirty (30) days of receipt of this letter to the Director of Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Both the envelope and the letter must be clearly marked "Freedom of Information Act appeal." There is no charge for your request.

I appreciate the opportunity to assist you with this matter. If you any questions or concerns about this letter, please contact Laura M. Atterbury, FOIA/Privacy Act Specialist, at 503-230-7305.

Sincerely,

/s/ Christina J. Brannon

Christina J. Brannon
Freedom of Information Act/Privacy Act Officer

Enclosures: Responsive documents

ALCOA
Responsive Documents
FOIA #09-048

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, July 01, 2009 12:56 PM
To: 'Laun, Max W.'
Subject: Accepted: BPA-Alcoa Call - EX 4

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, August 19, 2009 5:59 PM
To: 'Rousseau, Mike F.'
Cc: 'Pereira, Marc A.'; 'Laun, Max W.'; Gregorio, Kimberly A; Padgett, Michael; 'Jack Speer'; 'Mike Dotten'; Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: Draft Contract for Posting

Attachments: Power Sales Agreement ALCOA - 081909 pm.doc; Power Sales Agreement ALCOA - 081909 pm Redline.doc

Mike et al,
Attached is a redline and blackline of the contract being posted:

Power Sales greement ALCOA - Power Sales greement ALCOA - .

There are three documents that are in the midst of being posted at the following website and should be live by morning pacific time:
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

They are:
1) letter to the region announcing the draft contract
2) an attachment to the letter summarizing changes BPA has made in the draft contract in response to input received during the public comment process on the Alcoa Term Sheet, and
3) the draft contract

A further revision of the jobs assessment reflecting the draft contract will be posted soon.

Let us know if you have any questions. Thanks.

Mark

DRAFT
08/19/2009

Contract No. 09PB-#####

POWER SALES AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

ALCOA INC.

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Exhibit A Billing
Exhibit B Cost Caps
Exhibit C Special Provisions
Exhibit D Metering
Exhibit E Scheduling
Exhibit F Power Reserves
Exhibit G Employment Levels

This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and Alcoa Inc. (Alcoa), hereinafter individually referred to as "Party" and collectively referred to as the "Parties." Alcoa is a corporation organized under the laws of the State of Pennsylvania, and registered therein as entity number 10514, taxpayer identification number _____.

RECITALS

BPA is authorized to sell power to Alcoa, a direct service industrial customer, pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839 et seq.

In *Pacific Northwest Generating Cooperative v. Department of Energy*, 550 F.3d 846 (2008) the Ninth Circuit Court of Appeals invalidated monetary benefits provisions of power sales contracts between BPA and its aluminum company direct service industrial customers (DSIs), but held that BPA may make sales to DSIs at the Industrial Firm Power Rate (IP rate). This Agreement addresses the 2-year period remaining under those power sales contracts and potentially a subsequent 5-year period. Under both time periods power sales will be made to Alcoa at the IP rate.

Concomitantly with the execution of this Agreement, BPA has issued a record of decision addressing comments regarding this Agreement submitted by BPA customers and other interested parties, and such record of decision explains BPA's rationale for its decision to enter into this Agreement.

BPA has functionally separated its organization in order to separate the administration and decision-making activities of BPA's power and transmission functions. References in this Agreement to Power Services or Transmission Services are solely for the purpose of clarifying which BPA function is responsible for administrative activities that are jointly performed.

The Parties agree:

1. TERM

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2016, unless it is terminated earlier pursuant to the terms of this Agreement. Firm Power made available by PS for delivery to the Intalco Plant shall commence on October 1, 2009.

All liabilities incurred by each Party hereunder shall be preserved until satisfied, notwithstanding the expiration or termination of this Agreement.

2. DEFINITIONS

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used or, if not so defined, shall have the meaning stated in BPA's applicable

Wholesale Power Rate Schedules, including the General Rate Schedule Provisions ("GRSPs"). If a term is not defined in any of the named sources, then the term shall be given its normal and customary meaning, with due regard to generally accepted business practices, including the status of the undefined term as a generally recognized term of art.

2.1 "Alcoa Load" means that Alcoa hourly load at the Intalco Plant served under this Agreement.

2.2 "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

2.3 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.

2.4 "Business Days" means every Monday through Friday except for Federal holidays.

2.5 "Cost Cap" means shall have the meaning as defined in Exhibit B.

2.6 "Demand Entitlement" shall have the meaning as defined in section 1.2 of Exhibit A.

2.7 "Diurnal" means the division of hours within a month between Heavy Load Hours (HLH) and Light Load Hours (LLH).

2.8 "Firm Power" means the amount(s) of electric power that PS will make available at the Industrial Firm power rate to Alcoa under this Agreement in equal hourly amounts for every hour of the Fiscal Year.

2.9 "Fiscal Year" or "FY" means the period that begins each October 1 and which ends the following September 30.

2.10 "Forecasted Net Cost" shall have the meaning as defined in Exhibit B.

2.11 "Intalco Plant" means the Alcoa aluminum smelting facilities served from BPA's Intalco Substation, where the 13.8 kilovolt facilities of BPA and Alcoa are connected.

2.12 "Issue Date" shall have the meaning described in section 13.1.

2.13 "Net Firm Power" shall have the meaning described in Exhibit F.

2.14 "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 et seq., Public Law No. 96-501, as amended.

2.15 "Points of Metering" means the interconnection points between BPA, Alcoa and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.

2.16 "Power Reserves" shall have the meaning described in Exhibit F.

2.17 "Power Services" or "PS" means the organization, or its successor organization, within BPA that is responsible for the management and sale of Federal power.

2.18 "Primary Points of Receipt" shall have the meaning described in section 11.1.

2.19 "Prior Agreement" means Contract No. 06PB-11744 between BPA and Alcoa, as amended.

2.20 "Region" or "Regional" means the Pacific Northwest as defined in the Northwest Power Act, 16 U.S.C. § 839a(14).

2.21 "Transmission Services" or "TS" means the organization or its successor organization, within BPA that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

2.22 "Wheel Turning Load" shall have the meaning described in 2010 GRSP and equal 6 aMW.

3. APPLICABLE RATES

Sales by BPA to Alcoa under this Agreement shall be made at the Industrial Firm Power rate (the "IP rate") in effect at the time of such sales, and are subject to all applicable GRSPs.

3.1 Industrial Firm Power Rate

Alcoa shall purchase Firm Power provided by BPA under this Agreement at the applicable IP rate for the rate period, as established through the procedures specified in section 7(i) of the Northwest Power Act (16 U.S.C § 839e(i)), or its successor, including all adjustments and charges developed in accordance with all applicable statutory ratemaking directives.

Alcoa acknowledges that BPA has not agreed to propose that the IP rate be established at any particular level for any rate period included within the term of this Agreement, and that, while it reserves all rights with respect to challenging rates proposed or established by BPA, Alcoa bears any risks associated with the IP rate level established each rate period by BPA pursuant the above referenced rate setting procedures.

3.2 **Additional Charges**

Alcoa is subject to any applicable additional charges, including penalty charges (e.g., the Unauthorized Increase Charge), established in BPA's Wholesale Power Rate Schedules and associated GRSPs.

4. PURCHASE AND SALE OF FIRM POWER

During the period FY 2010 through FY 2016, BPA shall make available Firm Power in amounts specified herein and Alcoa shall purchase such Firm Power unless: (a) BPA has determined pursuant to Exhibit B that the cost to serve the Alcoa Load with Firm Power for the FY 2012 through FY 2016 period will exceed the Cost Caps identified in Exhibit B; (b) this Agreement has terminated; or (c) Alcoa has failed to operate the Intalco Plant at a level equal to or greater than 160 aMW for a least one complete Fiscal Year during the period October 1, 2006, through September 30, 2009.

All purchases of Firm Power by Alcoa under this Agreement shall be used exclusively to serve the Alcoa Load.

5. PURCHASE AND SALE OF FIRM POWER FROM FY 2010 THROUGH FY 2011

5.1 **Firm Power Sale by BPA from FY 2010 through FY 2011**

During the period that begins on October 1, 2009, and continues through September 30, 2011, BPA shall sell and Alcoa shall purchase 285 aMW of Firm Power, as such amount may be increased pursuant to section 5.2 below.

5.2 **Increase from 285 aMW to 320 aMW**

Alcoa may, upon written notice to BPA, request that the amount of Firm Power be increased from 285 aMW to 320 aMW for the balance of FY 2010 through FY 2011 period. Alcoa's notice shall include a schedule, by month, of Alcoa's proposed operating levels to achieve such Firm Power increase. If BPA determines, pursuant to Exhibit B, that the cost to serve the Alcoa Load with 320 aMW of Firm Power for the balance of the FY 2010 through FY 2011 period does not exceed the applicable Cost Caps specified in Exhibit B, then BPA shall accept such request; if not, BPA shall reject such request. BPA's determination shall be conclusive. BPA shall provide Alcoa with written notice of its determination, including the basis for such determination, within 5 Business Days following the receipt of such notice. Such increase, if accepted by BPA, shall occur no earlier than 90 days following the receipt of such notice by BPA, on the first day of a calendar month.

6. PURCHASE AND SALE OF FIRM POWER FROM FY 2012 THROUGH FY 2016

6.1 Firm Power Sale by BPA for FY 2012 through FY 2016

During the period that begins on October 1, 2011, and continues through September 30, 2016, BPA shall sell and Alcoa shall purchase 320 aMW of Firm Power, subject to the provisions in section 6.2 below.

6.2 Termination

If BPA determines, pursuant to Exhibit B, that the cost to serve the Alcoa Load with 320 aMW of Firm Power for the entire FY 2012 through FY 2016 period will exceed the Cost Cap specified in Exhibit B, then on or before March 31, 2010, BPA shall provide Alcoa with written notice that this Agreement shall terminate at 2400 hours on September 30, 2011. Such notice shall include the basis for such determination, and such determination shall be conclusive.

7. COST CAPS AND OTHER LIMITATIONS

7.1 Cost Caps

The Cost Caps specified in Exhibit B of this Agreement represent the maximum cost BPA will incur to support sales to Alcoa, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs allocated by BPA, pursuant to Exhibit B.

7.2 Other Limitations

Alcoa understands and agrees that BPA will not make a plant specific acquisition from a coal-fired resource, and that BPA will not acquire power from a supplier that is unwilling to absorb all of the regulatory or environmental costs referred to in section 7.1 above, that are imposed on the supplier after the date the acquisition contract is entered into.

8. EMPLOYMENT LEVELS

Except during any termination period in which Alcoa is not operating, Alcoa shall employ at least the number of full time equivalent (FTE) employees specified in Exhibit G. "FTE" shall mean full time annual equivalent employment (including part-time and partial year) for regular employees of Alcoa at the Intalco Plant and contractor employees working within Whatcom County, Washington during a calendar month.

Alcoa shall notify BPA in writing in the event that, during any calendar month, Average FTE, as defined in Exhibit G, levels are reduced by more than one percent below the applicable level specified in Exhibit G. Such notice shall be provided within five Business Days following such reduction. Such notice shall specify the date by which Alcoa anticipates Average FTE levels will equal or exceed the applicable level specified in Exhibit G; *provided, however*, that this Agreement will be subject to termination by BPA in the event Alcoa fails to provide BPA with a written plan and to comply with such plan for meeting the applicable Average FTE

levels specified in Exhibit G. Such plan shall demonstrate that Alcoa shall meet Average FTE requirements within 90 days following the end of the month during which such Average FTE levels fell below the 1 percent threshold. In order to permit BPA to determine whether Alcoa is meeting its plan to meet FTE obligations, Alcoa shall provide monthly reports to BPA demonstrating its FTE by month and whether its Average FTE levels meet the requirements of this section 8 within 15 days following the end of the month for which it is reporting. In the event that Alcoa fails to comply with its plan for reaching Average FTE levels, BPA may provide notice of termination within 30 days following the monthly notice provided in this section 8 and the effective date of termination shall be 90 days following the date such notice is received by Alcoa.

9. CURTAILMENT

9.1 Notice of Curtailment

Alcoa may, upon written notice to BPA, curtail all or a portion of the Alcoa Load, subject to the limitations specified in section 9.2 below. Any such notice shall specify the amount of Alcoa Load to be curtailed, the duration of such curtailment, and the effective date that such curtailment shall commence; *provided however*, that such effective date shall be no earlier than 90 days following the date that BPA receives such notice. The period of curtailment shall be for consecutive months. Any such notice, once received, shall not be changed by Alcoa without BPA's written consent.

9.2 Number of Curtailments Allowed and Cumulative Duration of Curtailments

Alcoa shall not provide BPA with more than two written notices to curtail during the term of this Agreement, and the cumulative duration of any such curtailment(s) shall not exceed 24 months; *provided, however*, the cumulative duration of such curtailment(s) during FY 2012 through FY 2016 period shall not exceed 18 months. Alcoa shall maintain the applicable employment level specified in Exhibit G during any curtailment, and will maintain at least the pre-curtailment ratio between its salaried and non-salaried FTEs.

9.3 No Compensation to Either Party During Curtailment

During any period of curtailment, Alcoa shall not incur any take-or-pay obligation for the amount curtailed, and BPA shall have no obligation to compensate Alcoa in any manner for the amount curtailed.

9.4 No Purchases from Third Parties During Curtailment

During any period of curtailment, Alcoa shall not make any market purchases from third party suppliers to replace all or any portion of the amount curtailed.

9.5 No Curtailment Following Notice of Termination

Alcoa shall not curtail pursuant to this section 9 following a notice of termination pursuant to section 21.1.1 below.

10. SCHEDULING

10.1 Scheduling

Alcoa shall schedule power in accordance with Exhibit E.

11. DELIVERY

11.1 Definitions

11.1.1 "Primary Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is forecasted to be made available by Power Services to Alcoa for purposes of obtaining a long-term firm transmission contract.

11.1.2 "Scheduling Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is made available by Power Services to Alcoa for purposes of transmission scheduling.

11.1.3 "Point of Delivery" means the point described in Exhibit E to which Alcoa delivers power.

11.2 Transmission Service

11.2.1 Alcoa is responsible for making arrangement for, and payment of, delivery of power from the Scheduling Points of Receipt, including all transmission and ancillary service costs.

11.2.2 Alcoa shall obtain prior BPA approval for, and shall provide at least 60 days' notice to Power Services prior to changing Balancing Authority Areas.

11.2.3 At Alcoa's request, Power Services shall provide Alcoa with Primary Points of Receipt and other information needed to enable Alcoa to obtain long-term firm transmission for delivery of power sold under this Agreement. If required by Transmission Services for purposes of transmission scheduling, then Power Services shall provide Alcoa with Scheduling Points of Receipt. Power Services has the right to provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt. If BPA does provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt, then BPA shall reimburse Alcoa for any incremental, direct, non-administrative costs incurred by Alcoa to comply with delivering Firm Power from such a Scheduling Point of Receipt to Alcoa's Intalco Plant if the following conditions, as outlined in 11.2.3.1 or 11.2.3.2 below, as applicable, have been met:

11.2.3.1 If Alcoa has long-term Point to Point (PTP) transmission service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.1.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.1.2 Alcoa has submitted a request to redirect its long-term firm PTP transmission service to deliver Firm Power from the Scheduling Point of Receipt on a firm basis, but that request was not granted; and

11.2.3.1.3 Alcoa's transmission schedule was curtailed due to non-firm status under PTP transmission service or Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.2 If Alcoa has long-term Network Integration Transmission Service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.2.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.2.2 Alcoa's transmission schedule was curtailed due to non-firm status under its secondary service status and Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.3 In the event power cannot be scheduled from a BPA Scheduling Point of Receipt (other than a Primary Point of Receipt) then Alcoa may request and, consistent with BPA's standard practices to achieve efficient system operation and reliability, BPA will move the Scheduling Point of Receipt to a point on the FCRTS where energy can be made available and scheduled to Alcoa's load ("Alternative Scheduling Point of Receipt"), if such a point is available and providing the power from that Alternative Scheduling Point of Receipt would not cause BPA to violate any type of non-power constraint.

11.3 **Liability for Delivery**

Alcoa waives any claims against BPA arising under this Agreement for non-delivery of power to any points beyond the applicable Scheduling Points of Receipt, except for reimbursement of costs as described in section 11.2.3. BPA shall not be liable under this Agreement for any third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership.

11.4 **Real Power Losses**

BPA is responsible for the real power losses necessary to deliver Firm Power across the Federal Columbia River Transmission System to Alcoa's POD(s) listed in Exhibit D.

12. METERING

Alcoa's purchase obligations in sections 5 and 6 are not dependant on amounts scheduled and do not require retail load meters for billing and payment.

13. BILLING AND PAYMENT

13.1 **Billing**

BPA shall bill Alcoa monthly for all products and services provided during the preceding month(s). BPA may send Alcoa an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to Alcoa. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

13.2 **Payment**

Alcoa shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the Issue Date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

If Alcoa has made payment on an estimated bill then:

13.2.1 if the amount of the final bill exceeds the amount of the estimated bill, then Alcoa shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or

13.2.2 if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay Alcoa the difference between the estimated bill and final bill by the 20th day after the final bill's Issue Date. If the 20th day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

13.3 **Late Payments**

After the Due Date, a late payment charge, equal to the higher of:

(1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or

(2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

13.4 **Termination**

If Alcoa has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment in full. If Alcoa does not provide payment within three Business Days after receipt of an additional written notice from BPA, and BPA determines in its sole discretion that Alcoa is unable to make the payments owed, then BPA may terminate this Agreement. Written notices sent under this section must comply with section 16 Notices and Contact Information.

13.5 **Disputed Bills**

13.5.1 If Alcoa disputes any portion of a charge or credit on Alcoa's estimated or final bills, Alcoa shall provide written notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Alcoa shall pay the entire bill by the Due Date. This section 13.5.1 does not allow Alcoa to challenge the validity of any BPA rate.

13.5.2 Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

13.5.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 18, Alcoa is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

14. INFORMATION EXCHANGE AND CONFIDENTIALITY

14.1 General Requirements

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement, and to forecast Alcoa Load, forecast BPA system load, comply with NERC reliability standards, prepare bills, resolve billing disputes, and otherwise implement this Agreement. For example, this obligation includes transmission and power scheduling information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.). Information requested under this section 14.1 shall be provided in a timely manner.

14.2 Reports

Alcoa shall notify BPA of public sources from which Alcoa's annual financial reports and any statements by its authorized officers are readily available and BPA will secure such reports and statements for its use. In the event Alcoa's annual financial reports and statements by its authorized officers become unavailable from public sources Alcoa shall provide such reports upon request by BPA.

14.3 Meter and Billing Data

Alcoa consents to allow Power Services to receive Alcoa's meter data and invoices from Transmission Services, BPA's metering function, or BPA's billing function.

14.4 Confidentiality

Before Alcoa provides information to BPA that Alcoa deems to be confidential commercial or financial information, Alcoa shall clearly designate such information as confidential. BPA shall notify Alcoa as soon as practicable, but in any case no later than as provided by applicable law or regulation, of any request received under the Freedom of Information Act (FOIA) (5 U.S.C. §§ 552 *et seq.*), or under any other federal law or court or administrative order, for any information designated as confidential by Alcoa. BPA shall only release such confidential information consistent with FOIA, or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of such confidential information within BPA to employees who need it for purposes of administering this Agreement.

15. CONSERVATION AND ENVIRONMENTAL ATTRIBUTES

15.1 Conservation

Alcoa shall verify and report all cost-effective (as defined by section 3(4) of the Northwest Power Act) non-BPA-funded conservation measures and projects savings achieved by Alcoa through the Regional Technical Forum's Planning, Tracking and Reporting System or its successor tool. Verification protocols of conservation measures and projects, reporting timelines and documentation requirements shall comply with BPA's Energy Efficiency Implementation Manual or its successor.

15.2 **Renewable Energy Certificates and Carbon Credit Treatment**

15.2.1 "Carbon Credit" means an Environmental Attribute consisting of greenhouse gas emission credits, certificates, or similar instruments.

15.2.2 "Environmental Attributes" means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.

15.2.3 "Renewable Energy Certificates" or "RECs" means the certificates, documentation, or other evidence that demonstrates the ownership of Environmental Attributes.

15.2.4 BPA shall not be obligated to provide Environmental Attributes, Carbon Credits, or RECs, or the value of any or all of them, to Alcoa under this Agreement, absent a statutory obligation, or final court decision or order, requiring it to do so.

15.2.5 BPA reserves any ratemaking authority it otherwise possesses to determine and factor in a share of the value and/or cost of any or all of the RECs and Carbon Credits for the purpose of determining applicable wholesale rates pursuant to section 7(c)(2) of the Northwest Power Act. BPA further reserves its ratemaking authority to recover any costs resulting from such ratemaking actions through rates, including rates applicable to Alcoa.

16. NOTICES AND CONTACT INFORMATION

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

(1) delivered in person;

(2) by a nationally recognized delivery service with proof of receipt;

(3) by United States Certified Mail with return receipt requested;

(4) electronically, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or

(5) by another method agreed to by the Parties.

References in this Agreement to the "BPA representative" and the "Alcoa representative" are to the persons listed below. Notices are effective when received.

Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

If to Alcoa:	If to BPA:
Alcoa Inc.	Bonneville Power Administration 905 NE 11th Avenue P.O. 3621 Portland, OR 97208-3621
Attn:	Attn: Account Executive
Phone:	Phone:
FAX:	FAX:
E-Mail:	E-Mail:

17. UNCONTROLLABLE FORCES

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which by exercise of that Party's reasonable care, diligence and foresight such Party was unable to avoid. Uncontrollable Forces include but are not limited to:

17.1 any unplanned curtailment or interruption of firm transmission service used to deliver Firm Power under this Agreement to Alcoa whether such curtailment or interruption occurs on BPA's or a third party's transmission system;

17.2 any failure of Alcoa's production, distribution or transmission facilities that prevents Alcoa from taking Firm Power delivered to the Point of Receipt;

17.3 strikes or work stoppage, including the threat of imminent strikes or work stoppages; *provided, however*, that nothing contained in this provision shall be construed to require any party to settle any strike or labor dispute in which it may be involved.

17.4 floods, earthquakes, or other natural disasters; terrorist acts; and

17.5 final orders or injunctions issued by a court or regulatory body having competent jurisdiction which the party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The

economic hardship of either Party shall not constitute an Uncontrollable Force.

If an Uncontrollable Force prevents a party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with section 18, Notices and Contact Information.

18. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law. Alcoa and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 20, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

18.1 Judicial Resolution

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Alcoa or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 18, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section 18, then Alcoa may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 18.

18.2 Arbitration

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 18.1 above, shall be subject to arbitration, as set forth below.

Alcoa may request that BPA engage in binding arbitration to resolve any dispute. If Alcoa requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. BPA may request that Alcoa engage in binding arbitration to resolve any dispute. In response to BPA's request, Alcoa may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 18.1 above and is not resolved via binding arbitration, unless Alcoa notifies BPA that it does not wish to proceed with nonbinding arbitration.

18.3 **Arbitration Procedure**

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

18.4 **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 18. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

18.5 **Finality**

18.5.1 In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

18.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether

it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

18.6 **Arbitration Costs**
Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

19. STATUTORY PROVISIONS

19.1 **Prohibition on Resale of Firm Power**
Alcoa shall not resell Firm Power purchased from BPA under this Agreement.

19.2 **BPA Appropriations Refinancing Act**
The text of the BPA Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, is incorporated as shown in Exhibit C, Special Provisions.

20. STANDARD PROVISIONS

20.1 **Amendments**
Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

20.2 **Entire Agreement and Order of Precedence**
This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

20.3 **Assignment**
Alcoa may assign this Agreement upon 90 days written notice, but only to a successor-in-interest that has acquired ownership, through purchase or merger, of the Intalco Plant, and then only if such assignee expressly agrees in writing to be bound by the terms of this Agreement. Such assignment will

be subject to any reasonable requirement by BPA that the assignee provide credit security, in a form acceptable to BPA, to secure performance of assignee's obligations under this Agreement. It shall not be deemed unreasonable for BPA to require credit security from an assignee with a Moody's credit rating below "A", or the equivalent if rated by another credit rating agency. No other assignment of this Agreement by Alcoa is permitted.

20.4 **No Third-Party Beneficiaries**

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

20.5 **Waivers**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

20.6 **BPA Policies**

Any reference in this Agreement to BPA policies, including any revisions thereto, does not constitute agreement of Alcoa to such policy by execution of this Agreement, nor shall it be construed to be a waiver of any right of Alcoa to seek judicial review of any such policy.

20.7 **Severability**

If any term of this Agreement is found or rendered invalid or unenforceable by a court of competent jurisdiction, then unless that term is not severable from all other provisions of this Agreement, such invalidity or unenforceability shall not otherwise affect any remaining lawful obligations under this Agreement. Neither Party shall be liable to the other Party for any damages associated with any term being severed from this Agreement.

20.8 **Credit Assurance**

20.8.1 Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA with an irrevocable standby letter of credit in the amount of $30,000,000, issued in a form and by a bank acceptable to BPA. Such letter of credit shall have an expiration date 1 year from its date of issuance, and BPA may require replacement letters of credit in the amount of $30,000,000 so that a letter of credit in the amount of $30,000,000 is in place on a continuous basis for the term of this Agreement.

If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 20.8.1, then BPA may terminate this Agreement.

20.8.2 Notwithstanding anything in section 20.8.1, should Alcoa's financial responsibility or performance viability become unsatisfactory to BPA in BPA's reasonably exercised discretion, then BPA may seek performance assurance from Alcoa consistent with law.

20.8.3 In the event that BPA requests a letter of credit pursuant to section 20.8, Alcoa and BPA shall confer concerning the necessity for, and terms concerning, such letter of credit for no more than the Business Days immediately following the date of such request. Following such discussions, Alcoa shall arrange for any letter of credit requested by BPA to be issued to BPA no later than 3 Business Days following such discussions.

20.9 **Drafting of Agreement**

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation or other event of negotiation, drafting or execution hereof.

20.10 **Execution by Counterparts**

This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

20.11 **Waiver of Damages**

In the event the Ninth Circuit Court of Appeals or other court of competent jurisdiction issues a final order that declares or renders this Agreement, or any part thereof, void or otherwise unenforceable, neither Party shall be entitled to any damages or restitution of any nature, in law or equity, from the other Party, and each Party hereby expressly waives any right to seek such damages or restitution. For the avoidance of doubt, the Parties agree this provision shall survive the termination of this Agreement, including any termination effected through any order described herein.

21. TERMINATION

For ease of reference, this section 21 is intended to collect into one section termination events specified in various sections of this Agreement, plus describe certain additional termination events not described elsewhere.

21.1 Alcoa Right to Terminate

21.1.1 **Alcoa Right to Terminate for Any Reason**

Alcoa may provide written notice to terminate this Agreement anytime after October 1, 2011. Such notice shall include an effective date of termination (Termination Effective Date) that is no earlier than 12 months following the date that BPA receives such notice. Such notice shall also specify, for each month during such 12-month period prior to the Termination Effective Date, the amount of Firm

Power, if any, that Alcoa shall take and pay for during the 12-month period prior to the Termination Effective Date, Alcoa shall be obligated to pay the IP rate for the monthly amounts of Firm Power not taken, which shall equal to 320 aMW less the monthly amounts, if any, that Alcoa has agreed to take and pay for.

The employment provisions of sections 8 and Exhibit G shall apply to amounts of Firm Power, if any, Alcoa elects to take and pay for during the 12-month period prior to the Termination Effective Date.

Following the receipt by BPA of a notice to terminate pursuant to this section 21.1.1, Alcoa agrees that it shall not, during the period that begins on the date of receipt of such notice by BPA and continues through 2400 hours on September 30, 2016, request a power sales agreement from BPA pursuant to section 5(d) of the Northwest Power Act.

21.1.2 **Alcoa Termination Following BPA Notice on or before March 31, 2010**

If, pursuant to section 6.2 above, BPA has provided notice that this Agreement shall terminate at 2400 hours on September 30, 2011, Alcoa may provide written notice to terminate this Agreement anytime. For avoidance of doubt, the effective date of termination may be less than 12-months following the date that BPA receives such notice, and Alcoa shall not be obligated to pay the IP rate for Firm Power not taken from the date of notice through the effective date of termination. In addition BPA agrees to waive section 21.1.5.

21.1.3 **Alcoa Termination During a Period of Curtailment**

If, pursuant to section 21.1.1 above, Alcoa provides BPA with a written notice to terminate during a period of curtailment, then such curtailment shall end as of the date BPA receives such notice, and during the subsequent 12-month period the options described in section 21.1.1 above shall apply.

21.1.4 **Alcoa Right to Terminate if Certain Taxes or Charges are Imposed on Alcoa by BPA**

If costs directly attributable to the Alcoa Load associated with either (1) renewable energy portfolio standard obligations, or (2) costs for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges ("Environmental Costs"), are imposed on BPA directly (as opposed to being indirectly imposed on the cost of third party power acquisitions by BPA) and all such Environmental Costs have not been allocated to, and recovered by BPA through, the IP rate schedule, then BPA shall bill Alcoa for such Environmental Costs, and Alcoa shall be obligated to pay such Environmental Costs and continue performance under this

Agreement; *provided, however*, that in the event all Environmental Costs paid by Alcoa to BPA equal or exceed $2 million, then in the event Alcoa is billed any additional Environmental Costs by BPA, Alcoa shall have the option to terminate pursuant to section 21.1.1 above, but Alcoa shall not be obligated to pay the IP rate for Firm Power not taken during the 12-month period prior to such termination.

21.1.5 **No Operation Following Termination**
Except as provided for in section 21.1.2 above, Alcoa agrees that in the event it exercises its right to terminate under this section 21, that the earliest it will restart operations at the Intalco Plant is October 1, 2016.

21.2 **BPA's Right to Terminate**
BPA may terminate this Agreement if:

21.2.1 Alcoa fails to take and pay for Firm Power made available to it under this Agreement, unless such failure is excused under section 9 or section 17.

21.2.2 Alcoa fails to provide payment assurance satisfactory to BPA as required by section 20.8.

21.2.3 Alcoa fails to maintain Employment Levels as required by section 8.

21.2.4 Alcoa resells Firm Power.

21.2.5 Alcoa fails to provide BPA with any irrevocable standby letter of credit required by section 20.8.1.

Termination by BPA under this section 21.2 is without prejudice to any other remedies available to BPA under law.

22. TERMINATION OF PRIOR AGREEMENT

The Prior Agreement, as amended, shall terminate at 2400 hours on September 30, 2009.

23. FEASIBILITY OF ENTERING INTO SUBSEQUENT AGREEMENT BEGINNING OCTOBER 1, 2016

If requested by Alcoa, BPA shall conduct a public process during the FY 2013 through FY 2014 time period to examine the feasibility of entering into a subsequent power sales agreement with Alcoa that would begin on October 1, 2016. In addition to examining the terms of service for any such subsequent agreement, the public process will include a study analyzing the impacts on the regional economy associated with such a subsequent agreement. This section 23 is not intended and shall not be construed as requiring BPA to offer any such subsequent

agreement, irrespective of the conclusions or findings following the completion of any public process undertaken.

24. ALCOA COVENANT NOT TO CHALLENGE VALIDITY OF THIS AGREEMENT

Alcoa agrees that it shall not challenge the validity of this Agreement, or any part thereof, in any proceeding before the United States Circuit Court of Appeals for the Ninth Circuit (Ninth Circuit), but Alcoa reserves the right to intervene in any proceeding in the Ninth Circuit in which a challenge to the validity of this Agreement, or any part thereof, has been filed.

25. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

Alcoa Inc.		UNITED STATES OF AMERICA Department of Energy Bonneville Power Administration	
By	_____	By	_____
Name	John G. Thuestad *(Print / Type)*	Name	Stephen J. Wright *(Print / Type)*
Title	President, US Primary Products	Title	Administrator and Chief Executive Officer
Date	_____	Date	_____

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Exhibit A
BILLING

1. INDUSTRIAL FIRM POWER ENTITLEMENTS

1.1 The MW made available by BPA under this Agreement multiplied by: (1) the number of HLH; and (2) the number of LLH in the applicable month establishes Alcoa's HLH and LLH Energy Entitlements.

1.2 The MW amount made available by BPA under this Agreement establishes Alcoa's Demand Entitlement.

2. UNAUTHORIZED INCREASE CHARGE

Hourly Firm Power scheduled by Alcoa in excess of amounts specified in Exhibit A shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PS.

3. REVISIONS

If this exhibit is inconsistent with BPA's Industrial Firm Power Rate Schedule, or its successor, as finally approved by FERC, the Parties shall make a good faith effort to amend this exhibit so that it is consistent.

Exhibit B
COST CAPS

1. DEFINITIONS

1.1 "Acquisition Cost for FY2011 through FY2012" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, by BPA multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.2 "Acquisition Cost for FY2012 through FY2016" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, assigned to the Composite Cost Pool under the Tiered Rates Methodology, including DSI loads multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.3 "Cost Cap" shall have the meaning described in section 2.1and section 3.1 of this Exhibit.

1.4 "Credit Cost" means the actual cost or forecasted cost to BPA of a credit default swap or other credit risk hedging instrument purchased by BPA.

1.5 "Environment or Regulatory Cost" means costs incurred, or to be incurred, by BPA that are associated with carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs

1.6 "Forecasted Cost" shall have the meaning described in section 4 of this Exhibit.

1.7 "Forecasted Net Cost" means the result on line J of the calculation in section 2.1 or section 3.1 of this Exhibit for the applicable period. Subject to section 2.2 of this Exhibit, $82 million is net cost cap for the period FY2010 through FY2011 and $300 million is the net cost cap for the period FY2012 through FY2016.

1.8 "Inventory Cost" means the weighted average of the monthly actual unit cost of, or opportunity cost of, BPA's surplus inventory, as valued by BPA with reference to then current market prices, forward curves, and BPA market price forecasts, multiplied by the volume in MWh of BPA's surplus inventory as applied each month to make available the Requested Firm Power to Alcoa, for the purposes of computing Forecasted Cost under this Agreement.

1.9 "Requested Firm Power" means the total amount of Firm Power requested by Alcoa in the notice provided to BPA pursuant to section 5.2 of the body of this Agreement.

2. COST CAP IN FY2010 THROUGH FY2011

2.1 Cost Cap

The Forecasted Net Cost for the FY2010 through FY2011 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 1 below:

TABLE 1 - Example Calculation of the Forecasted Net Cost in FY2010 through FY2011	**Maximum Value**	**Example Value**
A) Firm Power	285 aMW	285 aMW
B) Requested Increase in Firm Power *[effective date of request must be provided inclusive of contractual notice]*	35 aMW	35 aMW
C) Requested Firm Power = A+ B	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = (A * 8760 hours * 2 years) + (B * # hours from effective) *[weighted for appropriate effective dates of requested firm power]*	5,530,800	5,530,800
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	5,635,885	5,635,885
G) Weighted Average IP rate for FY10-11 ($ per MWh) *[weighted for appropriate effective dates of requested firm power]*	$ 34.59	$ 34.59
H) Forecasted Cost ($) *[see definition and example in section 4 of this Exhibit]*	$ 273,332,998	$ 266,577,361
I) Forecasted IP Revenue ($) = D * G	$ 191,332,998	$ 191,332,998
J) Forecasted Net Cost = H - I	$ 82,000,000	$ 75,244,363
K) Forecasted Cost ($ per MWh) = H / F	$ 48.50	$ 47.30
L) Forecasted Net Cost ($ per FY in period) = J / (2 fiscal years)	$ 41,000,000	$ 37,622,181

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2010 through FY2011 period and must be forecast to be less than or equal to $82 million (the "Cost Cap"); provided however such Cost Cap may be increased pursuant to section 2.2 of this Exhibit B.

2.2 Effect of DSI Curtailment on Cost Cap

To the extent any other aluminum smelter DSI notifies BPA of a curtailment under its BPA power sales agreement during the FY2010 through FY2011 period, then during the duration of such curtailment, the $82 million Cost Cap applicable to Alcoa under this Agreement for the FY2010 through FY2011 period will be increased by an amount equal to the amount of the Cost Cap forgone by such other aluminum smelter DSI, and the $48 per MWh cost cap will be increased accordingly.

3. COST CAP IN FY2012 THROUGH FY2016

3.1 Cost Cap

The Forecasted Net Cost for the FY2012 through FY2016 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 2 below:

TABLE 2 - Example Calculation of the Forecasted Net Cost in FY2012 through FY2016	**Maximum Value**	**Example Value**
A) Firm Power	n/a	n/a
B) Requested Increase in Firm Power	n/a	n/a
C) Requested Firm Power = 320 aMW	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = C * 8760 hours * 5 years	14,016,000	14,016,000
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	14,282,304	14,282,304
G) Weighted Average IP rate for FY12-16 ($ per MWh)	$ 38.22	$ 38.22
H) Forecasted Cost ($) *[see definition and example in section 4 of this Exhibit]*	$ 835,624,476	$ 756,105,174
I) Forecasted IP Revenue ($) = D * G	$ 535,624,476	$ 535,624,476
J) Forecasted Net Cost = H - I	$ 300,000,000	$ 220,480,698
K) Forecasted Cost ($ per MWh) = H / F	$ 58.51	$ 52.94
L) Forecasted Net Cost ($ per FY in period) = J / (5 fiscal years)	$ 60,000,000	$ 44,096,140

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2012 through FY2016 period and must be forecast to be less than or equal to $300 million (the "Cost Cap").

To the extent Parties anticipate a Forecasted Net Cost exceeding the $300 million Cost Cap, then by mutual agreement the Parties may: i) adjust FTE commitment levels; or ii) reduce the 18 month limit of the curtailment duration during the FY 2012 through FY 2016 period specified in section 9.2 of the body of the Agreement, in order to increase the Cost Cap. The Parties agree that the Cost Cap may not be increased above $330 million. For example, the Parties may increase FTE commitment (direct DSI jobs) up to 58 FTE in each year of smelter operation (203 job-years) and increase the Cost Cap an equivalent amount up to but not exceeding $330 million (line K in Table 2 above would increase up to $60.61 per MWh). The Parties shall amend this Agreement to implement agreed to adjustments to increase the Cost Cap, including revisions to Exhibits that may be necessary.

4. METHODOLOGY TO DETERMINE FORECASTED COST

The Forecasted Cost shall be determined by BPA in its sole discretion and will include, but is not limited to, the sum of the following costs: Acquisition Cost, Inventory Cost, Credit Cost, Environmental and Regulatory Cost. ("Forecasted Cost")

For each month in the period, BPA will assemble the information in Table 3 in the commercially reasonable manner below:

Table 3

Net Cost Check	$ 31,970,002	$ 49,970,301	$ 81,940,303
IP Revenues	$ 93,948,090	$ 97,002,675	$ 190,950,765

$48 per MWh test

	Cost FY2010	FY2011		HLH LLH split
Forecasted Cost	$ -	$ -	$ -	
Acqusition Cost	$ -	$ -	$ -	
Acqusitions Made				
Acqusitions to be Made	$ 125,918,091	$ 146,972,976	$ 272,891,068	
Inventory Cost	$ 125,918,091	$ 146,972,976	$ 272,891,068	
Inventory Applied				
Inventory to be Applied				
Credit Cost				
Environmental and Regulatory Cost				
Total - by Fiscal Year				

$	49.45	per MWh of Sales to Alcoa during FY10-11
$	48.67	per MWh of 320 aMW Sale to Alcoa for the entire FY10-11 period
	5,518,080	MWh Sales to Alcoa during FY10-11
	618,240	MWh of actual sales to thru effective date of increase
	4,899,840	MWh of 320 aMW sales to Alcoa subsequent to the effective date
	730	total days in period

assumes 3-month notice given at contract signing

	Volume (MWh incl losses) FY2010	FY2011	
Forecasted Cost	-	-	-
Acqusition Cost	-	-	-
Acquistions made	2,766,463	2,856,461	5,622,924
Acqusitions to be Made			
Inventory Cost	-	-	-
Inventory Applied	-	-	-
Inventory to be Applied	-	-	-
Credit Cost	-	-	-
Environmental and Regulatory Cost	2,766,463	2,856,461	5,622,924
Sum of Acquisitions & Inventory - by Fiscal Year			

** Loads applied to Credit and E&R Costs may not be additive.

Table 3 continued

Cost to Serve

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11
Forecasted Cost																				
Acquisition Cost																				
Acquisitions made	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Acquisitions to be Made	$ 8,756,743	$ 8,474,267	$ 8,756,743	$ 11,347,401	$ 10,249,268	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 12,865,206	$ 11,620,188	$ 12,865,206	$ 12,450,200	$ 12,865,208
Inventory Cost																				
Inventory Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Inventory to be Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Credit Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Environmental and Regulatory Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total - by Month	$ 8,756,743	$ 8,474,267	$ 8,756,743	$ 11,347,401	$ 10,249,268	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 12,865,206	$ 11,620,188	$ 12,865,206	$ 12,450,200	$ 12,865,208

Volume Required to Serve (MWh incl losses)

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11
Forecasted Cost																				
Acquisition Cost																				
Acquisitions made	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Acquisitions to be Made	212,278	205,430	212,278	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778	242,604	234,778	242,604	242,604	219,126	242,604	234,778	242,604
Inventory Cost																				
Inventory Applied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Inventory to be Applied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Credit Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Environmental and Regulatory Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sum of Acquisitions & Inventory - by Month	212,278	205,430	212,278	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778	242,604	234,778	242,604	242,604	219,126	242,604	234,778	242,604

** Loads applied to Credit and E&R Costs may not be additive

Average Load (aMW, not incl losses)

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11
Forecasted Cost																				
Acquisition Cost																				
Acquisitions made	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Acquisitions to be Made	280	280	280	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320
Inventory Cost																				
Inventory Applied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Inventory to be Applied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Environmental and Regulatory Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum of Acquisitions & Inventory - by Month	280	280	280	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320

** Loads applied to Credit and E&R Costs may not be additive.

Weighted Average Unit Cost by Month

	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11
Forecasted Cost																				
Acquisition Cost																				
Acquisitions made	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Acquisitions to be Made	$ 41.25	$ 41.25	$ 41.25	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03
Inventory Cost																				
Inventory Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Inventory to be Applied	$ 41.25	$ 41.25	$ 41.25	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03
Credit Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Environmental and Regulatory Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Expected acquisitions	$ 38.77	$ 38.77	$ 38.77	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84

Exhibit C
SPECIAL PROVISIONS

1. BPA APPROPRIATIONS REFINANCING

In accordance with section 21.2 of the body of this Agreement, section (i) of the BPA Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. No. 104-134, 110 Stat. 1321–350, is included in this Agreement--

(i) **Contract Provisions**

In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1996, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1996--

(1) the Administrator shall establish rates and charges on the basis that

(A) the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b) of the BPA Refinancing Act;

(B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under subsection (c) of the BPA Refinancing Act;

(C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and

(D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

(2) apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b) of the BPA Refinancing Act and to pay the interest on the principal amount under subsection (c) of the BPA Refinancing Act, no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

(3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United

States on a claim for a breach of the contract provisions required by this Part; and

(4) the contract provisions specified in this Part do not--

(A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or

(B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to--

(i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

(ii) design rates

2. REVISIONS

This exhibit shall be revised by mutual agreement of the Parties to reflect additional special provisions during the term of this Agreement.

Exhibit D
METERING

1. METERING

Directly Connected Points of Delivery

BPA POD Name: Intalco 13.8 kV;
BPA POD Number: TBD*;
WECC Balancing Authority: BPAT;

Location: the point in BPA's Intalco Substation where the 13.8 kV facilities of BPA and Alcoa are connected;

Voltage: 13.8 kV;

TBD* This data element is currently unresolved and shall be determined by BPA prior to June 1, 2011.

2. REVISIONS

Each Party shall notify the other in writing if updates to this exhibit are necessary to accurately reflect the actual characteristics of POD and meter information described in this exhibit. The Parties shall revise this exhibit to reflect such changes. The Parties shall mutually agree on any such exhibit revisions and agreement shall not be unreasonably withheld or delayed. The effective date of any exhibit revision shall be the date the actual circumstances described by the revision occur.

Exhibit E
SCHEDULING

1. SCHEDULING FEDERAL RESOURCES

Alcoa is responsible for creating E-Tags for all deliveries of federal power purchased under this Agreement.

In the event of an unplanned outage that affects future hours, Alcoa or its scheduling agent is responsible for adjusting e-Tags to accurately reflect the amount of load actually being served by generation provided by BPA.

2. AFTER THE FACT

BPA and Alcoa agree to reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). BPA and Alcoa shall verify all transactions per this Agreement, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

3. REVISIONS

BPA may unilaterally revise this exhibit: (1) to implement changes that are applicable to all customers who are subject to this exhibit and that BPA determines are reasonably necessary to meet its power and scheduling obligations under this Agreement or (2) to comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit F
POWER RESERVES

1. DEFINITIONS

(a) "Event" is a system condition under which PS needs additional power to meet its obligations during a system disturbance. The beginning of an Event shall be identified by notice from the TS dispatcher to the TS scheduler that such a system disturbance has occurred, and Alcoa's scheduling agent shall notify Alcoa that Restricted Energy is required. The end of the Event shall occur the earlier of when; a) initially established; b) Alcoa's scheduling agent has notified Alcoa that full service has been restored; or c) 105 minutes from the beginning of the Event. An Event shall not include BPA electing not to purchase power for economic reasons, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.

(b) "Event Duration" shall be the total cumulative Event Minutes of the Event.

(c) "Event Minute" shall be the minutes of restriction (or any portion thereof) during an Event.

(d) "Contingency Reserves" are those reserves provided by Alcoa under this Agreement for purposes of providing reserves for BPA's firm power loads within the region, as provided for in the Northwest Power Act.

(e) "Reserve Amount" shall be the kilowatt (kW) amount of Contingency Reserves available to BPA by Alcoa specified in Section 2 of this Exhibit.

(f) "Restricted Energy" means the requested megawatt-hour (MWh) amount of energy not made available to Alcoa hereunder because of an Event.

2. AMOUNT AND TYPES RESERVES

When necessary to provide Contingency Reserves, BPA may restrict the Reserve Amount, or the requested portion thereof, for a period of time (Restricted Energy). The Reserve Amount (in kilowatts) shall equal the amount of Minimum DSI Operating Reserve – Supplemental specified in the 2010 GRSP, or its successor.

Notwithstanding any other provision of this Agreement, BPA shall use its best efforts to end an Event as soon as possible, and Alcoa agrees to cooperate in development of mechanisms that will enhance BPA's ability to notify Alcoa of the end of an Event.

The Parties recognize that with the addition of certain electronic controls at the Intalco Plant, the Intalco Load can be varied to help accommodate within-hour fluctuations on BPA's system associated with wind power generation. The Parties agree to undertake discussions within 60 days after the execution of this

Agreement to identify and implement any agreed to actions and agreements necessary to achieve such wind integration benefits.

3. QUALITY AND CHARACTER OF RESERVES

Contingency Reserves provided by Alcoa shall be consistent with North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and Northwest Power Pool (NWPP) standards and criteria:

(a) the Reserve Amount, or the requested portion thereof, must be offline within ten (10) minutes after the first telephone call by Alcoa's scheduling agent to Alcoa;

(b) the Reserve Amount, or the requested portion thereof, must be available to be offline for up to one-hundred five (105) minutes.

Alcoa shall provide a contact at the Facility at the following phone number:

Alcoa
Phone: TBD

Alcoa shall maintain such contact for every hour in the Term of the Agreement in which the Minimum DSI Operating Reserve – Supplemental amount is greater than zero megawatts.

Alcoa will provide the Restricted Energy to BPA by an interruption of its loads in an amount equal to or greater than the amount of such specified Restricted Energy, and in each case shall continue such load interruption for the duration of the Event. BPA will bill and Alcoa shall pay for the Restricted Energy as though actually delivered to Alcoa.

The TS dispatcher will notify the TS scheduler of a contingency event. Depending on whether the event occurs less than 30 minutes past the delivery hour, or occurs greater than or equal to 30 minutes past the delivery hour either the TS scheduler or Alcoa's scheduling agent will adjust Alcoa's e-tags in real time. In both cases Alcoa's scheduling agent shall contact Alcoa at the phone number in this section to: (a) initiate each Event; and (b) terminate each Event. Within ten (10) minutes following such notice by the scheduling agent to initiate an Event, Alcoa shall commence providing the Restricted Energy to BPA. Alcoa shall not restore its use of the Restricted Energy until the lesser of: (a) one-hundred five (105) minutes; or (b) immediately following notice from the scheduling agent terminating an Event.

PS retains the right to verify Alcoa's provision of Restricted Energy by comparing the metered amounts before an Event, during an Event, and after an Event is terminated. If such verification fails to demonstrate that the Restricted Energy was made available to BPA by Alcoa for the Event Duration, then PS, in its sole discretion, may: (a) terminate the compensation specified in Section 4 of this

Exhibit for the undemonstrated portion of the Reserve Amount for the remaining Term of the Agreement; and, (b) notify TS of the undemonstrated portion of the Reserve Amount. Alcoa acknowledges that any undemonstrated portion of the Reserve Amount may cause its transmission supplier to take additional actions subject to the provisions of the Transmission Service Agreements Alcoa maintains with its transmission supplier, that may include an assessment of the monetary penalty described in the Failure to Comply provision of the prevailing TS tariff for transmission service.

4. COMPENSATION FOR CONTINGENCY RESERVES

Alcoa will be compensated by PS for Minimum DSI Operating Reserve - Supplemental provided in this Agreement through an adjustment to the IP rate, as provided for in the Northwest Power Act.

5. RETURNED ENERGY

BPA must make any Restricted Energy during an Event available to Alcoa within 24 hours ("Returned Energy") in mutually agreed flat hourly amounts and hours. It is understood by Parties that Returned Energy does not need to be scheduled during hours immediately following an Event and that the Returned Energy will likely be made available during Light Load Hours.

Scheduling of Returned Energy amounts will be in addition to federal power purchased pursuant to section 4 of the body of the Agreement. Alcoa shall be responsible for creating E-Tags and transmission required for the delivery of Returned Energy.

6. TESTING OF RESERVES

BPA shall have the option to conduct annual tests of the procedure specified in this Exhibit and Alcoa shall participate and provide any Restricted Energy requested.

7. REVISIONS

BPA may unilaterally revise this Exhibit F to implement changes that are applicable to Alcoa and that BPA determines are reasonably necessary for reserves provided under this Agreement to: (a) reflect changes in the value of the DSI Reserves Adjustment; and (b) comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit G
EMPLOYMENT LEVELS

1. Definitions

1.1 "Average Firm Power" means the average Firm Power during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.

1.2 "Average FTE" means the average FTE, as determined pursuant to Table 1 in section 2 below, during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.

1.3 "Firm Power" shall have the meaning ascribed to it in section 2.11 of the body of this Agreement.

1.4 "FTE" shall have the meaning ascribed to it in Section 8 of the body of this Agreement.

2. Relationship between Firm Power and FTE

For the avoidance of doubt, pursuant to this Exhibit G, Firm Power and FTE are proportional for the purposes of this Agreement, based on the amount of Firm Power Alcoa is consuming. As applicable and as described in Table 1 below, the proportion is 1.65 Average FTE per aMW of Average Firm Power:

Table 1 - Proportional Relationship between Average Firm Power and Average FTE

Average Firm Power (aMW)	Average FTE	Proportional FTE
320	528	1.65
280	462	1.65
240	396	1.65
200	330	1.65
160	264	1.65
120	198	1.65
80	132	1.65
72	**120**	n/a
40	**120**	n/a
0	**120**	n/a

During periods of curtailment, the average of the reported monthly FTE shall be equal to or greater than 120.

POWER SALES AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

ALCOA INC.

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This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and Alcoa Inc. (Alcoa), hereinafter individually referred to as "Party" and collectively referred to as the "Parties." Alcoa is a corporation organized under the laws of the State of Pennsylvania, and registered therein as entity number 10514, taxpayer identification number _____.

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RECITALS

BPA is authorized to sell power to Alcoa, a direct service industrial customer, pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839 et seq.

Deleted: section 5(d)(1)(A) of

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In *Pacific Northwest Generating Cooperative v. Department of Energy*, 550 F.3d 846 (2008) the Ninth Circuit Court of Appeals invalidated monetary benefits provisions of power sales contracts between BPA and its aluminum company direct service industrial customers (DSIs), but held that BPA may make sales to DSIs at the Industrial Firm Power Rate (IP rate). This Agreement addresses the 2-year period remaining under those power sales contracts and potentially, a subsequent 5-year period. Under both time periods power sales will be made to Alcoa at the IP rate.

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Concomitantly with the execution of this Agreement, BPA has issued a record of decision addressing comments regarding this Agreement submitted by BPA customers and other interested parties, and such record of decision explains BPA's rationale for its decision to enter into this Agreement.

BPA has functionally separated its organization in order to separate the administration and decision-making activities of BPA's power and transmission functions. References in this Agreement to Power Services or Transmission Services are solely for the purpose of clarifying which BPA function is responsible for administrative activities that are jointly performed.

The Parties agree:

1. TERM

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2016, unless it is terminated earlier pursuant to the terms of this Agreement. Firm Power made available by PS for delivery to the Intalco Plant shall commence on October 1, 2009.

All liabilities incurred by each Party hereunder shall be preserved until satisfied, notwithstanding the expiration or termination of this Agreement.

2. DEFINITIONS

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used or, if not so defined, shall have the meaning stated in BPA's applicable

Wholesale Power Rate Schedules, including the General Rate Schedule Provisions ("GRSPs"). If a term is not defined in any of the named sources, then the term shall be given its normal and customary meaning, with due regard to generally accepted business practices, including the status of the undefined term as a generally recognized term of art.

2.1 "Alcoa Load" means that Alcoa hourly load at the Intalco Plant served under this Agreement.

2.2 "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

2.3 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.

2.4 "Business Days" means every Monday through Friday except for Federal holidays.

2.5 "Cost Cap" means shall have the meaning as defined in Exhibit B.

2.6 "Demand Entitlement" shall have the meaning as defined in section 1.2 of Exhibit A.

2.7 "Diurnal" means the division of hours within a month between Heavy Load Hours (HLH) and Light Load Hours (LLH).

2.8 "Firm Power" means the amount(s) of electric power that PS will make available at the Industrial Firm power rate to Alcoa under this Agreement in equal hourly amounts for every hour of the Fiscal Year.

2.9 "Fiscal Year" or "FY" means the period that begins each October 1 and which ends the following September 30.

2.10 "Forecasted Net Cost" shall have the meaning as defined in Exhibit B.

2.11 "Intalco Plant" means the Alcoa aluminum smelting facilities served from BPA's Intalco Substation, where the 13.8 kilovolt facilities of BPA and Alcoa are connected.

2.12 "Issue Date" shall have the meaning described in section 13.1.

2.13 "Net Firm Power" shall have the meaning described in Exhibit E.

2.14 "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 et seq., Public Law No. 96-501, as amended.

Deleted: 2.8 "Federal Base System Resources" has the meaning contained in the Northwest Power Act, 16 U.S.C. § 839a(10).¶ ¶

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Deleted: Even though, as noted in section 1, certain actions are, or may be, required prior to the commencement of power deliveries, the first Fiscal Year under this Agreement is the 2012 Fiscal Year, which begins October 1, 2011, and continues through September 30, 2012.

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2.15 "Points of Metering" means the interconnection points between BPA, Alcoa and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.

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2.16 "Power Reserves" shall have the meaning described in Exhibit F.

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2.17 "Power Services" or "PS" means the organization, or its successor organization, within BPA that is responsible for the management and sale of Federal power.

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2.18 "Primary Points of Receipt" shall have the meaning described in section 11.1.

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2.19 "Prior Agreement" means Contract No. 06PB-11744 between BPA and Alcoa, as amended.

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2.20 "Region" or "Regional" means the Pacific Northwest as defined in the Northwest Power Act, 16 U.S.C. § 839a(14).

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2.21 "Transmission Services" or "TS" means the organization or its successor organization, within BPA that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

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2.22 "Wheel Turning Load" shall have the meaning described in 2010 GRSP and equal 6 aMW.

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3. APPLICABLE RATES

Sales by BPA to Alcoa under this Agreement shall be made at the Industrial Firm Power rate (the "IP rate") in effect at the time of such sales, and are subject to all applicable GRSPs.

3.1 Industrial Firm Power Rate

Alcoa shall purchase Firm Power provided by BPA under this Agreement at the applicable IP rate for the rate period, as established through the procedures specified in section 7(i) of the Northwest Power Act (16 U.S.C § 839e(i)), or its successor, including all adjustments and charges developed in accordance with all applicable statutory ratemaking directives.

Alcoa acknowledges that BPA has not agreed to propose that the IP rate be established at any particular level for any rate period included within the term of this Agreement, and that, while it reserves all rights with respect to challenging rates proposed or established by BPA, Alcoa bears any risks associated with the IP rate level established each rate period by BPA pursuant the above referenced rate setting procedures.

3.2 **Additional Charges**

Alcoa is subject to any applicable additional charges, including penalty charges (e.g., the Unauthorized Increase Charge), established in BPA's Wholesale Power Rate Schedules and associated GRSPs.

4. PURCHASE AND SALE OF FIRM POWER

During the period FY 2010 through FY 2016, BPA shall make available Firm Power in amounts specified herein and Alcoa shall purchase such Firm Power unless: (a) BPA has determined pursuant to Exhibit B that the cost to serve the Alcoa Load with Firm Power for the FY 2012 through FY 2016 period will exceed the Cost Caps identified in Exhibit B; (b) this Agreement has terminated; or (c) Alcoa has failed to operate the Intalco Plant at a level equal to or greater than 160 aMW for a least one complete Fiscal Year during the period October 1, 2006, through September 30, 2009.

All purchases of Firm Power by Alcoa under this Agreement shall be used exclusively to serve the Alcoa Load.

5. PURCHASE AND SALE OF FIRM POWER FROM FY 2010 THROUGH FY 2011

5.1 **Firm Power Sale by BPA from FY 2010 through FY 2011**

During the period that begins on October 1, 2009, and continues through September 30, 2011, BPA shall sell and Alcoa shall purchase 285 aMW of Firm Power, as such amount may be increased pursuant to section 5.2 below.

5.2 **Increase from 285 aMW to 320 aMW**

Alcoa may, upon written notice to BPA, request that the amount of Firm Power be increased from 285 aMW to 320 aMW for the balance of FY 2010 through FY 2011 period. Alcoa's notice shall include a schedule, by month, of Alcoa's proposed operating levels to achieve such Firm Power increase. If BPA determines, pursuant to Exhibit B, that the cost to serve the Alcoa Load with 320 aMW of Firm Power for the balance of the FY 2010 through FY 2011 period does not exceed the applicable Cost Caps specified in Exhibit B, then BPA shall accept such request; if not, BPA shall reject such request. BPA's determination shall be conclusive. BPA shall provide Alcoa with written notice of its determination, including the basis for such determination, within 5 Business Days following the receipt of such notice. Such increase, if accepted by BPA, shall occur no earlier than 90 days following the receipt of such notice by BPA, on the first day of a calendar month.

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6. PURCHASE AND SALE OF FIRM POWER FROM FY 2012 THROUGH FY 2016

6.1 Firm Power Sale by BPA for FY 2012 through FY 2016

During the period that begins on October 1, 2011, and continues through September 30, 2016, BPA shall sell and Alcoa shall purchase 320 aMW of Firm Power, subject to the provisions in section 6.2 below.

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6.2 Termination

If BPA determines, pursuant to Exhibit B, that the cost to serve the Alcoa Load with 320 aMW of Firm Power for the entire FY 2012 through FY 2016 period will exceed the Cost Cap specified in Exhibit B, then on or before March 31, 2010, BPA shall provide Alcoa with written notice that this Agreement shall terminate at 2400 hours on September 30, 2011. Such notice shall include the basis for such determination, and such determination shall be conclusive.

7. COST CAPS AND OTHER LIMITATIONS

7.1 Cost Caps

The Cost Caps specified in Exhibit B of this Agreement represent the maximum cost BPA will incur to support sales to Alcoa, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs allocated by BPA, pursuant to Exhibit B.

7.2 Other Limitations

Alcoa understands and agrees that BPA will not make a plant specific acquisition from a coal-fired resource, and that BPA will not acquire power from a supplier that is unwilling to absorb all of the regulatory or environmental costs referred to in section 7.1 above, that are imposed on the supplier after the date the acquisition contract is entered into.

8. EMPLOYMENT LEVELS

Except during any termination period in which Alcoa is not operating, Alcoa shall employ at least the number of full time equivalent (FTE) employees specified in Exhibit G. "FTE" shall mean full time annual equivalent employment (including part-time and partial year) for regular employees of Alcoa at the Intalco Plant and contractor employees working within Whatcom County, Washington during a calendar month.

Alcoa shall notify BPA in writing in the event that, during any calendar month, Average FTE, as defined in Exhibit G, levels are reduced by more than one percent below the applicable level specified in Exhibit G. Such notice shall be provided within five Business Days following such reduction. Such notice shall specify the date by which Alcoa anticipates Average FTE levels will equal or exceed the applicable level specified in Exhibit G; *provided, however*, that this Agreement will be subject to termination by BPA in the event Alcoa fails to provide BPA with a written plan and to comply with such plan for meeting the applicable Average FTE

levels specified in Exhibit G. Such plan shall demonstrate that Alcoa shall meet Average FTE requirements within 90 days following the end of the month during which such Average FTE levels fell below the 1 percent threshold. In order to permit BPA to determine whether Alcoa is meeting its plan to meet FTE obligations, Alcoa shall provide monthly reports to BPA demonstrating its FTE by month and whether its Average FTE levels meet the requirements of this section 8 within 15 days following the end of the month for which it is reporting. In the event that Alcoa fails to comply with its plan for reaching Average FTE levels, BPA may provide notice of termination within 30 days following the monthly notice provided in this section 8 and the effective date of termination shall be 90 days following the date such notice is received by Alcoa.

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During any period of curtailment, Alcoa will maintain the pre-curtailment ratio between its salaried and non-salaried FTEs.¶

9. CURTAILMENT

9.1 Notice of Curtailment

Alcoa may, upon written notice to BPA, curtail all or a portion of the Alcoa Load, subject to the limitations specified in section 9.2 below. Any such notice shall specify the amount of Alcoa Load to be curtailed, the duration of such curtailment, and the effective date that such curtailment shall commence; *provided however*, that such effective date shall be no earlier than 90 days following the date that BPA receives such notice. The period of curtailment shall be for consecutive months. Any such notice, once received, shall not be changed by Alcoa without BPA's written consent.

9.2 Number of Curtailments Allowed and Cumulative Duration of Curtailments

Alcoa shall not provide BPA with more than two written notices to curtail during the term of this Agreement, and the cumulative duration of any such curtailment(s) shall not exceed 24 months; *provided, however,* the cumulative duration of such curtailment(s) during FY 2012 through FY 2016 period shall not exceed 18 months. Alcoa shall maintain the applicable employment level specified in Exhibit G during any curtailment and will maintain at least the pre-curtailment ratio between its salaried and non-salaried FTEs.

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9.3 No Compensation to Either Party During Curtailment

During any period of curtailment, Alcoa shall not incur any take-or-pay obligation for the amount curtailed, and BPA shall have no obligation to compensate Alcoa in any manner for the amount curtailed.

9.4 No Purchases from Third Parties During Curtailment

During any period of curtailment, Alcoa shall not make any market purchases from third party suppliers to replace all or any portion of the amount curtailed.

9.5 No Curtailment Following Notice of Termination

Alcoa shall not curtail pursuant to this section 9 following a notice of termination pursuant to section 21.1.1 below.

10. SCHEDULING

10.1 Scheduling

Alcoa shall schedule power in accordance with Exhibit E.

11. DELIVERY

11.1 Definitions

11.1.1 "Primary Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is forecasted to be made available by Power Services to Alcoa for purposes of obtaining a long-term firm transmission contract.

11.1.2 "Scheduling Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is made available by Power Services to Alcoa for purposes of transmission scheduling.

11.1.3 "Point of Delivery" means the point described in Exhibit E to which Alcoa delivers power.

11.2 Transmission Service

11.2.1 Alcoa is responsible for making arrangement for, and payment of, delivery of power from the Scheduling Points of Receipt, including all transmission and ancillary service costs.

11.2.2 Alcoa shall obtain prior BPA approval for, and shall provide at least 60 days' notice to Power Services prior to changing Balancing Authority Areas.

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11.2.3 At Alcoa's request, Power Services shall provide Alcoa with Primary Points of Receipt and other information needed to enable Alcoa to obtain long-term firm transmission for delivery of power sold under this Agreement. If required by Transmission Services for purposes of transmission scheduling, then Power Services shall provide Alcoa with Scheduling Points of Receipt. Power Services has the right to provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt. If BPA does provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt, then BPA shall reimburse Alcoa for any incremental, direct, non-administrative costs incurred by Alcoa to comply with delivering Firm Power from such a Scheduling Point of Receipt to Alcoa's Intalco Plant if the following conditions, as outlined in 11.2.3.1 or 11.2.3.2 below, as applicable, have been met:

11.2.3.1 If Alcoa has long-term Point to Point (PTP) transmission service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.1.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.1.2 Alcoa has submitted a request to redirect its long-term firm PTP transmission service to deliver Firm Power from the Scheduling Point of Receipt on a firm basis, but that request was not granted; and

11.2.3.1.3 Alcoa's transmission schedule was curtailed due to non-firm status under PTP transmission service or Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.2 If Alcoa has long-term Network Integration Transmission Service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.2.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.2.2 Alcoa's transmission schedule was curtailed due to non-firm status under its secondary service status and Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.3 In the event power cannot be scheduled from a BPA Scheduling Point of Receipt (other than a Primary Point of Receipt) then Alcoa may request and, consistent with BPA's standard practices to achieve efficient system operation and reliability, BPA will move the Scheduling Point of Receipt to a point on the FCRTS where energy can be made available and scheduled to Alcoa's load ("Alternative Scheduling Point of Receipt"), if such a point is available and providing the power from that Alternative Scheduling Point of Receipt would not cause BPA to violate any type of non-power constraint.

11.3 **Liability for Delivery**

Alcoa waives any claims against BPA arising under this Agreement for non-delivery of power to any points beyond the applicable Scheduling Points of Receipt, except for reimbursement of costs as described in section 11.2.3. BPA shall not be liable under this Agreement for any third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership.

11.4 **Real Power Losses**

BPA is responsible for the real power losses necessary to deliver Firm Power across the Federal Columbia River Transmission System to Alcoa's POD(s) listed in Exhibit D.

12. METERING

Alcoa's purchase obligations in sections 5 and 6 are not dependant on amounts scheduled and do not require retail load meters for billing and payment.

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13. BILLING AND PAYMENT

13.1 **Billing**

BPA shall bill Alcoa monthly for all products and services provided during the preceding month(s). BPA may send Alcoa an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to Alcoa. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

13.2 **Payment**

Alcoa shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the Issue Date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

If Alcoa has made payment on an estimated bill then:

13.2.1 if the amount of the final bill exceeds the amount of the estimated bill, then Alcoa shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or

13.2.2 if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay Alcoa the difference between the estimated bill and final bill by the 20th day after the final bill's Issue Date. If the 20th day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

13.3 **Late Payments**

After the Due Date, a late payment charge, equal to the higher of:

(1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or

(2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

13.4 **Termination**

If Alcoa has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment in full. If Alcoa does not provide payment within three Business Days after receipt of an additional written notice from BPA, and BPA determines in its sole discretion that Alcoa is unable to make the payments owed, then BPA may terminate this Agreement. Written notices sent under this section must comply with section 16 Notices and Contact Information.

Comment [k2]: I know this is a standard term , but should we consider changing it if we get comments re creditworthiness? A lot of exposre for BPA could be mitigated by tightening this up and giving them a much shorter cure period.

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13.5 **Disputed Bills**

13.5.1 If Alcoa disputes any portion of a charge or credit on Alcoa's estimated or final bills, Alcoa shall provide written notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Alcoa shall pay the entire bill by the Due Date. This section 13.5.1 does not allow Alcoa to challenge the validity of any BPA rate.

13.5.2 Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

13.5.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 18, Alcoa is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

18.6 **Arbitration Costs**
Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

19. STATUTORY PROVISIONS

19.1 **Prohibition on Resale of Firm Power**
Alcoa shall not resell Firm Power purchased from BPA under this Agreement.

19.2 **BPA Appropriations Refinancing Act**
The text of the BPA Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, is incorporated as shown in Exhibit C, Special Provisions.

20. STANDARD PROVISIONS

20.1 **Amendments**
Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

20.2 **Entire Agreement and Order of Precedence**
This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

20.3 **Assignment**
Alcoa may assign this Agreement upon 90 days written notice, but only to a successor-in-interest that has acquired ownership, through purchase or merger, of the Intalco Plant, and then only if such assignee expressly agrees in writing to be bound by the terms of this Agreement. Such assignment will

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be subject to any reasonable requirement by BPA that the assignee provide credit security, in a form acceptable to BPA, to secure performance of assignee's obligations under this Agreement. It shall not be deemed unreasonable for BPA to require credit security from an assignee with a Moody's credit rating below "A", or the equivalent if rated by another credit rating agency. No other assignment of this Agreement by Alcoa is permitted.

20.4 **No Third-Party Beneficiaries**
This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

20.5 **Waivers**
No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

20.6 **BPA Policies**
Any reference in this Agreement to BPA policies, including any revisions thereto, does not constitute agreement of Alcoa to such policy by execution of this Agreement, nor shall it be construed to be a waiver of any right of Alcoa to seek judicial review of any such policy.

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20.7 **Severability**
If any term of this Agreement is found or rendered invalid or unenforceable by a court of competent jurisdiction, then unless that term is not severable from all other provisions of this Agreement, such invalidity or unenforceability shall not otherwise affect any remaining lawful obligations under this Agreement. Neither Party shall be liable to the other Party for any damages associated with any term being severed from this Agreement.

20.8 **Credit Assurance**

20.8.1 Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA with an irrevocable standby letter of credit in the amount of $30,000,000, issued in a form and by a bank acceptable to BPA. Such letter of credit shall have an expiration date 1 year from its date of issuance, and BPA may require replacement letters of credit in the amount of $30,000,000 so that a letter of credit in the amount of $30,000,000 is in place on a continuous basis for the term of this Agreement.

If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 20.8.1, then BPA may terminate this Agreement.

20.8.2 Notwithstanding anything in section 20.8.1, should Alcoa's financial responsibility or performance viability become unsatisfactory to BPA in BPA's reasonably exercised discretion, then BPA may seek performance assurance from Alcoa consistent with law.

20.8.3 In the event that BPA requests a letter of credit pursuant to section 20.8, Alcoa and BPA shall confer concerning the necessity for, and terms concerning, such letter of credit for no more than the Business Days immediately following the date of such request. Following such discussions, Alcoa shall arrange for any letter of credit requested by BPA to be issued to BPA no later than 3 Business Days following such discussions.

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20.9 **Drafting of Agreement**
This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation or other event of negotiation, drafting or execution hereof.

20.10 **Execution by Counterparts**
This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

20.11 **Waiver of Damages**
In the event the Ninth Circuit Court of Appeals or other court of competent jurisdiction issues a final order that declares or renders this Agreement, or any part thereof, void or otherwise unenforceable, neither Party shall be entitled to any damages or restitution of any nature, in law or equity, from the other Party, and each Party hereby expressly waives any right to seek such damages or restitution. For the avoidance of doubt, the Parties agree this provision shall survive the termination of this Agreement, including any termination effected through any order described herein.

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21. TERMINATION
For ease of reference, this section 21 is intended to collect into one section termination events specified in various sections of this Agreement, plus describe certain additional termination events not described elsewhere.

21.1 **Alcoa Right to Terminate**

21.1.1 **Alcoa Right to Terminate for Any Reason**
Alcoa may provide written notice to terminate this Agreement anytime after October 1, 2011. Such notice shall include an effective date of termination (Termination Effective Date) that is no earlier than 12 months following the date that BPA receives such notice. Such notice shall also specify, for each month during such 12-month period prior to the Termination Effective Date, the amount of Firm

Power, if any, that Alcoa shall take and pay for during the 12-month period prior to the Termination Effective Date, Alcoa shall be obligated to pay the IP rate for the monthly amounts of Firm Power not taken, which shall equal to 320 aMW less the monthly amounts, if any, that Alcoa has agreed to take and pay for.

The employment provisions of sections 8 and Exhibit G shall apply to amounts of Firm Power, if any, Alcoa elects to take and pay for during the 12-month period prior to the Termination Effective Date.

Following the receipt by BPA of a notice to terminate pursuant to this section 21.1.1, Alcoa agrees that it shall not, during the period that begins on the date of receipt of such notice by BPA and continues through 2400 hours on September 30, 2016, request a power sales agreement from BPA pursuant to section 5(d) of the Northwest Power Act.

21.1.2 **Alcoa Termination Following BPA Notice on or before March 31, 2010**

If, pursuant to section 6.2 above, BPA has provided notice that this Agreement shall terminate at 2400 hours on September 30, 2011, Alcoa may provide written notice to terminate this Agreement anytime. For avoidance of doubt, the effective date of termination may be less than 12-months following the date that BPA receives such notice, and Alcoa shall not be obligated to pay the IP rate for Firm Power not taken from the date of notice through the effective date of termination. In addition BPA agrees to waive section 21.1.5.

21.1.3 **Alcoa Termination During a Period of Curtailment**

If, pursuant to section 21.1.1 above, Alcoa provides BPA with a written notice to terminate during a period of curtailment, then such curtailment shall end as of the date BPA receives such notice, and during the subsequent 12-month period the options described in section 21.1.1 above shall apply.

21.1.4 **Alcoa Right to Terminate if Certain Taxes or Charges are Imposed on Alcoa by BPA**

If costs directly attributable to the Alcoa Load associated with either (1) renewable energy portfolio standard obligations, or (2) costs for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges ("Environmental Costs"), are imposed on BPA directly (as opposed to being indirectly imposed on the cost of third party power acquisitions by BPA) and all such Environmental Costs have not been allocated to, and recovered by BPA through, the IP rate schedule, then BPA shall bill Alcoa for such Environmental Costs, and Alcoa shall be obligated to pay such Environmental Costs and continue performance under this

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Agreement; *provided, however*, that in the event all Environmental Costs paid by Alcoa to BPA equal or exceed $2 million, then in the event Alcoa is billed any additional Environmental Costs by BPA, Alcoa shall have the option to terminate pursuant to section 21.1.1 above, but Alcoa shall not be obligated to pay the IP rate for Firm Power not taken during the 12-month period prior to such termination.

21.1.5 **No Operation Following Termination**
Except as provided for in section 21.1.2 above, Alcoa agrees that in the event it exercises its right to terminate under this section 21, that the earliest it will restart operations at the Intalco Plant is October 1, 2016.

21.2 **BPA's Right to Terminate**
BPA may terminate this Agreement if:

21.2.1 Alcoa fails to take and pay for Firm Power made available to it under this Agreement, unless such failure is excused under section 9 or section 17.

21.2.2 Alcoa fails to provide payment assurance satisfactory to BPA as required by section 20.8.

21.2.3 Alcoa fails to maintain Employment Levels as required by section 8.

21.2.4 Alcoa resells Firm Power.

21.2.5 Alcoa fails to provide BPA with any irrevocable standby letter of credit required by section 20.8.1.

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Termination by BPA under this section 21.2 is without prejudice to any other remedies available to BPA under law.

22. TERMINATION OF PRIOR AGREEMENT
The Prior Agreement, as amended, shall terminate at 2400 hours on September 30, 2009.

23. FEASIBILITY OF ENTERING INTO SUBSEQUENT AGREEMENT BEGINNING OCTOBER 1, 2016
If requested by Alcoa, BPA shall conduct a public process during the FY 2013 through FY 2014 time period to examine the feasibility of entering into a subsequent power sales agreement with Alcoa that would begin on October 1, 2016. In addition to examining the terms of service for any such subsequent agreement, the public process will include a study analyzing the impacts on the regional economy associated with such a subsequent agreement. This section 23 is not intended and shall not be construed as requiring BPA to offer any such subsequent

agreement, irrespective of the conclusions or findings following the completion of any public process undertaken.

24. ALCOA COVENANT NOT TO CHALLENGE VALIDITY OF THIS AGREEMENT

Alcoa agrees that it shall not challenge the validity of this Agreement, or any part thereof, in any proceeding before the United States Circuit Court of Appeals for the Ninth Circuit (Ninth Circuit), but Alcoa reserves the right to intervene in any proceeding in the Ninth Circuit in which a challenge to the validity of this Agreement, or any part thereof, has been filed.

25. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

Alcoa Inc.		UNITED STATES OF AMERICA Department of Energy Bonneville Power Administration	
By	_____	By	_____
Name	John G. Thuestad *(Print/Type)*	Name	Stephen J. Wright *(Print/Type)*
Title	President, US Primary Products	Title	Administrator and Chief Executive Officer
Date	_____	Date	_____

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Exhibit A
BILLING

1. INDUSTRIAL FIRM POWER ENTITLEMENTS

1.1 The MW made available by BPA under this Agreement multiplied by: (1) the number of HLH; and (2) the number of LLH in the applicable month establishes Alcoa's HLH and LLH Energy Entitlements.

1.2 The MW amount made available by BPA under this Agreement establishes Alcoa's Demand Entitlement.

2. UNAUTHORIZED INCREASE CHARGE

Hourly Firm Power scheduled by Alcoa in excess of amounts specified in Exhibit A shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PS.

3. REVISIONS

If this exhibit is inconsistent with BPA's Industrial Firm Power Rate Schedule, or its successor, as finally approved by FERC, the Parties shall make a good faith effort to amend this exhibit so that it is consistent.

Exhibit B
COST CAPS

1. DEFINITIONS

1.1 "Acquisition Cost for FY2011 through FY2012" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, by BPA multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.2 "Acquisition Cost for FY2012 through FY2016" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, assigned to the Composite Cost Pool under the Tiered Rates Methodology, including DSI loads multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.3 "Cost Cap" shall have the meaning described in section 2.1and section 3.1 of this Exhibit.

1.4 "Credit Cost" means the actual cost or forecasted cost to BPA of a credit default swap or other credit risk hedging instrument purchased by BPA.

1.5 "Environment or Regulatory Cost" means costs incurred, or to be incurred, by BPA that are associated with carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs

1.6 "Forecasted Cost" shall have the meaning described in section 4 of this Exhibit.

1.7 "Forecasted Net Cost" means the result on line J of the calculation in section 2.1 or section 3.1 of this Exhibit for the applicable period. Subject to section 2.2 of this Exhibit, $82 million is net cost cap for the period FY2010 through FY2011 and $300 million is the net cost cap for the period FY2012 through FY2016.

1.8 "Inventory Cost" means the weighted average of the monthly actual unit cost of, or opportunity cost of, BPA's surplus inventory, as valued by BPA with reference to then current market prices, forward curves, and BPA market price forecasts, multiplied by the volume in MWh of BPA's surplus inventory as applied each month to make available the Requested Firm Power to Alcoa, for the purposes of computing Forecasted Cost under this Agreement.

1.9 "Requested Firm Power" means the total amount of Firm Power requested by Alcoa in the notice provided to BPA pursuant to section 5.2 of the body of this Agreement.

2. COST CAP IN FY2010 THROUGH FY2011

2.1 Cost Cap

The Forecasted Net Cost for the FY2010 through FY2011 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 1 below:

TABLE 1 - Example Calculation of the Forecasted Net Cost in FY2010 through FY2011	**Maximum Value**	**Example Value**
A) Firm Power	285 aMW	285 aMW
B) Requested Increase in Firm Power *(effective date of request must be provided inclusive of contractual notice)*	35 aMW	35 aMW
C) Requested Firm Power = A+ B	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = (A * 8760 hours * 2 years) + (B * # hours from effective) *(weighted for appropriate effective dates of requested firm power)*	5,530,800	5,530,800
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	5,635,885	5,635,885
G) Weighted Average IP rate for FY10-11 ($ per MWh) *(weighted for appropriate effective dates of requested firm power)*	$ 34.59	$ 34.59
H) Forecasted Cost ($) *(see definition and example in section 4 of this Exhibit)*	$ 273,332,998	$ 266,577,361
I) Forecasted IP Revenue ($) = D * G	$ 191,332,998	$ 191,332,998
J) Forecasted Net Cost = H - I	$ 82,000,000	$ 75,244,363
K) Forecasted Cost ($ per MWh) = H / F	$ 48.50	$ 47.30
L) Forecasted Net Cost ($ per FY in period) = J / (2 fiscal years)	$ 41,000,000	$ 37,622,181

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2010 through FY2011 period and must be forecast to be less than or equal to $82 million (the "Cost Cap"); provided however such Cost Cap may be increased pursuant to section 2.2 of this Exhibit B.

2.2 Effect of DSI Curtailment on Cost Cap

To the extent any other aluminum smelter DSI notifies BPA of a curtailment under its BPA power sales agreement during the FY2010 through FY2011 period, then during the duration of such curtailment, the $82 million Cost Cap applicable to Alcoa under this Agreement for the FY2010 through FY2011 period will be increased by an amount equal to the amount of the Cost Cap forgone by such other aluminum smelter DSI, and the $48 per MWh cost cap will be increased accordingly.

3. COST CAP IN FY2012 THROUGH FY2016

3.1 Cost Cap

The Forecasted Net Cost for the FY2012 through FY2016 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 2 below:

TABLE 2 - Example Calculation of the Forecasted Net Cost in FY2012 through FY2016	Maximum Value	Example Value
A) Firm Power	n/a	n/a
B) Requested Increase in Firm Power	n/a	n/a
C) Requested Firm Power = 320 aMW	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = C * 8760 hours * 5 years	14,016,000	14,016,000
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	14,282,304	14,282,304
G) Weighted Average IP rate for FY12-16 ($ per MWh)	$ 38.22	$ 38.22
H) Forecasted Cost ($) *(see definition and example in section 4 of this Exhibit)*	$ 835,624,476	$ 756,105,174
I) Forecasted IP Revenue ($) = D * G	$ 535,624,476	$ 535,624,476
J) Forecasted Net Cost = H - I	$ 300,000,000	$ 220,480,698
K) Forecasted Cost ($ per MWh) = H / F	$ 58.51	$ 52.94
L) Forecasted Net Cost ($ per FY in period) = J / (5 fiscal years)	$ 60,000,000	$ 44,096,140

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2012 through FY2016 period and must be forecast to be less than or equal to $300 million (the "Cost Cap").

To the extent Parties anticipate a Forecasted Net Cost exceeding the $300 million Cost Cap, then by mutual agreement the Parties may: i) adjust FTE commitment levels; or ii) reduce the 18 month limit of the curtailment duration during the FY 2012 through FY 2016 period specified in section 9.2 of the body of the Agreement, in order to increase the Cost Cap. The Parties agree that the Cost Cap may not be increased above $330 million. For example, the Parties may increase FTE commitment (direct DSI jobs) up to 58 FTE in each year of smelter operation (203 job-years) and increase the Cost Cap an equivalent amount up to but not exceeding $330 million (line K in Table 2 above would increase up to $60.61 per MWh). The Parties shall amend this Agreement to implement agreed to adjustments to increase the Cost Cap, including revisions to Exhibits that may be necessary.

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4. METHODOLOGY TO DETERMINE FORECASTED COST

The Forecasted Cost shall be determined by BPA in its sole discretion and will include, but is not limited to, the sum of the following costs: Acquisition Cost,

Inventory Cost, Credit Cost, Environmental and Regulatory Cost. ("Forecasted Cost")

For each month in the period, BPA will assemble the information in Table 3 in the commercially reasonable manner below:

14. INFORMATION EXCHANGE AND CONFIDENTIALITY

14.1 General Requirements

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement, and to forecast Alcoa Load, forecast BPA system load, comply with NERC reliability standards, prepare bills, resolve billing disputes, and otherwise implement this Agreement. For example, this obligation includes transmission and power scheduling information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.). Information requested under this section 14.1 shall be provided in a timely manner.

14.2 Reports

Alcoa shall notify BPA of public sources from which Alcoa's annual financial reports and any statements by its authorized officers are readily available and BPA will secure such reports and statements for its use. In the event Alcoa's annual financial reports and statements by its authorized officers become unavailable from public sources Alcoa shall provide such reports upon request by BPA.

14.3 Meter and Billing Data

Alcoa consents to allow Power Services to receive Alcoa's meter data and invoices from Transmission Services, BPA's metering function, or BPA's billing function.

14.4 Confidentiality

Before Alcoa provides information to BPA that Alcoa deems to be confidential commercial or financial information, Alcoa shall clearly designate such information as confidential. BPA shall notify Alcoa as soon as practicable, but in any case no later than as provided by applicable law or regulation, of any request received under the Freedom of Information Act (FOIA) (5 U.S.C. §§ 552 *et seq.*), or under any other federal law or court or administrative order, for any information designated as confidential by Alcoa. BPA shall only release such confidential information consistent with FOIA, or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of such confidential information within BPA to employees who need it for purposes of administering this Agreement.

15. CONSERVATION AND ENVIRONMENTAL ATTRIBUTES

15.1 Conservation

Alcoa shall verify and report all cost-effective (as defined by section 3(4) of the Northwest Power Act) non-BPA-funded conservation measures and projects savings achieved by Alcoa through the Regional Technical Forum's Planning, Tracking and Reporting System or its successor tool. Verification protocols of conservation measures and projects, reporting timelines and documentation requirements shall comply with BPA's Energy Efficiency Implementation Manual or its successor.

15.2 **Renewable Energy Certificates and Carbon Credit Treatment**

15.2.1 "Carbon Credit" means an Environmental Attribute consisting of greenhouse gas emission credits, certificates, or similar instruments.

15.2.2 "Environmental Attributes" means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.

15.2.3 "Renewable Energy Certificates" or "RECs" means the certificates, documentation, or other evidence that demonstrates the ownership of Environmental Attributes.

15.2.4 BPA shall not be obligated to provide Environmental Attributes, Carbon Credits, or RECs, or the value of any or all of them, to Alcoa under this Agreement, absent a statutory obligation, or final court decision or order, requiring it to do so.

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15.2.5 BPA reserves any ratemaking authority it otherwise possesses to determine and factor in a share of the value and/or cost of any or all of the RECs and Carbon Credits for the purpose of determining applicable wholesale rates pursuant to section 7(c)(2) of the Northwest Power Act. BPA further reserves its ratemaking authority to recover any costs resulting from such ratemaking actions through rates, including rates applicable to Alcoa.

16. NOTICES AND CONTACT INFORMATION

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

(1) delivered in person;

(2) by a nationally recognized delivery service with proof of receipt;

(3) by United States Certified Mail with return receipt requested;

(4) electronically, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or

(5) by another method agreed to by the Parties.

References in this Agreement to the "BPA representative" and the "Alcoa representative" are to the persons listed below. Notices are effective when received.

Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

If to Alcoa:	If to BPA:
Alcoa Inc.	Bonneville Power Administration
,	905 NE 11th Avenue
,	P.O. 3621
,	Portland, OR 97208-3621
Attn: ,	Attn: ,
,	Account Executive
Phone:,	Phone:,
FAX: ,	FAX: ,
E-Mail: ,	E-Mail: ,

Deleted: 8650 Mountain View Road
Deleted: P.O. 927
Deleted: Ferndale, WA 98248
Formatted: English (U.S.)
Deleted: Mike Roussem
Deleted: Mark E. Miller
Deleted: Plant Manager
Deleted: 360-384-7061
Deleted: 503-230-4003
Deleted: 360-384-6185
Deleted: 503-230-3681
Deleted: Mike.Roussem@alcoa.com
Deleted: memiller@bpa.gov

17. UNCONTROLLABLE FORCES

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which by exercise of that Party's reasonable care, diligence and foresight such Party was unable to avoid. Uncontrollable Forces include but are not limited to:

17.1 any unplanned curtailment or interruption of firm transmission service used to deliver Firm Power under this Agreement to Alcoa whether such curtailment or interruption occurs on BPA's or a third party's transmission system;

17.2 any failure of Alcoa's production, distribution or transmission facilities that prevents Alcoa from taking Firm Power delivered to the Point of Receipt;

17.3 strikes or work stoppage, including the threat of imminent strikes or work stoppages; *provided, however*, that nothing contained in this provision shall be construed to require any party to settle any strike or labor dispute in which it may be involved.

17.4 floods, earthquakes, or other natural disasters; terrorist acts; and

17.5 final orders or injunctions issued by a court or regulatory body having competent jurisdiction which the party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The

economic hardship of either Party shall not constitute an Uncontrollable Force.

If an Uncontrollable Force prevents a party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with section 18, Notices and Contact Information.

18. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law. Alcoa and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 20, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

18.1 Judicial Resolution

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Alcoa or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 18, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section 18, then Alcoa may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 18.

18.2 Arbitration

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 18.1 above, shall be subject to arbitration, as set forth below.

Alcoa may request that BPA engage in binding arbitration to resolve any dispute. If Alcoa requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. BPA may request that Alcoa engage in binding arbitration to resolve any dispute. In response to BPA's request, Alcoa may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 18.1 above and is not resolved via binding arbitration, unless Alcoa notifies BPA that it does not wish to proceed with nonbinding arbitration.

18.3 **Arbitration Procedure**

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

18.4 **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 18. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

18.5 **Finality**

18.5.1 In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

18.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether

Table 3

Net Cost Check	$ 31,970,002	$ 49,970,301	$ 81,940,303
IP Revenues	$ 93,948,090	$ 97,002,675	$ 190,950,765

$48 per MWh test

	Cost FY2010	FY2011		HLH LLH split
Forecasted Cost	$ -	$ -	$ -	
Acqusition Cost	$ -	$ -	$ -	
Acqusitions Made				
Acqusitions to be Made				
Inventory Cost	$ 125,918,091	$ 146,972,976	$ 272,891,068	
Inventory Applied	$ 125,918,091	$ 146,972,976	$ 272,891,068	
Inventory to be Applied				
Credit Cost				
Environmental and Regulatory Cost				
Total - by Fiscal Year				

$	49.45	per MWh of Sales to Alcoa during FY10-11
$	48.67	per MWh of 320 aMW Sale to Alcoa for the entire FY10-11 period
	5,518,080	MWh Sales to Alcoa during FY10-11
	618,240	MWh of actual sales to thru effective date of increase
	4,899,840	MWh of 320 aMW sales to Alcoa subsequent to the effective date
	730	total days in period

assumes 3-month notice given at contract signing

	Volume (MWh incl losses) FY2010	FY2011	
Forecasted Cost			
Acqusition Cost			
Acqusitions made	-	-	-
Acqusitions to be Made	2,766,463	2,856,461	5,622,924
Inventory Cost			
Inventory Applied	-	-	-
Inventory to be Applied	-	-	-
Credit Cost	-	-	-
Environmental and Regulatory Cost	-	-	-
Sum of Acquisitions & Inventory - by Fiscal Year	2,766,463	2,856,461	5,622,924

** Loads applied to Credit and E&R Costs may not be additive.

Table 3 continued

Cost to Serve

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31	30
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisions made	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Acquisitions to be Made	$ 8,756,743	$ 8,474,267	$ 8,756,743	$ 11,347,401	$ 10,249,266	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 12,865,206	$ 11,620,186	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,450,200	$ 12,450,200
Inventory Cost																								
Inventory Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Inventory to be Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Credit Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Environmental and Regulatory Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total - by Month	$ 8,756,743	$ 8,474,267	$ 8,756,743	$ 11,347,401	$ 10,249,266	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 12,865,206	$ 11,620,186	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,450,200	$ 12,450,200

Volume Required to Serve (MWh incl losses)

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31	30
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisions made	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Acquisitions to be Made	212,778	205,430	212,278	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778	242,604	234,778	242,604	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778
Inventory Cost																								
Inventory Applied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Inventory to be Applied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Credit Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Environmental and Regulatory Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sum of Acquisitions & Inventory - by Month	212,778	205,430	212,278	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778	242,604	234,778	242,604	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778

** Loads applied to Credit and E&R Costs may not be additive

Average Load (MWh, not incl losses)

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31	30
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisions made	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Acquisitions to be Made	280	280	280	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320
Inventory Cost																								
Inventory Applied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Inventory to be Applied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Environmental and Regulatory Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum of Acquisitions & Inventory - by Month	280	280	280	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320

** Loads applied to Credit and E&R Costs may not be additive

Weighted Average Unit Cost by Month

	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisions made	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Acquisitions to be Made	$ 41.25	$ 41.25	$ 41.25	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03
Inventory Cost																								
Inventory Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Inventory to be Applied	$ 41.25	$ 41.25	$ 41.25	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03
Credit Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Environmental and Regulatory Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Expected acquisitions	$ 38.77	$ 38.77	$ 38.77	$ 43.96	$ 43.98	$ 43.96	$ 43.98	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84

Exhibit C
SPECIAL PROVISIONS

1. **BPA APPROPRIATIONS REFINANCING**

In accordance with section 21.2 of the body of this Agreement, section (i) of the BPA Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. No. 104-134, 110 Stat. 1321–350, is included in this Agreement--

(i) **Contract Provisions**

In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1996, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1996--

(1) the Administrator shall establish rates and charges on the basis that

(A) the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b) of the BPA Refinancing Act;

(B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under subsection (c) of the BPA Refinancing Act;

(C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and

(D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

(2) apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b) of the BPA Refinancing Act and to pay the interest on the principal amount under subsection (c) of the BPA Refinancing Act, no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

(3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United

States on a claim for a breach of the contract provisions required by this Part; and

(4) the contract provisions specified in this Part do not--

(A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or

(B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to--

(i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

(ii) design rates

2. REVISIONS

This exhibit shall be revised by mutual agreement of the Parties to reflect additional special provisions during the term of this Agreement.

Exhibit D
METERING

1. METERING

Directly Connected Points of Delivery

BPA POD Name: Intalco 13.8 kV;
BPA POD Number: TBD*;
WECC Balancing Authority: BPAT;

Location: the point in BPA's Intalco Substation where the 13.8 kV facilities of BPA and Alcoa are connected;

Voltage: 13.8 kV;

TBD* This data element is currently unresolved and shall be determined by BPA prior to June 1, 2011.

2. REVISIONS

Each Party shall notify the other in writing if updates to this exhibit are necessary to accurately reflect the actual characteristics of POD and meter information described in this exhibit. The Parties shall revise this exhibit to reflect such changes. The Parties shall mutually agree on any such exhibit revisions and agreement shall not be unreasonably withheld or delayed. The effective date of any exhibit revision shall be the date the actual circumstances described by the revision occur.

Exhibit E
SCHEDULING

1. SCHEDULING FEDERAL RESOURCES

Alcoa is responsible for creating E-Tags for all deliveries of federal power purchased under this Agreement.

In the event of an unplanned outage that affects future hours, Alcoa or its scheduling agent is responsible for adjusting e-Tags to accurately reflect the amount of load actually being served by generation provided by BPA.

2. AFTER THE FACT

BPA and Alcoa agree to reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). BPA and Alcoa shall verify all transactions per this Agreement, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

3. REVISIONS

BPA may unilaterally revise this exhibit: (1) to implement changes that are applicable to all customers who are subject to this exhibit and that BPA determines are reasonably necessary to meet its power and scheduling obligations under this Agreement or (2) to comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit F
POWER RESERVES

1. DEFINITIONS

(a) "Event" is a system condition under which PS needs additional power to meet its obligations during a system disturbance. The beginning of an Event shall be identified by notice from the TS dispatcher to the TS scheduler that such a system disturbance has occurred, and Alcoa's scheduling agent shall notify Alcoa that Restricted Energy is required. The end of the Event shall occur the earlier of when; a) initially established; b) Alcoa's scheduling agent has notified Alcoa that full service has been restored; or c) 105 minutes from the beginning of the Event. An Event shall not include BPA electing not to purchase power for economic reasons, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.

(b) "Event Duration" shall be the total cumulative Event Minutes of the Event.

(c) "Event Minute" shall be the minutes of restriction (or any portion thereof) during an Event.

(d) "Contingency Reserves" are those reserves provided by Alcoa under this Agreement for purposes of providing reserves for BPA's firm power loads within the region, as provided for in the Northwest Power Act.

(e) "Reserve Amount" shall be the kilowatt (kW) amount of Contingency Reserves available to BPA by Alcoa specified in Section 2 of this Exhibit.

(f) "Restricted Energy" means the requested megawatt-hour (MWh) amount of energy not made available to Alcoa hereunder because of an Event.

2. AMOUNT AND TYPES RESERVES

When necessary to provide Contingency Reserves, BPA may restrict the Reserve Amount, or the requested portion thereof, for a period of time (Restricted Energy). The Reserve Amount (in kilowatts) shall equal the amount of Minimum DSI Operating Reserve – Supplemental specified in the 2010 GRSP, or its successor.

Notwithstanding any other provision of this Agreement, BPA shall use its best efforts to end an Event as soon as possible, and Alcoa agrees to cooperate in development of mechanisms that will enhance BPA's ability to notify Alcoa of the end of an Event.

The Parties recognize that with the addition of certain electronic controls at the Intalco Plant, the Intalco Load can be varied to help accommodate within-hour fluctuations on BPA's system associated with wind power generation. The Parties agree to undertake discussions within 60 days after the execution of this

Agreement to identify and implement any agreed to actions and agreements necessary to achieve such wind integration benefits.

3. QUALITY AND CHARACTER OF RESERVES

Contingency Reserves provided by Alcoa shall be consistent with North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and Northwest Power Pool (NWPP) standards and criteria:

(a) the Reserve Amount, or the requested portion thereof, must be offline within ten (10) minutes after the first telephone call by Alcoa's scheduling agent to Alcoa;

(b) the Reserve Amount, or the requested portion thereof, must be available to be offline for up to one-hundred five (105) minutes.

Alcoa shall provide a contact at the Facility at the following phone number:

Alcoa
Phone: TBD

Alcoa shall maintain such contact for every hour in the Term of the Agreement in which the Minimum DSI Operating Reserve – Supplemental amount is greater than zero megawatts.

Alcoa will provide the Restricted Energy to BPA by an interruption of its loads in an amount equal to or greater than the amount of such specified Restricted Energy, and in each case shall continue such load interruption for the duration of the Event. BPA will bill and Alcoa shall pay for the Restricted Energy as though actually delivered to Alcoa.

The TS dispatcher will notify the TS scheduler of a contingency event. Depending on whether the event occurs less than 30 minutes past the delivery hour, or occurs greater than or equal to 30 minutes past the delivery hour either the TS scheduler or Alcoa's scheduling agent will adjust Alcoa's e-tags in real time. In both cases Alcoa's scheduling agent shall contact Alcoa at the phone number in this section to: (a) initiate each Event; and (b) terminate each Event. Within ten (10) minutes following such notice by the scheduling agent to initiate an Event, Alcoa shall commence providing the Restricted Energy to BPA. Alcoa shall not restore its use of the Restricted Energy until the lesser of: (a) one-hundred five (105) minutes; or (b) immediately following notice from the scheduling agent terminating an Event.

PS retains the right to verify Alcoa's provision of Restricted Energy by comparing the metered amounts before an Event, during an Event, and after an Event is terminated. If such verification fails to demonstrate that the Restricted Energy was made available to BPA by Alcoa for the Event Duration, then PS, in its sole discretion, may: (a) terminate the compensation specified in Section 4 of this

Exhibit for the undemonstrated portion of the Reserve Amount for the remaining Term of the Agreement; and, (b) notify TS of the undemonstrated portion of the Reserve Amount. Alcoa acknowledges that any undemonstrated portion of the Reserve Amount may cause its transmission supplier to take additional actions subject to the provisions of the Transmission Service Agreements Alcoa maintains with its transmission supplier, that may include an assessment of the monetary penalty described in the Failure to Comply provision of the prevailing TS tariff for transmission service.

4. COMPENSATION FOR CONTINGENCY RESERVES

Alcoa will be compensated by PS for Minimum DSI Operating Reserve - Supplemental provided in this Agreement through an adjustment to the IP rate, as provided for in the Northwest Power Act.

5. RETURNED ENERGY

BPA must make any Restricted Energy during an Event available to Alcoa within 24 hours ("Returned Energy") in mutually agreed flat hourly amounts and hours. It is understood by Parties that Returned Energy does not need to be scheduled during hours immediately following an Event and that the Returned Energy will likely be made available during Light Load Hours.

Scheduling of Returned Energy amounts will be in addition to federal power purchased pursuant to section 4 of the body of the Agreement. Alcoa shall be responsible for creating E-Tags and transmission required for the delivery of Returned Energy.

6. TESTING OF RESERVES

BPA shall have the option to conduct annual tests of the procedure specified in this Exhibit and Alcoa shall participate and provide any Restricted Energy requested.

7. REVISIONS

BPA may unilaterally revise this Exhibit F to implement changes that are applicable to Alcoa and that BPA determines are reasonably necessary for reserves provided under this Agreement to: (a) reflect changes in the value of the DSI Reserves Adjustment; and (b) comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit G
EMPLOYMENT LEVELS

1. Definitions

1.1 "Average Firm Power" means the average Firm Power during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.

1.2 "Average FTE" means the average FTE, as determined pursuant to Table 1 in section 2 below, during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.

1.3 "Firm Power" shall have the meaning ascribed to it in section 2.11 of the body of this Agreement.

1.4 "FTE" shall have the meaning ascribed to it in Section 8 of the body of this Agreement.

2. Relationship between Firm Power and FTE

For the avoidance of doubt, pursuant to this Exhibit G, Firm Power and FTE are proportional for the purposes of this Agreement, based on the amount of Firm Power Alcoa is consuming. As applicable and as described in Table 1 below, the proportion is 1.65 Average FTE per aMW of Average Firm Power:

Table 1 - Proportional Relationship between Average Firm Power and Average FTE

Average Firm Power (aMW)	Average FTE	Proportional FTE
320	528	1.65
280	462	1.65
240	396	1.65
200	330	1.65
160	264	1.65
120	198	1.65
80	132	1.65
72	**120**	n/a
40	**120**	n/a
0	**120**	n/a

During periods of curtailment, the average of the reported monthly FTE shall be equal to or greater than 120.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Monday, August 17, 2009 6:04 PM
To: 'Pereira, Marc A.'; Rousseau, Mike F.; Laun, Max W.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer; MICHAEL DOTTEN
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Hanlon,Douglas W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Draft Power Sale Contract

Attachments: Power Sales Agreement ALCOA - 081709 (pm version to Alcoa).doc

All,
The attached version addresses issues discussed on our earlier call:

Power Sales
greement ALCOA - :

While we think items with comments in the Agreement are negotiable, the $350 million must be changed to implement our Friday agreement.

We have blocked out 11am pacific for follow-on conference call. Please provide dial-in or let us know that you are expecting us to do so.

Thank you.

Mark

DRAFT
08/14/2009

Contract No. 09PB-#####

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POWER SALES AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

ALCOA INC.

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This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and Alcoa Inc. (Alcoa), hereinafter individually referred to as "Party" and collectively referred to as the "Parties." Alcoa is a corporation organized under the laws of the State of Pennsylvania, and registered therein as entity number 10514, taxpayer identification number 25-0317820.

RECITALS

BPA is authorized to sell power to Alcoa, a direct service industrial customer, pursuant to section 5(d)(1)(A) of the Northwest Power Act, 16 U.S.C. § 839c(d)(1)(A).

In *Pacific Northwest Generating Cooperative v. Department of Energy*, 550 F.3d 846 (2008) the Ninth Circuit Court of Appeals invalidated monetary benefits provisions of power sales contracts between BPA and its aluminum company direct service industrial customers (DSIs), but held that BPA may make sales to DSIs at the Industrial Firm Power Rate (IP rate). This Agreement addresses the 2-year period remaining under those power sales contracts and potentially, a subsequent 5-year period. Under both time periods power sales will be made to Alcoa at the IP rate.

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Concomitantly with the execution of this Agreement, BPA has issued a record of decision addressing comments regarding this Agreement submitted by BPA customers and other interested parties, and such record of decision explains BPA's rationale for its decision to enter into this Agreement.

BPA has functionally separated its organization in order to separate the administration and decision-making activities of BPA's power and transmission functions. References in this Agreement to Power Services or Transmission Services are solely for the purpose of clarifying which BPA function is responsible for administrative activities that are jointly performed.

The Parties agree:

1. TERM

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2016, unless it is terminated earlier pursuant to the terms of this Agreement. Firm Power made available by PS for delivery to the Intalco Plant shall commence on October 1, 2009.

All liabilities incurred by each Party hereunder shall be preserved until satisfied, notwithstanding the expiration or termination of this Agreement.

2. DEFINITIONS

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used or, if not so defined, shall have the meaning stated in BPA's applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions

("GRSPs"). If a term is not defined in any of the named sources, then the term shall be given its normal and customary meaning, with due regard to generally accepted business practices, including the status of the undefined term as a generally recognized term of art.

2.1 "Alcoa Load" means that Alcoa hourly load at the Intalco Plant served under this Agreement.

2.2 "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

2.3 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.

2.4 "BPA's Payment Exposure" shall have the meaning described in section 20.8.2.

2.5 "Business Days" means every Monday through Friday except for Federal holidays.

2.6 "Cost Cap" means shall have the meaning as defined in Exhibit B. **Deleted:** 5

2.7 "Demand Entitlement" shall have the meaning as defined in section 1.2 of Exhibit A. **Deleted:** 6

2.8 "Diurnal" means the division of hours within a month between Heavy Load Hours (HLH) and Light Load Hours (LLH). **Deleted:** 7

2.9 "Federal Base System Resources" has the meaning contained in the Northwest Power Act, 16 U.S.C. § 839a(10). **Deleted:** 8

2.10 "Firm Power" means the amount(s) of electric power that PS will make available at the Industrial Firm power rate to Alcoa under this Agreement in equal hourly amounts for every hour of the Fiscal Year. **Deleted:** 9

2.11 "Fiscal Year" or "FY" means the period that begins each October 1 and which ends the following September 30. Even though, as noted in section 1, certain actions are, or may be, required prior to the commencement of power deliveries, the first Fiscal Year under this Agreement is the 2012 Fiscal Year, which begins October 1, 2011, and continues through September 30, 2012. **Deleted:** 0

2.12 "Forecasted Net Cost" shall have the meaning as defined in Exhibit B. **Deleted:** 1

2.13 "Intalco Plant" means the Alcoa aluminum smelting facilities served from BPA's Intalco Substation, where the 13.8 kilovolt facilities of BPA and Alcoa are connected.

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2.14 "Issue Date" shall have the meaning described in section 13.1.

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2.15 "Net Firm Power" shall have the meaning described in Exhibit G.

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2.16 "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 et seq., Public Law No. 96-501, as amended.

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2.17 "Points of Metering" means the interconnection points between BPA, Alcoa and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.

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2.18 "Power Reserves" shall have the meaning described in Exhibit F.

Deleted: 7

2.19 "Power Services" or "PS" means the organization, or its successor organization, within BPA that is responsible for the management and sale of Federal power.

Deleted: 8

2.20 "Primary Points of Receipt" shall have the meaning described in section 11.1.

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2.21 "Prior Agreement" means Contract No. 06PB-11744 between BPA and Alcoa, as amended.

Deleted: 0

2.22 "Region" or "Regional" means the Pacific Northwest as defined in the Northwest Power Act, 16 U.S.C. § 839a(14).

Deleted: 1

2.23 "Transmission Services" or "TS" means the organization or its successor organization, within BPA that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

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2.24 "Wheel Turning Load" shall have the meaning described in 2010 GRSP and equal six (6) aMW.

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3. APPLICABLE RATES

Sales by BPA to Alcoa under this Agreement shall be made at the Industrial Firm Power rate (the "IP rate") in effect at the time of such sales, and are subject to all applicable GRSPs.

3.1 Industrial Firm Power Rate

Alcoa shall purchase Firm Power provided by BPA under this Agreement at the applicable IP rate for the rate period, as established through the procedures specified in section 7(i) of the Northwest Power Act (16 U.S.C §

839e(i)), or its successor, including all adjustments and charges developed in accordance with all applicable statutory ratemaking directives.

Alcoa acknowledges that BPA has not agreed to propose that the IP rate be established at any particular level for any rate period included within the term of this Agreement, and that, while it reserves all rights with respect to challenging rates proposed or established by BPA, Alcoa bears any risks associated with the IP rate level established each rate period by BPA pursuant the above referenced rate setting procedures.

3.2 **Additional Charges**

Alcoa is subject to any applicable additional charges, including penalty charges (e.g., the Unauthorized Increase Charge), established in BPA's Wholesale Power Rate Schedules and associated GRSPs.

4. PURCHASE AND SALE OF FIRM POWER

During the period FY 2010 through FY 2016, BPA shall make available Firm Power in amounts specified herein and Alcoa shall purchase such Firm Power unless: (a) BPA has determined pursuant to Exhibit B that the cost to serve the Alcoa Load with Firm Power for the FY 2012 through FY 2016 period will exceed the Cost Caps identified in Exhibit B; (b) this Agreement has terminated; or (c) Alcoa has failed to operate the Intalco Plant at a level equal to or greater than 160 aMW for a least one complete Fiscal Year during the period October 1, 2006, through September 30, 2009.

All purchases of Firm Power by Alcoa under this Agreement shall be used exclusively to serve the Alcoa Load.

5. PURCHASE AND SALE OF FIRM POWER FROM FY 2010 THROUGH FY 2011

5.1 **Firm Power Sale by BPA from FY 2010 through FY 2011**

During the period that begins on October 1, 2009, and continues through September 30, 2011, BPA shall sell and Alcoa shall purchase 285 aMW of Firm Power, as such amount may be increased pursuant to section 5.2 below.

5.2 **Increase from 285 aMW to 320 aMW**

Alcoa may, upon written notice to BPA, request that the amount of Firm Power be increased from 285 aMW to 320 aMW for the balance of FY 2010 through FY 2011 period. Alcoa's notice shall include a schedule, by month, of Alcoa's proposed operating levels to achieve such Firm Power increase. If BPA determines, pursuant to Exhibit B, that the cost to serve the Alcoa Load with 320 aMW of Firm Power for the balance of the FY 2010 through FY 2011 period does not exceed the applicable Cost Caps specified in Exhibit B, then BPA shall accept such request; if not, BPA shall reject such request. BPA's determination shall be conclusive. BPA shall provide Alcoa with written notice of its determination, including the basis for such determination, within 5 business days following the receipt of such notice.

Deleted: c

Deleted: Such increase, if accepted by BPA, shall occur no earlier than 90 days following the receipt of such notice by BPA.

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Such increase, if accepted by BPA, shall occur no earlier than 90 days following the receipt of such notice by BPA, on the first day of a calendar month.

Deleted: Any Firm Power increase to 320 aMW shall begin

6. PURCHASE AND SALE OF FIRM POWER FROM FY 2012 THROUGH FY 2016

6.1 Firm Power Sale by BPA for FY 2012 through FY 2016

During the period that begins on October 1, 2011, and continues through September 30, 2016, BPA shall sell and Alcoa shall purchase 320 aWM of Firm Power, subject to the provisions in section 6.2 below.

6.2 Termination

If BPA determines, pursuant to Exhibit B, that the cost to serve the Alcoa Load with 320 aMW of Firm Power for the entire FY 2012 through FY 2016 period will exceed the Cost Cap specified in Exhibit B, then on or before March 31, 2010, BPA shall provide Alcoa with written notice that this Agreement shall terminate at 2400 hours on September 30, 2011. Such notice shall include the basis for such determination, and such determination shall be conclusive.

7. COST CAPS AND OTHER LIMITATIONS

7.1 Cost Caps

The Cost Caps specified in Exhibit B of this Agreement represent the maximum cost BPA will incur to support sales to Alcoa, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs allocated by BPA, pursuant to Exhibit B, to the cost of service under this Agreement for purposes of making its determination pursuant to Exhibit B regarding Cost Caps.

7.2 Other Limitations

Alcoa understands and agrees that BPA will not make a plant specific acquisition from a coal-fired resource, and that BPA will not acquire power from a supplier that is unwilling to absorb all of the regulatory or environmental costs referred to in section 7.1 above, that are imposed on the supplier after the date the acquisition contract is entered into.

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8. EMPLOYMENT LEVELS

Except during any termination period in which Alcoa is not operating, Alcoa shall employ at least the number of full time equivalent (FTE) employees specified in Exhibit G. "FTE" shall mean full time annual employment for regular employees of Alcoa at the Intalco Plant and contractor employees working within Whatcom County, Washington during a calendar month.

Deleted: any period of curtailment pursuant to section 9 below, or

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Comment [m1]: There is a question regarding relationship of FTE and base salary for any month, particularly during curtailment.

Alcoa shall notify BPA in writing in the event that, during any calendar month, Average FTE levels are reduced by more than one percent below the applicable level specified in Exhibit G. Such notice shall be provided within five Business Days

following such reduction. Such notice shall specify the date by which Alcoa anticipates Average FTE levels will equal or exceed the applicable level specified in Exhibit G; *provided, however*, that this Agreement will be subject to termination by BPA in the event Alcoa fails to provide BPA with a written plan and comply with such plan for meeting the applicable Average FTE levels specified in Exhibit G. Such plan shall demonstrate that Alcoa shall meet Average FTE requirements within 90 days following the end of the month during which such Average FTE levels fell below the 1 percent threshold. In order to permit BPA to determine whether Alcoa is meeting its plan to meet FTE obligations, Alcoa shall provide monthly reports to BPA demonstrating its FTE by month and whether its Average FTE levels meet the requirements of this section 8 within 15 days following the end of the month for which it is reporting. In the event that Alcoa fails to comply with its plan for reaching Average FTE levels, BPA may provide notice of termination within 30 days following the monthly notice provided in this section 8 and the effective date of termination shall be 90 days following the date such notice is received by Alcoa.

Deleted: meet the applicable Average FTE levels specified in Exhibit G within __ days following the notice provided in this section 8

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9. CURTAILMENT

9.1 Notice of Curtailment

Alcoa may, upon written notice to BPA, curtail all or a portion of the Alcoa Load, subject to the limitations specified in section 9.2 below. Any such notice shall specify the amount of Alcoa Load to be curtailed, the duration of such curtailment, and the effective date that such curtailment shall commence; *provided however*, that such effective date shall be no earlier than 90 days following the date that BPA receives such notice. The period of curtailment shall be for consecutive months, and the amount curtailed shall be the same in all months. Any such notice, once received, shall not be changed by Alcoa without BPA's written consent.

9.2 Number of Curtailments Allowed and Cumulative Duration of Curtailments

Alcoa shall not provide BPA with more than two written notices to curtail during the term of this Agreement, and the cumulative duration of any such curtailment(s) shall not exceed 24 months; and provided further, the cumulative duration of such curtailment(s) during FY 2012 through FY 2016 period shall not exceed 18 months. Alcoa shall maintain the applicable employment level specified in Exhibit G during any curtailment.

Deleted: Alcoa shall not provide BPA more than one written notice during FY 2012 through FY 2016 and

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9.3 No Compensation to Either Party During Curtailment

During any period of curtailment, Alcoa shall not incur any take-or-pay obligation for the amount curtailed, and BPA shall have no obligation to compensate Alcoa in any manner for the amount curtailed.

9.4 No Purchases from Third Parties During Curtailment

During any period of curtailment, Alcoa shall not make any market purchases from third party suppliers to replace all or any portion of the amount curtailed.

9.5 **No Curtailment Following Notice of Termination**
Alcoa shall not curtail pursuant to this section 9 following a notice of termination pursuant to section 21.1.1 below.

10. SCHEDULING

10.1 **Scheduling**
Alcoa shall schedule power in accordance with Exhibit C.

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11. DELIVERY

11.1 **Definitions**

11.1.1 "Primary Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is forecasted to be made available by Power Services to Alcoa for purposes of obtaining a long-term firm transmission contract.

11.1.2 "Scheduling Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is made available by Power Services to Alcoa for purposes of transmission scheduling.

11.1.3 "Point of Delivery" means the point described in Exhibit E to which Alcoa delivers power.

11.2 **Transmission Service**

11.2.1 Alcoa is responsible for making arrangement for, and payment of, delivery of power from the Scheduling Points of Receipt, including all transmission and ancillary service costs.

11.2.2 Alcoa shall obtain prior BPA approval for, and shall provide at least 60 days' notice to Power Services prior to changing Balancing Authority Areas and.

11.2.3 At Alcoa's request, Power Services shall provide Alcoa with Primary Points of Receipt and other information needed to enable Alcoa to obtain long-term firm transmission for delivery of power sold under this Agreement. If required by Transmission Services for purposes of transmission scheduling, then Power Services shall provide Alcoa with Scheduling Points of Receipt. Power Services has the right to provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt. If BPA does provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt, then BPA shall reimburse Alcoa for any incremental, direct, non-administrative costs incurred by Alcoa to comply with delivering Firm Power from such a Scheduling Point of

Receipt to Alcoa's Intalco Plant if the following conditions, as outlined in 11.2.3.1 or 11.2.3.2 below, as applicable, have been met:

11.2.3.1 If Alcoa has long-term Point to Point (PTP) transmission service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.1.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.1.2 Alcoa has submitted a request to redirect its long-term firm PTP transmission service to deliver Firm Power from the Scheduling Point of Receipt on a firm basis, but that request was not granted; and

11.2.3.1.3 Alcoa's transmission schedule was curtailed due to non-firm status under PTP transmission service or Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.2 If Alcoa has long-term Network Integration Transmission Service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.2.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.2.2 Alcoa's transmission schedule was curtailed due to non-firm status under its secondary service status and Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.3 In the event power cannot be scheduled from a BPA Scheduling Point of Receipt (other than a Primary Point of Receipt) then Alcoa may request and, consistent with BPA's standard practices to achieve efficient system operation and reliability, BPA will move the Scheduling Point of Receipt to a point on the FCRTS where energy can be made available and scheduled to Alcoa's load ("Alternative Scheduling Point of Receipt"), if such a point is available and providing the power from that Alternative Scheduling Point of Receipt

would not cause BPA to violate any type of non-power constraint.

11.3 **Liability for Delivery**
Alcoa waives any claims against BPA arising under this Agreement for non-delivery of power to any points beyond the applicable Scheduling Points of Receipt, except for reimbursement of costs as described in section 11.2.3. BPA shall not be liable under this Agreement for any third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership.

11.4 **Real Power Losses**
BPA is responsible for the real power losses necessary to deliver Firm Power across the Federal Columbia River Transmission System to Alcoa's POD(s) listed in Exhibit D.

12. METERING

Alcoa's purchase obligations in sections 4 are not dependant on amounts scheduled and do not require retail load meters for billing and payment.

13. BILLING AND PAYMENT

13.1 **Billing**
BPA shall bill Alcoa monthly for all products and services provided during the preceding month(s). BPA may send Alcoa an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to Alcoa. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

13.2 **Payment**
Alcoa shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the Issue Date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

If Alcoa has made payment on an estimated bill then:

13.2.1 if the amount of the final bill exceeds the amount of the estimated bill, then Alcoa shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or

13.2.2 if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay Alcoa the difference between the estimated bill

and final bill by the 20th day after the final bill's Issue Date. If the 20th day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

13.3 **Late Payments**

After the Due Date, a late payment charge, equal to the higher of:

(1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or

(2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

13.4 **Termination**

If Alcoa has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment in full. If Alcoa does not provide payment within three Business Days after receipt of an additional written notice from BPA, and BPA determines in its sole discretion that Alcoa is unable to make the payments owed, then BPA may terminate this Agreement. Written notices sent under this section must comply with section 18 Notices and Contact Information.

13.5 **Disputed Bills**

13.5.1 If Alcoa disputes any portion of a charge or credit on Alcoa's estimated or final bills, Alcoa shall provide written notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Alcoa shall pay the entire bill by the Due Date. This section 13.5.1 does not allow Alcoa to challenge the validity of any BPA rate.

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13.5.2 Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

13.5.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 18, Alcoa is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

14. INFORMATION EXCHANGE AND CONFIDENTIALITY

14.1 General Requirements

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement, and to forecast Alcoa Load, forecast BPA system load, comply with NERC reliability standards, prepare bills, resolve billing disputes, and otherwise implement this Agreement. For example, this obligation includes transmission and power scheduling information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.). Information requested under this section 14.1 shall be provided in a timely manner.

14.2 Reports

Alcoa shall notify BPA of public sources from which Alcoa's annual financial reports and any statements by its authorized officers are readily available and BPA will secure such reports and statements for its use. In the event Alcoa's annual financial reports and statements by its authorized officers become unavailable from public sources Alcoa shall provide such reports upon request by BPA.

14.3 Meter and Billing Data

Alcoa consents to allow Power Services to receive Alcoa's meter data and invoices from Transmission Services, BPA's metering function, or BPA's billing function.

14.4 Confidentiality

Before Alcoa provides information to BPA that Alcoa deems to be confidential commercial or financial information, Alcoa shall clearly designate such information as confidential. BPA shall notify Alcoa as soon as practicable, but in any case no later than as provided by applicable law or regulation, of any request received under the Freedom of Information Act (FOIA) (5 U.S.C. §§ 552 *et seq.*), or under any other federal law or court or administrative order, for any information designated as confidential by Alcoa. BPA shall only release such confidential information consistent with FOIA, or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of such confidential information within BPA to employees who need it for purposes of administering this Agreement.

15. CONSERVATION AND ENVIRONMENTAL ATTRIBUTES

15.1 Conservation

Alcoa shall verify and report all cost-effective (as defined by section 3(4) of the Northwest Power Act) non-BPA-funded conservation measures and projects savings achieved by Alcoa through the Regional Technical Forum's Planning, Tracking and Reporting System or its successor tool. Verification protocols of conservation measures and projects, reporting timelines and documentation requirements shall comply with BPA's Energy Efficiency Implementation Manual or its successor.

15.2 **Renewable Energy Certificates and Carbon Credit Treatment**

15.2.1 "Carbon Credit" means an Environmental Attribute consisting of greenhouse gas emission credits, certificates, or similar instruments.

15.2.2 "Environmental Attributes" means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.

15.2.3 "Renewable Energy Certificates" or "RECs" means the certificates, documentation, or other evidence that demonstrates the ownership of Environmental Attributes.

15.2.4 BPA shall not be obligated to provide Environmental Attributes, Carbon Credits, or RECs, or the value of any or all of them, to Alcoa under this Agreement, absent a, statutory obligation, court decision, or order requiring it to do so.

15.2.5 BPA reserves any ratemaking authority it otherwise possesses to determine and factor in a share of the value and/or cost of any or all of the RECs and Carbon Credits for the purpose of determining applicable wholesale rates pursuant to section 7(c)(2) of the Northwest Power Act. BPA further reserves its ratemaking authority to recover any costs resulting from such ratemaking actions through rates, including rates applicable to Alcoa.

16. NOTICES AND CONTACT INFORMATION

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

(1) delivered in person;

(2) by a nationally recognized delivery service with proof of receipt;

(3) by United States Certified Mail with return receipt requested;

(4) electronically, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or

(5) by another method agreed to by the Parties.

References in this Agreement to the "BPA representative" and the "Alcoa representative" are to the persons listed below. Notices are effective when received.

Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

If to Alcoa:	If to BPA:
Alcoa Inc.	Bonneville Power Administration
4050 Mountain View Road	905 NE 11th Avenue
P.O. 937	P.O. 3621
Ferndale, WA 98248	Portland, OR 97208-3621
Attn: Mike Rousseau	**Attn:** Mark E. Miller
Plant Manager	Account Executive
Phone: 360-384-7061	**Phone:** 503-230-4003
FAX: 360-384-6185	**FAX:** 503-230-3681
E-Mail: Mike.Rousseau@alcoa.com	**E-Mail:** memiller@bpa.gov

17. UNCONTROLLABLE FORCES

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which by exercise of that Party's reasonable care, diligence and foresight such Party was unable to avoid. Uncontrollable Forces include but are not limited to:

17.1 any unplanned curtailment or interruption of firm transmission service used to deliver Firm Power under this Agreement to Alcoa whether such curtailment or interruption occurs on BPA's or a third party's transmission system;

17.2 any failure of Alcoa's production, distribution or transmission facilities that prevents Alcoa from taking Firm Power delivered to the Point of Receipt;

17.3 strikes or work stoppage, including the threat of imminent strikes or work stoppages; *provided, however*, that nothing contained in this provision shall be construed to require any party to settle any strike or labor dispute in which it may be involved.

17.4 floods, earthquakes, or other natural disasters; terrorist acts; and

17.5 final orders or injunctions issued by a court or regulatory body having competent jurisdiction which the party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The

economic hardship of either Party shall not constitute an Uncontrollable Force.

If an Uncontrollable Force prevents a party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with section 18, Notices and Contact Information.

18. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law. Alcoa and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 20, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

18.1 Judicial Resolution

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Alcoa or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 18, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section 18, then Alcoa may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 18.

18.2 Arbitration

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 18.1 above, shall be subject to arbitration, as set forth below.

Alcoa may request that BPA engage in binding arbitration to resolve any dispute. If Alcoa requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. BPA may request that Alcoa engage in binding arbitration to resolve any dispute. In response to BPA's request, Alcoa may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 18.1 above and is not resolved via binding arbitration, unless Alcoa notifies BPA that it does not wish to proceed with nonbinding arbitration.

18.3 **Arbitration Procedure**

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

18.4 **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 18. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

18.5 **Finality**

18.5.1 In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

18.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether

it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

18.6 **Arbitration Costs**
Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

19. STATUTORY PROVISIONS

19.1 **Prohibition on Resale of Firm Power**
Alcoa shall not resell Firm Power purchased from BPA under this Agreement.

19.2 **BPA Appropriations Refinancing Act**
The text of the BPA Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, is incorporated as shown in Exhibit D, Special Provisions.

20. STANDARD PROVISIONS

20.1 **Amendments**
Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

20.2 **Entire Agreement and Order of Precedence**
This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

20.3 **Assignment**
Alcoa may assign this Agreement upon 90 days written notice, but only to a successor-in-interest that has acquired ownership, through purchase or merger, of Alcoa's facilities that are served, in whole or in part, with power provided under this Agreement, and then only if such assignee expressly

agrees in writing to be bound by the terms of this Agreement. Such assignment will be subject to any reasonable requirement by BPA that the assignee provide credit security, in a form acceptable to BPA, to secure performance of assignee's obligations under this Agreement. It shall not be deemed unreasonable for BPA to require credit security from an assignee with a Moody's credit rating below "A", or the equivalent if rated by another credit rating agency. No other assignment of this Agreement by Alcoa is permitted.

20.4 **No Third-Party Beneficiaries**
This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

20.5 **Waivers**
No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

20.6 **BPA Policies**
Any reference in this Agreement to BPA policies, including any revisions, does not constitute agreement of Alcoa to such policy by execution of this Agreement, nor shall it be construed to be a waiver of the right of Alcoa to seek judicial review of any such policy.

20.7 **Severability**
If any term of this Agreement is found or rendered invalid or unenforceable by a court of competent jurisdiction, then unless that term is not severable from all other provisions of this Agreement, such invalidity or unenforceability shall not otherwise affect any remaining lawful obligations under this Agreement. Neither Party shall be liable to the other Party for any damages associated with any term being severed from this Agreement.

20.8 Credit Assurance

20.8.1 Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA with an irrevocable standby letter of credit in the amount of $20,000,000, in a form acceptable to BPA in the event of any of the following: (a) Alcoa's credit rating from Standard & Poor's drops below BBB-, or Alcoa's credit rating from Moody's drops below Baa3, or the average for a period of 30 or more consecutive days of the 5-year credit default swap for Alcoa as posted by Bloomberg equals or exceeds 700 basis points; (b) Alcoa provides notice of curtailment; or (c) Alcoa provides notice of termination of the Agreement. Such letter of credit shall have an expiration date 1 year from its date of issuance, and BPA may require replacement letters of credit in the amount of $20,000,000 so that a letter of credit in the

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When reasonable grounds for insecurity arise with respect to the performance of Alcoa, BPA may in writing demand adequate assurance of due performance and specify the form such assurance shall take. The type of assurance BPA may require includes, but is not limited to, providing a letter of credit, posting a security deposit, or requiring prepayment, as appropriate. Failure of Alcoa to provide such assurance within the time specified by BPA in its request for adequate assurance shall be considered a material breach and may, in BPA's sole discretion, create reasonable grounds to suspend or terminate this Agreement. If adequate assurance is not provided, or is not provided in the form specified in the request for adequate assurance, BPA shall have five Business Days from the date such assurance was required to be provided to notify Alcoa in writing of its intentions with respect to termination or suspension of the contract. Any waiver by BPA of its right to suspend or terminate this Agreement shall not be considered a waiver of said rights with respect to future instances when ade ... [1]

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amount of $20,000,000 is in place for the duration of a triggering event in (a) or (b) or (c) above.

If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 20.8.1, then BPA may terminate this Agreement.

20.8.2 In the event that conditions (a) and (b) above are simultaneously in place, then BPA may request, and Alcoa shall provide, an additional irrevocable standby letter of credit or an increase to the existing irrevocable standby letter of credit, such that the total amount equals $50 million. In the event that conditions (a) and (c) above are simultaneously in place, then BPA may request, and Alcoa shall provide, an additional irrevocable standby letter of credit or an increase to the existing irrevocable standby letter of credit, such that the total amount equals $100 million or the amount equal to BPA's IP revenue for 320 aMW less the IP revenues associated with the monthly amounts that Alcoa shall take and pay for during the 12-months prior to termination("BPA's Payment Exposure"), whichever is less. Such letter of credit shall have an expiration date 1 year from its date of issuance, and BPA may require replacement letters of credit for the amounts determined in this section 20.8.2 so that a letter of credit in such amount is in place for the duration of any triggering event.

If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 20.8.2, then BPA may terminate this Agreement.

20.8.3 Notwithstanding anything in section 20.8.1, or 20.8.2, should Alcoa's financial responsibility or performance viability become unsatisfactory to BPA in BPA's reasonably exercised discretion, then BPA may seek performance assurance from Alcoa, and until BPA receives assurance it may, if commercially reasonable, suspend its performance. Events that may trigger BPA questioning Alcoa's financial responsibility or performance viability shall be determined according to commercial standards and include, but are not limited to, defaults by Alcoa under other contracts, or other material adverse changes in Alcoa's financial condition. Failure by Alcoa to provide such assurance as is adequate under the circumstances, within a reasonable time not exceeding 30 days, shall be a material breach.

20.9 **Drafting of Agreement**

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation or other event of negotiation, drafting or execution hereof.

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20.10 **Execution by Counterparts**

This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

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20.11 **Waiver of Damages**

In the event the Ninth Circuit Court of Appeals or other court of competent jurisdiction issues a final order that declares or renders this Agreement, or any part thereof, void or otherwise unenforceable, neither Party shall be entitled to any damages or restitution of any nature, in law or equity, from the other Party, and each Party hereby expressly waives any right to seek such damages or restitution. For the avoidance of doubt, the Parties agree this provision shall survive the termination of this Agreement or any order as described herein.

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21. TERMINATION

For ease of reference, this section 21 is intended to collect into one section termination events specified in various sections of this Agreement, plus describe certain additional termination events not described elsewhere.

21.1 Alcoa Right to Terminate

21.1.1 Alcoa Right to Terminate for Any Reason

Alcoa may provide written notice to terminate this Agreement anytime after October 1, 2011. Such notice shall include an effective date of termination that is no earlier than 12 months following the date that BPA receives such notice. Such notice shall also specify, for each month during such 12-month period, the amount of Firm Power that Alcoa shall take and pay for, and the applicable provisions of section 8 above shall apply. During this 12-month period prior to termination, Alcoa shall be obligated to pay the IP rate for the monthly amounts of Firm Power it would have otherwise taken. Such monthly amounts shall be equal to 320 aMW less the monthly amounts that Alcoa has agreed to take and pay for, and the provisions of section 8 above shall not apply for such amounts. Following the receipt by BPA of a notice to terminate pursuant to this section 21.1.1, Alcoa agrees that it shall not, during the period that begins on the date of receipt of such notice by BPA and continues through 2400 hours on September 30, 2016, request a power sales agreement from BPA pursuant to section 5(d) of the Northwest Power Act.

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21.1.2 Alcoa Termination Following BPA Notice on or before March 31, 2010

If, pursuant to section 6.2 above, BPA has provided notice that this Agreement shall terminate at 2400 hours on September 30, 2011, Alcoa may provide written notice to terminate this Agreement anytime. For avoidance of doubt, the effective date of termination

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may be less than 12-months following the date that BPA receives such notice and BPA agrees to waive section 21.1.5.

21.1.3 **Alcoa Termination During a Period of Curtailment**
If, pursuant to section 21.1.1 above, Alcoa provides BPA with a written notice to terminate during a period of curtailment, then such curtailment shall end as of the date BPA receives such notice, and during the subsequent 12-month period the options described in section 21.1.1 above shall apply.

21.1.4 **Alcoa Right to Terminate if Certain Taxes or Charges are Imposed on Alcoa by BPA**
If costs directly attributable to the Alcoa Load associated with either (1) renewable energy portfolio standard obligations, or (2) costs for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges ("Environmental Costs"), are imposed on BPA directly (as opposed to being indirectly imposed on the cost of third party power acquisitions by BPA) and all Environmental Costs that have not been allocated to, and recovered by BPA through, the IP rate schedule, then BPA shall bill Alcoa for such Environmental Costs, and Alcoa shall be obligated to pay such Environmental Costs and continue performance under this Agreement; *provided, however*, that in the event all Environmental Costs paid by Alcoa to BPA equal or exceed $2 million, then in the event Alcoa is billed any additional Environmental Costs by BPA, Alcoa shall have the option to terminate pursuant to section 21.1.1 above, but Alcoa shall not be obligated to pay the IP rate for Firm Power not taken during the 12-month period prior to such termination.

21.1.5 **No Operation Following Termination**
Except as provided for in section 21.1.2 above, Alcoa agrees that in the event it exercises its right to terminate under this section 21, that the earliest it will restart operations at the Intalco Plant is October 1, 2016.

21.2 **BPA's Right to Terminate**
BPA may terminate this Agreement if:

21.2.1 Alcoa fails to take and pay for Firm Power made available to it under this Agreement, unless such failure is excused under section 9 or section 17.

21.2.2 Alcoa fails to provide payment assurance satisfactory to BPA as required by section 20.8.

21.2.3 Alcoa fails to maintain Employment Levels as required by section 8.

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21.2.4 Alcoa resells Firm Power.

21.2.5 Alcoa fails to provide BPA with any irrevocable standby letter of credit provided for in section 20.8.1 or 20.8.2.

Termination by BPA under this section 21.2 is without prejudice to any other remedies available to BPA under law.

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22. TERMINATION OF PRIOR AGREEMENT

The Prior Agreement, as amended, shall terminate at 2400 hours on September 30, 2009.

23. FEASIBILITY OF ENTERING INTO SUBSEQUENT AGREEMENT BEGINNING OCTOBER 1, 2016

If requested by Alcoa, BPA shall conduct a public process during the FY 2013 through FY 2014 time period to examine the feasibility of entering into a subsequent power sales agreement with Alcoa that would begin on October 1, 2016. In addition to examining the terms of service for any such subsequent agreement, the public process will include a study analyzing the impacts on the regional economy associated with such a subsequent agreement. This section 23 is not intended and shall not be construed as requiring BPA to offer any such subsequent agreement, irrespective of the conclusions or findings following the completion of any public process undertaken.

24. ALCOA COVENANT NOT TO CHALLENGE VALIDITY OF THIS AGREEMENT

Alcoa agrees that it shall not challenge the validity of this Agreement, or any part thereof, in any proceeding before the United States Circuit Court of Appeals for the Ninth Circuit (Ninth Circuit), but Alcoa reserves the right to intervene in any proceeding in the Ninth Circuit in which a challenge to the validity of this Agreement, or any part thereof, has been filed.

25. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

Alcoa Inc.		UNITED STATES OF AMERICA Department of Energy Bonneville Power Administration	
By	_____	By	_____
Name	John G. Thuestad *(Print/Type)*	Name	Stephen J. Wright *(Print/Type)*
Title	President, US Primary Products	Title	Administrator and Chief Executive Officer
Date	_____	Date	_____

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Exhibit A
BILLING

1. INDUSTRIAL FIRM POWER ENTITLEMENTS

1.1 The MW made available by BPA under this Agreement multiplied by: (1) the number of HLH; and (2) the number of LLH in the applicable month establishes Alcoa's HLH and LLH Energy Entitlements.

1.2 The MW amount made available by BPA under this Agreement establishes Alcoa's Demand Entitlement.

2. UNAUTHORIZED INCREASE CHARGE

Hourly Firm Power scheduled by Alcoa in excess of amounts specified in Exhibit A shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PS.

3. REVISIONS

If this exhibit is inconsistent with BPA's Industrial Firm Power Rate Schedule, or its successor, as finally approved by FERC, the Parties shall make a good faith effort to amend this exhibit so that it is consistent.

Exhibit B
COST CAPS

1. DEFINITIONS

1.1 "Acquisition Cost for FY2011 through FY2012" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, by BPA multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.2 "Acquisition Cost for FY2012 through FY2016" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, assigned to the Composite Cost Pool under the Tiered Rates Methodology, including DSI loads multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.3 "Cost Cap" shall have the meaning described in section 2.1and section 3.1 of this Exhibit.

1.4 "Credit Cost" means the actual cost or forecasted cost to BPA of a credit default swap or other credit risk hedging instrument purchased by BPA.

1.5 "Environment or Regulatory Cost" means costs incurred, or to be incurred, by BPA that are associated with carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs

1.6 "Forecasted Cost" shall have the meaning described in section 4 of this Exhibit.

1.7 "Forecasted Net Cost" means the result on line J of the calculation in section 2.1 or section 3.1 of this Exhibit for the applicable period. Subject to section 2.2 of this Exhibit, $82 million is net cost cap for the period FY2010 through FY2011 and $300 million is the net cost cap for the period FY2012 through FY2016.

1.8 "Inventory Cost" means the weighted average of the monthly actual unit cost of, or opportunity cost of, BPA's surplus inventory, as valued by BPA with reference to then current market prices, forward curves, and BPA market price forecasts, multiplied by the volume in MWh of BPA's surplus inventory as applied each month to make available the Requested Firm Power to Alcoa, for the purposes of computing Forecasted Cost under this Agreement.

Comment [m4]: BPA's position is that the $350 million cost cap needs to be reduced by $50 million to $300 million to reflect the cap adjustment agreed to in Friday's discussion (aka the $4 per MWh reduction from $62 per MWh to $58 per MWh)

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1.9 "Requested Firm Power" means the total amount of Firm Power requested by Alcoa in the notice provided to BPA pursuant to section 5.2 of the body of this Agreement.

2. COST CAP IN FY2010 THROUGH FY2011

2.1 Cost Cap

The Forecasted Net Cost for the FY2010 through FY2011 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 1 below:

TABLE 1 - Example Calculation of the Forecasted Net Cost in FY2010 through FY2011	Maximum Value	Example Value
A) Firm Power	285 aMW	285 aMW
B) Requested Increase in Firm Power *[effective date of request must be provided inclusive of contractual notice]*	35 aMW	35 aMW
C) Requested Firm Power = A+ B	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = (A * 8760 hours * 2 years) + (B * # hours from effective) *[weighted for appropriate effective dates of requested firm power]*	5,530,800	5,530,800
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	5,635,885	5,635,885
G) Weighted Average IP rate for FY10-11 ($ per MWh) *[weighted for appropriate effective dates of requested firm power]*	$ 34.59	$ 34.59
H) Forecasted Cost ($) *[see definition and example in section 4 of this Exhibit]*	$ 273,332,998	$ 266,577,361
I) Forecasted IP Revenue ($) = D * G	$ 191,332,998	$ 191,332,998
J) Forecasted Net Cost = H - I	$ 82,000,000	$ 75,244,363
K) Forecasted Cost ($ per MWh) = H / F	$ 48.50	$ 47.30
L) Forecasted Net Cost ($ per FY in period) = J / (2 fiscal years)	$ 41,000,000	$ 37,622,181

Deleted: TABLE 1 - Example Ca FY2010 through FY201 A) Firm Power B) Requested Increase in [effective date of request must be pr C) Requested Firm Power = A+ B D) Maximum Contract Vc = C * 8760 hours * 2 year [weighted for appropriate effective E) Losses percentage F) Maximum Contract Vo = D * (1+E) G) Weighted Average IP r [weighted for appropriate effective H) Forecasted Cost ($) [see definition and example in sectio I) Forecasted IP Revenue = D * G J) Forecasted Net Cost = H - I K) Forecasted Cost ($ per = H / F

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The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2010 through FY2011 period and must be forecast to be less than or equal to $82 million (the "Cost Cap"); provided however such Cost Cap may be increased pursuant to section 2.2 of this Exhibit B.

2.2 Effect of DSI Curtailment on Cost Cap

To the extent any other aluminum smelter DSI notifies BPA of a curtailment under its BPA power sales agreement during the FY2010 through FY2011 period, then during the duration of such curtailment, the $82 million Cost Cap applicable to Alcoa under this Agreement for the FY2010 through FY2011 period will be increased by an amount equal to the amount of the Cost Cap forgone by such other aluminum smelter DSI, and the $48 per MWh cost cap will be increased accordingly.

[insert example]

3. COST CAP IN FY2012 THROUGH FY2016

3.1 Cost Cap

The Forecasted Net Cost for the FY2012 through FY2016 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 2 below:

TABLE 2 - Example Calculation of the Forecasted Net Cost in FY2012 through FY2016	Maximum Value	Example Value
A) Firm Power	n/a	n/a
B) Requested Increase in Firm Power	n/a	n/a
C) Requested Firm Power = 320 aMW	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = C * 8760 hours * 5 years	14,016,000	14,016,000
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	14,282,304	14,282,304
G) Weighted Average IP rate for FY12-16 ($ per MWh)	$ 38.22	$ 38.22
H) Forecasted Cost ($) *(see definition and example in section 4 of this Exhibit)*	$ 835,624,476	$ 756,105,174
I) Forecasted IP Revenue ($) = D * G	$ 535,624,476	$ 535,624,476
J) Forecasted Net Cost = H - I	$ 300,000,000	$ 220,480,698
K) Forecasted Cost ($ per MWh) = H / F	$ 58.51	$ 52.94
L) Forecasted Net Cost ($ per FY in period) = J / (5 fiscal years)	$ 60,000,000	$ 44,096,140

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2012 through FY2016 period and must be forecast to be less than or equal to $300 million (the "Cost Cap").

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Comment [m5]: See comment m4 above

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4. METHODOLOGY TO DETERMINE FORECASTED COST

The Forecasted Cost shall be determined by BPA in its sole discretion and will include, but is not limited to, the sum of the following costs: Acquisition Cost, Inventory Cost, Credit Cost, Environmental and Regulatory Cost. ("Forecasted Cost")

For each month in the period, BPA will assemble the information in Table 3 in the commercially reasonable manner below:

[insert Table 3]

Exhibit C
SPECIAL PROVISIONS

1. **BPA APPROPRIATIONS REFINANCING**
In accordance with section 21.2 of the body of this Agreement, section (i) of the BPA Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. No. 104-134, 110 Stat. 1321–350, is included in this Agreement--

(i) **Contract Provisions**
In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1996, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1996--

(1) the Administrator shall establish rates and charges on the basis that

(A) the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b) of the BPA Refinancing Act;

(B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under subsection (c) of the BPA Refinancing Act;

(C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and

(D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

(2) apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b) of the BPA Refinancing Act and to pay the interest on the principal amount under subsection (c) of the BPA Refinancing Act, no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

(3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United

States on a claim for a breach of the contract provisions required by this Part; and

(4) the contract provisions specified in this Part do not--

(A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or

(B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to--

(i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

(ii) design rates

2. REVISIONS

This exhibit shall be revised by mutual agreement of the Parties to reflect additional special provisions during the term of this Agreement.

Exhibit D
METERING

1. **METERING**

Directly Connected Points of Delivery

BPA POD Name: Intalco 13.8 kV;
BPA POD Number: TBD*;
WECC Balancing Authority: BPAT;

Location: the point in BPA's Intalco Substation where the 13.8 kV facilities of BPA and Alcoa are connected;

Voltage: 13.8 kV;

TBD* This data element is currently unresolved and shall be determined by BPA prior to June 1, 2011.

2. **REVISIONS**

Each Party shall notify the other in writing if updates to this exhibit are necessary to accurately reflect the actual characteristics of POD and meter information described in this exhibit. The Parties shall revise this exhibit to reflect such changes. The Parties shall mutually agree on any such exhibit revisions and agreement shall not be unreasonably withheld or delayed. The effective date of any exhibit revision shall be the date the actual circumstances described by the revision occur.

Exhibit E
SCHEDULING

1. SCHEDULING FEDERAL RESOURCES

Alcoa is responsible for creating E-Tags for all deliveries of federal power purchased under this Agreement.

In the event of an unplanned outage that affects future hours, Alcoa or its scheduling agent is responsible for adjusting e-Tags to accurately reflect the amount of load actually being served by generation provided by BPA.

2. AFTER THE FACT

BPA and Alcoa agree to reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). BPA and Alcoa shall verify all transactions per this Agreement, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

3. REVISIONS

BPA may unilaterally revise this exhibit: (1) to implement changes that are applicable to all customers who are subject to this exhibit and that BPA determines are reasonably necessary to meet its power and scheduling obligations under this Agreement or (2) to comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit F
POWER RESERVES

1. DEFINITIONS

(a) "Event" is a system condition under which PS needs additional power to meet its obligations during a system disturbance. The beginning of an Event shall be identified by notice from the TS dispatcher to the TS scheduler that such a system disturbance has occurred, and Alcoa's scheduling agent shall notify Alcoa that Restricted Energy is required. The end of the Event shall occur the earlier of when: a) initially established; or b) Alcoa's scheduling agent has notified Alcoa that full service has been restored. An Event shall not include BPA electing not to purchase power for economic reasons, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.

(b) "Event Duration" shall be the total cumulative Event Minutes of the Event.

(c) "Event Minute" shall be the minutes of restriction (or any portion thereof) during an Event.

(d) "Contingency Reserves" are those reserves provided by Alcoa under this Agreement for purposes of providing reserves for BPA's firm power loads within the region, as provided for in the Northwest Power Act.

(e) "Reserve Amount" shall be the kilowatt (kW) amount of Contingency Reserves available to BPA by Alcoa specified in Section 2 of this Exhibit.

(f) "Restricted Energy" means the requested megawatt-hour (MWh) amount of energy not made available to Alcoa hereunder because of an Event.

2. AMOUNT AND TYPES RESERVES

When necessary to provide Contingency Reserves, BPA may restrict the Reserve Amount, or the requested portion thereof, for a period of time (Restricted Energy). The Reserve Amount (in kilowatts) shall equal the amount of Minimum DSI Operating Reserve – Supplemental specified in the 2010 GRSP, or its successor.

Notwithstanding any other provision of this Agreement, BPA shall use its best efforts to end an Event as soon as possible, and Alcoa agrees to cooperate in development of mechanisms that will enhance BPA's ability to notify Alcoa of the end of an Event.

The Parties recognize that with the addition of certain electronic controls at the Intalco Plant, the Intalco Load can be varied to help accommodate within-hour fluctuations on BPA's system associated with wind power generation. The Parties agree to undertake discussions within 60 days after the execution of this

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Agreement to identify and implement any agreed to actions and agreements necessary to achieve such wind integration benefits.

3. QUALITY AND CHARACTER OF RESERVES

Contingency Reserves provided by Alcoa shall be consistent with North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and Northwest Power Pool (NWPP) standards and criteria:

(a) the Reserve Amount, or the requested portion thereof, must be offline within ten (10) minutes after the first telephone call by Alcoa's scheduling agent to Alcoa;

(b) the Reserve Amount, or the requested portion thereof, must be available to be offline for up to one-hundred five (105) minutes.

Alcoa shall provide a contact at the Facility at the following phone number:

Alcoa
Phone: ( ) –

Alcoa shall maintain such contact for every hour in the Term of the Agreement in which the Minimum DSI Operating Reserve – Supplemental amount is greater than zero megawatts.

Alcoa will provide the Restricted Energy to BPA by an interruption of its loads in an amount equal to or greater than the amount of such specified Restricted Energy, and in each case shall continue such load interruption for the duration of the Event. BPA will bill and Alcoa shall pay for the Restricted Energy as though actually delivered to Alcoa.

The TS dispatcher will notify the TS scheduler of a contingency event. Depending on whether the event occurs less than 30 minutes past the delivery hour, or occurs greater than or equal to 30 minutes past the delivery hour either the TS scheduler or Alcoa's scheduling agent will adjust Alcoa's e-tags in real time. In both cases Alcoa's scheduling agent shall contact Alcoa at the phone number in this section to: (a) initiate each Event; and (b) terminate each Event. Within ten (10) minutes following such notice by the scheduling agent to initiate an Event, Alcoa shall commence providing the Restricted Energy to BPA. Alcoa shall not restore its use of the Restricted Energy until the lesser of: (a) one-hundred five (105) minutes; or (b) immediately following notice from the scheduling agent terminating an Event.

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PS retains the right to verify Alcoa's provision of Restricted Energy by comparing the metered amounts before an Event, during an Event, and after an Event is terminated. If such verification fails to demonstrate that the Restricted Energy was made available to BPA by Alcoa for the Event Duration, then PS, in its sole discretion, may: (a) terminate the compensation specified in Section 4 of this

Exhibit for the undemonstrated portion of the Reserve Amount for the remaining Term of the Agreement; and, (b) notify TS of the undemonstrated portion of the Reserve Amount. Alcoa acknowledges that any undemonstrated portion of the Reserve Amount may cause its transmission supplier to take additional actions subject to the provisions of the Transmission Service Agreements Alcoa maintains with its transmission supplier, that may include an assessment of the monetary penalty described in the Failure to Comply provision of the prevailing TS tariff for transmission service.

4. COMPENSATION FOR CONTINGENCY RESERVES

Alcoa will be compensated by PS for Minimum DSI Operating Reserve - Supplemental provided in this Agreement through an adjustment to the IP rate, as provided for in the Northwest Power Act.

5. RETURNED ENERGY

BPA must make any Restricted Energy during an Event available to Alcoa within 24 hours ("Returned Energy") in mutually agreed flat hourly amounts and hours. It is understood by Parties that Returned Energy does not need to be scheduled during hours immediately following an Event and that the Returned Energy will likely be made available during Light Load Hours.

Scheduling of Returned Energy amounts will be in addition to federal power purchased pursuant to section 4 of the body of the Agreement. Alcoa shall be responsible for creating E-Tags and transmission required for the delivery of Returned Energy.

6. TESTING OF RESERVES

BPA shall have the option to conduct annual tests of the procedure specified in this Exhibit and Alcoa shall participate and provide any Restricted Energy requested.

7. REVISIONS

BPA may unilaterally revise this Exhibit F to implement changes that are applicable to Alcoa and that BPA determines are reasonably necessary for reserves provided under this Agreement to: (a) reflect changes in the value of the DSI Reserves Adjustment; and (b) comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

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Comment [m6]: Language under further review

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Comment [m7]: Language under further review

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Exhibit G
EMPLOYMENT LEVELS

1. Definitions

1.1 "Average Firm Power" means the average Firm Power during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.

1.2 "Average FTE" means the average FTE, as determined pursuant to Table 1 in section 2 below, during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.

1.3 "Firm Power" shall have the meaning ascribed to it in section 2.11 of the body of this Agreement.

1.4 "FTE" shall have the meaning ascribed to it in Section 8 of the body of this Agreement.

1.5 "Proportional Employment" shall have the meaning described in section 2 of this Exhibit G.

2. Relationship between Firm Power and FTE

For the avoidance of doubt, pursuant to this Exhibit G, Firm Power and FTE are proportional for the purposes of this Agreement, based on the amount of Firm Power Alcoa is consuming. As applicable and as described in Table 1 below, the proportion is 1.65 Average FTE per aMW of Average Firm Power ("Proportional FTE"):

Table 1 - Proportional Relationship between Average Firm Power and Average FTE

Average Firm Power (aMW)	Average FTE	Proportional FTE
320	528	1.65
280	462	1.65
240	396	1.65
200	330	1.65
160	264	1.65
120	198	1.65
80	132	1.65
72	**120**	n/a
40	**120**	n/a
0	**120**	n/a

During periods of curtailment, the average of the reported monthly FTE shall be equal to or greater than 120.

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Average Firm Power (aMW)	Ave
320	
280	
240	
200	
160	
120	
80	
40	
0	

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Page 19: [1] Deleted **Doug Hanlon** **8/13/2009 10:21:00 AM**

20.8 **Performance Assurance**

When reasonable grounds for insecurity arise with respect to the performance of Alcoa, BPA may in writing demand adequate assurance of due performance and specify the form such assurance shall take. The type of assurance BPA may require includes, but is not limited to, providing a letter of credit, posting a security deposit, or requiring prepayment, as appropriate. Failure of Alcoa to provide such assurance within the time specified by BPA in its request for adequate assurance shall be considered a material breach and may, in BPA's sole discretion, create reasonable grounds to suspend or terminate this Agreement. If adequate assurance is not provided, or is not provided in the form specified in the request for adequate assurance, BPA shall have five Business Days from the date such assurance was required to be provided to notify Alcoa in writing of its intentions with respect to termination or suspension of the contract. Any waiver by BPA of its right to suspend or terminate this Agreement shall not be considered a waiver of said rights with respect to future instances when adequate assurance may be required. Written notices sent under this section must comply with section 16, Notices and Contact Information.

Page 19: [2] Deleted **Doug Hanlon** **8/13/2009 10:21:00 AM**

Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA with an irrevocable standby letter of credit in the amount of $_____, in a form acceptable to BPA. Such letter of credit shall have an expiration date one-year from its date of issuance, and BPA may require replacement letters of credit in the amount of $_____ so that a letter of credit in the amount of $_____ is in place on a continuous basis for the term of this Agreement. Nothing in this section 20.9 shall limit BPA's right to demand additional adequate assurance pursuant to section 20.8 above.

If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 20.9 then BPA may terminate this Agreement.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5

Sent: Monday, August 17, 2009 11:34 AM

To: 'MICHAEL DOTTEN'; Marc Pereira; Max W. Laun; Kimberly A Gregorio; Mike Rousseau; michael.padgett@alcoa.com; Jack Speer

Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7

Subject: RE: BPA/Alcoa contract review

Your ears must have been burning... we were just reaching for Marc's number.

We are finishing it up as we speak. Should have it by 12 noon pacific. We are open to postponing the start of our 12:30pm call to allow you all the same 1.5 hours for review. Just let us know when you would like to start the call. Thank you.

Mark

From: MICHAEL DOTTEN [mailto:mcdotten@msn.com]
Sent: Monday, August 17, 2009 11:28 AM
To: Symonds,Mark C - PTL-5; Marc Pereira; Max W. Laun; Kimberly A Gregorio; Mike Rousseau; michael.padgett@alcoa.com; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: BPA/Alcoa contract review

Hello, Mark:

Do we have a version of the contract for review yet integrating our agreements from Friday AM?

Best regards,

Mike Dotten

Michael C. Dotten - Attorney-Mediator-Arbitrator/13643 Melrose Pl./Lake Oswego, OR 97035
Tel: 503-882-4937/ Cell: 503-318-7090/e-mail: mcdotten@msn.com / web: DottenADR.com

The material in this e-mail may be confidential or privileged. If you receive this message in
error, please contact us immediately and delete the e-mail from your computer.

From: mcsymonds@bpa.gov
To: Marc.Pereira@alcoa.com; Max.Laun@alcoa.com; Kimberly.Gregorio@alcoa.com; Mike.Rousseau@alcoa.com; Michael.Padgett@alcoa.com; speerja@verizon.net; mcdotten@msn.com
CC: alburns@bpa.gov; hwclark@bpa.gov; kwrunzler@bpa.gov; dwhanlon@bpa.gov

Date: Fri, 14 Aug 2009 18:01:30 -0700
Subject: RE: BPA contract review

The matrix:
Thanx

Mark

From: Pereira, Marc A. [mailto:Marc.Pereira@elcoa.com]
Sent: Friday, August 14, 2009 2:19 PM
To: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Symonds,Mark C - PTL-5; Laun, Max W.; Gregono, Kimberly A; Rousseau, Mike F.; Padgett, Michael; specrja@verizon.net; mcdotten@msn.com
Subject: BPA contract review
When: Monday, August 17, 2009 12:30 PM-2:30 PM (GMT-08:00) Pacific Time (US & Canada).
Where:

EX 4

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Monday, August 17, 2009 12:20 PM
To: 'Pereira, Marc A.'; MICHAEL DOTTEN; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7
Subject: RE: BPA/Alcoa contract review
Attachments: Power Sales Agreement ALCOA - 081709.doc

All,
We will be on the phone in 15 minutes and will walk through the changes:
<see attached doc>

Mark

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Monday, August 17, 2009 12:03 PM
To: Symonds,Mark C - PTL-5; MICHAEL DOTTEN; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7
Subject: RE: BPA/Alcoa contract review

Let's not postpone. You can walk us through the changes. Start is at 3:30 Eastern as planned.
marc

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Monday, August 17, 2009 2:34 PM
To: 'MICHAEL DOTTEN'; Pereira, Marc A.; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7
Subject: RE: BPA/Alcoa contract review

Your ears must have been burning... we were just reaching for Marc's number.

We are finishing it up as we speak. Should have it by 12 noon pacific. We are open to postponing the start of our 12:30pm call to allow you all the same 1.5 hours for review. Just let us know when you would like to start the call. Thank you.

Mark

From: MICHAEL DOTTEN [mailto:mcdotten@msn.com]
Sent: Monday, August 17, 2009 11:28 AM
To: Symonds,Mark C - PTL-5; Marc Pereira; Max W. Laun; Kimberly A Gregorio; Mike Rousseau; michael.padgett@alcoa.com; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5

Subject: RE: BPA/Alcoa contract review

Hello, Mark:

Do we have a version of the contract for review yet integrating our agreements from Friday AM?

Best regards,

Mike Dotten

Michael C. Dotten - Attorney-Mediator-Arbitrator/13643 Melrose Pl./Lake Oswego, OR 97035
Tel: 503-882-4937/ Cell: 503-318-7090/e-mail: mcdotten@msn.com / web: DottenADR.com

The material in this e-mail may be confidential or privileged. If you receive this message in
error, please contact us immediately and delete the e-mail from your computer.

From: mcsymonds@bpa.gov
To: Marc.Pereira@alcoa.com; Max.Laun@alcoa.com; Kimberly.Gregorio@alcoa.com; Mike.Rousseau@alcoa.com; Michael.Padgett@alcoa.com; speerja@verizon.net; mcdotten@msn.com
CC: alburns@bpa.gov; hwclark@bpa.gov; kwrunzler@bpa.gov; dwhanlon@bpa.gov
Date: Fri, 14 Aug 2009 18:01:30 -0700
Subject: RE: BPA contract review

The matrix:
Thanx

Mark

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t A. [mailto:Marc.Pereira@alcoa.com]
t 14, 2009 2:19 PM
D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Symonds,Mark C - PTL-5; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; speerja@verizon.net; mcdotten@msn.com
ntract review
gust 17, 2009 12:30 PM-2:30 PM (GMT-08:00) Pacific Time (US & Canada).

Ex 4

DRAFT
08/11/2009

Contract No. 09PB-#####

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POWER SALES AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

ALCOA INC.

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This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and Alcoa Inc. (Alcoa), hereinafter individually referred to as "Party" and collectively referred to as the "Parties." Alcoa is a corporation organized under the laws of the State of Pennsylvania, and registered therein as entity number 10514, taxpayer identification number 25-0317820.

RECITALS

BPA is authorized to sell power to Alcoa, a direct service industrial customer, pursuant to section 5(d)(1)(A) of the Northwest Power Act, 16 U.S.C. § 839c(d)(1)(A).

In *Pacific Northwest Generating Cooperative v. Department of Energy*, 550 F.3d 846 (2008) the Ninth Circuit Court of Appeals invalidated monetary benefits provisions of power sales contracts between BPA and its aluminum company direct service industrial customers (DSIs), but held that BPA may make sales to DSIs at the Industrial Firm Power Rate (IP rate). This Agreement addresses the 2-year period remaining under those power sales contracts, and potentially, a subsequent 5-year period. Under both time periods power sales will be made to Alcoa at the IP rate.

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Concomitantly with the execution of this Agreement, BPA has issued a record of decision addressing comments regarding this Agreement submitted by BPA customers and other interested parties, and such record of decision explains BPA's rationale for its decision to enter into this Agreement.

BPA has functionally separated its organization in order to separate the administration and decision-making activities of BPA's power and transmission functions. References in this Agreement to Power Services or Transmission Services are solely for the purpose of clarifying which BPA function is responsible for administrative activities that are jointly performed.

The Parties agree:

1. **TERM**

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2016, unless it is terminated earlier pursuant to the terms of this Agreement. Firm Power made available by PS for delivery to the Intalco Plant shall commence on October 1, 2009.

All liabilities incurred by each Party hereunder shall be preserved until satisfied, notwithstanding the expiration or termination of this Agreement.

2. **DEFINITIONS**

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used or, if not so defined, shall have the meaning stated in BPA's applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions

("GRSPs"). If a term is not defined in any of the named sources, then the term shall be given its normal and customary meaning, with due regard to generally accepted business practices, including the status of the undefined term as a generally recognized term of art.

2.1 "Alcoa Load" means that Alcoa hourly load at the Intalco Plant served under this Agreement.

2.2 "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

2.3 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.

2.4 "BPA's Payment Exposure" shall have the meaning described in section 20.8.2.

2.5 "Business Days" means every Monday through Friday except for Federal holidays.

2.6 "Cost Cap" means shall have the meaning as defined in Exhibit B. **Deleted:** 5

2.7 "Demand Entitlement" shall have the meaning as defined in section 1.2 of Exhibit A. **Deleted:** 6

2.8 "Diurnal" means the division of hours within a month between Heavy Load Hours (HLH) and Light Load Hours (LLH). **Deleted:** 7

2.9 "Federal Base System Resources" has the meaning contained in the Northwest Power Act, 16 U.S.C. § 839a(10). **Deleted:** 8

2.10 "Firm Power" means the amount(s) of electric power that PS will make available at the Industrial Firm power rate to Alcoa under this Agreement in equal hourly amounts for every hour of the Fiscal Year. **Deleted:** 9

2.11 "Fiscal Year" or "FY" means the period that begins each October 1 and which ends the following September 30. Even though, as noted in section 1, certain actions are, or may be, required prior to the commencement of power deliveries, the first Fiscal Year under this Agreement is the 2012 Fiscal Year, which begins October 1, 2011, and continues through September 30, 2012. **Deleted:** 0

2.12 "Forecasted Net Cost" shall have the meaning as defined in Exhibit B. **Deleted:** 1

2.13 "Intalco Plant" means the Alcoa aluminum smelting facilities served from BPA's Intalco Substation, where the 13.8 kilovolt facilities of BPA and Alcoa are connected.

Deleted: 2

2.14 "Issue Date" shall have the meaning described in section 13.1.

Deleted: 3

2.15 "Net Firm Power" shall have the meaning described in Exhibit G.

Deleted: 4

2.16 "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 et seq., Public Law No. 96-501, as amended.

Deleted: 5

2.17 "Points of Metering" means the interconnection points between BPA, Alcoa and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.

Deleted: 6

2.18 "Power Reserves" shall have the meaning described in Exhibit F.

Deleted: 7

2.19 "Power Services" or "PS" means the organization, or its successor organization, within BPA that is responsible for the management and sale of Federal power.

Deleted: 8

2.20 "Primary Points of Receipt" shall have the meaning described in section 11.1.

Deleted: 19

2.21 "Prior Agreement" means Contract No. 06PB-11744 between BPA and Alcoa, as amended.

Deleted: 0

2.22 "Region" or "Regional" means the Pacific Northwest as defined in the Northwest Power Act, 16 U.S.C. § 839a(14).

Deleted: 1

2.23 "Transmission Services" or "TS" means the organization or its successor organization, within BPA that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

Deleted: 2

2.24 "Wheel Turning Load" shall have the meaning described in 2010 GRSP and equal six (6) aMW.

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3. APPLICABLE RATES

Sales by BPA to Alcoa under this Agreement shall be made at the Industrial Firm Power rate (the "IP rate") in effect at the time of such sales, and are subject to all applicable GRSPs.

3.1 Industrial Firm Power Rate

Alcoa shall purchase Firm Power provided by BPA under this Agreement at the applicable IP rate for the rate period, as established through the procedures specified in section 7(i) of the Northwest Power Act (16 U.S.C §

839e(i)), or its successor, including all adjustments and charges developed in accordance with all applicable statutory ratemaking directives.

Alcoa acknowledges that BPA has not agreed to propose that the IP rate be established at any particular level for any rate period included within the term of this Agreement, and that, while it reserves all rights with respect to challenging rates proposed or established by BPA, Alcoa bears any risks associated with the IP rate level established each rate period by BPA pursuant the above referenced rate setting procedures.

3.2 **Additional Charges**
Alcoa is subject to any applicable additional charges, including penalty charges (e.g., the Unauthorized Increase Charge), established in BPA's Wholesale Power Rate Schedules and associated GRSPs.

4. PURCHASE AND SALE OF FIRM POWER

During the period FY 2010 through FY 2016, BPA shall make available Firm Power in amounts specified herein and Alcoa shall purchase such Firm Power unless: (a) BPA has determined pursuant to Exhibit B that the cost to serve the Alcoa Load with Firm Power for the FY 2012 through FY 2016 period will exceed the Cost Caps identified in Exhibit B; (b) this Agreement has terminated; or (c) Alcoa has failed to operate the Intalco Plant at a level equal to or greater than 160 aMW for a least one complete Fiscal Year during the period October 1, 2006, through September 30, 2009.

All purchases of Firm Power by Alcoa under this Agreement shall be used exclusively to serve the Alcoa Load.

5. PURCHASE AND SALE OF FIRM POWER FROM FY 2010 THROUGH FY 2011

5.1 **Firm Power Sale by BPA from FY 2010 through FY 2011**
During the period that begins on October 1, 2009, and continues through September 30, 2011, BPA shall sell and Alcoa shall purchase 285 aMW of Firm Power, as such amount may be increased pursuant to section 5.2 below.

5.2 **Increase from 285 aMW to 320 aMW**
Alcoa may, upon written notice to BPA, request that the amount of Firm Power be increased from 285 aMW to 320 aMW for the balance of FY 2010 through FY 2011 period. Alcoa's notice shall include a schedule, by month, of Alcoa's proposed operating levels to achieve such Firm Power increase. If BPA determines, pursuant to Exhibit B, that the cost to serve the Alcoa Load with 320 aMW of Firm Power for the balance of the FY 2010 through FY 2011 period does not exceed the applicable Cost Caps specified in Exhibit B, then BPA shall accept such request; if not, BPA shall reject such request. BPA's determination shall be conclusive. BPA shall provide Alcoa with written notice of its determination, including the basis for such determination, within 5 business days following the receipt of such notice.

Deleted: c

Deleted: Such increase, if accepted by BPA, shall occur no earlier than 90 days following the receipt of such notice by BPA.

Deleted: ___

Such increase, if accepted by BPA, shall occur no earlier than 90 days following the receipt of such notice by BPA, on the first day of a calendar month.

Deleted: Any Firm Power increase to 320 aMW shall begin

6. PURCHASE AND SALE OF FIRM POWER FROM FY 2012 THROUGH FY 2016

6.1 Firm Power Sale by BPA for FY 2012 through FY 2016

During the period that begins on October 1, 2011, and continues through September 30, 2016, BPA shall sell and Alcoa shall purchase 320 aWM of Firm Power, subject to the provisions in section 6.2 below.

6.2 Termination

If BPA determines, pursuant to Exhibit B, that the cost to serve the Alcoa Load with 320 aMW of Firm Power for the entire FY 2012 through FY 2016 period will exceed the Cost Cap specified in Exhibit B, then on or before March 31, 2010, BPA shall provide Alcoa with written notice that this Agreement shall terminate at 2400 hours on September 30, 2011. Such notice shall include the basis for such determination, and such determination shall be conclusive.

7. COST CAPS AND OTHER LIMITATIONS

7.1 Cost Caps

The Cost Caps specified in Exhibit B of this Agreement represent the maximum cost BPA will incur to support sales to Alcoa, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs allocated by BPA, pursuant to Exhibit B, to the cost of service under this Agreement for purposes of making its determination pursuant to Exhibit B regarding Cost Caps.

7.2 Other Limitations

Alcoa understands and agrees that BPA will not make a plant specific acquisition from a coal-fired resource, and that BPA will not acquire power from a supplier that is unwilling to absorb all of the regulatory or environmental costs referred to in section 7.1 above, that are imposed on the supplier after the date the acquisition contract is entered into.

Deleted: any

8. EMPLOYMENT LEVELS

Except during any termination period in which Alcoa is not operating, Alcoa shall employ at least the number of full time equivalent (FTE) employees specified in Exhibit G. "FTE" shall mean full time annual employment for regular employees of Alcoa at the Intalco Plant and contractor employees working within Whatcom County, Washington during a calendar month.

Deleted: any period of curtailment pursuant to section 9 below, or

Deleted: of

Deleted: Alcoa at the Intalco Plant

Deleted: who are

Alcoa shall notify BPA in writing in the event that, during any calendar month, Average FTE levels are reduced by more than one percent below the applicable level specified in Exhibit G. Such notice shall be provided within five Business Days

following such reduction. Such notice shall specify the date by which Alcoa anticipates Average FTE levels will equal or exceed the applicable level specified in Exhibit G; *provided, however*, that this Agreement will be subject to termination by BPA in the event Alcoa fails to provide BPA with a written plan and comply with such plan for meeting the applicable Average FTE levels specified in Exhibit G. Such plan shall demonstrate that Alcoa shall meet Average FTE requirements within 90 days following the end of the month during which such Average FTE levels fell below the 1 percent threshold. In order to permit BPA to determine whether Alcoa is meeting its plan to meet FTE obligations, Alcoa shall provide monthly reports to BPA demonstrating its FTE by month and whether its Average FTE levels meet the requirements of this section 8 within 15 days following the end of the month for which it is reporting. In the event that Alcoa fails to comply with its plan for reaching Average FTE levels, BPA may provide notice of termination within 30 days following the monthly notice provided in this section 8 and the effective date of termination shall be 90 days following the date such notice is received by Alcoa.

Deleted: meet the applicable Average FTE levels specified in Exhibit G within ___ days following the notice provided in this section 8

Deleted: effective

9. CURTAILMENT

9.1 Notice of Curtailment

Alcoa may, upon written notice to BPA, curtail all or a portion of the Alcoa Load, subject to the limitations specified in section 9.2 below. Any such notice shall specify the amount of Alcoa Load to be curtailed, the duration of such curtailment, and the effective date that such curtailment shall commence; *provided however*, that such effective date shall be no earlier than 90 days following the date that BPA receives such notice. The period of curtailment shall be for consecutive months, and the amount curtailed shall be the same in all months. Any such notice, once received, shall not be changed by Alcoa without BPA's written consent.

9.2 Number of Curtailments Allowed and Cumulative Duration of Curtailments

Alcoa shall not provide BPA with more than two written notices to curtail during the term of this Agreement, and the cumulative duration of any such curtailment(s) shall not exceed 24 months; and provided further, the cumulative duration of such curtailment(s) during FY 2012 through FY 2016 period shall not exceed 18 months. Alcoa shall maintain the applicable employment level specified in Exhibit G during any curtailment.

Deleted: Alcoa shall not provide BPA more than one written notice during FY 2012 through FY 2016 and

Deleted: 2

9.3 No Compensation to Either Party During Curtailment

During any period of curtailment, Alcoa shall not incur any take-or-pay obligation for the amount curtailed, and BPA shall have no obligation to compensate Alcoa in any manner for the amount curtailed.

9.4 No Purchases from Third Parties During Curtailment

During any period of curtailment, Alcoa shall not make any market purchases from third party suppliers to replace all or any portion of the amount curtailed.

9.5 **No Curtailment Following Notice of Termination**
Alcoa shall not curtail pursuant to this section 9 following a notice of termination pursuant to section 21.1.1 below.

10. SCHEDULING

10.1 **Scheduling**
Alcoa shall schedule power in accordance with Exhibit _.

11. DELIVERY

11.1 **Definitions**

11.1.1 "Primary Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is forecasted to be made available by Power Services to Alcoa for purposes of obtaining a long-term firm transmission contract.

11.1.2 "Scheduling Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is made available by Power Services to Alcoa for purposes of transmission scheduling.

11.1.3 "Point of Delivery" means the point described in Exhibit E to which Alcoa delivers power.

11.2 **Transmission Service**

11.2.1 Alcoa is responsible for making arrangement for, and payment of, delivery of power from the Scheduling Points of Receipt, including all transmission and ancillary service costs.

11.2.2 Alcoa shall obtain prior BPA approval for, and shall provide at least 60 days' notice to Power Services prior to changing Balancing Authority Areas and.

11.2.3 At Alcoa's request, Power Services shall provide Alcoa with Primary Points of Receipt and other information needed to enable Alcoa to obtain long-term firm transmission for delivery of power sold under this Agreement. If required by Transmission Services for purposes of transmission scheduling, then Power Services shall provide Alcoa with Scheduling Points of Receipt. Power Services has the right to provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt. If BPA does provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt, then BPA shall reimburse Alcoa for any incremental, direct, non-administrative costs incurred by Alcoa to comply with delivering Firm Power from such a Scheduling Point of

Receipt to Alcoa's Intalco Plant if the following conditions, as outlined in 11.2.3.1 or 11.2.3.2 below, as applicable, have been met:

11.2.3.1 If Alcoa has long-term Point to Point (PTP) transmission service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.1.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.1.2 Alcoa has submitted a request to redirect its long-term firm PTP transmission service to deliver Firm Power from the Scheduling Point of Receipt on a firm basis, but that request was not granted; and

11.2.3.1.3 Alcoa's transmission schedule was curtailed due to non-firm status under PTP transmission service or Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.2 If Alcoa has long-term Network Integration Transmission Service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.2.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.2.2 Alcoa's transmission schedule was curtailed due to non-firm status under its secondary service status and Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.3 In the event power cannot be scheduled from a BPA Scheduling Point of Receipt (other than a Primary Point of Receipt) then Alcoa may request and, consistent with BPA's standard practices to achieve efficient system operation and reliability, BPA will move the Scheduling Point of Receipt to a point on the FCRTS where energy can be made available and scheduled to Alcoa's load ("Alternative Scheduling Point of Receipt"), if such a point is available and providing the power from that Alternative Scheduling Point of Receipt

would not cause BPA to violate any type of non-power constraint.

11.3 **Liability for Delivery**
Alcoa waives any claims against BPA arising under this Agreement for non-delivery of power to any points beyond the applicable Scheduling Points of Receipt, except for reimbursement of costs as described in section 11.2.3. BPA shall not be liable under this Agreement for any third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership.

11.4 **Real Power Losses**
BPA is responsible for the real power losses necessary to deliver Firm Power across the Federal Columbia River Transmission System to Alcoa's POD(s) listed in Exhibit D.

12. METERING

Alcoa's purchase obligations in sections 4 are not dependant on amounts scheduled and do not require retail load meters for billing and payment.

13. BILLING AND PAYMENT

13.1 **Billing**
BPA shall bill Alcoa monthly for all products and services provided during the preceding month(s). BPA may send Alcoa an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to Alcoa. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

13.2 **Payment**
Alcoa shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the Issue Date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

If Alcoa has made payment on an estimated bill then:

13.2.1 if the amount of the final bill exceeds the amount of the estimated bill, then Alcoa shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or

13.2.2 if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay Alcoa the difference between the estimated bill

and final bill by the 20th day after the final bill's Issue Date. If the 20th day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

13.3 **Late Payments**

After the Due Date, a late payment charge, equal to the higher of:

(1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or

(2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

13.4 **Termination**

If Alcoa has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment in full. If Alcoa does not provide payment within three Business Days after receipt of an additional written notice from BPA, and BPA determines in its sole discretion that Alcoa is unable to make the payments owed, then BPA may terminate this Agreement. Written notices sent under this section must comply with section 18 Notices and Contact Information.

13.5 **Disputed Bills**

13.5.1 If Alcoa disputes any portion of a charge or credit on Alcoa's estimated or final bills, Alcoa shall provide written notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Alcoa shall pay the entire bill by the Due Date. This section 13.6.1 does not allow Alcoa to challenge the validity of any BPA rate.

13.5.2 Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

13.5.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 18, Alcoa is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

14. INFORMATION EXCHANGE AND CONFIDENTIALITY

14.1 General Requirements

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement, and to forecast Alcoa Load, forecast BPA system load, comply with NERC reliability standards, prepare bills, resolve billing disputes, and otherwise implement this Agreement. For example, this obligation includes transmission and power scheduling information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.). Information requested under this section 14.1 shall be provided in a timely manner.

14.2 Reports

Alcoa shall notify BPA of public sources from which Alcoa's annual financial reports and any statements by its authorized officers are readily available and BPA will secure such reports and statements for its use. In the event Alcoa's annual financial reports and statements by its authorized officers become unavailable from public sources Alcoa shall provide such reports upon request by BPA.

14.3 Meter and Billing Data

Alcoa consents to allow Power Services to receive Alcoa's meter data and invoices from Transmission Services, BPA's metering function, or BPA's billing function.

14.4 Confidentiality

Before Alcoa provides information to BPA that Alcoa deems to be confidential commercial or financial information, Alcoa shall clearly designate such information as confidential. BPA shall notify Alcoa as soon as practicable, but in any case no later than as provided by applicable law or regulation, of any request received under the Freedom of Information Act (FOIA) (5 U.S.C. §§ 552 *et seq.*), or under any other federal law or court or administrative order, for any information designated as confidential by Alcoa. BPA shall only release such confidential information consistent with FOIA, or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of such confidential information within BPA to employees who need it for purposes of administering this Agreement.

15. CONSERVATION AND ENVIRONMENTAL ATTRIBUTES

15.1 Conservation

Alcoa shall verify and report all cost-effective (as defined by section 3(4) of the Northwest Power Act) non-BPA-funded conservation measures and projects savings achieved by Alcoa through the Regional Technical Forum's Planning, Tracking and Reporting System or its successor tool. Verification protocols of conservation measures and projects, reporting timelines and documentation requirements shall comply with BPA's Energy Efficiency Implementation Manual or its successor.

15.2 **Renewable Energy Certificates and Carbon Credit Treatment**

15.2.1 "Carbon Credit" means an Environmental Attribute consisting of greenhouse gas emission credits, certificates, or similar instruments.

15.2.2 "Environmental Attributes" means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.

15.2.3 "Renewable Energy Certificates" or "RECs" means the certificates, documentation, or other evidence that demonstrates the ownership of Environmental Attributes.

15.2.4 BPA shall not be obligated to provide Environmental Attributes, Carbon Credits, or RECs, or the value of any or all of them, to Alcoa under this Agreement, absent a, statutory obligation, court decision, or order requiring it to do so.

15.2.5 BPA reserves any ratemaking authority it otherwise possesses to determine and factor in a share of the value and/or cost of any or all of the RECs and Carbon Credits for the purpose of determining applicable wholesale rates pursuant to section 7(c)(2) of the Northwest Power Act. BPA further reserves its ratemaking authority to recover any costs resulting from such ratemaking actions through rates, including rates applicable to Alcoa.

16. NOTICES AND CONTACT INFORMATION

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

(1) delivered in person;

(2) by a nationally recognized delivery service with proof of receipt;

(3) by United States Certified Mail with return receipt requested;

(4) electronically, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or

(5) by another method agreed to by the Parties.

References in this Agreement to the "BPA representative" and the "Alcoa representative" are to the persons listed below. Notices are effective when received.

Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

If to Alcoa:	If to BPA:
Alcoa Inc	Bonneville Power Administration
4050 Mountain View Road	905 NE 11th Avenue
P.O. 937	P.O. 3621
Ferndale, WA 98248	Portland, OR 97208-3621
Attn: Mike Rousseau	Attn: Mark E. Miller
Plant Manager	Account Executive
Phone: 360-384-7061	Phone: 503-230-4003
FAX: 360-384-6185	FAX: 503-230-3681
E-Mail: Mike.Rousseau@alcoa.com	E-Mail: memiller@bpa.gov

17. UNCONTROLLABLE FORCES

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which by exercise of that Party's reasonable care, diligence and foresight such Party was unable to avoid. Uncontrollable Forces include but are not limited to:

17.1 any unplanned curtailment or interruption of firm transmission service used to deliver Firm Power under this Agreement to Alcoa whether such curtailment or interruption occurs on BPA's or a third party's transmission system;

17.2 any failure of Alcoa's production, distribution or transmission facilities that prevents Alcoa from taking Firm Power delivered to the Point of Receipt;

17.3 strikes or work stoppage, including the threat of imminent strikes or work stoppages; *provided, however*, that nothing contained in this provision shall be construed to require any party to settle any strike or labor dispute in which it may be involved.

17.4 floods, earthquakes, or other natural disasters; terrorist acts; and

17.5 final orders or injunctions issued by a court or regulatory body having competent jurisdiction which the party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The

economic hardship of either Party shall not constitute an Uncontrollable Force.

If an Uncontrollable Force prevents a party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with section 18, Notices and Contact Information.

18. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law. Alcoa and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 20, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

18.1 Judicial Resolution

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Alcoa or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 18, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section 18, then Alcoa may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 18.

18.2 Arbitration

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 18.1 above, shall be subject to arbitration, as set forth below.

Alcoa may request that BPA engage in binding arbitration to resolve any dispute. If Alcoa requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. BPA may request that Alcoa engage in binding arbitration to resolve any dispute. In response to BPA's request, Alcoa may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 18.1 above and is not resolved via binding arbitration, unless Alcoa notifies BPA that it does not wish to proceed with nonbinding arbitration.

18.3 **Arbitration Procedure**
Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

18.4 **Arbitration Remedies**
The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 18. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

18.5 **Finality**

18.5.1 In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

18.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether

it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

18.6 **Arbitration Costs**
Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

19. STATUTORY PROVISIONS

19.1 **Prohibition on Resale of Firm Power**
Alcoa shall not resell Firm Power purchased from BPA under this Agreement.

19.2 **BPA Appropriations Refinancing Act**
The text of the BPA Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, is incorporated as shown in Exhibit D, Special Provisions.

20. STANDARD PROVISIONS

20.1 **Amendments**
Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

20.2 **Entire Agreement and Order of Precedence**
This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

20.3 **Assignment**
Alcoa may assign this Agreement upon 90 days written notice, but only to a successor-in-interest that has acquired ownership, through purchase or merger, of Alcoa's facilities that are served, in whole or in part, with power provided under this Agreement, and then only if such assignee expressly

agrees in writing to be bound by the terms of this Agreement. Such assignment will be subject to any reasonable requirement by BPA that the assignee provide credit security, in a form acceptable to BPA, to secure performance of assignee's obligations under this Agreement. It shall not be deemed unreasonable for BPA to require credit security from an assignee with a Moody's credit rating below "A", or the equivalent if rated by another credit rating agency. No other assignment of this Agreement by Alcoa is permitted.

20.4 **No Third-Party Beneficiaries**
This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

20.5 **Waivers**
No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

20.6 **BPA Policies**
Any reference in this Agreement to BPA policies, including any revisions, does not constitute agreement of Alcoa to such policy by execution of this Agreement, nor shall it be construed to be a waiver of the right of Alcoa to seek judicial review of any such policy.

20.7 **Severability**
If any term of this Agreement is found or rendered invalid or unenforceable by a court of competent jurisdiction, then unless that term is not severable from all other provisions of this Agreement, such invalidity or unenforceability shall not otherwise affect any remaining lawful obligations under this Agreement. Neither Party shall be liable to the other Party for any damages associated with any term being severed from this Agreement.

20.98 **Credit Assurance**

20.8.1 Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA with an irrevocable standby letter of credit in the amount of $20,000,000, in a form acceptable to BPA in the event of any of the following: (a) Alcoa's credit rating from Standard & Poor's drops below BBB-, or Alcoa's credit rating from Moody's drops below Baa3, or the average for a period of 30 or more consecutive days of the 5-year credit default swap for Alcoa as posted by Bloomberg equals or exceeds 700 basis points; (b) Alcoa provides notice of curtailment, or (c) Alcoa provides notice of termination of the Agreement. Such letter of credit shall have an expiration date 1 year from its date of issuance, and BPA may require replacement letters of credit in the amount of $20,000,000 so that a letter of credit in the

Deleted: 20.8 **Performance Assurance** ¶
When reasonable grounds for insecurity arise with respect to the performance of Alcoa, BPA may in writing demand adequate assurance of due performance and specify the form such assurance shall take. The type of assurance BPA may require includes, but is not limited to, providing a letter of credit, posting a security deposit, or requiring prepayment, as appropriate. Failure of Alcoa to provide such assurance within the time specified by BPA in its request for adequate assurance shall be considered a material breach and may, in BPA's sole discretion, create reasonable grounds to suspend or terminate this Agreement. If adequate assurance is not provided, or is not provided in the form specified in the request for adequate assurance, BPA shall have five Business Days from the date such assurance was required to be provided to notify Alcoa in writing of its intentions with respect to termination or suspension of the contract. Any waiver by BPA of its right to suspend or terminate this Agreement shall not be considered a waiver of said rights with respect to future instances when adequate assurance may be required. Written notices sent under this section must comply with section 16, Notices and Contact Information. ¶ ... [1]

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amount of $20,000,000 is in place for the duration of a triggering event in (a) or (b) or (c) above.

If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 20.8.1, then BPA may terminate this Agreement.

20.8.2 In the event that conditions (a) and (b) above are simultaneously in place, then BPA may request, and Alcoa shall provide, an additional irrevocable standby letter of credit or an increase to the existing irrevocable standby letter of credit, such that the total amount equals $50 million. In the event that conditions (a) and (c) above are simultaneously in place, then BPA may request, and Alcoa shall provide, an additional irrevocable standby letter of credit or an increase to the existing irrevocable standby letter of credit, such that the total amount equals $100 million or the amount equal to BPA's IP revenue for 320 aMW less the IP revenues associated with the monthly amounts that Alcoa shall take and pay for during the 12-months prior to termination("BPA's Payment Exposure"), whichever is less. Such letter of credit shall have an expiration date 1 year from its date of issuance, and BPA may require replacement letters of credit for the amounts determined in this section 20.8.2 so that a letter of credit in such amount is in place for the duration of any triggering event.

If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 20.8.2, then BPA may terminate this Agreement.

20.8.3 Notwithstanding anything in section 20.8.1, or 20.8.2, should Alcoa's financial responsibility or performance viability become unsatisfactory to BPA in BPA's reasonably exercised discretion, then BPA may seek performance assurance from Alcoa, and until BPA receives assurance it may, if commercially reasonable, suspend its performance. Events that may trigger BPA questioning Alcoa's financial responsibility or performance viability shall be determined according to commercial standards and include, but are not limited to, defaults by Alcoa under other contracts, or other material adverse changes in Alcoa's financial condition. Failure by Alcoa to provide such assurance as is adequate under the circumstances, within a reasonable time not exceeding 30 days, shall be a material breach,

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20.9 **Drafting of Agreement**

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation or other event of negotiation, drafting or execution hereof.

20.10 **Execution by Counterparts**
This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

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20.11 **Waiver of Damages**
In the event the Ninth Circuit Court of Appeals or other court of competent jurisdiction issues a final order that declares or renders this Agreement, or any part thereof, void or otherwise unenforceable, neither Party shall be entitled to any damages or restitution of any nature, in law or equity, from the other Party, and each Party hereby expressly waives any right to seek such damages or restitution. For the avoidance of doubt, the Parties agree this provision shall survive the termination of this Agreement or any order as described herein.

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21. TERMINATION

For ease of reference, this section 21 is intended to collect into one section termination events specified in various sections of this Agreement, plus describe certain additional termination events not described elsewhere.

21.1 Alcoa Right to Terminate

21.1.1 Alcoa Right to Terminate for Any Reason

Alcoa may provide written notice to terminate this Agreement anytime after October 1, 2011; *provided however*, if BPA has provided notice pursuant to section 6.2, Alcoa may provide BPA a written notice to terminate this agreement and BPA agrees to waive section 21.1.4.

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Such notice shall include an effective date of termination that is no earlier than 12 months following the date that BPA receives such notice. Such notice shall also specify, for each month during such 12-month period, the amount of Firm Power that Alcoa shall take and pay for, and the applicable provisions of section 8 above shall apply. During this 12-month period prior to termination, Alcoa shall be obligated to pay the IP rate for the monthly amounts of Firm Power it would have otherwise taken. Such monthly amounts shall be equal to 320 aMW less the monthly amounts that Alcoa has agreed to take and pay for, and the provisions of section 8 above shall not apply for such amounts. Following the receipt by BPA of a notice to terminate pursuant to this section 21.1.1, Alcoa agrees that it shall not, during the period that begins on the date of receipt of such notice by BPA and continues through 2400 hours on September 30, 2016, request a power sales agreement from BPA pursuant to section 5(d) of the Northwest Power Act.

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21.1.2 Alcoa Termination During a Period of Curtailment

If, pursuant to section 21.1.1 above, Alcoa provides BPA with a written notice to terminate during a period of curtailment, then such curtailment shall end as of the date BPA receives such notice, and during the subsequent 12-month period the options described in section 21.1.1 above shall apply.

21.1.3 **Alcoa Right to Terminate if Certain Taxes or Charges are Imposed on Alcoa by BPA**

If costs directly attributable to the Alcoa Load associated with either (1) renewable energy portfolio standard obligations, or (2) costs for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges ("Environmental Costs"), are imposed on BPA directly (as opposed to being indirectly imposed on the cost of third party power acquisitions by BPA) and all Environmental Costs that have not been allocated to, and recovered by BPA through, the IP rate schedule, then, BPA shall bill Alcoa for such Environmental Costs, and Alcoa shall be obligated to pay such Environmental Costs and continue performance under this Agreement; *provided, however*, that in the event all Environmental Costs paid by Alcoa to BPA equal or exceed $2 million, then in the event Alcoa is billed any additional Environmental Costs by BPA, Alcoa shall have the option to terminate pursuant to section 21.1.1 above, but Alcoa shall not be obligated to pay the IP rate for Firm Power not taken during the 12-month period prior to such termination.

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21.1.4 **No Operation Following Termination**

Alcoa agrees that in the event it exercises its right to terminate under this section 21, that the earliest it will restart operations at the Intalco Plant is October 1, 2016.

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21.2 **BPA's Right to Terminate**

BPA may terminate this Agreement if:

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21.2.1 Alcoa fails to take and pay for Firm Power made available to it under this Agreement, unless such failure is excused under section 9 or section 17.

21.2.2 Alcoa fails to provide payment assurance satisfactory to BPA as required by section 20.8.

21.2.3 Alcoa fails to maintain Employment Levels as required by section 8.

21.2.4 Alcoa resells Firm Power.

21.2.5 Alcoa fails to provide BPA with any irrevocable standby letter of credit provided for in section 20.8.

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Termination by BPA under this section 21.2 is without prejudice to any other remedies available to BPA under law.

22. TERMINATION OF PRIOR AGREEMENT

The Prior Agreement, as amended, shall terminate at 2400 hours on September 30, 2009.

23. FEASIBILITY OF ENTERING INTO SUBSEQUENT AGREEMENT BEGINNING OCTOBER 1, 2016

If requested by Alcoa, BPA shall conduct a public process during the FY 2013 through FY 2014 time period to examine the feasibility of entering into a subsequent power sales agreement with Alcoa that would begin on October 1, 2016. In addition to examining the terms of service for any such subsequent agreement, the public process will include a study analyzing the impacts on the regional economy associated with such a subsequent agreement. This section 23 is not intended and shall not be construed as requiring BPA to offer any such subsequent agreement, irrespective of the conclusions or findings following the completion of any public process undertaken.

24. ALCOA COVENANT NOT TO CHALLENGE VALIDITY OF THIS AGREEMENT

Alcoa agrees that it shall not challenge the validity of this Agreement, or any part thereof, in any proceeding before the United States Circuit Court of Appeals for the Ninth Circuit (Ninth Circuit), but Alcoa reserves the right to intervene in any proceeding in the Ninth Circuit in which a challenge to the validity of this Agreement, or any part thereof, has been filed.

25. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

Alcoa Inc.		UNITED STATES OF AMERICA Department of Energy Bonneville Power Administration	
By	_____	By	_____
Name	John G. Thuestad *(Print/Type)*	Name	Stephen J. Wright *(Print/Type)*
Title	President, US Primary Products	Title	Administrator and Chief Executive Officer
Date	_____	Date	_____

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Exhibit A
BILLING

1. INDUSTRIAL FIRM POWER ENTITLEMENTS

1.1 The MW made available by BPA under this Agreement multiplied by: (1) the number of HLH; and (2) the number of LLH in the applicable month establishes Alcoa's HLH and LLH Energy Entitlements.

1.2 The MW amount made available by BPA under this Agreement establishes Alcoa's Demand Entitlement.

2. UNAUTHORIZED INCREASE CHARGE

Hourly Firm Power scheduled by Alcoa in excess of amounts specified in Exhibit A shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PS.

3. REVISIONS

If this exhibit is inconsistent with BPA's Industrial Firm Power Rate Schedule, or its successor, as finally approved by FERC, the Parties shall make a good faith effort to amend this exhibit so that it is consistent.

Exhibit B
COST CAPS

1. DEFINITIONS

1.1 "Acquisition Cost for FY2011 through FY2012" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, by BPA multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.2 "Acquisition Cost for FY2012 through FY2016" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, assigned to the Composite Cost Pool under the Tiered Rates Methodology, including DSI loads multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.3 "Cost Cap" shall have the meaning described in section 2.1and section 3.1 of this Exhibit.

1.4 "Credit Cost" means the actual cost or forecasted cost to BPA of a credit default swap or other credit risk hedging instrument purchased by BPA.

1.5 "Environment or Regulatory Cost" means costs incurred, or to be incurred, by BPA that are associated with carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs

1.6 "Forecasted Cost" shall have the meaning described in section 4 of this Exhibit.

1.7 "Forecasted Net Cost" means the result on line J of the calculation in section 2.1 or section 3.1 of this Exhibit for the applicable period. Subject to section 2.2 of this Exhibit, $82 million is net cost cap for the period FY2010 through FY2011 and $350 million is the net cost cap for the period FY2012 through FY2016.

1.8 "Inventory Cost" means the weighted average of the monthly actual unit cost of, or opportunity cost of, BPA's surplus inventory, as valued by BPA with reference to then current market prices, forward curves, and BPA market price forecasts, multiplied by the volume in MWh of BPA's surplus inventory as applied each month to make available the Requested Firm Power to Alcoa, for the purposes of computing Forecasted Cost under this Agreement.

1.9 "Requested Firm Power" means the total amount of Firm Power requested by Alcoa in the notice provided to BPA pursuant to section 5.2 of the body of this Agreement.

2. COST CAP IN FY2010 THROUGH FY2011

2.1 Cost Cap

The Forecasted Net Cost for the FY2010 through FY2011 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 1 below:

TABLE 1 - Example Calculation of the Forecasted Net Cost in FY2010 through FY2011	**Maximum Value**	**Example Value**
A) Firm Power	285 aMW	285 aMW
B) Requested Increase in Firm Power *[effective date of request must be provided inclusive of contractual notice]*	35 aMW	35 aMW
C) Requested Firm Power = A+ B	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = (A * 8760 hours * 2 years) + (B * # hours from effective) *[weighted for appropriate effective dates of requested firm power]*	5,530,800	5,530,800
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	5,635,885	5,635,885
G) Weighted Average IP rate for FY10-11 ($ per MWh) *[weighted for appropriate effective dates of requested firm power]*	$ 34.59	$ 34.59
H) Forecasted Cost ($) *[see definition and example in section 4 of this Exhibit]*	$ 273,332,998	$ 266,577,361
I) Forecasted IP Revenue ($) = D * G	$ 191,332,998	$ 191,332,998
J) Forecasted Net Cost = H - I	$ 82,000,000	$ 75,244,363
K) Forecasted Cost ($ per MWh) = H / F	$ 48.50	$ 47.30
L) Forecasted Net Cost ($ per FY in period) = J / (2 fiscal years)	$ 41,000,000	$ 37,622,181

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2010 through FY2011 period and must be forecast to be less than or equal to $82 million (the "Cost Cap"); provided however such Cost Cap may be increased pursuant to section 2.2 of this Exhibit B.

2.2 Effect of DSI Curtailment on Cost Cap

To the extent any other aluminum smelter DSI notifies BPA of a curtailment under its BPA power sales agreement during the FY2010 through FY2011 period, then during the duration of such curtailment, the $82 million Cost Cap applicable to Alcoa under this Agreement for the FY2010 through FY2011 period will be increased by an amount equal to the amount of the Cost Cap forgone by such other aluminum smelter DSI, and the $48 per MWh cost cap will be increased accordingly.

[insert example]

TABLE 1 - Example Ca
FY2010 through FY201
A) Firm Power
B) Requested Increase in
[effective date of request must be pr
C) Requested Firm Power
= A+ B
D) Maximum Contract Vo
= C * 8760 hours * 2 year
[weighted for appropriate effective
E) Losses percentage
F) Maximum Contract Vo
= D * (1+E)
G) Weighted Average IP r
[weighted for appropriate effective
H) Forecasted Cost ($)
[see definition and example in sectio
I) Forecasted IP Revenue
= D * G
J) Forecasted Net Cost
= H - I
K) Forecasted Cost ($ per
= H / F

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3. COST CAP IN FY2012 THROUGH FY2016

3.1 Cost Cap

The Forecasted Net Cost for the FY2012 through FY2016 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 2 below:

TABLE 2 - Example Calculation of the Forecasted Net Cost in FY2012 through FY2016	Maximum Value	Example Value
A) Firm Power	n/a	n/a
B) Requested Increase in Firm Power	n/a	n/a
C) Requested Firm Power = 320 aMW	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = C * 8760 hours * 5 years	14,016,000	14,016,000
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	14,282,304	14,282,304
G) Weighted Average IP rate for FY12-16 ($ per MWh)	$ 38.22	$ 38.22
H) Forecasted Cost ($) *[see definition and example in section 4 of this Exhibit]*	$ 835,624,476	$ 756,105,174
I) Forecasted IP Revenue ($) = D * G	$ 535,624,476	$ 535,624,476
J) Forecasted Net Cost = H - I	$ 300,000,000	$ 220,480,698
K) Forecasted Cost ($ per MWh) = H / F	$ 58.51	$ 52.94
L) Forecasted Net Cost ($ per FY in period) = J / (5 fiscal years)	$ 60,000,000	$ 44,096,140

Deleted: [insert chart – Example Calculation of the Cost Cap in Fy12-16]¶

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2012 through FY2016 period and must be forecast to be less than or equal to $350 million (the "Cost Cap").

4. METHODOLOGY TO DETERMINE FORECASTED COST

The Forecasted Cost shall be determined by BPA in its sole discretion and will include, but is not limited to, the sum of the following costs: Acquisition Cost, Inventory Cost, Credit Cost, Environmental and Regulatory Cost. ("Forecasted Cost")

For each month in the period, BPA will assemble the information in Table 3 in the commercially reasonable manner below:

[insert Table 3]

Exhibit C
SPECIAL PROVISIONS

1. **BPA APPROPRIATIONS REFINANCING**
In accordance with section 21.2 of the body of this Agreement, section (i) of the BPA Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. No. 104-134, 110 Stat. 1321–350, is included in this Agreement--

(i) **Contract Provisions**
In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1996, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1996--

(1) the Administrator shall establish rates and charges on the basis that

(A) the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b) of the BPA Refinancing Act;

(B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under subsection (c) of the BPA Refinancing Act;

(C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and

(D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

(2) apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b) of the BPA Refinancing Act and to pay the interest on the principal amount under subsection (c) of the BPA Refinancing Act, no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

(3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United

States on a claim for a breach of the contract provisions required by this Part; and

(4) the contract provisions specified in this Part do not--

(A) preclude the Administrator from recovering, through rates or other means. any tax that is generally imposed on electric utilities in the United States, or

(B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to--

(i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

(ii) design rates

2. REVISIONS

This exhibit shall be revised by mutual agreement of the Parties to reflect additional special provisions during the term of this Agreement.

Exhibit D
METERING

1. METERING

Directly Connected Points of Delivery

BPA POD Name: Intalco 13.8 kV;
BPA POD Number: TBD*;
WECC Balancing Authority: BPAT;

Location: the point in BPA's Intalco Substation where the 13.8 kV facilities of BPA and Alcoa are connected;

Voltage: 13.8 kV;

TBD* This data element is currently unresolved and shall be determined by BPA prior to June 1, 2011.

2. REVISIONS

Each Party shall notify the other in writing if updates to this exhibit are necessary to accurately reflect the actual characteristics of POD and meter information described in this exhibit. The Parties shall revise this exhibit to reflect such changes. The Parties shall mutually agree on any such exhibit revisions and agreement shall not be unreasonably withheld or delayed. The effective date of any exhibit revision shall be the date the actual circumstances described by the revision occur.

Exhibit E
SCHEDULING

1. **SCHEDULING FEDERAL RESOURCES**
Alcoa is responsible for creating E-Tags for all deliveries of federal power purchased under this Agreement.

In the event of an unplanned outage that affects future hours, Alcoa or its scheduling agent is responsible for adjusting e-Tags to accurately reflect the amount of load actually being served by generation provided by BPA.

2. **AFTER THE FACT**
BPA and Alcoa agree to reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). BPA and Alcoa shall verify all transactions per this Agreement, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

3. **REVISIONS**
BPA may unilaterally revise this exhibit: (1) to implement changes that are applicable to all customers who are subject to this exhibit and that BPA determines are reasonably necessary to meet its power and scheduling obligations under this Agreement or (2) to comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit F
POWER RESERVES

Deleted: ¶
[To be completed.]

1. DEFINITIONS

(a) "Event" is a system condition under which PS needs additional power to meet its obligations during a system disturbance. The beginning of an Event shall be identified by notice from the TS dispatcher to the TS scheduler that such a system disturbance has occurred, and Alcoa's scheduling agent shall notify Alcoa that Restricted Energy is required. The end of the Event shall occur the earlier of when: a) initially established; or b) Alcoa's scheduling agent has notified Alcoa that full service has been restored. An Event shall not include BPA electing not to purchase power for economic reasons, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.

Deleted: a
Deleted: PS
Deleted: Alcoa
Deleted: PS requests
Deleted: from Alcoa
Deleted: PS
Deleted: adverse market conditions when power is available for purchase and
Deleted: s for economic reasons
Deleted: power

(b) "Event Duration" shall be the total cumulative Event Minutes of the Event.

(c) "Event Minute" shall be the minutes of restriction (or any portion thereof) during an Event.

(d) "Contingency Reserves" are those reserves provided by Alcoa under this Agreement for purposes of providing reserves for BPA's firm power loads within the region, as provided for in the Northwest Power Act.

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(e) "Reserve Amount" shall be the kilowatt (kW) amount of Contingency Reserves available to BPA by Alcoa specified in Section 2 of this Exhibit.

(f) "Restricted Energy" means the requested megawatt-hour (MWh) amount of energy not made available to Alcoa hereunder because of an Event.

2. AMOUNT AND TYPES RESERVES

When necessary to provide Contingency Reserves, BPA may restrict the Reserve Amount, or the requested portion thereof, for a period of time (Restricted Energy). The Reserve Amount (in kilowatts) shall equal the amount of Minimum DSI Operating Reserve – Supplemental specified in the 2010 GRSP, or its successor.

Deleted: PS

Notwithstanding any other provision of this Agreement, BPA shall use its best efforts to end an Event as soon as possible, and Alcoa agrees to cooperate in development of mechanisms that will enhance BPA's ability to notify Alcoa of the end of an Event.

Deleted: PS
Deleted: PS

The Parties recognize that with the addition of certain electronic controls at the Intalco Plant, the Intalco Load can be varied to help accommodate within-hour fluctuations on BPA's system associated with wind power generation. The Parties agree to undertake discussions within 60 days after the execution of this

Agreement to identify and implement actions and agreements necessary to achieve such wind integration benefits.

3. QUALITY AND CHARACTER OF RESERVES

Contingency Reserves provided by Alcoa shall be consistent with North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and Northwest Power Pool (NWPP) standards and criteria:

(a) the Reserve Amount, or the requested portion thereof, must be offline within ten (10) minutes after the first telephone call by Alcoa's scheduling agent to Alcoa;

(b) the Reserve Amount, or the requested portion thereof, must be available to be offline for up to one-hundred five (105) minutes.

Alcoa shall provide a contact at the Facility at the following phone number:

Alcoa
Phone: ( ) –

Alcoa shall maintain such contact for every hour in the Term of the Agreement in which the Minimum DSI Operating Reserve – Supplemental amount is greater than zero megawatts.

Alcoa will provide the Restricted Energy to BPA by an interruption of its loads in an amount equal to or greater than the amount of such specified Restricted Energy, and in each case shall continue such load interruption for the duration of the Event.

The TS dispatcher will notify the TS scheduler of a contingency event. Depending on whether the event occurs less than 30 minutes past the delivery hour, or occurs greater than or equal to 30 minutes past the delivery hour, either the TS scheduler or Alcoa's scheduling agent will adjust Alcoa's e-tags in real time. In both cases Alcoa's scheduling agent shall contact Alcoa at the phone number in this section to: (a) initiate each Event; and (b) terminate each Event. Within ten (10) minutes following such notice by the scheduling agent to initiate an Event, Alcoa shall commence providing the Restricted Energy to BPA. Alcoa shall not restore its use of the Restricted Energy until the lesser of: (a) one-hundred five (105) minutes; or (b) immediately following notice from the scheduling agent terminating an Event.

Deleted: is during the delivery hour (within hour)

Deleted: the scheduling hour (next hour)

Deleted: is

PS retains the right to verify Alcoa's provision of Restricted Energy by comparing the metered amounts before an Event, during an Event, and after an Event is terminated. If such verification fails to demonstrate that the Restricted Energy was made available to BPA by Alcoa for the Event Duration, then PS, in its sole discretion, may: (a) terminate the compensation specified in Section 4 of this Exhibit for the undemonstrated portion of the Reserve Amount for the remaining Term of the Agreement; and, (b) notify TS of the undemonstrated portion of the

Reserve Amount. Alcoa acknowledges that any undemonstrated portion of the Reserve Amount may cause its transmission supplier to take additional actions subject to the provisions of the Transmission Service Agreements Alcoa maintains with its transmission supplier, that may include an assessment of the monetary penalty described in the Failure to Comply provision of the prevailing TS tariff for transmission service.

4. COMPENSATION FOR CONTINGENCY RESERVES

Alcoa will be compensated by PS for Minimum DSI Operating Reserve - Supplemental provided in this Agreement through an adjustment to the IP rate, as provided for in the Northwest Power Act.

5. RETURN OF RESTRICTED ENERGY

BPA must make any Restricted Energy during an Event available to Alcoa within 24 hours in a mutually agreed shape and hours. It is understood by Parties that such returns do not need to occur immediately following an Event and most likely will be made available during Light Load Hours.

Alcoa shall be responsible for scheduling and transmission required for the delivery of Restricted Energy made available to Alcoa by BPA following an Event.

6. TESTING OF RESERVES

[to be inserted]

7. REVISIONS

BPA may unilaterally revise this Exhibit F to implement changes that are applicable to Alcoa and that BPA determines are reasonably necessary for reserves provided under this Agreement to: (a) reflect changes in the value of the DSI Reserves Adjustment; and (b) comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

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Deleted: <#>Credit to be allowed Alcoa for provision of any DSI Reserves(s) beyond the Minimum DSI Operating Reserve - Supplemental, in accordance with the DSI Reserves Adjustment in Section III, Part 2 of the IP-2010 Rate Schedule, or its successor, shall equal the product of: (a) the Reserve Amount (in kilowatts); (b) one-hundred (100) percent; and, (c) the per kilowatt per month of the rate published in BPA's Final WP-2010 Rate Schedule, or its successor, for operating reserve capacity that is provided as a generation input to Transmission Services. This maximum value of such operating reserve capacity is based on the FERC approved embedded cost methodology.¶ <#>¶ 5...

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Deleted: accommodate within-hour fluctuations; and, (c)

Exhibit G
EMPLOYMENT LEVELS

1. Definitions

1.1 "Average Firm Power" means the average Firm Power during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.

1.2 "Average FTE" means the average FTE, as determined pursuant to Table 1 in section 2 below, during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.

1.3 "Firm Power" shall have the meaning ascribed to it in section 2.11 of the body of this Agreement.

1.4 "FTE" shall have the meaning ascribed to it in Section 8 of the body of this Agreement.

1.5 "Proportional Employment" shall have the meaning described in section 2 of this Exhibit G.

2. Relationship between Firm Power and FTE

For the avoidance of doubt, pursuant to this Exhibit G, Firm Power and FTE are proportional for the purposes of this Agreement, based on the amount of Firm Power Alcoa is consuming. As applicable and as described in Table 1 below, the proportion is 1.65 Average FTE per aMW of Average Firm Power ("Proportional FTE"):

Table 1 - Proportional Relationship between Average Firm Power and Average FTE

Average Firm Power (aMW)	Average FTE	Proportional FTE
320	528	1.65
280	462	1.65
240	396	1.65
200	330	1.65
160	264	1.65
120	198	1.65
80	132	1.65
72	**120**	n/a
40	**120**	n/a
0	**120**	n/a

During periods of curtailment, the average of the reported monthly FTE shall be equal to or greater than 120.

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Deleted: During periods of curtailment, Average FTE shall equal, on a monthly basis, the applicable employment levels determined from Table 2

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Average Firm Power (aMW)	Aver
320	
280	
240	
200	
160	
120	
80	
40	
0	

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Page 19: [1] Deleted **Doug Hanlon** **8/13/2009 10:21:00 AM**

20.8 **Performance Assurance**

When reasonable grounds for insecurity arise with respect to the performance of Alcoa, BPA may in writing demand adequate assurance of due performance and specify the form such assurance shall take. The type of assurance BPA may require includes, but is not limited to, providing a letter of credit, posting a security deposit, or requiring prepayment, as appropriate. Failure of Alcoa to provide such assurance within the time specified by BPA in its request for adequate assurance shall be considered a material breach and may, in BPA's sole discretion, create reasonable grounds to suspend or terminate this Agreement. If adequate assurance is not provided, or is not provided in the form specified in the request for adequate assurance, BPA shall have five Business Days from the date such assurance was required to be provided to notify Alcoa in writing of its intentions with respect to termination or suspension of the contract. Any waiver by BPA of its right to suspend or terminate this Agreement shall not be considered a waiver of said rights with respect to future instances when adequate assurance may be required. Written notices sent under this section must comply with section 16, Notices and Contact Information.

Page 19: [2] Deleted **Doug Hanlon** **8/13/2009 10:21:00 AM**

Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA with an irrevocable standby letter of credit in the amount of $_____, in a form acceptable to BPA. Such letter of credit shall have an expiration date one-year from its date of issuance, and BPA may require replacement letters of credit in the amount of $_____ so that a letter of credit in the amount of $_____ is in place on a continuous basis for the term of this Agreement. Nothing in this section 20.9 shall limit BPA's right to demand additional adequate assurance pursuant to section 20.8 above.

If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 20.9 then BPA may terminate this Agreement.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Friday, August 14, 2009 6:02 PM
To: 'Pereira, Marc A.'; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; speerja@verizon.net; mcdotten@msn.com
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: BPA contract review

Attachments: Matrix of Jobs during Curtailment - 081409 (draft).xls

The matrix

Matrix of Jobs during Curtailm...

Thanx

Mark

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Friday, August 14, 2009 2:19 PM
To: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Symonds,Mark C - PTL-5; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; speerja@verizon.net; mcdotten@msn.com
Subject: BPA contract review
When: Monday, August 17, 2009 12:30 PM-2:30 PM (GMT-08:00) Pacific Time (US & Canada).
Where:

Ex 4

DRAFT Matrix of Jobs during Curtailment and Length of Curtailment
Resulting $/MWh Cap Adjustment from $62 per MWh
Prepared: 8/14/2009

		Jobs during Curtailment			
		350	150	120	66
Length of Curtailment	24-months	$ (2)	$ (6)	n/a	$ (7)
	18-months	$ -	$ (4)	$ (4)	$ (5)
	15-months	$ -	$ (3)	n/a	$ (4)

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Friday, August 14, 2009 2:28 PM
To: 'Pereira, Marc A.'
Subject: RE: BPA contract review

We talk Monday at 12:30pm Thanx

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Friday, August 14, 2009 2:19 PM
To: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Symonds,Mark C - PTL-5; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; speerja@verizon.net; mcdotten@msn.com
Subject: BPA contract review
When: Monday, August 17, 2009 12:30 PM-2:30 PM (GMT-08:00) Pacific Time (US & Canada).
Where:

Ex 4

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Tuesday, August 18, 2009 8:54 AM
To: 'Pereira, Marc A.'
Subject: RE: BPA contract review

Thank you

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Tuesday, August 18, 2009 5:03 AM
To: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W PTL-5; Symonds,Mark C - PTL-5; Laun, Max W.; Gregono, Kimberly A; Rousseau, Mike F.; Padgett, Michael; 'speerja@verizon.net'; 'mcdotten@msn.com'
Subject: BPA contract review
When: Tuesday, August 18, 2009 11:00 AM-12:30 PM (GMT-08:00) Pacific Time (US & Canada).
Where:

Ex 4

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5

Sent: Tuesday, August 18, 2009 11:43 AM

To: 'Laun, Max W.'; Pereira, Marc A.; Rousseau, Mike F.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer; MICHAEL DOTTEN

Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Hanlon,Douglas W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; max.laun@gmail.com

Subject: RE: Draft Power Sale Contract - Credit Assurances

I have it and will bring it up.

From: Laun, Max W. [mailto:Max.Laun@alcoa.com]
Sent: Tuesday, August 18, 2009 11:32 AM
To: Symonds,Mark C - PTL-5; Pereira, Marc A.; Rousseau, Mike F.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer; MICHAEL DOTTEN
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Hanlon,Douglas W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; max.laun@gmail.com
Subject: RE: Draft Power Sale Contract - Credit Assurances

Here's our proposal. Please confirm receipt.

Regards,

Max

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Monday, August 17, 2009 9:04 PM
To: Pereira, Marc A.; Rousseau, Mike F.; Laun, Max W.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer; MICHAEL DOTTEN
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Hanlon,Douglas W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Draft Power Sale Contract

All,
The attached version addresses issues discussed on our earlier call:
While we think items with comments in the Agreement are negotiable, the $350 million must be changed to implement our Friday agreement.

We have blocked out 11am pacific for follow-on conference call. Please provide dial-in or let us know that you are expecting us to do so.

Thank you.

Mark

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5

Sent: Wednesday, July 01, 2009 1:41 PM

To: 'Jack Speer'

Cc: Mike Dotten; Mike Rousseau; Max W. Laun; Marc Pereira; Clark,Harry W - PTL-5; Burns,Allen L - D-7; Wright,Jon D - LP-7; Runzler,Kurt W - LP-7

Subject: RE: Senator Wyden Response

Jack,
The summary of BPA's use of the regional economic study provided to Sen. Wyden is on our website:
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2008/DSI/2008-12-18_DSI-Use-of-Reg-Econ-Study.pdf

Thanx

Mark

From: Jack Speer [mailto:speerja@verizon.net]
Sent: Wednesday, July 01, 2009 1:06 PM
To: Symonds,Mark C - PTL-5
Cc: Mike Dotten; Mike Rousseau; Max W. Laun; Marc Pereira
Subject: Senator Wyden Response

Mark,

Would you please send us the BPA response to Senator Wyden on DSI economics which you mentioned in today's meeting?

Thanks.

Jack

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Thursday, August 06, 2009 5:56 PM
To: 'Rousseau, Mike F.'
Subject: RE: updated Schedule - Contract discussions

This time works. We will send Ex B prior to our call.

Mark

From: Rousseau, Mike F. [mailto:Mike.Rousseau@alcoa.com]
Sent: Thursday, August 06, 2009 1:29 PM
To: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5; Symonds,Mark C - PTL-5; Pereira, Marc A.; Laun, Max W.; Jack Speer; Mike Dotten
Subject: updated Schedule - Contract discussions
When: Friday, August 07, 2009 1:00 PM-2:00 PM (GMT-08:00) Pacific Time (US & Canada).
Where: Conf Call

It appears 1 PM Pacific works best for folks.

Ex 4

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, August 12, 2009 6:10 PM
To: 'Rousseau, Mike F.'; 'Pereira, Marc A.'; 'Laun, Max W.'; 'Jack Speer'; 'Mike Dotten'
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule
Attachments: DRAFT Term Sheet - CFAC 2009-07-17 _7-year option_.pdf

FYI - Attached is the version of the 2+5 term sheet with CFAC's numbers plugged in
<see attached pdf>

Mark

From: Symonds,Mark C - PTL-5
Sent: Friday, August 07, 2009 1:02 PM
To: 'Rousseau, Mike F.'; 'Pereira, Marc A.'; 'Laun, Max W.'; 'Jack Speer'; 'Mike Dotten'
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
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All,
Attached is a draft of Exhibit B and a pdf of a Table yet to be inserted:
<see attached files>

We'll be on the phone momentarily.

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Sent: Thursday, August 06, 2009 11:21 AM
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in light of decisions made in the WP-10 rate case.

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Mark

DRAFT – Term Sheet
Block Power Sale to CFAC[1]

July 17, 2009

Basic Terms (subject to the Special Conditions below):

Product	Block, firm power, delivered on all hours.
Rate	Industrial Firm Power (IP) rate. Reserves provided consistent with law.
Amount	70 aMW during Initial 2-year Period 140 aMW during Subsequent 5-year Period
Term	October 1, 2009 – September 30, 2016 October 1, 2009 – September 30, 2011 (Initial 2-year Period) October 1, 2011 – September 30, 2016 (Subsequent 5-year Period).

Special Conditions:

1. BPA may provide Columbia Falls Aluminum Company (CFAC) notice of termination prior to March 31, 2010, if, in BPA's sole discretion, it is unable to purchase FBS replacement resources sufficient to serve the Amount for the Subsequent 5-Year Period for less than or equal to $64 per MWh. The cost cap represents a forecasted net cost of less than $150 million for the Subsequent 5-year Period (defined as cost of purchases to serve CFAC load less expected IP revenue from the same).

2. In the event that wholesale power market prices for power purchased by BPA for the Initial 2-year Period are sufficient to serve CFAC 140 aMW at a cost less than or equal to $48 per MWh, then upon CFAC's 3-month request BPA will increase the Amount to 140 aMW for the balance of the Initial 2-year Period. Consistent with BPA's determination that it will not exceed the $48 per MWh cost cap for DSI service, the cost cap represents a forecasted net cost of less than $35 million for the Initial 2-year Period based on then current forecast of market price. To the extent any other aluminum smelter DSI notifies BPA of a curtailment, during the duration of such curtailment, the $35 million cost cap will be increased and the $48 per MWh cost cap will be increased accordingly.

3. Upon CFAC's request BPA will conduct a public process between October 1, 2012, and October 1, 2014, to determine the feasibility of entering into a follow-on contract with CFAC beginning October 1, 2016. In addition to examining the terms of service for any such follow-on contract, the public process will include a study analyzing the impacts on the regional economy associated with such a follow-on contract. This provision is not intended and shall not be construed as requiring BPA to offer any such follow-on

[1] This draft term sheet is for discussion purposes only, is subject to change, and is not binding on BPA or CFAC for any purposes.

contract, irrespective of the conclusions or findings of any public process undertaken.

4. Any costs of carbon taxes or charges, greenhouse gas mitigation costs or other similar environmental or regulatory costs will be included in the net cost calculation, and, as set forth below, BPA intends to require any suppliers to include such costs (excluding costs directly imposed on BPA explained in section 5, below) in their offers of electricity.

   The cost caps in Sections 1 and 2 above represent the maximum amount BPA will pay for average annual blocks of power to support sales to CFAC, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs, and costs incurred by BPA in connection with any credit requirements. Cost caps represent the weighted average of acquisitions made by BPA to support sales to CFAC over all Fiscal Years comprising the particular delivery period. Further,

   a. BPA will not make a plant specific acquisition from a coal-fired resource.

   b. BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to above, that are imposed on the supplier after the date the acquisition contract is entered into.

5. In the event costs associated with either renewable energy portfolio standard obligations, if any, or costs imposed on BPA directly (in contrast with costs imposed upon suppliers to BPA) for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges, if any, are not recovered by BPA through rates but are to be paid by CFAC under the terms of the contract, CFAC shall have the option to terminate pursuant to Section 11 below, but without the obligation to pay the IP rate for the applicable Amount for the 12-month notice period.

6. CFAC commits to employ an average of ___ full time equivalent employees (FTEs) at the Intalco Plant during the period that CFAC receives 140 aMW (2 potlines) under the contract, measured on a 5-year rolling average basis. Equivalent pro rata FTE levels will be developed for different operating levels and addressed in the contract. "FTE" shall mean full time annual employment for both regular employees and on-site and local off-site contractors. If CFAC fails to average FTE levels established in this section or the contract, BPA may terminate the contract; provided however, such minimum requirement shall not apply during periods of curtailment, or if notice of termination has been given.

7. In order to qualify for service beginning October 1, 2009, CFAC's load at the Intalco Plant must have been 70 aMW or more in any one year of the Subscription Period (Fiscal Year 2007 through Fiscal Year 2009).

8. Following a notice of termination by CFAC under Section 11 below (unless triggered under Section 5 above), CFAC agrees that it will not request power service as a Direct Service Industry from BPA.

9. CFAC agrees not to challenge the validity of the contract implementing this Term Sheet in the Ninth Circuit Court of Appeals, but reserves the right to intervene in any proceeding challenging the validity of the contract for the purpose of defending the validity of the contract or any portion thereof.

10. CFAC may curtail deliveries up to twice during the Term. If CFAC elects to curtail, then:
    - **a)** 3-month prior written notice is required, and the curtailment duration may be changed only with BPA's consent;
    - **b)** cumulative curtailment duration shall not exceed 24 months;
    - **c)** no take-or-pay obligation on appropriately noticed curtailed amounts and no compensation by BPA to CFAC; and
    - **d)** provisions in Section 6 above shall be suspended for the duration of each curtailment, proportional to the amount curtailed.
    - **e)** curtailments of the Product may not be replaced by third-party power purchases

11. CFAC may terminate upon 12-months prior written notice, but the provisions in Section 6 above shall be suspended during this period, and CFAC shall be obligated to pay the IP rate (whether or not it takes power and without regard to any mitigation by BPA) for the applicable Amount for the 12-month notice period. CFAC may switch from a curtailment to a termination at any time during a curtailment by providing notice of termination and agreeing to pay the IP rate for the applicable Amount for a period of not less than 12-months following the effective date of the notice of curtailment.

Symonds,Mark C - PTL-5

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Subject: RE: Updated Schedule
Attachments: Net Cost Determination for Draft Contract - 080509 (draft).pdf; Power Sales Contract ALCOA Exhibit B - 080709.doc

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Net Cost Check	$ 31,970,002	$ 49,970,301	$ 81,940,303
IP Revenues	$ 93,948,090	$ 97,002,675	$ 190,950,765

$48 per MWh test

	Cost FY2010	FY2011		HUH LLH split
Forecasted Cost	$ -	$ -	$ -	
Acquisition Cost	$ -	$ -	$ -	
Acquisitions Made				
Acquisitions to be Made				
Inventory Cost	$ 125,918,091	$ 146,972,976	$ 272,891,068	
Inventory Applied	$ 125,918,091	$ 146,972,976	$ 272,891,068	
Inventory to be Applied				
Credit Cost				
Environmental and Regulatory Cost				
Total - by Fiscal Year				

$	49.45	per MWh of Sales to Alcoa during FY10-11
$	48.67	per MWh of 320 aMW Sale to Alcoa for the entire FY10-11 period
	5,518,060	MWh Sales to Alcoa during FY10-11
	618,245	MWh of actual sales to Intu effective date of increase
	4,899,840	MWh of 320 aMW sales to Alcoa subsequent to the effective date
	730	total days in period

assumes 3-month notice given at contract signing

	Volume (MWh incl losses) FY2010	FY2011	
Forecasted Cost			
Acquisition Cost			
Acquisitions made	-	-	-
Acquisitions to be Made	2,766,463	2,856,461	5,622,924
Inventory Cost			
Inventory Applied	-	-	-
Inventory to be Applied	-	-	-
Credit Cost	-	-	-
Environmental and Regulatory Cost	-	-	-
Sum of Acquisitions & Inventory - by Fiscal Year	2,766,463	2,856,461	5,622,924

** Loads applied to Credit and E&R Costs may not be additive

Cost to Serve

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31	30
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisitions made	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Acquisitions to be Made	$ 8,756,743	$ 8,474,267	$ 8,756,743	$ 11,347,401	$ 10,249,266	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 12,865,206	$ 11,620,186	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,865,206	$ 12,450,200
Inventory Cost																								
Inventory Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Inventory to be Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Credit Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Environmental and Regulatory Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total - by Month	$ 8,756,743	$ 8,474,267	$ 8,756,743	$ 11,347,401	$ 10,249,266	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 12,865,206	$ 11,620,186	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,865,206	$ 12,450,200

Volume Required to Serve (MWh incl losses)

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31	30
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisitions made	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Acquisitions to be Made	212,278	205,430	212,278	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778	242,604	234,778	242,604	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778
Inventory Cost																								
Inventory Applied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Inventory to be Applied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Credit Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Environmental and Regulatory Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sum of Acquisitions & Inventory - by Month	212,278	205,430	212,278	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778	242,604	234,778	242,604	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778

** Loads applied to Credit and E&R Costs may not be additive

Average Load (aMW, not incl losses)

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31	30
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisitions made	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Acquisitions to be Made	280	280	280	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320
Inventory Cost																								
Inventory Applied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Inventory to be Applied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Environmental and Regulatory Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum of Acquisitions & Inventory - by Month	280	280	280	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320

** Loads applied to Credit and E&R Costs may not be additive

how do we deal with the ramp-up? This does not happen overnight.

Weighted Average Unit Cost by Month

	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisitions made	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Acquisitions to be Made	$ 41.25	$ 41.25	$ 41.25	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03
Inventory Cost																								
Inventory Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Inventory to be Applied	$ 41.25	$ 41.25	$ 41.25	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03
Credit Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Environmental and Regulatory Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Expected acquisitions	$ 38.77	$ 38.77	$ 38.77	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84

Exhibit B
COST CAPS

1. Definitions

1.1 "Acquisition Cost for FY2011 through FY2012" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, by BPA multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.2 "Acquisition Cost for FY2012 through FY2016" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, assigned to the Composite Cost Pool under the Tiered Rates Methodology, including DSI loads multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa,for the purpose of computing Forecasted Cost under this Agreement.

1.3 "Cost Cap" shall have the meaning described in section 2.1and section 3.1 of this Exhibit.

1.4 "Credit Cost" means the actual cost or forecasted cost to BPA of a credit default swap or other credit risk hedging instrument purchased by BPA.

1.5 "Environment or Regulatory Cost" means costs incurred, or to be incurred, by BPA that are associated with carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs

1.6 "Forecasted Cost" shall have the meaning described in section 4 of this Exhibit.

1.7 "Forecasted Net Cost" means the result on line J of the calculation in section 2.1 or section 3.1 of this Exhibit for the applicable period. Subject to section 2.2 of this Exhibit, $82 million is net cost cap for the period FY2010 through FY2011 and $350 million is the net cost cap for the period FY2012 through FY2016.

1.8 "Inventory Cost" means the weighted average of the monthly actual unit cost of, or opportunity cost of, BPA's surplus inventory,as valued by BPA with reference to then current market prices, forward curves, and BPA market price forecasts, multiplied by the volume in MWh of BPA's surplus inventory as applied each month to make available the Requested Firm Power to Alcoa, for the purposes of computing Forecasted Cost under this Agreement.

1.9 "Requested Firm Power" means the total amount of Firm Power requested by Alcoa in the notice provided to BPA pursuant to section 5.2 of the body of this Agreement.

2. Cost Cap in FY2010 through FY2011

2.1 Cost Cap

The Forecasted Net Cost for the FY2010 through FY2011 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 1 below:

TABLE 1 - Example Calculation of the Forecasted Net Cost in FY2010 through FY2011	**Maximum Value**	**Example Value**
A) Firm Power	285 aMW	285 aMW
B) Requested Increase in Firm Power *[effective date of request must be provided inclusive of contractual notice]*	35 aMW	35 aMW
C) Requested Firm Power = A+ B	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = C * 8760 hours * 2 years *[weighted for appropriate effective dates of requested firm power]*	5,606,400	5,606,400
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	5,712,922	5,712,922
G) Weighted Average IP rate for FY10-11 ($ per MWh) *[weighted for appropriate effective dates of requested firm power]*	$ 34.60	$ 34.60
H) Forecasted Cost ($) *[see definition and example in section 4 of this Exhibit]*	$ 275,981,440	$ 200,000,000
I) Forecasted IP Revenue ($) = D * G	$ 193,981,440	$ 193,981,440
J) Forecasted Net Cost = H - I	$ 82,000,000	$ 6,018,560
K) Forecasted Cost ($ per MWh) = H / F	$ 48.31	$ 35.01

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2010 through FY2011 period and must be forecast to be less than or equal to $82 million (the "Cost Cap"); provided however such Cost Cap may be increased pursuant to section 2.2 of this Exhibit B.

2.2 Effect of DSI Curtailment on Cost Cap

To the extent any other aluminum smelter DSI notifies BPA of a curtailment under its BPA power sales agreement during the FY2010 through FY2011 period, then during the duration of such curtailment, the $82 million Cost Cap applicable to Alcoa under this Agreement for the FY2010 through FY2011 period will be increased by an amount equal to the amount of the Cost Cap forgone by such other aluminum smelter DSI, and the $48 per MWh cost cap will be increased accordingly.

[insert example]

3. Cost Cap in FY2012 through FY2016

3.1 Cost Cap

The Forecasted Net Cost for the FY2012 through FY2016 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 2 below:

[insert chart – Example Calculation of the Cost Cap in Fy12-16]

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2012 through FY2016 period and must be forecast to be less than or equal to $350 million (the "Cost Cap").

4. Methodology to Determine Forecasted Cost

The Forecasted Cost shall be determined by BPA in its sole discretion and will include, but is not limited to, the sum of the following costs: Acquisition Cost, Inventory Cost, Credit Cost, Environmental and Regulatory Cost. ("Forecasted Cost")

For each month in the period, BPA will assemble the information in Table 3 in the commercially reasonable manner below:

[insert Table 3]

5.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Thursday, August 06, 2009 11:21 AM
To: 'Rousseau, Mike F.'; Pereira, Marc A.; Laun, Max W.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule
Attachments: Power Sales Agreement ALCOA - 080609.doc

All,
Attached please find our initial draft contract:
<see attached doc>

Note that there are several places with placeholders and that Exhibits B & F are missing entirely. Exhibit B will follow under separate cover later today. We will work on Exhibit F next week, but please take note of reserve provisions in the IP-10 rate schedule and GRSPs.

It is also important to note that this contract draft does not address comments received under the term sheet as they are still coming in and being posted as late as this morning. We encourage you to review them and we expect there will be changes to the draft contract to address the public comments received. One such change may include the need for the IP rate forecast to be lowered from what had been used in the January draft contract in light of decisions made in the WP-10 rate case.

Please let me know if there is a time available tomorrow to review our approach with you all. Also please be prepared to discuss logistics for next week on tomorrow's call. Thank you.

Mark

From: Rousseau, Mike F. [mailto:Mike.Rousseau@alcoa.com]
Sent: Thursday, August 06, 2009 8:34 AM
To: Symonds,Mark C - PTL-5; Pereira, Marc A.; Laun, Max W.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule

Thanks Mark

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Wednesday, August 05, 2009 5:25 PM
To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; 'Jack Speer'; 'Mike Dotten'
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule

Marc-
We will be sending out the contract draft in the morning.

A couple things to think about in the meantime:
1) probably useful to have a conf call to review our approach on Friday
2) we remain open to your plans to come out late Tues through Thurs afternoon - let's discuss this Friday also

More in the morning.

Mark

From: Symonds,Mark C - PTL-5
Sent: Monday, July 27, 2009 1:14 PM
To: 'Pereira, Marc A.'; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

Very well.

Just to clarify, you mean you all are available from Tuesday afternoon at 3pm, which is August 11th, right? Just making sure you did not mean Monday.

Thank you.

Mark

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Monday, July 27, 2009 10:44 AM
To: Symonds,Mark C - PTL-5; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

Mark,
Thanks for the update.
We are making travel arrangements to be in Portland during the week of august 10. We will be available to meet with BPA from Tuesday (august 10) at 3pm until Thursday evening, as needed.
We can always cancel if the draft is perfect, but let's reserve those dates just in case.
marc

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Friday, July 24, 2009 7:43 PM
To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; 'Jack Speer'; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Updated Schedule

Marc et al,
You left a note for Allen earlier in the day regarding schedule. Here are some of the key points:
8/5 - we expect to provide Alcoa with an initial draft contract (less than a week and a half from now)
8/10-14 - intensive contract negotiations and mostly likely week for face-to-face as needed
8/17-21 - we anticipate releasing contract for public review late this week
9/7-11 - public comment period anticipated to end this week (note the holiday weekend)
9/14-18 - BPA works in comments into contract / ROD
9/21-25 - time for approvals

Contract negotiations are a bit more accelerated than you indicated in you message, but I have laid out the rest of the time in an effort to underline why it is important to try to accelerate. Please contact me with any questions you may have. Thanx

Contract No. 09PB-

POWER SALES AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

ALCOA INC.

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Exhibit **Metering**
Exhibit **Scheduling**
Exhibit **Power Reserves**

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This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and Alcoa Inc. (Alcoa), hereinafter individually referred to as "Party" and collectively referred to as the "Parties." Alcoa is a corporation organized under the laws of the State of Pennsylvania, and registered therein as entity number 10514, taxpayer identification number 25-0317820.

RECITALS

BPA is authorized to sell power to Alcoa, a direct service industrial customer, pursuant to section 5(d)(1)(A) of the Northwest Power Act, 16 U.S.C. § 839c(d)(1)(A).

Concomitantly with the execution of this Agreement BPA has issued a record of decision addressing comments regarding this Agreement submitted by BPA customers and other interested parties, and BPA's rationale for its decision to enter into th Agreement.

BPA has functionally separated its organization in order to separate the administration and decision-making activities of BPA's power and transmission functions. References in this Agreement to Power Services or Transmission Services are solely for the purpose of clarifying which BPA function is responsible for administrative activities that are jointly performed.

The Parties agree:

1. **TERM**

This Agreement takes effect on the date signed by the Parties and expires on September 30, 20 , unless it is terminated earlier pursuant to the terms of th Agreement. Power by to Intalco Plant commence on October 1, 20 .

All liabilities incurred by each arty hereunder be preserved until satisfied, notwithstanding the expiration or termination of this Agreement.

2. **DEFINITIONS**

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used or, if not so defined, shall have the meaning stated in BPA's applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions ("GRSPs"). If a term is not defined in any of the named sources, then the term shall be given its normal and customary meaning, with due regard to generally accepted business practices, including the status of the undefined term as a generally recognized term of art.

2.1 "Alcoa Load" means that Alcoa hourly load at the Intalco Plant served under this Agreement.

Deleted: By its terms Alcoa's current block power sales agreement (Contract No. 06PB-11744) continues through September 30, 2011, and power deliveries under this Agreement are expected to commence on October 1, 2011.¶
¶

Deleted: On October 10, 2008, the Parties signed a Memorandum of Understanding (MOU No. 09PB-12006) which described the process necessary to establish a power sales agreement for the period Fiscal Years 2012 through 2028, and which established a framework of principles for the terms and conditions of such power sales contract. ¶
¶
Given its most current load and resource projections for the Federal Columbia River Power System, this Agreement contemplates and provides for BPA to acquire power to support sales to Alcoa under this Agreement. ¶
¶
It is BPA's intent to treat acquisitions of power by BPA in support of sales to Alcoa under this Agreement as Federal Base System Resource replacements.¶
¶

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2. "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

2. "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.

2. "Business Days" means every Monday through Friday except for Federal holidays.

" "

" "

2. "Demand Entitlement" shall have the meaning described in section 1.2 of Exhibit B.

2. "Diurnal" means the division of hours within a month between Heavy Load Hours (HLH) and Light Load Hours (LLH).

2. "Employment "

2. "Federal Base System Resources" has the meaning contained in the Northwest Power Act, 16 U.S.C. § 839a(10).

2.1 "Firm Power" means electric power that PS will make available at the Industrial Firm power rate to Alcoa under this Agreement in equal hourly amounts for every hour of the Fiscal Year.

2.1 "Fiscal Year" or "FY" means the period that begins each October 1 and which ends the following September 30. Even though, as noted in ection 1, certain actions are, or may be, required prior to the commencement of power deliveries, the first Fiscal Year under this Agreement is the 2012 Fiscal Year, which begins October 1, 2011, and continues through September 30, 2012.

2.1 "Intalco Plant" means the Alcoa aluminum smelting facilities served from BPA's Intalco Substation, where the 13.8 kilovolt facilities of BPA and Alcoa are connected.

2.1 "Issue Date" shall have the meaning described in section 1 .1.

2.1 "Net Firm Power" shall have the meaning described in Exhibit G.

" "

Deleted: 2.2 "Allocated Power" means the amount of power acquired by BPA pursuant to sections 5, 6, and 7 of this Agreement, as specified in Exhibit A.¶
¶
2.3 "Allowable Expenditures" shall have the meaning described in section 11.4.¶
¶

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Deleted: 2.7 "Contingent Acquisition" means a proposed ten-year power purchase transaction that is memorialized in a power purchase agreement where BPA's obligation for the first five years of the transaction is non-contingent and BPA's obligation for the second five years of the transaction is contingent on the occurrence of certain conditions specified in such power purchase agreement. ¶
¶

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2. "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 et seq., Public Law No. 96-501, as amended.

2. "Points of Metering" means the interconnection points between BPA, Alcoa and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.

2. "Power Reserves" shall have the meaning described in Exhibit .

2. "Power Services" or "PS" means the organization, or its successor organization, within BPA that is responsible for the management and sale of Federal power.

2.2 "Primary Points of Receipt" shall have the meaning described in section 1 .1.

"

2. "Region" or "Regional" means the Pacific Northwest as defined in the Northwest Power Act, 16 U.S.C. § 839a(14).

2. "Transmission Services" or "TS" means the organization or its successor organization, within BPA that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

"

3. APPLICABLE RATES

Sales by BPA to Alcoa under this Agreement shall be made at the Industrial Firm Power rate (the "IP rate") in effect at the time of such sales, and are subject to all applicable GRSPs.

3.1 Industrial Firm Power Rate

Alcoa purchase Firm Power provided by BPA under this Agreement at the applicable IP rate for the rate period, as established through the procedures specified in section 7(i) of the Northwest Power Act (16 U.S.C § 839e(i)), or its successor, including all adjustments and charges developed in accordance with all applicable statutory ratemaking directives.

Alcoa acknowledges that BPA has not agreed to propose that the IP rate be established at any particular level for any rate period included within the term of this Agreement, and that, while it reserves all rights with respect to challenging rates proposed or established by BPA, Alcoa bears any risks associated with the IP rate level established each rate period by BPA pursuant the above referenced rate setting procedures.

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Deleted: 2.21 "Party" or "Parties" means BPA and/or Alcoa.¶
¶

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Deleted: 2.25 "Power Supply Agreement" shall have the meaning described in section 8.4.¶
¶
2.26 "Price Caps" means the maximum amount BPA will pay for average annual blocks of power for service to Alcoa Load during a Fiscal Year.¶
¶

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Deleted: 2.28 "Reallocated Power" means the amount of power reallocated to Alcoa pursuant to section 10.6 and specified in Exhibit A.¶
¶
2.29 "Reduced Liquidated Damages" shall have the meaning described in section 11.2.2. ¶
¶

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3.2 **Additional Charges**

Alcoa is subject to any applicable additional charges, including penalty charges (e.g., the Unauthorized Increase Charge), established in BPA's Wholesale Power Rate Schedules and associated GRSPs.

4. PURCHASE AND SALE

the period FY 201 through FY 20 , BPA shall Firm Power in amounts specified and Alcoa shall purchase such ower unless: (a) ower Caps identified in ; ( ) th Agreement has terminated; or ( ) Alcoa has failed to operate the Intalco Plant at a level equal to or greater than 160 aMW for a least during the period 1, 200 , through September 30,

All purchases of Firm Power by Alcoa under this Agreement shall be used exclusively to serve the Alcoa Load.

5. PURCHASE AND SALE FY 201 THROUGH FY 20 1

5.1 **by BPA**

5.2

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PURCHASE AND SALE FY 20 2 THROUGH FY 20

.1

.1 **Caps**

The Caps specified in represent the maximum BPA support sales to Alcoa including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs ,

.2 **Other Limitations**

BPA will not make a plant specific acquisition from a coal-fired resource BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to in section .1 above, that are imposed on the supplier after the date the acquisition contract is entered into.

EMPLOYMENT

Except during any period of curtailment pursuant to section 9 below, or any termination period in which Alc a is not operating, Alcoa shall employ at least the number of full time equivalent (FTE) employees specified in Exhibit G. "FTE" shall mean full time annual employment for regular employees of Alcoa at the Intalco Plant and contractor employees of Alcoa at the Intalco Plant.

Alcoa shall notify BPA in writing in the event that Average FTE levels are reduced by more than one percent below the applicable level specified in Exhibit G. Such notice shall be provided within five Business Days following such reduction. Such notice shall specify the date by which Alcoa anticipates Average FTE levels will equal or exceed the applicable level specified in Exhibit G; *provided, however*, that this Agreement will be subject to termination by BPA in the event Alcoa fails to

Deleted: 5.3 **Termination** ¶ In the event BPA has not executed one or more acquisitions, including any Contingent Acquisitions, that together total 240 aMW by March 31, 2009, and Alcoa has not provided notice to BPA pursuant to section 6.1 below, then this Agreement will terminate on April 1, 2009.¶
¶
5.4 **Liquidated Damages**¶ Alcoa shall be liable to BPA for Liquidated Damages, if any, pursuant to section 11 in connection with any acquisitions, including any Contingent Acquisition made by BPA that culminates in a BPA power purchase obligation.¶
¶
5.5 **Credit Assurance**¶ Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa prov ... [12]

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meet the applicable Average FTE levels specified in Exhibit C within days following the notice provided in this section .

. **CURTAILMENT**

.1

1 . **SCHEDULING**

1 .1 **Scheduling**
Alcoa shall schedule power in accordance with Exhibit .

1 . **DELIVERY**

1 .1 **Definitions**

1 .1.1 "Primary Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is forecasted to be

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Deleted: 9.1 **Employment and Capital Commitments**¶
Alcoa commits to make the minimum annual Employment Expenditures specified in the Expenditure and Investment Table below, at the Intalco Plant through the term of this Agreement. "Employment Expenditures" shall mean, and will be limited to, regular compensation, which is comprised of wages, benefits, and customary performance bonuses, and will not include any extraordinary bonuses or similar types of awards. If Alcoa fails to make annual Employment Expenditures each Fiscal Ye ... [29]

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10.1.1 **BPA Payments**¶ ... [32]

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made available by Power Services to Alcoa for purposes of obtaining a long-term firm transmission contract.

1 .1.2 "Scheduling Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is made available by Power Services to Alcoa for purposes of transmission scheduling.

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1 .1.3 "Point of Delivery" means the point described in Exhibit E to which Alcoa delivers power.

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1 .2 **Transmission Service**

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1 .2.1 Alcoa is responsible for making arrangement for, and payment of, delivery of power from the Scheduling Points of Receipt, including all transmission and ancillary service costs.

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1 .2.2 Alcoa shall obtain prior BPA approval for, and shall provide at least 60 days' notice to Power Services prior to changing Balancing Authority Areas and.

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1 .2.3 At Alcoa's request, Power Services shall provide Alcoa with Primary Points of Receipt and other information needed to enable Alcoa to obtain long-term firm transmission for delivery of power sold under this Agreement. If required by Transmission Services for purposes of transmission scheduling, then Power Services shall provide Alcoa with Scheduling Points of Receipt. Power Services has the right to provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt. If BPA does provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt, then BPA shall reimburse Alcoa for any incremental, direct, non-administrative costs incurred by Alcoa to comply with delivering Firm Power from such a Scheduling Point of Receipt to Alcoa's Intalco Plant if the following conditions, as outlined in 1 .2.3.1 or 1 .2.3.2 below, as applicable, have been met:

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1 .2.3.1 If Alcoa has long-term Point to Point (PTP) transmission service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

1 .2.3.1.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

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1 .2.3.1.2 Alcoa has submitted a request to redirect its long-term firm PTP transmission service to deliver Firm Power from the Scheduling Point of

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Receipt on a firm basis, but that request was not granted; and

1 .2.3.1.3 Alcoa's transmission schedule was curtailed due to non-firm status under PTP transmission service or Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

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1 .2.3.2 If Alcoa has long-term Network Integration Transmission Service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

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1 .2.3.2.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

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1 .2.3.2.2 Alcoa's transmission schedule was curtailed due to non-firm status under its secondary service status and Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

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1 .2.3.3 In the event power cannot be scheduled from a BPA Scheduling Point of Receipt (other than a Primary Point of Receipt) then Alcoa may request and, consistent with BPA's standard practices to achieve efficient system operation and reliability, BPA will move the Scheduling Point of Receipt to a point on the FCRTS where energy can be made available and scheduled to Alcoa's load ("Alternative Scheduling Point of Receipt"), if such a point is available and providing the power from that Alternative Scheduling Point of Receipt would not cause BPA to violate any type of non-power constraint.

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1 .3 **Liability for Delivery**

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Alcoa waives any claims against BPA arising under this Agreement for non-delivery of power to any points beyond the applicable Scheduling Points of Receipt, except for reimbursement of costs as described in section 1 .2.3. BPA shall not be liable under this Agreement for any third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership.

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1 .4 **Real Power Losses**

BPA is responsible for the real power losses necessary to deliver Firm Power across the Federal Columbia River Transmission System to Alcoa's POD(s) listed in Exhibit . Alcoa shall be responsible for any real power losses over non-federal transmission facilities.

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1 . **METERING**

Alcoa's purchase obligations in sections 4 are not dependant on amounts scheduled and do not require retail load meters for billing and payment.

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1 . **BILLING AND PAYMENT**

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1 .1 **Billing**

BPA shall bill Alcoa monthly for all products and services provided during the preceding month(s). BPA may send Alcoa an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to Alcoa. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

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1 .2 **Payment**

Alcoa shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the Issue Date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

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If Alcoa has made payment on an estimated bill then:

1 .2.1 if the amount of the final bill exceeds the amount of the estimated bill, then Alcoa shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or

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1 .2.2 if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay Alcoa the difference between the estimated bill and final bill by the 20th day after the final bill's Issue Date. If the 20th day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

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1 .3 **Payment by BPA**

All payments must be received by the 20th day following the last day of the month in which any such Curtailment payment is due. If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

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1 .4 **Late Payments**

After the Due Date, a late payment charge, equal to the higher of:

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(1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or

(2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

1 .5 **Termination** Deleted: 5

If Alcoa has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment in full. If Alcoa does not provide payment within three Business Days after receipt of an additional written notice from BPA, and BPA determines in its sole discretion that Alcoa is unable to make the payments owed, then BPA may terminate this Agreement. Written notices sent under this section must comply with section 18 Notices and Contact Information.

1 .6 **Disputed Bills** Deleted: 5

1 .6.1 If Alcoa disputes any portion of a charge or credit on Alcoa's estimated or final bills, Alcoa shall provide written notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Alcoa shall pay the entire bill by the Due Date. This section 1 .6.1 does not allow Alcoa to challenge the validity of any BPA rate. Deleted: 5 Deleted: 5

1 .6.2 Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated. Deleted: 5

1 .6.3 If the Parties agree, or if after a final determination of a dispute pursuant to section , Alcoa is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365. Deleted: 5 Deleted: 20

1 . INFORMATION EXCHANGE AND CONFIDENTIALITY Deleted: 6

1 .1 **General Requirements** Deleted: 6

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement, and to forecast Alcoa Load, forecast BPA system load, comply with NERC reliability standards, prepare bills, resolve billing disputes, and otherwise implement this Agreement. For example, this obligation includes transmission and power scheduling Formatted: Font: 10 pt Deleted: 13268

information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.). Information requested under this section 1 .1 shall be provided in a timely manner.

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1 .2 **Reports**

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Alcoa shall notify BPA of public sources from which Alcoa's annual financial reports and any statements by its authorized officers are readily available and BPA will secure such reports and statements for its use. In the event Alcoa's annual financial reports and statements by its authorized officers become unavailable from public sources Alcoa shall provide such reports upon request BPA.

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1 .3 **Meter Data**

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Alcoa consents to allow Power Services to receive Alcoa's meter data from Transmission Services or BPA's metering function.

1 .4 **Confidentiality**

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Before Alcoa provides information to BPA that Alcoa deems to be confidential commercial or financial information, Alcoa shall clearly designate such information as confidential. BPA shall notify Alcoa as soon as practicable, but in any case as provided by applicable law or regulation, of any request received under the Freedom of Information Act (FOIA) (5 U.S.C. §§ 552 *et seq.*), or under any other federal law or court or administrative order, for any information designated as confidential by Alcoa. BPA shall only release such confidential information consistent with FOIA, or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of such confidential information within BPA to employees who need it for purposes of administering this Agreement.

1 . **CONSERVATION AND ENVIRONMENTAL ATTRIBUTES**

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1 .1 **Conservation**

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Alcoa shall verify and report all cost-effective (as defined by section 3(4) of the Northwest Power Act) non-BPA-funded conservation measures and projects savings achieved by Alcoa through the Regional Technical Forum's Planning, Tracking and Reporting System or its successor tool. Verification protocols of conservation measures and projects, reporting timelines and documentation requirements shall comply with BPA's Energy Efficiency Implementation Manual or its successor.

1 .2 **Renewable Energy Certificates and Carbon Credit Treatment**

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1 .2.1 "Carbon Credit" means an Environmental Attribute consisting of greenhouse gas emission credits, certificates, or similar instruments.

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1 .2.2 "Environmental Attributes" means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from a resource. Environmental Attributes

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do not include the tax credits associated with such resource. One megawatt hour of energy generation from a resource is associated with one megawatt hour of Environmental Attributes.

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1 .2.3 "Renewable Energy Certificates" or "RECs" means the certificates, documentation, or other evidence that demonstrates the ownership of Environmental Attributes.

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1 .2.4 BPA shall not be obligated to provide Environmental Attributes, Carbon Credits, or RECs, or the value of any or all of them, to Alcoa under this Agreement, absent a court decision or order requiring it to do so.

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1 .2.5 BPA reserves any ratemaking authority it otherwise possesses to determine and factor in a share of the value and/or cost of any or all of the RECs and Carbon Credits for the purpose of determining applicable wholesale rates pursuant to section 7(c)(2) of the Northwest Power Act. BPA further reserves its ratemaking authority to recover any costs resulting from such ratemaking actions through rates, including rates applicable to Alcoa.

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1 .. NOTICES AND CONTACT INFORMATION

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Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

(1) delivered in person;

(2) by a nationally recognized delivery service with proof of receipt;

(3) by United States Certified Mail with return receipt requested;

(4) electronically, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or

(5) by another method agreed to by the Parties.

References in this Agreement to the "BPA representative" and the "Alcoa representative" are to the persons listed below. Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

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If to Alcoa:	If to BPA:
Alcoa Inc.	Bonneville Power Administration
4050 Mountain View Road	905 NE 11th Avenue
P.O. 937	P.O. 3621
Ferndale, WA 98248	Portland, OR 97208-3621
Attn: Mike Rousseau	Attn: Mark E. Miller
Plant Manager	Account Executive
Phone: 360-384-7061	Phone: 503-230-4003
FAX: 360-384-6185	FAX: 503-230-3681
E-Mail: Mike.Rousseau@alcoa.com	E-Mail: memiller@bpa.gov

1 . **UNCONTROLLABLE FORCES** **Deleted:** 9

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which by exercise of that Party's reasonable care, diligence and foresight such Party was unable to avoid. Uncontrollable Forces include but are not limited to:

1 .1 any unplanned curtailment or interruption of firm transmission service used to deliver Firm Power under this Agreement to Alcoa whether such curtailment or interruption occurs on BPA's or a third party's transmission system; **Deleted:** 9

1 .2 any failure of Alcoa's production, distribution or transmission facilities that prevents Alcoa from taking Firm Power delivered to the Point of Receipt; **Deleted:** 9

1 .3 strikes or work stoppage, including the threat of imminent strikes or work stoppages; *provided, however*, that nothing contained in this provision shall be construed to require any party to settle any strike or labor dispute in which it may be involved. **Deleted:** 9

1 .4 floods, earthquakes, or other natural disasters; terrorist acts; and **Deleted:** 9

1 .5 final orders or injunctions issued by a court or regulatory body having competent jurisdiction which the party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction. **Deleted:** 9

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force.

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If an Uncontrollable Force prevents a party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with section 18, Notices and Contact Information.

GOVERNING LAW AND DISPUTE RESOLUTION

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This Agreement shall be interpreted consistent with and governed by federal law. Alcoa and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 20, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

.1 Judicial Resolution

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Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Alcoa or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section , BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section , then Alcoa may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section .

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.2 Arbitration

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Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section .1 above, shall be subject to arbitration, as set forth below.

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Alcoa may request that BPA engage in binding arbitration to resolve any dispute. If Alcoa requests such binding arbitration and BPA determines in

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its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section .2 and sections .3 and .4 are met. BPA may request that Alcoa engage in binding arbitration to resolve any dispute. In response to BPA's request, Alcoa may agree to binding arbitration of such dispute, provided that the remaining requirements of this section .2 and sections .3 and .4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

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Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section .1 above and is not resolved via binding arbitration, unless Alcoa notifies BPA that it does not wish to proceed with nonbinding arbitration.

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.3 **Arbitration Procedure**

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Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

.4 **Arbitration Remedies**

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The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section . This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

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.5 **Finality**

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.5.1 In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

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.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is

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brought no later than 395 calendar days after the date the arbitration award was issued.

.6 **Arbitration Costs**
Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

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STATUTORY PROVISIONS

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.1 **Prohibition on Resale of Firm Power**
Alcoa shall not resell Firm Power purchased from BPA under this Agreement.

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.2 **BPA Appropriations Refinancing Act**
The text of the BPA Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, is incorporated as shown in Exhibit D, Special Provisions.

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2 STANDARD PROVISIONS

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2 .1 **Amendments**
Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

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2 .2 **Entire Agreement and Order of Precedence**
This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

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2 .3 **Assignment**
Alcoa may assign this Agreement upon 90 days written notice, but only to a successor-in-interest that has acquired ownership, through purchase or merger, of Alcoa's facilities that are served, in whole or in part, with power provided under this Agreement, and then only if such assignee expressly agrees in writing to be bound by the terms of this Agreement. Such assignment will be subject to any reasonable requirement by BPA that the assignee provide credit security, in a form acceptable to BPA, to secure

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performance of assignee's obligations under this Agreement. It shall not be deemed unreasonable for BPA to require credit security from an assignee with a Moody's credit rating below "A", or the equivalent if rated by another credit rating agency. No other assignment of this Agreement by Alcoa is permitted.

2 .4 **No Third Party Beneficiaries**

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

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2 .5 **Waivers**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

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2 .6 **BPA Policies**

Any reference in this Agreement to BPA policies, including any revisions, does not constitute agreement of Alcoa to such policy by execution of this Agreement, nor shall it be construed to be a waiver of the right of Alcoa to seek judicial review of any such policy.

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2 .7 **Severability**

If any term of this Agreement is found or rendered invalid or unenforceable by a court of competent jurisdiction, then unless that term is not severable from all other provisions of this Agreement, such invalidity or unenforceability shall not otherwise affect any remaining lawful obligations under this Agreement. Neither Party shall be liable to the other Party for any damages associated with any term being severed from this Agreement.

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2 .8 **Performance Assurance**

When reasonable grounds for insecurity arise with respect to the performance of Alcoa, BPA may in writing demand adequate assurance of due performance and specify the form such assurance shall take. The type of assurance BPA may require includes, but is not limited to, providing a letter of credit, posting a security deposit, or requiring prepayment, as appropriate. Failure of Alcoa to provide such assurance within the time specified by BPA in its request for adequate assurance shall be considered a material breach and may, in BPA's sole discretion, create reasonable grounds to suspend or terminate this Agreement. If adequate assurance is not provided, or is not provided in the form specified in the request for adequate assurance, BPA shall have five Business Days from the date such assurance was required to be provided to notify Alcoa in writing of its intentions with respect to termination or suspension of the contract. Any waiver by BPA of its right to suspend or terminate this Agreement shall not be considered a waiver of said rights with respect to future instances when adequate assurance may be

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required. Written notices sent under this section must comply with section 1[illegible], Notices and Contact Information.

[illegible] Credit Assurance

[illegible]

[illegible]

2[illegible] **Drafting of Agreement**

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation or other event of negotiation, drafting or execution hereof.

2[illegible].1[illegible] **Execution by Counterparts**

This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

[illegible] Waiver of Damages

[illegible]

2[illegible]. TERMINATION

For ease of reference, this section 2[illegible] is intended to collect into one section termination events specified in various sections of this Agreement, plus describe certain additional termination events not described elsewhere.

[illegible] Alcoa Right to Terminate

[illegible] Alcoa Right to Terminate for Any Reason

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23.1 **BPA Unable to Complete Ten-Year Purchase** ¶

This Agreement will terminate if BPA has not completed the ten-year purchase specified in section 5 and Alcoa has not submitted notice by ¶ March 31, 2009, as specified in section 6.1, to proceed according to provisions specified in sections 6.2 and 6.3. Termination will be effective April 1, 2009. ¶

¶

23.2 **BPA Unable to Complete First Five-Year Purchase**¶

This Agreement will terminate pursuant to section 6.2.3, effective December 1, 2010.¶

¶

23.3 **BPA Curtailment Payments Exceed $85 Million**¶

This Agreement will terminate when accumulated BPA Curtailment payments specified in section 10.1 exceed $85 million (in 2012$). Termination shall be effective at the end of the month for which accumulated BPA Curtailment payment amounts exceed $85 million (in 2012$).¶

¶

23.4 **Failure to Make Minimum Capital Investment**¶

This Agreement will terminate pursuant to section 9.2.4, effective ¶ October 1, 2021.¶

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Alcoa fails to provide payment assurance satisfactory to BPA as required by section 2 .8.

Alcoa fails to Employment required by section .

Alcoa resells Firm Power.

Alcoa fails to provide BPA with an initial or replacement letter of credit as provided .

ermination under this section 2 is without prejudice to any other remedies available to BPA under law.

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23.7 **Fallback Negotiation**¶
IF THIS AGREEMENT IS TERMINATED UNDER SECTION 23.1 OR 23.2, THE PARTIES WILL NEGOTIATE IN GOOD FAITH TO ARRIVE AT A MUTUALLY ACCEPTABLE ALTERNATIVE ARRANGEMENT, AND, CONSISTENT WITH APPLICABLE LAW BPA WILL PROPOSE AN IP RATE SCHEDULE FOR THE RATE PERIOD IMMEDIATELY FOLLOWING SUCH TERMINATION.

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2 . SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

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Alcoa Inc.	UNITED STATES OF AMERICA Department of Energy Bonneville Power Administration
By _____	By _____
Name John G. Thuestad *(Print/Type)*	Name Stephen J. Wright *(Print/Type)*
Title President, US Primary Products	Title Administrator and Chief Executive Officer
Date _____	Date _____

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Exhibit
BILLING

1. INDUSTRIAL FIRM POWER ENTITLEMENTS

1.1 The MW made available by BPA under this Agreement multiplied by: (1) the number of HLH; and (2) the number of LLH in the applicable month establishes Alcoa's HLH and LLH Energy Entitlements.

1.2 The MW amount made available by BPA under this Agreement establishes Alcoa's Demand Entitlement.

2. UNAUTHORIZED INCREASE CHARGE

Hourly Firm Power scheduled by Alcoa in excess of amounts specified in Exhibit A shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PS.

3. REVISIONS

If this exhibit is inconsistent with BPA's Industrial Firm Power Rate Schedule, or its successor, as finally approved by FERC, the Parties shall make a good faith effort to amend this exhibit so that it is consistent.

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Exhibit A¶
FIRM POWER ENTITLEMENT¶
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1. ALCOA FIRM POWER PURCHASE OBLIGATION¶
¶
Fiscal Year ... [34]

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Exhibit
CAPS

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Exhibit
SPECIAL PROVISIONS

1. BPA APPROPRIATIONS REFINANCING

In accordance with section 21.2 of the body of this Agreement, section (i) of the BPA Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. No. 104-134, 110 Stat. 1321–350, is included in this Agreement--

(i) **Contract Provisions**

In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1996, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1996--

(1) the Administrator shall establish rates and charges on the basis that

(A) the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b) of the BPA Refinancing Act;

(B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under subsection (c) of the BPA Refinancing Act;

(C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and

(D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

(2) apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b) of the BPA Refinancing Act and to pay the interest on the principal amount under subsection (c) of the BPA Refinancing Act, no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

(3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United

States on a claim for a breach of the contract provisions required by this Part; and

(4) the contract provisions specified in this Part do not--

(A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or

(B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to--

(i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

(ii) design rates

2. REVISIONS

This exhibit shall be revised by mutual agreement of the Parties to reflect additional special provisions during the term of this Agreement.

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Exhibit
METERING

1. METERING

Directly Connected Points of Delivery

BPA POD Name: Intalco 13.8 kV;
BPA POD Number: TBD*;
WECC Balancing Authority: BPAT;

Location: the point in BPA's Intalco Substation where the 13.8 kV facilities of BPA and Alcoa are connected;

Voltage: 13.8 kV;

TBD* This data element is currently unresolved and shall be determined by BPA prior to June 1, 2011.

2. REVISIONS

Each Party shall notify the other in writing if updates to this exhibit are necessary to accurately reflect the actual characteristics of POD and meter information described in this exhibit. The Parties shall revise this exhibit to reflect such changes. The Parties shall mutually agree on any such exhibit revisions and agreement shall not be unreasonably withheld or delayed. The effective date of any exhibit revision shall be the date the actual circumstances described by the revision occur.

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Exhibit
SCHEDULING

1. SCHEDULING FEDERAL RESOURCES

Alcoa is responsible for creating E-Tags for all deliveries of federal power purchased under this Agreement.

In the event of an unplanned outage that affects future hours, Alcoa or its scheduling agent is responsible for adjusting e-Tags to accurately reflect the amount of load actually being served by generation provided by BPA.

2. AFTER THE FACT

BPA and Alcoa agree to reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). BPA and Alcoa shall verify all transactions per this Agreement, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

3. REVISIONS

BPA may unilaterally revise this exhibit: (1) to implement changes that are applicable to all customers who are subject to this exhibit and that BPA determines are reasonably necessary to meet its power and scheduling obligations under this Agreement or (2) to comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit
POWER RESERVES

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Deleted: <#>**DEFINITIONS**¶
¶
<#>"Event" is a system condition under which PS needs additional power to meet its obligations to meet regional firm load after utilizing best efforts to balance its resources and obligations through other methods. The beginning of an Event shall be identified by a notice from PS to Alcoa that such condition has occurred, and that BPA will restrict up to 10 percent of Net Firm Power. The end of the Event shall occur when PS has notified Alcoa that full service has been restored. An Event shall not include adverse market conditions when power is available for purchase and BPA elects for economic reasons not to purchase power, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.¶
¶
The Event shall be reinstated and continue as follows:¶
¶
<#>If the Event Duration was 5 Event Minutes or less, then the Event shall be reinstated if PS again restricts Firm Load within 2 hours of the last Event Minute;¶
¶
<#> If the Event Duration was more than 5 Event Minutes but less than 15 Event Minutes, then the Event shall be reinstated if PS again restricts Firm Load within 4 hours of the last Event Minute;¶
¶
<#>If the Event Duration was more than 15 Event Minutes but less than 22 Event Minutes, then the Event shall be reinstated if PS again restricts Firm Load within 6 hours of the last Event Minute;¶
¶
<#>If the Event Duration was more than 22 Event Minutes, then the Event shall be reinstated if PS again restricts Firm Load within 8 hours of the last Event Minute;¶
¶
<#>"Event Duration" shall be the total cumulative Event Minutes of the Event.¶
¶ ... [36]

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Average Firm Power (aMW)	Average FTE	Proportional FTE
320	528	1.65
280	462	1.65
240	396	1.65
200	330	1.65
160	264	1.65
120	198	1.65
80	132	1.65
40	66	1.65
0	0	1.65

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GUARANTEE¶
¶
¶
This Guarantee ("Guarantee") dated as of the __ day of _____, 200_ is made and entered into by [INSERT NAME OF GUARANTOR], a [_____ corporation] (the "Guarantor"), in favor of the Bonneville Power Administration, an agency of the United States of America Department of Energy, its successors and permitted assigns (the "Guaranteed Party").¶
¶
¶
WITNESSETH:¶
¶
¶
WHEREAS, [INSERT NAME OF UNDERLYING OBLIGOR] (the "Company") and the Guaranteed Party have entered or anticipate entering into one or more transactions arising under one or more agreements or master agreements, including, but not limited to, transactions providing for the purchase and sale of electricity and agreements providing for electric power transmission services (such master agreements, confirmations, schedules, instruments and other documents confirming, evidencing, securing or guaranteeing any transaction between the Company and the Guaranteed Party collectively the "Agreements"); and¶
¶
WHEREAS, the Guarantor will directly or indirectly benefit from the Agreements.¶
¶
NOW THEREFORE, in consideration of the Guaranteed Party agreeing to conduct business with the Company, the Guarantor hereby covenants and agrees as follows:¶
¶
1. GUARANTEE. The Guarantor hereby irrevocably and ... [37]

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; the commencement and continuation of service under this Agreement during its term is subject to, among other things, the acquisition of power within the timeframes, in the amounts, and at or below the prices specified in this Agreement, that are necessary to support the power deliveries contemplated hereunder

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2.14 "Initial Curtailment Period" means the first 24 months that Alcoa curtails deliveries of Firm Power by BPA under this Agreement pursuant to section 10.4 during the period prior to October 1, 2016. The Initial Curtailment Period ends on the earlier of the first day of the twenty fifth month that Alcoa curtails deliveries under section 10.4 or October 1, 2016; provided, however, if 70 aMW of Firm Power becomes available for BPA to reallocate pursuant to section 10.6 and BPA successfully completes the power acquisitions in support of all or a portion of such additional Firm Power as requested by Alcoa prior the start of the Initial Curtailment Period, then the Initial Curtailment Period means the first 12 months that Alcoa cutails deliveries under section 10.4 and the Intial Curtailment Period shall end on the earlier of the first day of the thirteenth month that Alcoa curtails deliveries under section 10.4 or October 1, 2016.

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2.17 "Liquidated Damages" shall have the meaning described in section 11.2.1.

2.18 "Liquidated Gains" shall have the meaning described in section 11.2.3.

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the body of this Agreement, or if not specified in the body of this Agreement then in Table 1 of Exhibit C; (b) Alcoa has lost all or part of its Firm Power entitlement pursuant to curtailments in excess of those permitted by section 10.5 of this Agreement

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BPA's obligation to acquire power in support of sales to Alcoa under this Agreement, in addition to being contingent on meeting the applicable Price Cap requirement, is contingent on any such acquisition complying with all applicable statutory requirements, including any required environmental review under the National Environmental Policy Act (42 U.S.C. §§ 4321, *et seq.*), and each other condition contained in section 8 of this Agreement. For the avoidance of doubt, the Parties expressly acknowledge that BPA will not be obligated to enter into any acquisition, including any Contingent Acquisition, that BPA believes, in its reasonably exercised discretion, is priced at a level that is in excess of the prevailing forward market price in the same market for a similar power product and for a similar term of years, even if such acquisition or Contingent Acquisition is otherwise at a price equal to or less than the applicable Price Cap(s); provided, however, that BPA agrees that any proposed acquisition by BPA from Alcoa pursuant to sections 6.2.1, 6.3.1, or 7.2, will meet this requirement through implementation of the procedures contained in section 8.3.1.

performance of assignee's obligations under this Agreement. It shall not be deemed unreasonable for BPA to require credit security from an assignee with a Moody's credit rating below "A", or the equivalent if rated by another credit rating agency. No other assignment of this Agreement by Alcoa is permitted.

2 .4 **No Third-Party Beneficiaries**
This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

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2 .5 **Waivers**
No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

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2 .6 **BPA Policies**
Any reference in this Agreement to BPA policies, including any revisions, does not constitute agreement of Alcoa to such policy by execution of this Agreement, nor shall it be construed to be a waiver of the right of Alcoa to seek judicial review of any such policy.

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2 .7 **Severability**
If any term of this Agreement is found or rendered invalid or unenforceable by a court of competent jurisdiction, then unless that term is not severable from all other provisions of this Agreement, such invalidity or unenforceability shall not otherwise affect any remaining lawful obligations under this Agreement. Neither Party shall be liable to the other Party for any damages associated with any term being severed from this Agreement.

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2 .8 **Performance Assurance**
When reasonable grounds for insecurity arise with respect to the performance of Alcoa, BPA may in writing demand adequate assurance of due performance and specify the form such assurance shall take. The type of assurance BPA may require includes, but is not limited to, providing a letter of credit, posting a security deposit, or requiring prepayment, as appropriate. Failure of Alcoa to provide such assurance within the time specified by BPA in its request for adequate assurance shall be considered a material breach and may, in BPA's sole discretion, create reasonable grounds to suspend or terminate this Agreement. If adequate assurance is not provided, or is not provided in the form specified in the request for adequate assurance, BPA shall have five Business Days from the date such assurance was required to be provided to notify Alcoa in writing of its intentions with respect to termination or suspension of the contract. Any waiver by BPA of its right to suspend or terminate this Agreement shall not be considered a waiver of said rights with respect to future instances when adequate assurance may be

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[illegible] Alcoa fails to provide payment assurance satisfactory to BPA as required by section 2[illegible].8.

[illegible] Alcoa fails to [illegible] Employment [illegible] required by section [illegible].

[illegible] Alcoa resells Firm Power.

[illegible] Alcoa fails to provide BPA with an initial or replacement letter of credit as provided [illegible].

[illegible]ermination [illegible] under this section 2[illegible] is without prejudice to any other remedies available to BPA under law.

22. TERMINATION OF PRIOR AGREEMENT

[illegible]

23. FEASIBILITY OF ENTERING INTO SUBSEQUENT AGREEMENT BEGINNING OCTOBER 1, 2016

[illegible]

24. ALCOA COVENANT NOT TO CHALLENGE VALIDITY OF THIS AGREEMENT

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23.7 **Fallback Negotiation**¶
IF THIS AGREEMENT IS TERMINATED UNDER SECTION 23.1 OR 23.2, THE PARTIES WILL NEGOTIATE IN GOOD FAITH TO ARRIVE AT A MUTUALLY ACCEPTABLE ALTERNATIVE ARRANGEMENT, AND, CONSISTENT WITH APPLICABLE LAW BPA WILL PROPOSE AN IP RATE SCHEDULE FOR THE RATE PERIOD IMMEDIATELY FOLLOWING SUCH TERMINATION.

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All such power acquisitions will be purchased as flat annual blocks of power.

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PHASE 1 – SINGLE TEN-YEAR PERIOD

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For the ten-year period FY 2012 through FY 2021 ("Phase 1"), BPA shall sell and Alcoa shall purchase, as determined in this section 5 and in section 6 below, 160 aMW or 240 aMW of Firm Power.

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BPA will initially endeavor to acquire 240 aMW, including in whole or in part through Contingent Acquisitions, as provided below.

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BPA will, on or before March 31, 2009, endeavor to enter into one or more acquisitions, including through Contingent Acquisitions, totaling 240 aMW and covering the full ten-year period of Phase 1, at an average price of $72/MWh or less. BPA will pursue such acquisitions in consultation with Alcoa; provided, however, that BPA may execute, without Alcoa's prior approval, and in BPA's sole discretion, such acquisitions, including Contingent Acquisitions, that are consistent with this Agreement.

In the event Alcoa notifies BPA, as provided in section 6.1, to forgo seeking such acquisitions, including Contingent Acquisitions, sufficient to cover the full ten-year period, then the sale and purchase for Phase 1 will be divided into two separate five-year periods, pursuant to section 6.

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Notice of Completion of Ten-Year Acquisition

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BPA will revise the amounts of Allocated Power for the appropriate Fiscal Years specified in Exhibit A to reflect acquisitions (excluding Contingent Acquisitions until such time as such Contingent Acquisition culminates in a BPA power purchase obligation), and notify Alcoa's representative in writing if and when it has executed any acquisition, including any Contingent Acquisition, pursuant to this section 5 for the full ten-year period.

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5.3 **Termination**

In the event BPA has not executed one or more acquisitions, including any Contingent Acquisitions, that together total 240 aMW by March 31, 2009, and Alcoa has not provided notice to BPA pursuant to section 6.1 below, then this Agreement will terminate on April 1, 2009.

5.4 **Liquidated Damages**

Alcoa shall be liable to BPA for Liquidated Damages, if any, pursuant to section 11 in connection with any acquisitions, including any Contingent Acquisition made by BPA that culminates in a BPA power purchase obligation.

5.5 **Credit Assurance**

Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA, immediately prior to BPA consummating any acquisition pursuant to this section 5, including any Contingent Acquisition, with an irrevocable standby letter of credit in the amount of $20 million, in a form acceptable to BPA, and issued by a bank that meets the requirements contained in section 8.4.5.5 of this Agreement. Such letter of credit shall have an expiration date one-year from its date of issuance, and BPA may require replacement letters of credit in the amount of $20 million so that a letter of credit in the amount of $20 million is in place on a continuous basis for the term of this Agreement. Nothing in this section 5.5 shall limit BPA's right to demand additional adequate assurance pursuant to section 22.8 of this Agreement.

In the event that Alcoa fails to provide any letter of credit required by this section 5.5 then BPA may terminate this Agreement.

6. PHASE 1 - CONVERSION FROM A SINGLE TEN-YEAR PERIOD TO TWO SEPARATE FIVE-YEAR PERIODS

Subject to the terms and conditions specified in this section 6, the single ten-year period described in section 5 may be converted to two separate five-year periods pursuant to the following subsections.

6.1 **Notice Requesting Conversion to Two Separate Five-Year Periods**

Alcoa may relieve BPA of its obligation to endeavor to enter into one or more acquisitions, including Contingent Acquisitions, covering the full ten-year period provided for in section 5, by notifying BPA's representative in writing any time prior to March 31, 2009, directing BPA to endeavor to acquire power for two separate five-year periods in accordance with the provisions of this section 6. Upon receiving such notice, BPA shall no longer be obligated to pursue acquisitions, including Contingent Acquisitions, totaling 240 aMW for the full ten-year period.

If, however, BPA has executed one or more acquisitions, including Contingent Acquisitions, that together total 240 aMW prior to receiving

notice from Alcoa to proceed pursuant to this section 6, then Alcoa's notice shall be of no force and effect.

6.2 **First Five-Year Period (FY 2012 through FY 2016)**
In the event Alcoa provides notice pursuant to section 6.1 to divide Phase 1 into two separate five-year periods, BPA will sell 240 aMW of Firm Power to Alcoa for the period FY 2012 through FY 2016 (the "First Five-Year Period"), provided that prior to December 1, 2010, BPA has succeeded in acquiring 240 aMW for the full First Five-Year Period at an average price at or below $72 per MWh.

6.2.1 **Alcoa Put Right**
In the event BPA has not acquired all 240 aMW for the full First Five-Year Period by June 30, 2009, then Alcoa shall have the right through December 31, 2009, to offer to sell to BPA the unprocured balance of annual flat amounts of power for the full First Five-Year Period. Subject to the conditions in sections 8, BPA shall accept Alcoa's offer, at a price that is the lesser of: (a) Alcoa's (weighted average) purchase price(s), or (b) a price that, when combined with the weighted average of all of BPA's purchases, including the purchase in (a), is equal to or less than $72 per MWh for this First Five-Year Period.

6.2.2 **Notice**
BPA will revise the amounts of Allocated Power for the appropriate Fiscal Years specified in Exhibit A and notify Alcoa's representative if and when BPA has acquired 240 aMW, as provided in this section 6.2, for the full First Five-Year Period.

6.2.3 **Termination**
In the event BPA has not acquired the 240 aMW for the full First Five-Year Period as provided by this section 6.2 by December 1, 2010, then this Agreement will terminate.

6.2.4 **Liquidated Damages**
Alcoa shall be liable to BPA for Liquidated Damages, if any, pursuant to section 11 in connection with any acquisitions made by BPA for the First Five-Year Period.

6.2.5 **Credit Assurance**
Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA, immediately prior to BPA consummating any acquisition pursuant to this section 6, with an irrevocable standby letter of credit in the amount of $20 million, in a form acceptable to BPA, and issued by a bank that meets the requirements contained in section 8.4.5.5 of this Agreement. Such letter of credit shall have an expiration date one-year from its date of issuance, and BPA may require replacement letters of credit in the amount of $20 million so that a letter of credit in the amount of $20

million is in place on a continuous basis for the term of this Agreement. Nothing in this section 6.2.5 shall limit BPA's right to demand additional adequate assurance pursuant to section 22.8 of this Agreement.

In the event that Alcoa fails to provide any letter of credit required by this section 6.2.5 then BPA may terminate this Agreement.

6.3 **Second Five-Year Period (FY 2017 through FY 2021)**

In the event Alcoa provides notice pursuant to section 6.1 to divide Phase 1 into two separate five-year periods BPA will sell either 160 aMW or 240 aMW of Firm Power to Alcoa for the period FY 2017 through FY 2021 (the "Second Five-Year Period"), provided that (a) BPA has acquired 240 aMW for the First Five-Year Period, and (b) BPA has acquired power in the amounts and within the timeframes specified in this section 6.3 for the Second Five-Year Period at or below the applicable Price Caps, or the aggregate average thereof, specified in Table 1 of Exhibit C.

BPA will initially endeavor to acquire 240 aMW for the full Second Five-Year Period by March 31, 2010.

6.3.1 **Alcoa Put Right**

In the event BPA has not acquired all 240 aMW for the full Second Five-Year Period by March 31, 2010, then Alcoa shall have the right through June 30, 2014, to offer to sell to BPA the unprocured balance of annual flat amounts of power for the full Second Five-Year Period. Subject to the conditions in sections 8, BPA shall accept Alcoa's offer, at a price that is the lesser of: (a) Alcoa's (weighted average) purchase price(s), or (b) a price that, when combined with the weighted average of all of BPA's purchases, including the purchase in (a), is equal to or less than $72 per MWh for this Second Five-Year Period.

6.3.2 **Acquisitions Beginning July 2014**

BPA will (a) beginning July 1, 2014, and continuing until the date BPA publishes its initial wholesale power rate proposal in the Federal Register for the first rate period falling in whole or in part within the Second Five-Year Period, endeavor to acquire any unprocured balance of the 240 aMW for the full balance of the Second Five-Year Period at a price such that the weighted average price of all BPA purchases for the Phase 1 period equals $72/MWh or less, or (b) beginning July 1, 2014, and continuing until the date BPA publishes its initial wholesale power rate proposal in the Federal Register for each rate period falling in whole or in part within the Second Five-Year Period, endeavor to acquire 160 aMW or 240 aMW for each individual two-year rate period at or below the applicable 240 aMW Price Cap (averaged over the rate period) specified in Table 1 of Exhibit C, or the applicable 160 aMW Price Cap specified in Table 1 of Exhibit C (averaged over the rate period).

Notwithstanding anything else in this section 6, if BPA has acquired at least 160 aMW for the Second Five-Year Period, Alcoa will either purchase 160 aMW of Firm Power under this Agreement, or pay Liquidated Damages, if any, under section 11.

6.3.3 **Notice**

BPA will revise the amounts of Allocated Power for the appropriate Fiscal Years specified in Exhibit A and notify Alcoa's representative if and when BPA has acquired 160 aMW or 240 aMW, as provided in this section 6.3, for the Second Five-Year Period or any individual rate period therein.

6.3.4 **Termination**

In the event BPA has not acquired 160 aMW or 240 aMW as provided by section 6.3.2 for any individual rate period prior to the date BPA publishes its initial wholesale power rate proposal in the Federal Register for such rate period, then BPA's obligation to endeavor to acquire power for such rate period will terminate, but this Agreement will not terminate.

6.3.5 **Liquidated Damages**

Alcoa shall be liable to BPA for Liquidated Damages, if any, pursuant to section 11 in connection with any acquisitions made by BPA for the Second Five-Year Period.

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PHASE 2 -

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For the period FY 2022 through FY 2028 ("Phase 2"), BPA shall sell and Alcoa shall purchase Firm Power in the amounts specified in this section 7. BPA will endeavor to acquire power for the Phase 2 period on a rate period basis.

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Phase 2 Acquisition

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BPA will sell 160 aMW of Firm Power to Alcoa for each rate period within the Phase 2 period, provided that, consistent with this section 7, BPA has acquired 160 aMW of power for a rate period at or below the applicable Price Caps (averaged over the applicable rate period) specified in Table 1 of Exhibit C.

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7.2 **Alcoa's Put Right**

In the event BPA has not acquired all 160 aMW nine months prior to the beginning of each rate period falling in whole or in part within the Phase 2 period, then Alcoa shall have the right, until the date BPA publishes its initial wholesale power rate proposal in the Federal Register for such rate period, to offer to sell to BPA the unprocured balance of annual flat amounts of power for such rate period. Subject to the conditions in sections 8, BPA shall accept Alcoa's offer provided that the weighted average price of all purchases for the rate period, inclusive of the proposed Alcoa sale to BPA, are at or below the applicable 160 aMW Price Cap specified in Table 1 of Exhibit C.

7.3 **Notice**

BPA will revise the amounts of Allocated Power for the appropriate Fiscal Years specified in Exhibit A and notify Alcoa's representative if and when BPA has acquired, as provided by this section 7, 160 aMW for any individual rate period within the Phase 2 period.

7.4 **Termination**

In the event BPA has not acquired 160 aMW, as provided by this section 7, for the last rate period within the Phase 2 period, then this Agreement will terminate.

7.5 **Liquidated Damages**

Alcoa shall be liable to BPA for Liquidated Damages, if any, pursuant to section 11 in connection with any acquisitions made by BPA for the Phase 2 period.

7.6 **Economic Study to Provide Additional Power**

Following any notice to Alcoa pursuant to section 7.3, and in the event that wholesale power market prices are below the Price Caps in Table 1 of Exhibit C for the Phase 2 period by more than 20 percent, then upon Alcoa's request BPA will conduct an economic study of the Regional impacts of providing Alcoa with additional power above 160 aMW that may be available within the Price Caps specified in Table 1 of Exhibit C. This provision is not

intended and shall not be construed as requiring BPA to offer any such additional power to Alcoa during the Phase 2 period, irrespective of the conclusions or findings of any economic study undertaken.

This section 7.6 shall not apply if Alcoa is reallocated any Firm Power made available by the reduction of another direct service industry smelter customer's entitlement pursuant to section 10.6.

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ACQUISITION CONDITIONS

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8.1 Statutory and Policy Requirements

Alcoa acknowledges and agrees that BPA's obligation to acquire power in support of sales to Alcoa under this Agreement is contingent on a determination by BPA that each such acquisition (including any Contingent Acquisition, or acquisition of power offered to BPA by Alcoa pursuant to sections 6.2.1, 6.3.1, or 7.2.1) is consistent and in compliance with all applicable requirements and conditions regarding the acquisition of resources contained in BPA's enabling statutes, including but not limited to section 6 of the Northwest Power Act (16 U.S.C. §§ 839d, *et seq.*), and on the completion of any required environmental review under the National Environmental Policy Act (42 U.S.C. §§ 4321, *et seq.*) and other applicable federal environmental statutes or regulations.

In addition, such acquisitions must be consistent with any BPA risk policy adopted by the BPA Administrator and in effect at the time any proposed acquisition is being evaluated by BPA.

8.2 Price Caps and Other Limitations

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Price

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Price

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Table 1 of Exhibit C

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amount

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will pay for average annual blocks of power to

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(unless a lower maximum amount is specified in the body of this Agreement)

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costs incurred for any credit requirements pursuant to section 8.4, **and the cost or forecasted cost to BPA of a credit default swap or other risk hedging instrument purchased by BPA in connection with this Agreement.** In the event that BPA incurs any of the foregoing environmental or regulatory costs in connection with an acquisition after the date it enters into such acquisition, and such costs result in BPA paying an effective acquisition price that exceeds the Price Cap(s) applicable to such acquisition, then such costs will be included in the calculation of any reduction of the Price Caps pursuant to section 2 of Exhibit C.

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Unless specified otherwise in this Agreement, references to Price Caps should be read to mean the weighted average of acquisitions made by BPA to support sales to Alcoa over all Fiscal Years comprising the particular delivery period.

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8.3 Alcoa Purchases and Offers of Sale to BPA

8.3.1 Power Purchase Price Standard

Notwithstanding anything else in this Agreement to the contrary, any offers of sales of power by Alcoa to BPA referred to in this Agreement must be at the lower of the applicable Price Cap or Alcoa's actual and reasonable purchase cost at the time the purchase in question is made. Alcoa will seek to obtain three broker quotes for any power purchase it makes that it intends to offer to BPA pursuant to section 6.2.1, 6.3.1, 7.2, and will present any offered price to BPA's representative to obtain prior approval of the purchase and BPA shall respond to such request (a) for purchases of 18-month or less, within the same day if such prior approval is sought before 9 a.m. Pacific Time, or by 8 a.m. on the next Business Day if such request is made

after 9 a.m. Pacific Time, and (b) for purchases of over 18 months, within three Business Days.

In all cases, Alcoa shall make a purchase at the lowest price tendered by a qualified counterparty. Alcoa will retain and, upon BPA's request, provide its records documenting the reasonableness of such purchase, and BPA will have the right to verify such cost by audit to ensure that BPA did not pay more than the actual cost of power acquired by Alcoa.

8.3.2 **Additional Offers of Sale**
In addition to Alcoa's rights specified in sections 6.2.1, 6.3.1, and 7.2, during any period that BPA is seeking to make acquisitions or Contingent Acquisitions as specified in sections 5, 6, and 7, Alcoa may present other potential acquisition opportunities to BPA for its consideration.

8.4 **Third-Party Supplier Credit and Collateralization Requirements**
In light of Alcoa's obligations to BPA under section 11.3 of this Agreement in the event of a supplier default, BPA agrees to require supplier credit and collateralization provisions in any agreement from a third-party power supplier ("Supplier") under sections 5, 6 or 7 hereunder ("Power Supply Agreement") consistent with this section 8.4. BPA will consult Alcoa regarding BPA's negotiation and implementation of the credit and collateralization provisions in any Power Supply Agreement.

8.4.1 **Financial Statements**
Any Power Supply Agreement shall provide that BPA has the right to request from the Supplier, or its guarantor (if any), audited annual financial statements where such financial statements are not already available on such Supplier's or its guarantor's internet website. Notwithstanding the foregoing, where a Supplier's obligations under the Power Supply Agreement are supported by a guarantee, provision of the guarantor's audited financial statements shall constitute full compliance with this section 8.4.1 by such Supplier.

8.4.2 **Performance Assurance**
If BPA believes, based on information that it has received, that the ability of the Supplier, or a Supplier's guarantor (if any) (each a "Failing Party") to perform its obligations under the Power Supply Agreement or a guarantee has been or will, with the passage of time be, impaired, then BPA will demand, consistent with the terms of such Power Supply Agreement, adequate assurance of performance of those obligations ("Adequate Assurance"). Adequate Assurance shall be in a form of Collateral (as defined in section 8.4.5.1 below) provided for in the Power Supply Agreement, and that is deemed acceptable and adequate to BPA.

8.4.3 **Third Party Beneficiary**

Any Power Supply Agreement shall provide that Alcoa shall be a third- party beneficiary of the security provisions required in the Power Supply Agreement by this Section 8.4 of this Agreement; provided, however, that Alcoa will consult BPA prior to commencing any legal proceeding against a Supplier with respect to such credit and collateralization provisions.

8.4.4 **Collateral Support Obligations**

8.4.4.1 At the end of each week BPA shall calculate the amount that would be owed by Supplier to BPA, if any, as if the Power Supply Agreement were terminated for cause, as of such Business Day (the "Exposure Amount"). If the Exposure Amount exceeds the sum of the Supplier's Collateral Threshold (defined below) plus any Collateral (defined below) already posted by the Supplier and held by BPA ("Posted Collateral"), then the Supplier shall be required to transfer additional Collateral in an amount equal to the positive difference between (i) the Exposure Amount and (ii) the sum of the Supplier's Collateral Threshold plus any Posted Collateral (the "Required Margin").

The Required Margin shall be transferred to BPA by the close of business on the next Business Day following the Business Day on which notice of the demand for such Required Margin (a "Collateral Notice") is provided by BPA.

8.4.4.2 The Exposure Amount shall be the net positive difference between payments that would have been made to the Supplier by BPA pursuant to the Power Supply Agreement and the forward prices for electric power delivered to the Mid-C delivery point for the then-remaining term of the Power Supply Agreement as reflected in the average of the posted prices found on the Intercontinental Exchange, TFS Energy and Prebon Energy indices, or their successors ("Indices") for the remaining term of the Power Supply Agreement. In the event that the Indices fail to post forward prices for the entire remaining term of the Power Sale Agreement, the forward price closest to the last day of the Power Sale Agreement shall be escalated at an annual rate of 3.5 percent to calculate the Exposure Amount for the remaining term of the Power Supply Agreement.

8.4.4.3 If BPA and Supplier cannot agree on the Exposure Amount in any week, then the undisputed portion of any Collateral to be provided to BPA by Supplier or returned by BPA to Supplier ("Undisputed Amount") shall be required to be

transferred by the close of the next Business Day following the Business Day on which the Collateral Notice is sent. BPA will then calculate the Exposure Amount by seeking three actual quotations for electric power for the remaining term of the Power Supply Agreement, and using the arithmetic average of those quotations BPA shall then notify the Supplier of such amended Exposure Amount ("Amended Collateral Notice")

Any additional Collateral required to be provided or returned as a result of such Amended Collateral Notice shall be transferred by the close of the next Business Day following the Business Day on which the Amended Collateral Notice is sent.

8.4.4.4 The Power Supply Agreement shall specify that BPA shall have free and unrestricted use of all cash Collateral provided to it.

8.4.5 **Credit Definitions**

8.4.5.1 "Collateral" means: (a) cash, (b) a Letter of Credit (as defined below), or (c) a guarantee (as defined below). Collateral in the form of a Letter of Credit or guarantee shall be valued at zero if there are 30 days or less remaining before its expiration.

8.4.5.2 "Collateral Threshold" means the lower of (i) the amount specified opposite the Credit Rating (as defined below) of Supplier in the table below, (ii) the amount specified opposite the Credit Rating of Supplier's guarantor in the table below, and (iii) in the event a guarantee has been posted as Collateral, 80% of the dollar limit set forth in such guarantee. Notwithstanding the foregoing, if Supplier or Supplier's guarantor is not rated by S&P or Moody's or if the Supplier or the Supplier's guarantor is in default under the Power Supply Agreement or the guarantee, as the case may be, then the Collateral Threshold shall be zero.

S&P	Moody's	Collateral Threshold
AA- and above	Aa3 and above	$40 million
A-, A, A+	A3, A2, A1	$30 million
BBB, BBB+	Baa2, Baa1	$10 million
BBB-	Baa3	$5 million
Below BBB-	Below Baa3	$ zero

8.4.5.3 "Credit Rating" shall mean with respect to an entity on any Business Day, the respective rating then assigned to its unsecured, senior long-term debt (not supported by third-party credit enhancement) by S&P or Moody's or a successor to either of them. In the event of an inconsistency in ratings assigned by S&P or Moody's the lowest rating assigned shall control.

8.4.5.4 "Guarantee" means a form of agreement in substantially the same form as that provided as Exhibit H of this Agreement.

8.4.5.5 "Letter of Credit" means an irrevocable standby letter of credit in a form satisfactory to BPA, issued by a commercial bank that is not an affiliate of the Supplier, having an office in the United States, with total assets of at least $5,000,000,000 and whose Credit Rating at such time is at least "A-" by S&P and at least "A3" by Moody's; in the event such a commercial bank is rated by only one of S&P or Moody's, eligibility will be based on the available rating.

8.4.5.6 "Moody's" shall mean Moody's Investor Services, Inc. or its successor.

8.4.5.7 "S&P" shall mean Standard and Poor's Rating Services (a division of McGraw-Hill, Inc.) or its successor.

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EXPENDITURES AND CAPITAL INVESTMENT

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9.1 Employment and Capital Commitments

Alcoa commits to make the minimum annual Employment Expenditures specified in the Expenditure and Investment Table below, at the Intalco Plant through the term of this Agreement. "Employment Expenditures" shall mean, and will be limited to, regular compensation, which is comprised of wages, benefits, and customary performance bonuses, and will not include any extraordinary bonuses or similar types of awards. If Alcoa fails to make annual Employment Expenditures each Fiscal Year equal to or greater than the minimum annual Employment Expenditures specified in the Expenditure and Investment Table, BPA may terminate this Agreement.

Alcoa also commits to the capital investments, at the Intalco Plant, specified in the Expenditures and Investment Table, provided that BPA has acquired power, pursuant to section 5 or section 6, for the full ten-year period of Phase 1, by March 31, 2010. Capital investments shall be limited to costs for items (a) that are depreciated as capital expenditures consistent with generally accepted accounting principles, or (b) that are associated with the

repair or maintenance of capital equipment, provided that any costs under this subpart (b) shall be limited to ten-percent of Actual Capital Invested (as defined in 9.2.1 below).

Expenditures and Investment Table

Pot-Lines	Minimum Annual Employment Expenditures (2012$)	5-Year Capital Investment	10-Year Capital Investment*
1 pot-line	$38 million	$0 million	$125 million
1.5 pot-lines	$48 million	$0 million	$160 million
2 pot-lines	$56 million	$0 million	$200 million

*Notes: Alcoa may initiate its capital spending in 2009 in anticipation of deliveries by BPA under this Agreement. Minimum annual Employment Expenditure amounts will be escalated to account for inflation, as measured by the Implicit Price Deflator for Gross Domestic Product maintained by the United States government, Bureau of Economic Analysis.

9.1.1 **Minimum Annual Employment Expenditure**

In the event 70 aMW of Firm Power becomes available for BPA to reallocate pursuant to section 10.6 and BPA successfully completes the power acquisitions in support of all or a portion of such additional Firm Power as requested by Alcoa, then Alcoa's employment expenditure obligation must be consistent with the 2 pot-lines minimum annual employment expenditure amount described in the Expenditures and Investment Table effective the Fiscal Year following the Fiscal Year such additional Firm Power is initially made available by BPA.

9.2 Capital Investment Commitment Comparison

9.2.1 **Capital Investment Notification**

In the event that BPA is successful in acquiring power pursuant to section 5 of this Agreement or pursuant to section 6.2 and 6.3 of this Agreement by March 31, 2010, then on or before September 1, 2012, Alcoa will notify BPA of its actual capital invested amount for the Intalco Plant. Such notice will include: (a) the actual dollar amount of capital invested by Alcoa in the Intalco Plant between January 1, 2009, and the date of the notice ("Actual Capital Invested"); (b) the anticipated dollar amount of capital committed to be invested in the Intalco Plant in any remaining portion of the period prior to September 30, 2021; and, (c) the anticipated annual dollar amount of capital committed to be invested in the Intalco Plant between October 1, 2021 and September 30, 2028. The sum of these items (a), (b), and (c) in this paragraph shall equal Alcoa's capital invested in the Intalco Plant ("Capital Invested"). Beginning September 1, 2013, and on each September 1 thereafter, as applicable, Alcoa will notify BPA of the

updated Actual Capital Invested in the Intalco Plant between January 1, 2009, and the date of such notice.

9.2.2 **10-Year Capital Investment**
In the event Alcoa is required to provide BPA the notice specified in section 9.2.1, then such notice will be required annually until such time as Actual Capital Invested is greater than 100 percent of the 1.5 pot-lines 10-Year Capital Investment described in the Expenditures and Investment Table, above, or this Agreement is terminated, whichever is earlier, provided, further, that if 70 aMW of Firm Power becomes available for BPA to reallocate pursuant to section 10.6 and BPA successfully completes the power acquisitions in support of such additional Firm Power as requested by Alcoa by March 31, 2010, then Alcoa's Actual Capital Invested obligation must be consistent with the 2 pot-lines 10-Year Capital Investment amount described in the Expenditures and Investment Table effective October 1, 2017.

9.2.3 **Capital Investment Less Than 50 Percent**
In the event that BPA is successful in acquiring power pursuant to Section 5 of this Agreement or pursuant to Sections 6.2 and 6.3 of this Agreement by March 31, 2010, the Actual Capital Invested by October 1, 2016 shall be equal to or greater than 50 percent of the 1.5 pot-lines 10-Year Capital Investment established in section 9.2.2, otherwise BPA may terminate this Agreement.

9.2.4 **Capital Investment Less Than 80 Percent**
In the event that BPA is successful in acquiring power pursuant to Section 5 of this Agreement or pursuant to Sections 6.2 and 6.3 of this Agreement by March 31, 2010, the Actual Capital Invested by October 1, 2021 shall be equal to or greater than 80 percent of the 10-Year Capital Investment amount established in section 9.2.2, otherwise this Agreement will terminate effective October 1, 2021.

9.2.5 **Capital Investment Greater Than 80 Percent**
In the event Alcoa's Actual Capital Invested is equal to or greater than 80 percent but less than 100 percent of the 10-Year Capital Investment amount, established in section 9.2.2 by October 1, 2021, BPA shall reduce the 160 aMW Price Caps in Table 1 of Exhibit C FY 2022 through FY 2028 by the amount Alcoa's Actual Capital Invested is less than 100 percent of the 10-Year Capital Investment amount established in section 9.2.2. Such reduction shall be applied as specified in section 3 of Exhibit C. Additionally, prior to each October 1, beginning October 1, 2022, BPA will compare the updated Actual Capital Invested submitted by Alcoa, pursuant to section 9.2.1, to the Capital Invested amount that is specified in the annual notice.

9.3 **Expenditure and Investment Documentation**

Alcoa will retain and, upon BPA's request, provide BPA access to its records documenting Employment Expenditure and Capital Invested amounts for the Intalco Plant, and BPA will have the right to verify such amounts by audit.

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BPA Curtailment if Unable to Acquire 160 aMW after FY 2016

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In consideration of Alcoa's agreement in section 6.3 to provide BPA with the flexibility to reduce its acquisition costs below the Price Caps, and to accept the risk that in exercising that flexibility that BPA may ultimately be unable to acquire 160 aMW at or below the Price Caps, then in the event BPA is unable to acquire 160 aMW to support sales to Alcoa within the 160 aMW Price Cap specified in Table 1 of Exhibit C for any period after FY 2016 (a "BPA Curtailment"), BPA will curtail deliveries to Alcoa Load and make payments to Alcoa as provided in 10.1.1 and 10.1.2.

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10.1.1 **BPA Payments**

BPA will pay Alcoa $5.0 million for each BPA Curtailment to cover shutdown/start-up costs, plus $2.9 million (in 2012$) to offset Employment Expenditures, as specified in section 9.1 for each full month of any BPA Curtailment, up to the $85 million cap described in 10.1.2. Any such payments from BPA to Alcoa will be made as specified in section 15.3.

10.1.2 **Termination**

If and when accumulated BPA Curtailment payments reach $85 million (in 2012$), this Agreement will terminate.

10.2 **BPA Restriction for Reserve Obligations**

Alcoa shall make available for restriction by BPA during the term of this Agreement up to 10 percent of its Net Firm Power, upon notice and for such durations as specified in Exhibit G, for purposes of providing Power Reserves for BPA's firm power loads within the region, as provided for in the Northwest Power Act. Alcoa will be compensated for the value of such Power Reserves made available to BPA through an adjustment to the IP rate, as provided for in the Northwest Power Act, and as established by BPA in its wholesale power rate proceedings.

10.2.2 **Additional or Alternative Arrangements for Reserves Restriction**

Nothing in this Agreement shall preclude BPA and Alcoa from entering into arrangements, either by amendment to this Agreement through a separate agreement, for Alcoa to provide BPA with additional or alternative restriction rights for purposes of providing reserves for BPA's firm power loads within the region.

10.3 **Temporary Load Reduction**

A temporary reduction of power deliveries due to a power system reliability need, other than a restriction under section 10.2 above, or emergency will be treated as an Uncontrollable Force event, and will not be considered a curtailment under this Agreement.

10.4 **Alcoa Curtailment**

Alcoa may curtail deliveries of power by BPA under this Agreement pursuant to this section 10.4. Alcoa shall endeavor to provide notice to BPA at least seven Business Days in advance of a curtailment; provided, however, that such notice shall in no event be less than three Business Days prior to the beginning of a curtailment. Such notice shall specify the amount of Firm Power to be curtailed and the duration of the curtailment. The election to curtail, and the amount and duration of such curtailment, may not be changed without BPA's consent. Any Alcoa curtailment of deliveries by BPA, in whole or in part, will be subject to Liquidated Damages, Reduced Liquidated Damages and Liquidated Gains calculations pursuant to section 11 below.

10.5 **Curtailed Amount**

For any amount of Firm Power made available to Alcoa that it does not use for 36 consecutive months ("Curtailed Amount"), Alcoa will lose its right to purchase an equal amount of Firm Power for the remaining term of this Agreement. The following procedure shall be used to determine any Curtailed Amount:

(1) Beginning in October 2014, and following each month thereafter, BPA shall track the amount of Demand Entitlement that Alcoa has taken during each of the preceding 36 months,

(2) In order to retain its Firm Power entitlement, Alcoa must, for at least one month during the preceding 36 months, have received the full Allocated Power amount specified in section 1 of Exhibit A. If this condition has not been satisfied, then Alcoa's Firm Power entitlement made available pursuant to section 4 shall be reduced by the Curtailed Amount,

(3) BPA shall provide notice of the Curtailed Amount and Alcoa 's revised Firm Power entitlement. Such revision shall become effective at 2400 hours on the last day of the month in the month that BPA provides notice to Alcoa of such revision, and

(4) For purposes of this section 10.5, restrictions by BPA pursuant to section 10.2 will be treated as though Alcoa had received the amount of power so restricted.

10.6 **Reallocation of Curtailed Amount from Another Customer**
Upon Alcoa's request, and to the extent consistent with all other requirements and limitations in this Agreement regarding BPA acquisitions, BPA shall reallocate up to 70 aMW: 1) of any Firm Power made available by the reduction of Columbia Falls Aluminum Company's (CFAC) entitlement pursuant to the section of a CFAC contract corresponding to this section10.6 and in effect after September 30, 2011; or 2) of any of CFAC's Unused Benefit Amounts under Contract No. 06PB-11745 (as that term is defined in such contract), or any successor contract for the FY 2010-2011 period, that Alcoa acquires after this Agreement becomes effective; provided, that, a) such acquired Unused Benefit Amounts are retained by Alcoa through September 30, 2011, and b) the cost of such reallocation is, or can be, supported by a power acquisition by BPA at or below $72 per MWh in Phase 1, and in Phase 2 at or below $80/MWh in 2021$. This Reallocated Power will be additive to Alcoa's Allocated Power amount, and such amounts will be reflected in Exhibit A.

Alcoa must make the request specified in this section 10.6 within twelve months following the effective date of the other direct service industry smelter customer's entitlement reduction.

11. LIQUIDATED DAMAGES AND GAINS

11.1 **Liquidated Damages and Gains Associated with BPA Acquisitions or Alcoa Curtailments**
Alcoa shall be liable to BPA for Liquidated Damage amounts, if any, Reduced Liquidated Damage Amounts, if any, and will share in any Liquidated Gain amounts, if any, pursuant to this section 11, in the event: (a) BPA has made at least 160 aMW of acquisitions for any period, and Alcoa fails to take-and-pay for any Firm Power made available to it by BPA (including during the period of any Uncontrollable Force event that otherwise prevents Alcoa from performing its obligations hereunder, or in the event this Agreement has terminated pursuant to sections 23.4, 23.5, or 23.6), or (b) Alcoa has curtailed deliveries of Firm Power pursuant to section 10.4.

If BPA has acquired less than 160 aMW for any period pursuant to sections 5, 6 , or 7, at BPA's option, it may (a) retain such power for its own use and account, and section 11.2 below shall not apply, or (b) sell to Alcoa (and Alcoa shall be obligated to purchase) such power at BPA's average cost of acquiring such power. Any sale by BPA to Alcoa pursuant to the immediately preceding clause shall be transacted under separate contract, and pursuant to BPA's then existing surplus power rate schedule.

Otherwise, when BPA has acquired power in amounts equal to or greater than 160 aMW for any of the separate periods described in this Agreement, Alcoa shall be obligated to pay BPA Liquidated Damages, if any, or Reduced Liquidated Damages, if any, pursuant to sections 11.2 and 11.3, below.

11.2 **Liquidated Damage or Gain Calculation and Allocation**

BPA will be the Party responsible for calculating Liquidated Damages, Reduced Liquidated Damages and Liquidated Gains. In determining the market price and calculating Liquidated Damages and Liquidated Gains, BPA will act in good faith and will use commercially reasonable procedures in order to produce a commercially reasonable result. BPA may consider any relevant information in its calculation, including, without limitation, (a) firm or indicative quotations by one or more third-parties for replacement transactions; (b) relevant market data supplied by one or more third-parties; and (c) relevant market data derived from internal BPA sources, if that data is the same type used by BPA in the regular course of its business for the valuation of similar transactions; provided, however, that BPA shall not be required to enter into replacement transactions in order to determine or assess Liquidated Damage or Liquidated Gain amounts.

BPA will calculate Liquidated Damages, Reduced Liquidated Damages or Liquidated Gains, as applicable, within five Business Days after BPA has determined, either through notice from Alcoa or otherwise, that an event has occurred giving rise to the need to calculate a liquidated amount.

Alcoa shall be obligated to pay BPA Reduced Liquidated Damages during the Initial Curtailment Period if Alcoa makes its minimum annual Employment Expenditures and Liquidated Damages after the Initial Curtailment Period. If Aloca fails to make its minimum annual Employment Expenditures during any portion of the Initial Curtailment Period, Alcoa shall be obligated to pay Liquidated Damages during the Initial Curtailment Period.

11.2.1 **Liquidated Damages**

Liquidated Damages will equal 100 percent of the difference (where the market price is below the original acquisition price) between the acquisition price for power acquired by BPA and the market price measured at the time such Liquidated Damages are calculated, multiplied by the number of MWh of undelivered Firm Power; provided, however, that in the event section 11.2.2 is severed from this Agreement, BPA will offset such Liquidated Damages by the positive difference, during the period prior to the curtailment, between BPA's original acquisition price and the Price Caps applicable to such acquisitions, up to a total amount of offsets equal to $70 million over the remaining term of the Agreement; provided, further, such $70 million shall be reduced by 150 percent of any amount that the calculation of Reduced Liquidated Damages during the Initial Curtailment Period was less than the calculation of Liquidated Damages for that same undelivered Firm Power. Such positive difference shall be calculated by comparing (i) the original average acquisition price for purchases during the portion prior to the curtailment of the term of the acquisition used in the Liquidated Damages calculation, to (ii) the weighted average of the Price Caps that were applicable to each purchase. Such offset shall not be made

following a material breach of this Agreement by Alcoa. BPA will make reasonable efforts to mitigate any Liquidated Damages.

11.2.2 **Reduced Liquidated Damages**
Reduced Liquidated Damages will equal 100 percent of the difference (where the market price is below the applicable IP Rate) between the IP Rate applicable to the undelivered Firm Power and the market price measured at the time such Reduced Liquidated Damages are calculated, multiplied by the number of MWh of undelivered Firm Power.

11.2.3 **Liquidated Gains**
Liquidated Gains will equal 100 percent of the difference (where the market price exceeds the original acquisition price) between the market price measured at the time such Liquidated Gains are calculated and the acquisition price for power acquired by BPA, multiplied by the number of MWh of undelivered Firm Power. There will be no calculation of Liquidated Gains during the Initial Curtailment Period and any amounts that would have been calculated shall be retained by BPA. Liquidated Gains will be held and maintained by BPA, and such amounts shall be disbursed by BPA solely for reimbursement to Alcoa for certain Allowable Expenditures for the Intalco Plant, as identified in section 11.4; provided, however, that (a) any such reimbursements will be limited to: (i) of the first $140 million, 67 percent of the Liquidated Gains obtained from such remarketed power, with the balance of 33 percent retained by BPA for its own account; (ii) of the next $140 million, 33 percent of the Liquidated Gains obtained from such remarketed power, with the balance of 67 percent retained by BPA for its own account; and (iii) of any amounts above $280 million, 50 percent of the Liquidated Gains obtained from such remarketed power, with the balance of 50 percent retained by BPA for its own account; (b) any Liquidated Gain amounts that would otherwise be available for Allowable Expenditure reimbursement will first be used to offset (i) any BPA Curtailment payments, and (ii) 150 percent of any amount that the calculation of Reduced Liquidated Damages during the Initial Curtailment Period was less than the calculation of Liquidated Damages for that same undelivered Firm Power; and (c) no Liquidated Gain amounts obtained following a material breach of this Agreement by Alcoa will be available for Allowable Expenditure reimbursement.

11.3 **Supplier Default**

11.3.1 **Third Party Supplier Default**
In the event BPA acquires power from a third-party supplier with a credit rating of "A" or better at the time such acquisition is made (as rated by the Moody's, Fitch, or Standard and Poor's rating companies) and BPA includes in the Power Supply Agreement with such supplier

the credit requirements provided for in section 8.4 of this Agreement, and such supplier defaults under its Power Supply Agreement with BPA, then Alcoa shall provide BPA with written notice, within 48 hours after notification from BPA of such supplier default, that it elects to either (i) terminate purchases from BPA under this Agreement, effective as of the notice date, equal to the amount of the defaulted acquisition, or (ii) in addition to payment by it under the IP rate, pay BPA the amount by which the market price for power at the Mid-C trading hub exceeds the original acquisition price under the defaulted agreement for power supplied by BPA to serve the Alcoa Load until such time as BPA can enter into a replacement acquisition, and then pay BPA the positive difference of such replacement acquisition minus the original acquisition price under the defaulted agreement times the undelivered MWh under the defaulted agreement minus any default payments or performance assurance payments received by BPA.

In addition, with respect to the 48-hour period between the notice of default provided by BPA to Alcoa and Alcoa's notice to BPA, Alcoa agrees that, in addition to payment under the IP rate, it will reimburse BPA for the amount by which the market price for power at the Mid-C trading hub exceeds the original acquisition price under the defaulted agreement, for all power delivered by BPA to Alcoa during such 48-hour period.

11.3.2 **Alcoa Default**

In the event BPA acquires power from Alcoa or an Alcoa affiliate and Alcoa or its affiliate defaults under its supply agreement with BPA, then Alcoa shall either (i) terminate purchases from BPA under this Agreement equal to the amount of the defaulted acquisition, or (ii) in addition to payment by it under the IP rate, pay BPA the amount by which the market price for power at the Mid-C trading hub exceeds the original acquisition price under the defaulted agreement for power supplied by BPA to serve the Alcoa Load until such time as BPA can enter into a replacement acquisition, and then to pay BPA the positive difference of a replacement acquisition by BPA minus the original acquisition price under the defaulted agreement times the undelivered MWh under the defaulted agreement minus any default payments or performance assurance payments received by BPA.

11.4 **Allowable Expenditures**

"Allowable Expenditures" include payments made by Alcoa for (a) employment compensation (which are consistent with the provisions of section 9.1), (b) costs for restarting production at the Intalco Plant following a shutdown or curtailment, including the purchase of raw materials and contract labor for such purpose; (c) equipment upgrades to the Intalco Plant (whether such upgrades are expensed or capitalized); (d) costs incurred for decommissioning the Intalco Plant (whether such costs are expensed or

capitalized); and (e) environmental remediation costs associated with the Intalco Plant (whether such costs are expensed or capitalized). Alcoa will retain and, upon BPA's request, provide its records documenting the reasonableness of the Allowable Expenditures, and BPA will have the right to verify such Allowable Expenditures by audit.

Any Liquidated Gain amounts available for Allowable Expenditure reimbursement that are unused for such purpose on the date when the Intalco Plant is no longer subject to a government order relating to (d) or (e) above, will be retained by BPA for its own account.

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23.1 **BPA Unable to Complete Ten-Year Purchase**
This Agreement will terminate if BPA has not completed the ten-year purchase specified in section 5 and Alcoa has not submitted notice by March 31, 2009, as specified in section 6.1, to proceed according to provisions specified in sections 6.2 and 6.3. Termination will be effective April 1, 2009.

23.2 **BPA Unable to Complete First Five-Year Purchase**
This Agreement will terminate pursuant to section 6.2.3, effective December 1, 2010.

23.3 **BPA Curtailment Payments Exceed $85 Million**
This Agreement will terminate when accumulated BPA Curtailment payments specified in section 10.1 exceed $85 million (in 2012$). Termination shall be effective at the end of the month for which accumulated BPA Curtailment payment amounts exceed $85 million (in 2012$).

23.4 **Failure to Make Minimum Capital Investment**
This Agreement will terminate pursuant to section 9.2.4, effective October 1, 2021.

23.5 **Court Ordered Additional Power Sales Contract**
In the event BPA is obligated by court order or decision to offer Alcoa any other additional power sales, and the Parties subsequently enter into such other additional power sales, then this Agreement will terminate upon commencement of performance under the other additional power sales contract. Alcoa shall pay BPA Liquidated Damages, if any, for power acquired by BPA under this Agreement to serve the Alcoa Load; provided, however, that at BPA's option, it may (a) retain such power for its own use and account, and in such event section 11.2 of this Agreement shall not apply, or (b) sell to Alcoa (and Alcoa shall be obligated to purchase) such power at BPA's average cost of acquiring such power. Any sale by BPA to Alcoa pursuant to the immediately preceding clause shall be transacted under separate contract, and pursuant to BPA's then existing surplus power rate schedule.

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EXAMPLE

Exhibit A
FIRM POWER ENTITLEMENT

1. ALCOA FIRM POWER PURCHASE OBLIGATION

Fiscal Year	Allocated Power MW	Reallocated Power MW	Firm Power MW	Minimum Annual Employment Expenditures ($m)	10-Year Capital Investment ($m)
2012					
2013					
2014					
2015					
2016					
2017					
2018					
2019					
2020					
2021					
2022					
2023					
2024					
2025					
2026					
2027					
2028					

2. REVISIONS

Following completion of power acquisitions for each Fiscal Year BPA shall unilaterally update the table in section 1 of this Exhibit, according to sections 4, 5, 6, 7, and 9 of the body of this Agreement.

Section Break (Next Page)

Fiscal Year	160 aMW price cap ($/MWh)	240 aMW price cap ($/MWh)
FY12	n/a	$ 72.00
FY13	n/a	
FY14	n/a	
FY15	n/a	
FY16	n/a	
FY17	$ 102.00	$ 82.00
FY18	$ 104.00	$ 84.00
FY19	$ 107.00	$ 86.00
FY20	$ 109.00	$ 88.00
FY21	$ 111.00	$ 90.00
FY22	$ 98.00	n/a
FY23	$ 100.00	n/a
FY24	$ 102.00	n/a
FY25	$ 104.00	n/a
FY26	$ 107.00	n/a
FY27	$ 109.00	n/a
FY28	$ 112.00	n/a

2. **PRICE CAP ADJUSTMENT FOR EXCEEDING $650 MILLION**

Prior to FY 2022, BPA shall determine the amount by which the cost for service to Alcoa Load under the terms of this Agreement during Phase 1 (FY 2012 through FY 2021), including but not limited to the costs referenced in section 8.2.1, exceeded revenues from power sales for service to Alcoa Load. Revenue from power sales to Alcoa Load will be based on BPA's actual IP rate during Phase 1. BPA will reduce, pro rata, the 160 aMW Price Caps specified in Table 1 of this Exhibit FY 2022 through FY 2028, by the amount, if any, such total cost exceeds $650 million. The reduction ($/MWh) to be applied to the Price Caps, if any, will be calculated by dividing the amount exceeding $650 million by the total number of hours in the period FY 2022 through FY2028.

3. **PRICE CAP ADJUSTMENT FOR INSUFFICIENT CAPITAL INVESTMENT**

In the event the 160 aMW Price Caps specified in Table 1 of this Exhibit FY 2022 through FY 2028 need to be reduced by BPA as specified in section 9.2.5 of the body of the Agreement. BPA will determine the amount of such reduction ($/MWh) by first subtracting the Actual Capital Invested amount specified by Alcoa pursuant to section 9.2.1 of the body of this Agreement from 100 percent of the 10-Year Capital Investment amount established in section 9.2.2 of the body of this Agreement and then dividing such difference by the product of multiplying 160 MW by the number of hours in the period FY 2022 through FY 2028.

4. REVISIONS

BPA may unilaterally revise this exhibit to implement reductions, if any, pursuant to section 2 and 3 of this Exhibit.

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DEFINITIONS

"Event" is a system condition under which PS needs additional power to meet its obligations to meet regional firm load after utilizing best efforts to balance its resources and obligations through other methods. The beginning of an Event shall be identified by a notice from PS to Alcoa that such condition has occurred, and that BPA will restrict up to 10 percent of Net Firm Power. The end of the Event shall occur when PS has notified Alcoa that full service has been restored. An Event shall not include adverse market conditions when power is available for purchase and BPA elects for economic reasons not to purchase power, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.

The Event shall be reinstated and continue as follows:

If the Event Duration was 5 Event Minutes or less, then the Event shall be reinstated if PS again restricts Firm Load within 2 hours of the last Event Minute;

If the Event Duration was more than 5 Event Minutes but less than 15 Event Minutes, then the Event shall be reinstated if PS again restricts Firm Load within 4 hours of the last Event Minute;

If the Event Duration was more than 15 Event Minutes but less than 22 Event Minutes, then the Event shall be reinstated if PS again restricts Firm Load within 6 hours of the last Event Minute;

If the Event Duration was more than 22 Event Minutes, then the Event shall be reinstated if PS again restricts Firm Load within 8 hours of the last Event Minute;

"Event Duration" shall be the total cumulative Event Minutes of the Event.

"Event Minute" shall be the minutes of restriction (or any portion thereof) during an Event. If PS restricts less than its full entitlement in any Event Minute, then for purposes of defining the

Event, the Event Minutes and Event Duration, PS shall be deemed to have restricted the entire amount of power available for restriction under this Agreement.

"Material Plant Damage" means the inability of Alcoa to resume industrial production at all or any portion of the Intalco Plant because of damage to plant production facilities resulting from a restriction; for example, the inability to resume electrolysis in one or more pots without rebuilding or substantially repairing such pot(s).

"Net Firm Power" shall mean all Firm Power made available by PS under this Agreement less the sum of: (a) any power restricted by TS under any other agreement, and (b) wheel turning loads.

"Power Reserves" are those reserves provided by Alcoa under this Agreement that are necessary to protect firm power loads within the region after PS has utilized best efforts to protect such loads using other methods.

"Restricted Energy" means energy not made available to Alcoa hereunder because of an Event.

AMOUNT OF RESERVES

When necessary to provide Power Reserves, PS may restrict 10 percent of all Net Firm Power under this Agreement for up to 60 Event Minutes per Event and 4 Events per month.

Notwithstanding any other provision of this Agreement, PS shall use its best efforts to end an Event as soon as possible, and Alcoa agrees to cooperate in development of mechanisms that will enhance PS's ability to notify Alcoa of the end of an Event.

Notwithstanding any other provision of this Agreement, PS shall have no contractual right under this Agreement which would cause Alcoa to incur Material Plant Damage; provided, PS shall not be liable for equitable relief or damages for such Material Plant Damage for an Event whose duration is 60 Event Minutes or less, except as provided in Section 4, below.

COMPENSATION FOR POWER RESERVES

Alcoa will be compensated by PS for Power Reserves provided in this Agreement through an adjustment to the IP rate, as provided for in the Northwest Power Act, and established by BPA in its wholesale power rate proceedings.

RESERVE LIQUIDATED DAMAGES

The Parties acknowledge that restrictions by PS beyond those allowed by this Agreement may result in damage to Alcoa facilities and lost aluminum production by Alcoa prior to Material Plant Damage, which is difficult to quantify. If the Event Duration exceeds 60 Event Minutes, then PS shall be liable to Alcoa as follows:

$1000/MWh (in real 2012 dollars) of Restricted Energy during Event Minutes (or portion thereof), after Event Minute 60 of an Event and continuing for the full duration of the Event;

provided, that in lieu of (a) above and at PS's option, if the Event Duration exceeds 60 Event Minutes, and Alcoa incurs, in its determination, Material Plant Damage as a direct result of the restriction, then as to the portion of its production facilities that suffers Material Plant Damage, PS and Alcoa agree that these damages can be reasonably quantified and, therefore, for that portion of its production facilities, Alcoa may recover actual damages (excluding only lost production and lost profits); but such actual damages shall not exceed $200/kW (in real 2012 dollars) of plant production facilities suffering Material Plant Damage. The liquidated damages charges in (a) above, shall continue to apply to that portion of Alcoa load which does not suffer Material Plant Damage. For purposes of this calculation, the Material Plant Damage shall be deemed to occur at the beginning of Event Minute 61.

MAKE UP POWER

When an Event ends, PS shall permit Alcoa to purchase from BPA, subject to power availability, additional amounts of power at the IP rate in excess of Allocated Power necessary to restore Alcoa facilities to normal operating conditions.

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Exhibit H
GUARANTEE

This Guarantee ("Guarantee") dated as of the ___ day of _____, 200_ is made and entered into by [INSERT NAME OF GUARANTOR], a [_____ corporation] (the "Guarantor"), in favor of the Bonneville Power Administration, an agency of the United States of America Department of Energy, its successors and permitted assigns (the "Guaranteed Party").

WITNESSETH:

WHEREAS, [INSERT NAME OF UNDERLYING OBLIGOR] (the "Company") and the Guaranteed Party have entered or anticipate entering into one or more transactions arising under one or more agreements or master agreements, including, but not limited to, transactions providing for the purchase and sale of electricity and agreements providing for electric power transmission services (such master agreements, confirmations, schedules, instruments and other documents confirming, evidencing, securing or guaranteeing any transaction between the Company and the Guaranteed Party collectively the "Agreements"); and

WHEREAS, the Guarantor will directly or indirectly benefit from the Agreements.

NOW THEREFORE, in consideration of the Guaranteed Party agreeing to conduct business with the Company, the Guarantor hereby covenants and agrees as follows:

1. GUARANTEE. The Guarantor hereby irrevocably and unconditionally guarantees the timely and complete payment when and as due (whether at the stated maturity, by acceleration, upon one or more dates set for payment, or otherwise, including without limitation the payment of amounts of interest that would be due but for the operation of any section under Title 11 of the United States Code or any applicable federal, state or foreign bankruptcy, insolvency or liquidation law) of the obligations of Company under the Agreements (the "Obligations") to the Guaranteed Party in accordance with the Agreements. The Guarantor shall forthwith pay to the Guaranteed Party the amount due in the same currency and manner provided for in the Agreements. The Guarantor further agrees to pay all reasonable attorney's fees, costs and expenses incurred by the Guaranteed Party in connection with the collection of any amounts payable hereunder or any enforcement of this Guarantee. This Guarantee shall constitute a guarantee of payment and not of collection. The Guarantor shall have no right of subrogation with respect to any payments it makes under this Guarantee until all of the Obligations of Company to the Guaranteed Party are paid in full. The liability of the Guarantor under the Guarantee shall be subject to the following:

   The Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made in accordance with the Agreements (even if such payments are deemed to be damages or are not recoverable in any bankruptcy, insolvency or liquidation proceeding involving the Company) and, except to the extent specifically provided in the Agreements, in no event shall the Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort or any other damages.

(b) Notwithstanding Section 1(a), **the aggregate liability of the Guarantor under this Guarantee shall not exceed _____Million U.S. Dollars _____.**

DEMANDS AND NOTICE. Upon the occurrence and during the continuance of an Event of Default as defined in the applicable Agreement, or if the Company fails or refuses to pay any Obligations, the Guaranteed Party may make a demand upon the Guarantor (hereinafter referred to as a "Payment Demand"). A Payment Demand shall be in writing and shall briefly specify in reasonable detail the amount due and owing under an Agreement and what amount, if any, the Company has failed to pay, with a specific statement that the Guaranteed Party is calling upon Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single written Payment Demand shall be effective as to any specific failure to pay during the continuance of such failure to pay, until the Company or the Guarantor has cured such failure to pay, and additional written Payment Demands concerning such failure to pay shall not be required until such failure to pay is cured.

TERM. **This Guarantee shall remain in full force and effect until the earlier of (i) _____ or (ii) the date it is terminated by thirty (30) days Notice from Guarantor to Guaranteed Party (the "Termination Effective Date").** When this Guarantee is terminated in accordance with the foregoing, the Guarantor shall have no further liability hereunder with respect to any Obligations arising in respect of any transactions entered into between the Company and the Guaranteed Party after the Termination Effective Date; provided, however, that no such termination shall affect the Guarantor's liability with respect to any Obligations arising under or relating to any transaction under any Agreement entered into on or prior to the Termination Effective Date, including without limitation any amendments, supplements, modifications or renewals of any such transactions.

Upon any termination of this Guarantee by Guarantor pursuant to clause (ii) above, within thirty (30) days of the Termination Effective Date, the Guarantor and the Guaranteed Party shall exchange lists setting forth all transactions then existing as of the Termination Effective Date under each Agreement and the relevant termination or maturity date of each such transaction. The Guaranteed Party and the Guarantor will cooperate with each other to resolve any discrepancies between such lists.

REPRESENTATIONS AND WARRANTIES. The Guarantor represents and warrants that:

it is a corporation duly organized and validly existing under the laws of [_____] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;

no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution and delivery of this Guarantee;

this Guarantee constitutes a valid and legally binding agreement of the Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;

the execution, delivery and performance of this Guarantee does not violate any law, order, rule or regulation applicable to the Guarantor, or any material agreement, instrument or document to which the Guarantor is party or by which its assets are bound; and

its [audited] financial statements as of [DATE], including without limitation the notes thereto, complete and correct copies of which have been provided to the Guaranteed Party, (i) are correct and complete in all material respects as of the dates and for the periods referred to therein, (ii) have been prepared in accordance with U.S. generally accepted accounting principles in effect as of the dates such financial statements were prepared, and (iii) fairly present in all material respects the financial condition and results of operations of the Guarantor. Since the date of such financial statements, there has been no material adverse change or development in the financial condition or results of operations of the Guarantor.

GUARANTEE ABSOLUTE. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee shall in no way be released, diminished, reduced, affected or impaired by reason of the happening from time to time of any of the following events, any of which may be done or occur without the necessity of any notice to or further consent of the Guarantor (all of which are expressly waived by the Guarantor): (i) to the fullest extent permitted by applicable law, any lack of validity or enforceability of any provision of any transaction or Agreement, or avoidance or subrogation of any of the Obligations; (ii) the release or waiver, by operation of law or otherwise, of the performance or observance by, to the fullest extent permitted by applicable law, the Company of any of the Obligations or any other term or condition in any Agreement to be performed by the Company; (iii) any extension in the time, or change in the manner or place of payment of, or any increase in the amount of, any or all of the Obligations, including without limitation the incurrence by the Company of new or additional Obligations pursuant to any transactions or Agreements entered into after the date hereof (subject to Section 3 hereof); (iv) any renewal, supplementation, modification, rearrangement or amendment (whether

material or otherwise) of any transaction, Agreement or Obligation; (v) any waiver, release, consent, extension, forbearance or granting of any indulgence by the Guaranteed Party in respect of any or all of the Obligations, or any failure, omission, delay, neglect, refusal or lack of diligence on the part of the Guaranteed Party to enforce, assert, or exercise any right, privilege, power or remedy conferred on the Guaranteed Party under any Agreement or otherwise in respect of any transaction or Obligation; (vi) any settlement or compromise of any Obligation, (vii) the taking or release of any security or guarantee in respect of any Obligation and (viii) any other event, action or circumstance which might otherwise, in the absence of this Section 5, constitute a legal or equitable defense or discharge of a surety or guarantor.

6. EFFECT OF BANKRUPTCY. The Guarantor's obligation to pay under this Guarantee shall not be affected in any way by the institution with respect to the Company of a bankruptcy, reorganization, moratorium or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition for the Company's winding-up or liquidation. This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment obligation is annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by the Guaranteed Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Guarantor, or upon or as a result of the appointment of a receiver or conservator of, or trustee for Guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made.

7. AMENDMENT. No term or provision of this Guarantee shall be amended, modified, altered, waived, or supplemented except in a writing signed by the Guarantor and the Guaranteed Party.

8. WAIVERS. The Guarantor hereby waives (a) notice of acceptance of this Guarantee; (b) presentment and demand concerning the liabilities of the Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against the Company or any other person, or except as expressly hereinabove set forth, to require that the Guaranteed Party seek enforcement of any performance against the Company or any other person, prior to any action against the Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of the Guaranteed Party in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of the Guarantor from any obligations hereunder.

The Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in

the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreements.

9. ASSIGNMENT. The Guarantor shall not assign this Guarantee without the express written consent of the Guaranteed Party. The Guaranteed Party shall be entitled to assign its rights under this Guarantee in its sole discretion.

10. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified or registered mail, postage prepaid and return receipt requested, as follows:

To the Guaranteed Party: Bonneville Power Administration
905 NE 11th Ave.
Portland, OR 97232
Attn: Credit Manager, Rodney Ross DBC-3

To the Guarantor: _____
_____
_____
Attn: _____

11. MISCELLANEOUS. THIS GUARANTEE SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE, EXCEPT THAT TO THE EXTENT THE PARTIES' RIGHTS AND OBLIGATIONS ARE REQUIRED TO BE GOVERNED BY UNITED STATES FEDERAL LAW, THEN SUCH RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY UNITED STATES FEDERAL LAW.

WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS GUARANTEE, THE GUARANTOR HEREBY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY. THE GUARANTEED PARTY HEREBY AGREES THAT AS A MATTER OF VENUE IT WILL PURSUE ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS GUARANTEE IN THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY; PROVIDED, HOWEVER, THAT IF UNITED STATES FEDERAL LAW REQUIRES THAT SUCH SUIT, ACTION OR PROCEEDING BE PURSUED BY THE GUARANTEED PARTY IN ANOTHER COURT OR TRIBUNAL (WHETHER BY REMOVAL TO THE UNITED STATES COURT OF FEDERAL CLAIMS OR OTHERWISE), THE GUARANTEED PARTY

SHALL PURSUE SUCH SUIT, ACTION OR PROCEEDING IN SUCH OTHER COURT OR TRIBUNAL AS MAY BE REQUIRED BY UNITED STATES FEDERAL LAW.

This Guarantee shall be binding upon the Guarantor, its successors and assigns and enure to the benefit of and be enforceable by the Guaranteed Party, its successors and assigns. This Guarantee embodies the entire agreement and understanding between the Guarantor and the Guaranteed Party and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof.

EXECUTED as of the day and year first above written on the respective dates set forth below.

[NAME OF GUARANTOR]

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, August 05, 2009 5:25 PM
To: 'Pereira, Marc A.'; 'Laun, Max W.'; 'Rousseau, Mike F.'; 'Jack Speer'; 'Mike Dotten'
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule

Marc-
We will be sending out the contract draft in the morning.

A couple things to think about in the meantime:
1) probably useful to have a conf call to review our approach on Friday
2) we remain open to your plans to come out late Tues through Thurs afternoon - let's discuss this Friday also

More in the morning.

Mark

From: Symonds,Mark C - PTL-5
Sent: Monday, July 27, 2009 1:14 PM
To: 'Pereira, Marc A.'; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

Very well.

Just to clarify, you mean you all are available from Tuesday afternoon at 3pm, which is August 11th, right? Just making sure you did not mean Monday.

Thank you.

Mark

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Monday, July 27, 2009 10:44 AM
To: Symonds,Mark C - PTL-5; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

Mark,
Thanks for the update.
We are making travel arrangements to be in Portland during the week of august 10. We will be available to meet with BPA from Tuesday (august 10) at 3pm until Thursday evening, as needed.
We can always cancel if the draft is perfect, but let's reserve those dates just in case.
marc

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Friday, July 24, 2009 7:43 PM
To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; 'Jack Speer'; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Updated Schedule

Marc et al,
You left a note for Allen earlier in the day regarding schedule. Here are some of the key points:
8/5 - we expect to provide Alcoa with an initial draft contract (less than a week and a half from now)
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8/17-21 - we anticipate releasing contract for public review late this week
9/7-11 - public comment period anticipated to end this week (note the holiday weekend)
9/14-18 - BPA works in comments into contract / ROD
9/21-25 - time for approvals

Contract negotiations are a bit more accelerated than you indicated in you message, but I have laid out the rest of the time in an effort to underline why it is important to try to accelerate. Please contact me with any questions you may have. Thanx

Mark

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Monday, July 27, 2009 1:28 PM
To: 'Pereira, Marc A.'
Subject: RE: Updated Schedule

Thanx

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Monday, July 27, 2009 1:18 PM
To: Symonds,Mark C - PTL-5; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten; Gregorio, Kimberly A
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

You are correct. It is Tuesday the 11th (not the 10th..my bad).
marc

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Monday, July 27, 2009 4:14 PM
To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

Very well.

Just to clarify, you mean you all are available from Tuesday afternoon at 3pm, which is August 11th, right? Just making sure you did not mean Monday.

Thank you.

Mark

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Monday, July 27, 2009 10:44 AM
To: Symonds,Mark C - PTL-5; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
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Mark

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Tuesday, August 18, 2009 11:48 AM
To: 'Rousseau, Mike F.'; 'Pereira, Marc A.'; 'Laun, Max W.'; 'Jack Speer'; 'Mike Dotten'; Gregorio, Kimberly A; Padgett, Michael
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule
Attachments: Net Cost Determination for Draft Contract - 080509 (draft).pdf; Power Sales Contract ALCOA Exhibit B - 080709.doc

RESENDING E-MAIL from 8/12 to illustrate the PDF copy of Table 3 to be inserted in Ex B.

All,
Attached is a draft of Exhibit B and a pdf of a Table yet to be inserted:
<see attached files>

We'll be on the phone momentarily.

Mark

From: Symonds,Mark C - PTL-5
Sent: Thursday, August 06, 2009 11:21 AM
To: 'Rousseau, Mike F.'; Pereira, Marc A.; Laun, Max W.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule

All,
Attached please find our initial draft contract:
<see attached doc>

Note that there are several places with placeholders and that Exhibits B & F are missing entirely. Exhibit B will follow under separate cover later today. We will work on Exhibit F next week, but please take note of reserve provisions in the IP-10 rate schedule and GRSPs.

It is also important to note that this contract draft does not address comments received under the term sheet as they are still coming in and being posted as late as this morning. We encourage you to review them and we expect there will be changes to the draft contract to address the public comments received. One such change may include the need for the IP rate forecast to be lowered from what had been used in the January draft contract in light of decisions made in the WP-10 rate case.

Please let me know if there is a time available tomorrow to review our approach with you all. Also please be prepared to discuss logistics for next week on tomorrow's call. Thank you.

Mark

From: Rousseau, Mike F. [mailto:Mike.Rousseau@alcoa.com]

Sent: Thursday, August 06, 2009 8:34 AM
To: Symonds,Mark C - PTL-5; Pereira, Marc A.; Laun, Max W.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule

Thanks Mark

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Wednesday, August 05, 2009 5:25 PM
To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; 'Jack Speer'; 'Mike Dotten'
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule

Marc-
We will be sending out the contract draft in the morning.

A couple things to think about in the meantime:
1) probably useful to have a conf call to review our approach on Friday
2) we remain open to your plans to come out late Tues through Thurs afternoon - let's discuss this Friday also

More in the morning.

Mark

From: Symonds,Mark C - PTL-5
Sent: Monday, July 27, 2009 1:14 PM
To: 'Pereira, Marc A.'; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
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Mark

Net Cost Check	$ 31,970,002	$ 49,970,361	$ 81,940,363
IP Revenues	$ 93,948,090	$ 97,002,675	$ 190,950,765

$48 per MWh test

	Cost FY2010	FY2011		HLH LLH split
Forecasted Cost	$ -	$ -	$ -	
Acquisition Cost	$ -	$ -	$ -	
Acquisitions Made				
Acquisitions to be Made				
Inventory Cost	$ 125,918,091	$ 148,972,976	$ 272,891,068	
Inventory Applied	$ 125,918,091	$ 148,972,976	$ 272,891,068	
Inventory to be Applied				
Credit Cost				
Environmental and Regulatory Cost				
Total - by Fiscal Year				

$	49.45	per MWh of Sales to Alcoa during FY10-11
$	45.67	per MWh of 320 aMW Sale to Alcoa for the entire FY10-11 period
	5,518,080	MWh Sales to Alcoa during FY10-11
	618,240	MWh of actual sales to thru effective date of increase
	4,899,840	MWh of 320 aMW sales to Alcoa subsequent to the effective date
	730	total days in period

assumes 3-month notice given at contract signing

	Volume (MWh incl losses) FY2010	FY2011	
Forecasted Cost			
Acquisition Cost			-
Acquisitions made			-
Acquisitions to be Made	2,766,463	2,856,461	5,622,924
Inventory Cost			
Inventory Applied	-	-	-
Inventory to be Applied	-	-	-
Credit Cost	-	-	-
Environmental and Regulatory Cost	-	-	-
Sum of Acquisitions & Inventory - by Fiscal Year	2,766,463	2,856,461	5,622,924

** Loads applied to Credit and E&R Costs may not be additive

Cost to Serve

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31	30
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisitions made	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Acquisitions to be Made	$ 8,756,743	$ 8,474,267	$ 8,756,743	$ 11,347,401	$ 10,249,266	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 12,865,206	$ 11,620,186	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,865,206	$ 12,450,200
Inventory Cost																								
Inventory Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Inventory to be Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Credit Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Environmental and Regulatory Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total - by Month	$ 8,756,743	$ 8,474,267	$ 8,756,743	$ 11,347,401	$ 10,249,266	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 12,865,206	$ 11,620,186	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,450,200	$ 12,865,206	$ 12,865,206	$ 12,450,200

Volume Required to Serve (MWh incl losses)

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31	30
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisitions made	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Acquisitions to be Made	212,278	205,430	212,278	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778	242,604	234,778	242,604	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778
Inventory Cost																								
Inventory Applied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Inventory to be Applied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Credit Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Environmental and Regulatory Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sum of Acquisitions & Inventory - by Month	212,278	205,430	212,278	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778	242,604	234,778	242,604	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778

** Loads applied to Credit and EAR Costs may not be additive

Average Load (aMW, not incl losses)

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31	30
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisitions made	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Acquisitions to be Made	280	280	280	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320
Inventory Cost																								
Inventory Applied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Inventory to be Applied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Environmental and Regulatory Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum of Acquisitions & Inventory - by Month	280	280	280	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320

** Loads applied to Credit and EAR Costs may not be additive. how do we deal with the ramp-up? This does not happen overnight.

Weighted Average Unit Cost by Month

	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Forecasted Cost																								
Acquisition Cost																								
Acquisitions made	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
Acquisitions to be Made	$ 41.25	$ 41.25	$ 41.25	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03
Inventory Cost																								
Inventory Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Inventory to be Applied	$ 41.25	$ 41.25	$ 41.25	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03
Credit Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Environmental and Regulatory Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Expected acquisitions	$ 38.77	$ 38.77	$ 38.77	$ 43.98	$ 43.98	$ 43.98	$ 43.98	$ 43.98	$ 43.98	$ 43.98	$ 43.98	$ 43.98	$ 43.98	$ 43.98	$ 43.98	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84

Exhibit B
COST CAPS

1. Definitions

1.1 "Acquisition Cost for FY2011 through FY2012" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, by BPA multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.2 "Acquisition Cost for FY2012 through FY2016" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, assigned to the Composite Cost Pool under the Tiered Rates Methodology, including DSI loads multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa,for the purpose of computing Forecasted Cost under this Agreement.

1.3 "Cost Cap" shall have the meaning described in section 2.1and section 3.1 of this Exhibit.

1.4 "Credit Cost" means the actual cost or forecasted cost to BPA of a credit default swap or other credit risk hedging instrument purchased by BPA.

1.5 "Environment or Regulatory Cost" means costs incurred, or to be incurred, by BPA that are associated with carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs

1.6 "Forecasted Cost" shall have the meaning described in section 4 of this Exhibit.

1.7 "Forecasted Net Cost" means the result on line J of the calculation in section 2.1 or section 3.1 of this Exhibit for the applicable period. Subject to section 2.2 of this Exhibit, $82 million is net cost cap for the period FY2010 through FY2011 and $350 million is the net cost cap for the period FY2012 through FY2016.

1.8 "Inventory Cost" means the weighted average of the monthly actual unit cost of, or opportunity cost of, BPA's surplus inventory,as valued by BPA with reference to then current market prices, forward curves, and BPA market price forecasts, multiplied by the volume in MWh of BPA's surplus inventory as applied each month to make available the Requested Firm Power to Alcoa, for the purposes of computing Forecasted Cost under this Agreement.

1.9 "Requested Firm Power" means the total amount of Firm Power requested by Alcoa in the notice provided to BPA pursuant to section 5.2 of the body of this Agreement.

2. Cost Cap in FY2010 through FY2011

2.1 Cost Cap

The Forecasted Net Cost for the FY2010 through FY2011 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 1 below:

TABLE 1 - Example Calculation of the Forecasted Net Cost in FY2010 through FY2011	**Maximum Value**	**Example Value**
A) Firm Power	285 aMW	285 aMW
B) Requested Increase in Firm Power *[effective date of request must be provided inclusive of contractual notice]*	35 aMW	35 aMW
C) Requested Firm Power = A+ B	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = C * 8760 hours * 2 years *[weighted for appropriate effective dates of requested firm power]*	5,606,400	5,606,400
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	5,712,922	5,712,922
G) Weighted Average IP rate for FY10-11 ($ per MWh) *[weighted for appropriate effective dates of requested firm power]*	$ 34.60	$ 34.60
H) Forecasted Cost ($) *[see definition and example in section 4 of this Exhibit]*	$ 275,981,440	$ 200,000,000
I) Forecasted IP Revenue ($) = D * G	$ 193,981,440	$ 193,981,440
J) Forecasted Net Cost = H - I	$ 82,000,000	$ 6,018,560
K) Forecasted Cost ($ per MWh) = H / F	$ 48.31	$ 35.01

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2010 through FY2011 period and must be forecast to be less than or equal to $82 million (the "Cost Cap"); provided however such Cost Cap may be increased pursuant to section 2.2 of this Exhibit B.

2.2 Effect of DSI Curtailment on Cost Cap

To the extent any other aluminum smelter DSI notifies BPA of a curtailment under its BPA power sales agreement during the FY2010 through FY2011 period, then during the duration of such curtailment, the $82 million Cost Cap applicable to Alcoa under this Agreement for the FY2010 through FY2011 period will be increased by an amount equal to the amount of the Cost Cap forgone by such other aluminum smelter DSI, and the $48 per MWh cost cap will be increased accordingly.

[insert example]

3. Cost Cap in FY2012 through FY2016

3.1 Cost Cap

The Forecasted Net Cost for the FY2012 through FY2016 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 2 below:

[insert chart – Example Calculation of the Cost Cap in Fy12-16]

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2012 through FY2016 period and must be forecast to be less than or equal to $350 million (the "Cost Cap").

4. Methodology to Determine Forecasted Cost

The Forecasted Cost shall be determined by BPA in its sole discretion and will include, but is not limited to, the sum of the following costs: Acquisition Cost, Inventory Cost, Credit Cost, Environmental and Regulatory Cost. ("Forecasted Cost")

For each month in the period, BPA will assemble the information in Table 3 in the commercially reasonable manner below:

[insert Table 3]

5.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, July 01, 2009 8:50 AM
To: 'Pereira, Marc A.'; 'Rousseau, Mike F.'; Laun, Max W.; Jack Speer; MICHAEL DOTTEN
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Term Sheet and Schedule for Conf Call

Attachments: DRAFT Term Sheet -070109 (to Alcoa).doc; TermSheetContractTimelineAlcoa.doc

All,
Attached is the latest version of the term sheet we discussed since last week and a more detailed schedule for the time between now and October 1:

DRAFT Term Sheet -070109 (to A... TermSheetContract TimelineAlcoa...

Regarding the term sheet, you will notice it has been reorganized a bit - basic terms are now right at the top and curtailment & termination provisions have been moved to the end of the special conditions section.

In our discussion today, we plan to address three main questions:
A) On the term sheet, in addition to generally cleaning up the document, what are the substantive changes made since our face-to-face?

1) We had discussed allowing either smelter to use upto the full $59 million in #2, but the 3-month notice prevents us from spending the other guy's money beyond the 3-month notice period. As a result, we limited it to Alcoa's share of the $59 million over the 2-year period or $82 million.

2) The language in #3 was revised to reflect our earlier discussions with you all regarding a subsequent contract. We had inadvertently incorporated the language from the January draft regarding whether or not we would be able to provide more power under the cap in the last 7 years.

3) We have dropped the reference to 7g in #4 and replaced it with a more general rates provision. We can talk through our rationale here.

B) On the term sheet, what are the areas we think either need further work and/or need to remain open until discussion between Steve & John:

1) The numbers for employment guarantee in #5. We are expecting an increase relative to January and we plan to discuss why this is important.

2) How we plan to address the first paragraph in #4 may need to remain an open issue. There are really two issues here which are (a) direct costs that may need to be incurred for RES compliance, and (b) indirect effects on the "greenness" of BPA's system.

C) What does our schedule look like?

Let me know if there are any questions. Thank you.

Mark

DRAFT – Term Sheet
Block Power Sale to Alcoa[1]

July 1, 2009

Basic Terms (subject to the Special Conditions below):

Product	Block, firm power, delivered on all hours.
Rate	Industrial Firm Power (IP) rate. Reserves provided consistent with law.
Amount	285 aMW during Initial 2-year Period 320 aMW during Subsequent 5-year Period
Term	October 1, 2009 – September 30, 2011 (Initial 2-year Period) October 1, 2011 – September 30, 2016 (Subsequent 5-year Period).

Special Conditions:

1. BPA may provide Alcoa notice of termination prior to June 30, 2010, if, in BPA's sole discretion, it is unable to purchase FBS replacement resources sufficient to serve the Amount for the Subsequent 5-Year Period for less than or equal to $64 per MWh. The price cap represents a forecasted net cost of less than $350 million for the Subsequent 5-year Period (defined as cost of purchases to serve Alcoa's Intalco Plant load less expected IP revenue from the same). BPA will make reasonable efforts to purchase power sufficient to serve the Amount for the Subsequent 5-Year Period by March 31, 2010, and to notify Alcoa if it has made such purchases on or before that date.
2. In the event that wholesale power market prices for power purchased by BPA for the Initial 2-year Period are sufficient to serve Alcoa 320 aMW at a cost less than or equal to $48 per MWh, then upon Alcoa's request BPA will increase the Amount for the Initial 2-year Period to 320 aMW. Consistent with BPA's determination that it will not exceed the cost cap for DSI service, the $48 per MWh price cap represents a forecasted net cost of less than $82 million for the Initial 2-year Period.
3. Upon Alcoa's request BPA will conduct a public process between October 1, 2012, and October 1, 2014, to determine the feasibility of entering into a follow-on contract with Alcoa beginning October 1, 2016. In addition to examining the terms of service for any such follow-on contract, the public process will include a study analyzing the impacts on the regional economy associated with such a follow-on contract. This provision is not intended and shall not be construed as requiring BPA to offer any such follow-on contract, irrespective of the conclusions or findings of any public process undertaken.
4. Any costs of carbon taxes or charges, greenhouse gas mitigation costs, renewable portfolio standard obligations or other similar environmental or regulatory costs will be included in the net cost calculation, and any such costs not recovered by BPA through

[1] This draft term sheet is for discussion purposes only, is subject to change, and is not binding on BPA or Alcoa for any purposes.

rates will be paid by Alcoa under the terms of the contract. To the extent such cost allocation results in degrading the "greenness" of BPA's system, then BPA will be entitled to Alcoa's indirect carbon credits.

The price caps in (1) and (2) above represent the maximum amount BPA will pay for average annual blocks of power to support sales to Alcoa including any costs of carbon taxes or charges, greenhouse gas mitigation costs, renewable portfolio standard obligations or other similar environmental or regulatory costs, and costs incurred by BPA in connection with any credit requirements. Price caps represent the weighted average of acquisitions made by BPA to support sales to Alcoa over all Fiscal Years comprising the particular delivery period.

i. BPA will not make a plant specific acquisition from a coal-fired resource.
ii. BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to above, that are imposed on the supplier after the date the acquisition contract is entered into.

5. Alcoa commits to make minimum Employment Expenditures of $___ million [a two-year value] at the Intalco Plant through the term of this contract. "Employment Expenditures" shall mean, and will be limited to, regular compensation for employees and contractors, which is comprised of wages, benefits, and customary performance bonuses, and will not include any extraordinary bonuses or similar types of awards. If Alcoa fails to make Employment Expenditures in two consecutive Fiscal Years equal to or greater than the minimum Employment Expenditures of $___ million [a two-year value], BPA may terminate this contract; provided however, such minimum Employment Expenditure commitment shall not apply if notice of termination has been given.
6. In order to qualify for service beginning October 1, 2009, Alcoa's load at the Intalco Plant must have been 160 aMW or more in any one year of the Subscription Period (Fiscal Year 2007 through Fiscal Year 2009).
7. Following a notice of termination by Alcoa under the provision below, Alcoa agrees that it will not request power service from BPA.
8. Alcoa agrees not to challenge the validity of this contract in the Ninth Circuit Court of Appeals, but reserves the right to intervene in any proceeding challenging the validity of the contract for the purpose of defending the validity of the contract or any portion thereof.
9. Alcoa may curtail deliveries twice during the Term. If Alcoa elects to curtail, then:
   a) 3-month notice is required, curtailment duration may be changed only with BPA's consent;
   b) cumulative curtailment duration shall not exceed 24 months;
   c) no take-or-pay obligation and no compensation by BPA to Alcoa; and
   d) Provision 5 shall be suspended for the duration of the curtailment.
10. Alcoa may terminate upon12-months prior written notice, but shall be obligated to pay the IP rate (whether or not it takes power and without regard to any mitigation by BPA) for the applicable Amount for the 12-month notice period. Alcoa may switch from a curtailment to a termination at any time during a curtailment by providing notice of termination and agreeing to pay the IP rate for the applicable Amount for a period of not less than 12-months following the effective date of the notice of curtailment.

Draft – Preliminary and Discussion Purposes Only

BPA's Timeline for Term Sheet and Power Sale Contract Development

Dates	Target or Process
6/23	Draft WP-10 ROD Released of Public Review
6/25 – 7/13	BPA/Alcoa agree on Term Sheet
7/1	BPA/Staff Call
7/13	**Steve W. and John T. (Meeting or Phone)**
7/14	**BPA/Alcoa Term Sheet Released for Public Review**
7/14	BPA provides Alcoa initial contract draft Discuss in conference call or meeting
7/15 – 9/15	Drafting of ROD
7/20	Alcoa returns contract draft to BPA
7/21	**WP-10 Final ROD** Issued
7/22	**Term Sheet Public Review Ends**
7/22 – 7/28	Review Public Comments, identify issues
7/22	Draft Contract Distributed for internal LTSP Core Team/Implementation Team Stakeholder Review
7/28	Internal Stakeholder Review Signoff
7/31	BPA provides Alcoa final contract draft
8/5	*BPA/Alcoa discuss final contract draft*
8/13	Draft Contract released for Public Review
9/4	**Draft Contract Public Review Ends**
9/8 – 9/11	Review Public Comments, identify issues
9/14 – 9/17	TAC for ROD & Contract
9/18	**Final ROD Released / Contract Executed**

TRMC Meetings scheduled 7/16 & 8/20.
PMC Meetings scheduled 7/30 & 8/27
VP-12 Meeting scheduled 7/20

Symonds,Mark C - PTL-5

From: Padgett, Michael [Michael.Padgett@alcoa.com]

Sent: Monday, August 17, 2009 2:21 PM

To: Symonds,Mark C - PTL-5; Pereira, Marc A.; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; speerja@verizon.net; mcdotten@msn.com

Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5

Subject: Alcoa Treasury

Contact details follow:

Peter Hong
Vice President & Treasurer
Alcoa Inc.

New York Office
212 836 2666

Please advise contact info of the BPA person(s) with whom Peter would be speaking if we go down this path. I'll work on timing.

Thanks,
Michael

Symonds,Mark C - PTL-5

From: Clark,Harry W - PTL-5
Sent: Thursday, August 13, 2009 7:07 PM
To: 'Jack Speer'
Subject: Exhibit F.doc

Attachments: Exhibit F.doc

Jack
This is an electronic version of Exhibit F passed out today. As I mentioned I still have work to do on this because it is based on work done several months ago, terms have changed since the rate case was final, and we are just now finishing internal procedures between TS and PS for assessing DSI reserves.
Harry

Exhibit F.doc (39 KB)

Draft

Exhibit F
POWER RESERVES

1. DEFINITIONS

(a) "Event" is a system condition under which PS needs additional power to meet its obligations during a system disturbance. The beginning of an Event shall be identified by a notice from PS to Alcoa that such a system disturbance has occurred, and that PS requests Restricted Energy from Alcoa. The end of the Event shall occur when PS has notified Alcoa that full service has been restored. An Event shall not include adverse market conditions when power is available for purchase and BPA elects for economic reasons not to purchase power, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.

(b) "Event Duration" shall be the total cumulative Event Minutes of the Event.

(c) "Event Minute" shall be the minutes of restriction (or any portion thereof) during an Event.

(d) "Power Reserves" are those reserves provided by Alcoa under this Agreement for purposes of providing Power Reserves for BPA's firm power loads within the region, as provided for in the Northwest Power Act.

(e) "Reserve Amount" shall be the kilowatt (kW) amount of Contingency Reserves available to BPA by Alcoa specified in Section 2 of this Exhibit.

(f) "Restricted Energy" means the requested megawatt-hour (MWh) amount of energy not made available to Alcoa hereunder because of an Event.

2. AMOUNT AND TYPES RESERVES

When necessary to provide Contingency Reserves, PS may restrict the Reserve Amount, or the requested portion thereof, for a period of time (Restricted Energy). The Reserve Amount (in kilowatts) shall equal the amount of Minimum DSI Operating Reserve – Supplemental specified in the 2010 GRSP, or its successor.

Notwithstanding any other provision of this Agreement, PS shall use its best efforts to end an Event as soon as possible, and Alcoa agrees to cooperate in development of mechanisms that will enhance PS's ability to notify Alcoa of the end of an Event.

The Parties recognize that with the addition of certain electronic controls at the Intalco Plant, the Intalco Load can be varied to help accommodate within-hour fluctuations on BPA's system associated with wind power generation. The Parties agree to undertake discussions within 60 days after the execution of this Agreement to identify and implement actions and agreements necessary to achieve such wind integration benefits.

3. QUALITY AND CHARACTER OF RESERVES

Contingency Reserves provided by Alcoa shall be consistent with North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and Northwest Power Pool (NWPP) standards and criteria:

(a) the Reserve Amount, or the requested portion thereof, must be offline within ten (10) minutes after the first telephone call by Alcoa's scheduling agent to Alcoa;

(b) the Reserve Amount, or the requested portion thereof, must be available to be offline for up to one-hundred five (105) minutes.

Alcoa shall provide a contact at the Facility at the following phone number:

Alcoa
Phone: () –

Alcoa shall maintain such contact for every hour in the Term of the Agreement in which the Minimum DSI Operating Reserve – Supplemental amount is greater than zero megawatts.

Alcoa will provide the Restricted Energy to BPA by an interruption of its loads in an amount equal to or greater than the amount of such specified Restricted Energy, and in each case shall continue such load interruption for the duration of the Event.

The TS dispatcher will notify the TS scheduler of a contingency event. Depending on whether the event is during the delivery hour (within hour), or the scheduling hour (next hour) either the TS scheduler or Alcoa's scheduling agent will adjust Alcoa's e-tags in real time. Alcoa's scheduling agent shall contact Alcoa at this number to: (a) initiate each Event; and (b) terminate each Event. Within ten (10) minutes following such notice by the scheduling agent to initiate an Event, Alcoa shall commence providing the Restricted Energy to BPA. Alcoa shall not restore its use of the Restricted Energy until the lesser of: (a) one-hundred five (105) minutes; or (b) immediately following notice from the scheduling agent terminating an Event.

PS retains the right to verify Alcoa's provision of Restricted Energy by comparing the metered amounts before an Event, during an Event, and after an Event is terminated. If such verification fails to demonstrate that the Restricted Energy was made available to BPA by Alcoa for the Event Duration, then PS, in its sole discretion, may: (a) terminate the compensation specified in Section 4 of this Exhibit for the undemonstrated portion of the Reserve Amount for the remaining Term of the Agreement; and, (b) notify TS of the undemonstrated portion of the Reserve Amount. Alcoa acknowledges that any undemonstrated portion of the Reserve Amount may cause its transmission supplier to take additional actions subject to the provisions of the Transmission Service Agreements Alcoa maintains with its transmission supplier, that may include an assessment of the monetary penalty described in the Failure to Comply provision of the prevailing TS tariff for transmission service.

4. COMPENSATION FOR POWER RESERVES

Alcoa will be compensated by PS for Minimum DSI Operating Reserve - Supplemental provided in this Agreement through an adjustment to the IP rate, as provided for in the Northwest Power Act.

Credit to be allowed Alcoa for provision of any DSI Reserves(s) beyond the Minimum DSI Operating Reserve - Supplemental, in accordance with the DSI Reserves Adjustment in Section III, Part 2 of the IP-2010 Rate Schedule, or its successor, shall equal the product of: (a) the Reserve Amount (in kilowatts); (b) one-hundred (100) percent; and, (c) the per kilowatt per month of the rate published in BPA's Final WP-2010 Rate Schedule, or its successor, for operating reserve capacity that is provided as a generation input to Transmission Services. This maximum value of such operating reserve capacity is based on the FERC approved embedded cost methodology.

5. REVISIONS

BPA may unilaterally revise this Exhibit F to implement changes that are applicable to Alcoa and that BPA determines are reasonably necessary for reserves provided under this Agreement to: (a) reflect changes in the value of the DSI Reserves Adjustment; (b) accommodate within-hour fluctuations; and, (c) comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Symonds,Mark C - PTL-5

From: Padgett, Michael [Michael.Padgett@alcoa.com]

Sent: Wednesday, August 19, 2009 9:13 AM

To: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Symonds,Mark C - PTL-5

Cc: Rousseau, Mike F.; Pereira, Marc A.; Laun, Max W.; Jack Speer; Mike Dotten; Gregorio, Kimberly A

Subject: FW: Revisions to Section 20.8.3

Attachments: Section 20.8.3.doc

Suggested revised wording.
Michael

20.8.3 In the event that BPA requests a letter of credit pursuant to section 20.8, Alcoa and BPA shall confer concerning the necessity for, and terms concerning, such letter of credit for no more than two business days. Following such discussions, Alcoa shall arrange for any letter of credit requested by BPA to be issued to BPA no later than 3 business days following such discussions.

Deleted: pursuant to section 20.8

Deleted: request

Symonds,Mark C - PTL-5

From: Rousseau, Mike F. [Mike.Rousseau@alcoa.com]
Sent: Friday, May 01, 2009 4:06 PM
To: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Symonds,Mark C - PTL-5
Subject: NY Power Contract

Here is the links to some public info.

The link to the Contract and Tariff Sheets:
http://www.nypa.gov/publichearings/06nov2008/Draft%20Alcoa%20Contract%20
and%20Service%20Tariff.pdf

> The press release:
> http://www.nypa.gov/press/2008/080923b.htm
>
>
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>

Symonds,Mark C - PTL-5

From: MICHAEL DOTTEN [mcdotten@msn.com]

Sent: Wednesday, August 12, 2009 7:00 AM

To: Symonds,Mark C - PTL-5; Mike Rousseau; Marc Pereira; Max W. Laun; Jack Speer

Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5

Subject: Proposed Recital in Alcoa 7-year agreement

Here is a draft of the recital we discussed at yesterday's meeting:

In *Pacific Northwest Generating Cooperative v. Department of Energy*, 550 F. 3d 846 (2008) the Ninth Circuit Court of Appeals invalidated monetary benefits provisions of power sales contracts between BPA and its direct service industrial customers (DSIs), but held that BPA may make sales to DSIs at the Industrial Firm Power Rate (IP rate). This Agreement addresses the two-year period remaining under the invalidated contract provision and potentially, a further 5-year term. Under both time periods power sales will be made to Alcoa at the IP rate.

Michael C. Dotten - Attorney-Mediator-Arbitrator/13643 Melrose Pl./Lake Oswego, OR 97035
Tel: 503-882-4937/ Cell: 503-318-7090/e-mail: mcdotten@msn.com / web: DottenADR.com

The material in this e-mail may be confidential or privileged. If you receive this message in error, please contact us immediately and delete the e-mail from your computer.

From: mcsymonds@bpa.gov
To: Mike.Rousseau@alcoa.com; Marc.Pereira@alcoa.com; Max.Laun@alcoa.com; speerja@verizon.net; mcdotten@msn.com
CC: alburns@bpa.gov; hwclark@bpa.gov; kwrunzler@bpa.gov; jdwright@bpa.gov; dwhanlon@bpa.gov
Date: Thu, 6 Aug 2009 11:20:57 -0700
Subject: RE: Updated Schedule

All,
Attached please find our initial draft contract:
<see attached doc>

Note that there are several places with placeholders and that Exhibits B & F are missing entirely. Exhibit B will follow under separate cover later today. We will work on Exhibit F next week, but please take note of reserve provisions in the IP-10 rate schedule and GRSPs.

It is also important to note that this contract draft does not address comments received under the term sheet as they are still coming in and being posted as late as this morning. We encourage you to review them and we expect there will be changes to the draft contract to address the public comments received. One such change may include the need for the IP rate forecast to be lowered from what had been used in the January draft contract in light of decisions made in the WP-10 rate case.

Please let me know if there is a time available tomorrow to review our approach with you all. Also please be prepared to discuss logistics for next week on tomorrow's call. Thank you.

Mark

From: Rousseau, Mike F. [mailto:Mike.Rousseau@alcoa.com]
Sent: Thursday, August 06, 2009 8:34 AM
To: Symonds,Mark C - PTL-5; Pereira, Marc A.; Laun, Max W.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule

Thanks Mark

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Wednesday, August 05, 2009 5:25 PM
To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; 'Jack Speer'; 'Mike Dotten'
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule

Marc-
We will be sending out the contract draft in the morning.

A couple things to think about in the meantime:
1) probably useful to have a conf call to review our approach on Friday
2) we remain open to your plans to come out late Tues through Thurs afternoon - let's discuss this Friday also

More in the morning.

Mark

From: Symonds,Mark C - PTL-5
Sent: Monday, July 27, 2009 1:14 PM
To: 'Pereira, Marc A.'; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

Very well.

Just to clarify, you mean you all are available from Tuesday afternoon at 3pm, which is August 11th, right? Just making sure you did not mean Monday.

Thank you.

Mark

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Monday, July 27, 2009 10:44 AM
To: Symonds,Mark C - PTL-5; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7

Subject: RE: Updated Schedule

Mark,
Thanks for the update.
We are making travel arrangements to be in Portland during the week of august 10. We will be available to meet with BPA from Tuesday (august 10) at 3pm until Thursday evening, as needed.
We can always cancel if the draft is perfect, but let's reserve those dates just in case.
marc

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Friday, July 24, 2009 7:43 PM
To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; 'Jack Speer'; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Updated Schedule

Marc et al,
You left a note for Allen earlier in the day regarding schedule. Here are some of the key points:
8/5 - we expect to provide Alcoa with an initial draft contract (less than a week and a half from now)
8/10-14 - intensive contract negotiations and mostly likely week for face-to-face as needed
8/17-21 - we anticipate releasing contract for public review late this week
9/7-11 - public comment period anticipated to end this week (note the holiday weekend)
9/14-18 - BPA works in comments into contract / ROD
9/21-25 - time for approvals

Contract negotiations are a bit more accelerated than you indicated in you message, but I have laid out the rest of the time in an effort to underline why it is important to try to accelerate. Please contact me with any questions you may have. Thanx

Mark

Symonds,Mark C - PTL-5

From: Clark,Harry W - PTL-5
Sent: Wednesday, July 22, 2009 5:06 PM
To: 'Huber, Robert D.'
Subject: RE: 2000 Resource Mix
Attachments: Mix for 2000 Purchases Alcoab.xls

Bob
Sales from the Reynolds and Alumax contract were in the summary but but I did forget about a surplus sale April through July. Take a look at this and see if this covers everything.
Harry

From: Huber, Robert D. [mailto:Bob.Huber@alcoa.com]
Sent: Tuesday, July 14, 2009 3:22 PM
To: Clark,Harry W - PTL-5
Subject: FW: 2000 Resource Mix

Harry,
I spoke with Jack Speer about the data on the attached (this occurred prior to my time here) and he indicated there should also be power delivered to Ferndale from the Alumax and Reynolds Longview contracts. If correct, could you add those transactions as well please.

Thanks,

Bob

From: Clark,Harry W - PTL-5 [mailto:hwclark@bpa.gov]
Sent: Tuesday, June 23, 2009 3:16 PM
To: Huber, Robert D.
Cc: Miller,Mark E - PTF-5
Subject: 2000 Resource Mix

Bob
When reviewing sales to Alcoa in 2000 I noticed that there were sales to the Wenatchee smelter so I included those numbers. The year 2000 is the year Alcoa purchased/'merged with Reynolds so I have identified sales under the Reynolds contract that went to the Ferndale and Wenatchee smelters. I also included a chart of BPA's resource mix for 2000. Give me a call if you have any questions.

2000 Summary

2000 Resource Mix Chart

Harry Clark - PTL-5 (3662)

Purchases (kv

CY 2000	Troutdale	Ferndale	
	Reynolds Contract # 94865	Reynolds Contract # 94865	Intalco (Alumax) Contract #94860
January	117,700,800		258,168,000
February	110,196,400		241,512,000
March	118,417,200		258,168,000
April	113,956,800		249,493,000
May	118,385,600		258,168,000
June	113,270,400		249,840,000
July	38,106,000	56,808,000	258,168,000
August	1,291,000	98,208,000	258,168,000
September	1,016,800	95,040,000	249,840,000
October	975,200	9,685,000	348,660,000
November	962,800	9,360,000	336,960,000
December	933,200	9,280,000	348,192,000
	735,212,200	278,381,000	1,799,988,000

Vh)

	Wenatchee		
FPS Sale SP#95106	Reynolds Contract # 94865	Alcoa Contract # 90343	Total (kWh)
20,700,000			
85,560,000			
82,800,000			
20,700,000	50,592,000	13,362,900	
	50,592,000	39,432,900	
	56,160,000	42,645,000	
	149,000,000	46,238,100	
	175,536,000	45,012,600	
	183,768,000	48,893,700	
20,700,000	665,648,000	235,585,200	

Symonds,Mark C - PTL-5

From: MICHAEL DOTTEN [mcdotten@msn.com]
Sent: Monday, August 17, 2009 11:28 AM
To: Symonds,Mark C - PTL-5; Marc Pereira; Max W. Laun; Kimberly A Gregorio; Mike Rousseau; michael.padgett@alcoa.com; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: BPA/Alcoa contract review

Hello, Mark:

Do we have a version of the contract for review yet integrating our agreements from Friday AM?

Best regards,

Mike Dotten

Michael C. Dotten - Attorney-Mediator-Arbitrator/13643 Melrose Pl./Lake Oswego, OR 97035
Tel: 503-882-4937/ Cell: 503-318-7090/e-mail: mcdotten@msn.com / web: DottenADR.com

The material in this e-mail may be confidential or privileged. If you receive this message in error, please contact us immediately and delete the e-mail from your computer.

From: mcsymonds@bpa.gov
To: Marc.Pereira@alcoa.com; Max.Laun@alcoa.com; Kimberly.Gregorio@alcoa.com; Mike.Rousseau@alcoa.com; Michael.Padgett@alcoa.com; speerja@verizon.net; mcdotten@msn.com
CC: alburns@bpa.gov; hwclark@bpa.gov; kwrunzler@bpa.gov; dwhanlon@bpa.gov
Date: Fri, 14 Aug 2009 18:01:30 -0700
Subject: RE: BPA contract review

The matrix:
Thanx

Mark

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Friday, August 14, 2009 2:19 PM
To: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Symonds,Mark C - PTL-5; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; speerja@verizon.net; mcdotten@msn.com
Subject: BPA contract review
When: Monday, August 17, 2009 12:30 PM-2:30 PM (GMT-08:00) Pacific Time (US & Canada).
Where:

EX 4

EX 4

Symonds,Mark C - PTL-5

From: Pereira, Marc A. [Marc.Pereira@alcoa.com]

Sent: Monday, August 17, 2009 12:03 PM

To: Symonds,Mark C - PTL-5; MICHAEL DOTTEN; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; Jack Speer

Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7

Subject: RE: BPA/Alcoa contract review

Let's not postpone. You can walk us through the changes. Start is at 3:30 Eastern as planned.
marc

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Monday, August 17, 2009 2:34 PM
To: 'MICHAEL DOTTEN'; Pereira, Marc A.; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7
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ntract review
gust 17, 2009 12:30 PM-2:30 PM (GMT-08:00) Pacific Time (US & Canada).

EX 4

Symonds,Mark C - PTL-5

From: Rousseau, Mike F. [Mike.Rousseau@alcoa.com]
Sent: Monday, August 17, 2009 12:53 PM
To: Symonds,Mark C - PTL-5; MICHAEL DOTTEN; Pereira, Marc A.; Laun, Max W.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7
Subject: RE: BPA/Alcoa contract review

Still no contract is getting thru to us Alcoans

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Monday, August 17, 2009 11:34 AM
To: 'MICHAEL DOTTEN'; Pereira, Marc A.; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7
Subject: RE: BPA/Alcoa contract review

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Sent: Monday, August 17, 2009 11:28 AM
To: Symonds,Mark C - PTL-5; Marc Pereira; Max W. Laun; Kimberly A Gregorio; Mike Rousseau; michael.padgett@alcoa.com; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5
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To: Marc.Pereira@alcoa.com; Max.Laun@alcoa.com; Kimberly.Gregorio@alcoa.com; Mike.Rousseau@alcoa.com; Michael.Padgett@alcoa.com; speerja@verizon.net; mcdotten@msn.com
CC: alburns@bpa.gov; hwclark@bpa.gov; kwrunzler@bpa.gov; dwhanlon@bpa.gov
Date: Fri, 14 Aug 2009 18:01:30 -0700
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Thanx

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ntract review
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Ex 4

Symonds,Mark C - PTL-5

From: Rousseau, Mike F. [Mike.Rousseau@alcoa.com]
Sent: Monday, August 17, 2009 12:21 PM
To: Symonds,Mark C - PTL-5; MICHAEL DOTTEN; Pereira, Marc A.; Laun, Max W.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7
Subject: RE: BPA/Alcoa contract review

Looks like we will get no time.

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Monday, August 17, 2009 11:34 AM
To: 'MICHAEL DOTTEN'; Pereira, Marc A.; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7
Subject: RE: BPA/Alcoa contract review

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To: Symonds,Mark C - PTL-5; Marc Pereira; Max W. Laun; Kimberly A Gregorio; Mike Rousseau; michael.padgett@alcoa.com; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5
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Sent: Monday, August 17, 2009 11:57 AM
To: Symonds,Mark C - PTL-5; Marc Pereira; Max W. Laun; Kimberly A Gregorio; Mike Rousseau; Michael Padgett; Jack Speer
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Wright,Jon D - LP-7
Subject: RE: BPA/Alcoa contract review

Thanks, Mark. I just wanted to be sure that I hadn't been overlooked in the long e-mail chain.

Best regards,

Mike

Michael C. Dotten - Attorney-Mediator-Arbitrator/13643 Melrose Pl./Lake Oswego, OR 97035
Tel: 503-882-4937/ Cell: 503-318-7090/e-mail: mcdotten@msn.com / web: DottenADR.com

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From: mcsymonds@bpa.gov
To: mcdotten@msn.com; marc.pereira@alcoa.com; max.laun@alcoa.com; kimberly.gregorio@alcoa.com; mike.rousseau@alcoa.com; michael.padgett@alcoa.com; speerja@verizon.net
CC: alburns@bpa.gov; hwclark@bpa.gov; kwrunzler@bpa.gov; dwhanlon@bpa.gov; jdwright@bpa.gov
Date: Mon, 17 Aug 2009 11:33:57 -0700
Subject: RE: BPA/Alcoa contract review

Your ears must have been burning... we were just reaching for Marc's number.

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To: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Hanlon,Douglas W - PTL-5; Symonds,Mark C - PTL-5; Laun, Max W.; Gregorio, Kimberly A; Rousseau, Mike F.; Padgett, Michael; speerja@verizon.net; mcdotten@msn.com
Subject: BPA contract review
When: Monday, August 17, 2009 12:30 PM-2:30 PM (GMT-08:00) Pacific Time (US & Canada).
Where:

USA Toll-Free: (877)336-4423

USA Caller Paid: (404)443-0219

For Other Countries: Global Conference Access Numbers <https://www.teleconference.att.com/servlet/glbAccess?process=1&accessCode=4769574&accessNumber=8773364423>

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Subject: BPA contract review
When: Monday, August 17, 2009 12:30 PM-2:30 PM (GMT-08:00) Pacific Time (US & Canada).
Where:

EX 4

Symonds,Mark C - PTL-5

From: Laun, Max W. [Max.Laun@alcoa.com]

Sent: Tuesday, August 18, 2009 11:32 AM

To: Symonds,Mark C - PTL-5; Pereira, Marc A.; Rousseau, Mike F.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer; MICHAEL DOTTEN

Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Hanlon,Douglas W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; max.laun@gmail.com

Subject: RE: Draft Power Sale Contract - Credit Assurances

Attachments: Credit Assurances Addition.doc

Here's our proposal. Please confirm receipt.

Regards,

Max

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Monday, August 17, 2009 9:04 PM
To: Pereira, Marc A.; Rousseau, Mike F.; Laun, Max W.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer; MICHAEL DOTTEN
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Hanlon,Douglas W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Draft Power Sale Contract

All,
The attached version addresses issues discussed on our earlier call:
While we think items with comments in the Agreement are negotiable, the $350 million must be changed to implement our Friday agreement.

We have blocked out 11am pacific for follow-on conference call. Please provide dial-in or let us know that you are expecting us to do so.

Thank you.

Mark

20.8.3 Notwithstanding anything in section 20.8.1, or 20.8.2, should Alcoa's financial responsibility or performance viability become unsatisfactory to BPA in BPA's reasonably exercised discretion, then BPA may seek performance assurance from Alcoa. Events that may trigger BPA questioning Alcoa's financial responsibility or performance viability shall be determined according to commercial standards and include defaults by Alcoa under other contracts, or other material adverse changes in Alcoa's financial condition.

Failure by Alcoa to provide such assurance as is adequate under the circumstances, within a reasonable time not exceeding 30 days, shall be a material breach.

Deleted: ,

Deleted: and until BPA receives assurance it may, if commercially reasonable, suspend its performance.

Deleted: , but are not limited to,

Formatted: Superscript

Symonds,Mark C - PTL-5

From: Laun, Max W. [Max.Laun@alcoa.com]

Sent: Tuesday, August 18, 2009 11:56 AM

To: Symonds,Mark C - PTL-5; Pereira, Marc A.; Rousseau, Mike F.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer; MICHAEL DOTTEN

Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Hanlon,Douglas W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; max.laun@gmail.com

Subject: RE: Draft Power Sale Contract - Insert to Employment Section

How about the following?

"During any period of curtailment, Alcoa will maintain the pre-curtailment ratio between its salaried and non-salaried FTEs (consistent with its obligations under its collective bargaining agreement for the Intalco Plant)."

Regards,

Max

From: Laun, Max W.
Sent: Tuesday, August 18, 2009 2:32 PM
To: Symonds,Mark C - PTL-5; Pereira, Marc A.; Rousseau, Mike F.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer; MICHAEL DOTTEN
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Thank you.

Mark

Symonds,Mark C - PTL-5

From: Clark,Harry W - PTL-5
Sent: Tuesday, August 18, 2009 5:12 PM
To: 'Pereira, Marc A.'; Rousseau, Mike F.; Laun, Max W.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer; MICHAEL DOTTEN
Cc: Burns,Allen L - D-7; Hanlon,Douglas W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Symonds,Mark C - PTL-5
Subject: RE: Draft Power Sale Contract

Attachments: Power Sales Agreement ALCOA - 081809 pm.doc

All
Attached contract draft is with all the redline from this morning accepted. The changes discussed this morning, a few other nits, and the Credit Assurance changes discussed between Marc and Allen are redlined. Look forward to our discussion tomorrow from 0900 - 1000. Thanks
Harry

Power Sales
greement ALCOA - .

From: Symonds,Mark C - PTL-5
Sent: Monday, August 17, 2009 6:04 PM
To: 'Pereira, Marc A.'; Rousseau, Mike F.; Laun, Max W.; Gregorio, Kimberly A; Padgett, Michael; Jack Speer; MICHAEL DOTTEN
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Hanlon,Douglas W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Draft Power Sale Contract

All,
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<< File: Power Sales Agreement ALCOA - 081709 (pm version to Alcoa).doc >>
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Thank you.

Mark

POWER SALES AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

ALCOA INC.

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This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and Alcoa Inc. (Alcoa), hereinafter individually referred to as "Party" and collectively referred to as the "Parties." Alcoa is a corporation organized under the laws of the State of Pennsylvania, and registered therein as entity number 10514, taxpayer identification number 25-0317820.

RECITALS

BPA is authorized to sell power to Alcoa, a direct service industrial customer, pursuant to section 5(d)(1)(A) of the Northwest Power Act, 16 U.S.C. § 839c(d)(1)(A).

In *Pacific Northwest Generating Cooperative v. Department of Energy*, 550 F.3d 846 (2008) the Ninth Circuit Court of Appeals invalidated monetary benefits provisions of power sales contracts between BPA and its aluminum company direct service industrial customers (DSIs), but held that BPA may make sales to DSIs at the Industrial Firm Power Rate (IP rate). This Agreement addresses the 2-year period remaining under those power sales contracts and potentially, a subsequent 5-year period. Under both time periods power sales will be made to Alcoa at the IP rate.

Concomitantly with the execution of this Agreement, BPA has issued a record of decision addressing comments regarding this Agreement submitted by BPA customers and other interested parties, and such record of decision explains BPA's rationale for its decision to enter into this Agreement.

BPA has functionally separated its organization in order to separate the administration and decision-making activities of BPA's power and transmission functions. References in this Agreement to Power Services or Transmission Services are solely for the purpose of clarifying which BPA function is responsible for administrative activities that are jointly performed.

The Parties agree:

1. TERM

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2016, unless it is terminated earlier pursuant to the terms of this Agreement. Firm Power made available by PS for delivery to the Intalco Plant shall commence on October 1, 2009.

All liabilities incurred by each Party hereunder shall be preserved until satisfied, notwithstanding the expiration or termination of this Agreement.

2. DEFINITIONS

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used or, if not so defined, shall have the meaning stated in BPA's applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions

("GRSPs"). If a term is not defined in any of the named sources, then the term shall be given its normal and customary meaning, with due regard to generally accepted business practices, including the status of the undefined term as a generally recognized term of art.

2.1 "Alcoa Load" means that Alcoa hourly load at the Intalco Plant served under this Agreement.

2.2 "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

2.3 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.

2.4 "Business Days" means every Monday through Friday except for Federal holidays.

2.5 "Cost Cap" means shall have the meaning as defined in Exhibit B.

2.6 "Demand Entitlement" shall have the meaning as defined in section 1.2 of Exhibit A.

2.7 "Diurnal" means the division of hours within a month between Heavy Load Hours (HLH) and Light Load Hours (LLH).

2.8 "Federal Base System Resources" has the meaning contained in the Northwest Power Act, 16 U.S.C. § 839a(10).

2.9 "Firm Power" means the amount(s) of electric power that PS will make available at the Industrial Firm power rate to Alcoa under this Agreement in equal hourly amounts for every hour of the Fiscal Year.

2.10 "Fiscal Year" or "FY" means the period that begins each October 1 and which ends the following September 30. Even though, as noted in section 1, certain actions are, or may be, required prior to the commencement of power deliveries, the first Fiscal Year under this Agreement is the 2012 Fiscal Year, which begins October 1, 2011, and continues through September 30, 2012.

2.11 "Forecasted Net Cost" shall have the meaning as defined in Exhibit B.

2.12 "Intalco Plant" means the Alcoa aluminum smelting facilities served from BPA's Intalco Substation, where the 13.8 kilovolt facilities of BPA and Alcoa are connected.

2.13 "Issue Date" shall have the meaning described in section 13.1.

2.14 "Net Firm Power" shall have the meaning described in Exhibit G.

2.15 "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 et seq., Public Law No. 96-501, as amended.

2.16 "Points of Metering" means the interconnection points between BPA, Alcoa and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.

2.17 "Power Reserves" shall have the meaning described in Exhibit F.

2.18 "Power Services" or "PS" means the organization, or its successor organization, within BPA that is responsible for the management and sale of Federal power.

2.19 "Primary Points of Receipt" shall have the meaning described in section 11.1.

2.20 "Prior Agreement" means Contract No. 06PB-11744 between BPA and Alcoa, as amended.

2.21 "Region" or "Regional" means the Pacific Northwest as defined in the Northwest Power Act, 16 U.S.C. § 839a(14).

2.22 "Transmission Services" or "TS" means the organization or its successor organization, within BPA that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

2.23 "Wheel Turning Load" shall have the meaning described in 2010 GRSP and equal six (6) aMW.

3. APPLICABLE RATES

Sales by BPA to Alcoa under this Agreement shall be made at the Industrial Firm Power rate (the "IP rate") in effect at the time of such sales, and are subject to all applicable GRSPs.

3.1 Industrial Firm Power Rate

Alcoa shall purchase Firm Power provided by BPA under this Agreement at the applicable IP rate for the rate period, as established through the procedures specified in section 7(i) of the Northwest Power Act (16 U.S.C § 839e(i)), or its successor, including all adjustments and charges developed in accordance with all applicable statutory ratemaking directives.

Alcoa acknowledges that BPA has not agreed to propose that the IP rate be established at any particular level for any rate period included within the

term of this Agreement, and that, while it reserves all rights with respect to challenging rates proposed or established by BPA, Alcoa bears any risks associated with the IP rate level established each rate period by BPA pursuant the above referenced rate setting procedures.

3.2 **Additional Charges**
Alcoa is subject to any applicable additional charges, including penalty charges (e.g., the Unauthorized Increase Charge), established in BPA's Wholesale Power Rate Schedules and associated GRSPs.

4. PURCHASE AND SALE OF FIRM POWER

During the period FY 2010 through FY 2016, BPA shall make available Firm Power in amounts specified herein and Alcoa shall purchase such Firm Power unless: (a) BPA has determined pursuant to Exhibit B that the cost to serve the Alcoa Load with Firm Power for the FY 2012 through FY 2016 period will exceed the Cost Caps identified in Exhibit B; (b) this Agreement has terminated; or (c) Alcoa has failed to operate the Intalco Plant at a level equal to or greater than 160 aMW for a least one complete Fiscal Year during the period October 1, 2006, through September 30, 2009.

All purchases of Firm Power by Alcoa under this Agreement shall be used exclusively to serve the Alcoa Load.

5. PURCHASE AND SALE OF FIRM POWER FROM FY 2010 THROUGH FY 2011

5.1 **Firm Power Sale by BPA from FY 2010 through FY 2011**
During the period that begins on October 1, 2009, and continues through September 30, 2011, BPA shall sell and Alcoa shall purchase 285 aMW of Firm Power, as such amount may be increased pursuant to section 5.2 below.

5.2 **Increase from 285 aMW to 320 aMW**
Alcoa may, upon written notice to BPA, request that the amount of Firm Power be increased from 285 aMW to 320 aMW for the balance of FY 2010 through FY 2011 period. Alcoa's notice shall include a schedule, by month, of Alcoa's proposed operating levels to achieve such Firm Power increase. If BPA determines, pursuant to Exhibit B, that the cost to serve the Alcoa Load with 320 aMW of Firm Power for the balance of the FY 2010 through FY 2011 period does not exceed the applicable Cost Caps specified in Exhibit B, then BPA shall accept such request; if not, BPA shall reject such request. BPA's determination shall be conclusive. BPA shall provide Alcoa with written notice of its determination, including the basis for such determination, within 5 business days following the receipt of such notice. Such increase, if accepted by BPA, shall occur no earlier than 90 days following the receipt of such notice by BPA, on the first day of a calendar month.

6. PURCHASE AND SALE OF FIRM POWER FROM FY 2012 THROUGH FY 2016

6.1 Firm Power Sale by BPA for FY 2012 through FY 2016

During the period that begins on October 1, 2011, and continues through September 30, 2016, BPA shall sell and Alcoa shall purchase 320 aWM of Firm Power, subject to the provisions in section 6.2 below.

6.2 Termination

If BPA determines, pursuant to Exhibit B, that the cost to serve the Alcoa Load with 320 aMW of Firm Power for the entire FY 2012 through FY 2016 period will exceed the Cost Cap specified in Exhibit B, then on or before March 31, 2010, BPA shall provide Alcoa with written notice that this Agreement shall terminate at 2400 hours on September 30, 2011. Such notice shall include the basis for such determination, and such determination shall be conclusive.

7. COST CAPS AND OTHER LIMITATIONS

7.1 Cost Caps

The Cost Caps specified in Exhibit B of this Agreement represent the maximum cost BPA will incur to support sales to Alcoa, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs allocated by BPA, pursuant to Exhibit B.

Deleted: , to the cost of service under this Agreement for purposes of making its determination pursuant to Exhibit B regarding Cost Caps

7.2 Other Limitations

Alcoa understands and agrees that BPA will not make a plant specific acquisition from a coal-fired resource, and that BPA will not acquire power from a supplier that is unwilling to absorb all of the regulatory or environmental costs referred to in section 7.1 above, that are imposed on the supplier after the date the acquisition contract is entered into.

8. EMPLOYMENT LEVELS

Except during any termination period in which Alcoa is not operating, Alcoa shall employ at least the number of full time equivalent (FTE) employees specified in Exhibit G. "FTE" shall mean full time annual equivalent employment (including part-time and partial year) for regular employees of Alcoa at the Intalco Plant and contractor employees working within Whatcom County, Washington during a calendar month.

Alcoa shall notify BPA in writing in the event that, during any calendar month, Average FTE, as defined in Exhibit G, levels are reduced by more than one percent below the applicable level specified in Exhibit G. Such notice shall be provided within five Business Days following such reduction. Such notice shall specify the date by which Alcoa anticipates Average FTE levels will equal or exceed the applicable level specified in Exhibit G; *provided, however*, that this Agreement will be subject to termination by BPA in the event Alcoa fails to provide BPA with a written plan and comply with such plan for meeting the applicable Average FTE

levels specified in Exhibit G. Such plan shall demonstrate that Alcoa shall meet Average FTE requirements within 90 days following the end of the month during which such Average FTE levels fell below the 1 percent threshold. In order to permit BPA to determine whether Alcoa is meeting its plan to meet FTE obligations, Alcoa shall provide monthly reports to BPA demonstrating its FTE by month and whether its Average FTE levels meet the requirements of this section 8 within 15 days following the end of the month for which it is reporting. In the event that Alcoa fails to comply with its plan for reaching Average FTE levels, BPA may provide notice of termination within 30 days following the monthly notice provided in this section 8 and the effective date of termination shall be 90 days following the date such notice is received by Alcoa.

During any period of curtailment, Alcoa will maintain the pre-curtailment ratio between its salaried and non-salaried FTEs.

9. CURTAILMENT

9.1 Notice of Curtailment

Alcoa may, upon written notice to BPA, curtail all or a portion of the Alcoa Load, subject to the limitations specified in section 9.2 below. Any such notice shall specify the amount of Alcoa Load to be curtailed, the duration of such curtailment, and the effective date that such curtailment shall commence; *provided however*, that such effective date shall be no earlier than 90 days following the date that BPA receives such notice. The period of curtailment shall be for consecutive months. Any such notice, once received, shall not be changed by Alcoa without BPA's written consent.

Deleted: , and the amount curtailed shall be the same in all months

9.2 Number of Curtailments Allowed and Cumulative Duration of Curtailments

Alcoa shall not provide BPA with more than two written notices to curtail during the term of this Agreement, and the cumulative duration of any such curtailment(s) shall not exceed 24 months; and provided further, the cumulative duration of such curtailment(s) during FY 2012 through FY 2016 period shall not exceed 18 months. Alcoa shall maintain the applicable employment level specified in Exhibit G during any curtailment.

9.3 No Compensation to Either Party During Curtailment

During any period of curtailment, Alcoa shall not incur any take-or-pay obligation for the amount curtailed, and BPA shall have no obligation to compensate Alcoa in any manner for the amount curtailed.

9.4 No Purchases from Third Parties During Curtailment

During any period of curtailment, Alcoa shall not make any market purchases from third party suppliers to replace all or any portion of the amount curtailed.

9.5 No Curtailment Following Notice of Termination

Alcoa shall not curtail pursuant to this section 9 following a notice of termination pursuant to section 21.1.1 below.

10. SCHEDULING

10.1 Scheduling

Alcoa shall schedule power in accordance with Exhibit J.

Deleted: C

11. DELIVERY

11.1 Definitions

11.1.1 "Primary Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is forecasted to be made available by Power Services to Alcoa for purposes of obtaining a long-term firm transmission contract.

11.1.2 "Scheduling Points of Receipt" means the points on the Pacific Northwest transmission system where Firm Power is made available by Power Services to Alcoa for purposes of transmission scheduling.

11.1.3 "Point of Delivery" means the point described in Exhibit E to which Alcoa delivers power.

11.2 Transmission Service

11.2.1 Alcoa is responsible for making arrangement for, and payment of, delivery of power from the Scheduling Points of Receipt, including all transmission and ancillary service costs.

11.2.2 Alcoa shall obtain prior BPA approval for, and shall provide at least 60 days' notice to Power Services prior to changing Balancing Authority Areas and.

11.2.3 At Alcoa's request, Power Services shall provide Alcoa with Primary Points of Receipt and other information needed to enable Alcoa to obtain long-term firm transmission for delivery of power sold under this Agreement. If required by Transmission Services for purposes of transmission scheduling, then Power Services shall provide Alcoa with Scheduling Points of Receipt. Power Services has the right to provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt. If BPA does provide power to Alcoa at Scheduling Points of Receipt that are different than the Primary Points of Receipt, then BPA shall reimburse Alcoa for any incremental, direct, non-administrative costs incurred by Alcoa to comply with delivering Firm Power from such a Scheduling Point of Receipt to Alcoa's Intalco Plant if the following conditions, as outlined in 11.2.3.1 or 11.2.3.2 below, as applicable, have been met:

11.2.3.1 If Alcoa has long-term Point to Point (PTP) transmission service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.1.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.1.2 Alcoa has submitted a request to redirect its long-term firm PTP transmission service to deliver Firm Power from the Scheduling Point of Receipt on a firm basis, but that request was not granted; and

11.2.3.1.3 Alcoa's transmission schedule was curtailed due to non-firm status under PTP transmission service or Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.2 If Alcoa has long-term Network Integration Transmission Service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.2.1 Alcoa has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.2.2 Alcoa's transmission schedule was curtailed due to non-firm status under its secondary service status and Alcoa can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.3 In the event power cannot be scheduled from a BPA Scheduling Point of Receipt (other than a Primary Point of Receipt) then Alcoa may request and, consistent with BPA's standard practices to achieve efficient system operation and reliability, BPA will move the Scheduling Point of Receipt to a point on the FCRTS where energy can be made available and scheduled to Alcoa's load ("Alternative Scheduling Point of Receipt"), if such a point is available and providing the power from that Alternative Scheduling Point of Receipt would not cause BPA to violate any type of non-power constraint.

11.3 **Liability for Delivery**

Alcoa waives any claims against BPA arising under this Agreement for non-delivery of power to any points beyond the applicable Scheduling Points of Receipt, except for reimbursement of costs as described in section 11.2.3. BPA shall not be liable under this Agreement for any third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership.

11.4 **Real Power Losses**

BPA is responsible for the real power losses necessary to deliver Firm Power across the Federal Columbia River Transmission System to Alcoa's POD(s) listed in Exhibit D.

12. METERING

Alcoa's purchase obligations in sections 4 are not dependant on amounts scheduled and do not require retail load meters for billing and payment.

13. BILLING AND PAYMENT

13.1 **Billing**

BPA shall bill Alcoa monthly for all products and services provided during the preceding month(s). BPA may send Alcoa an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to Alcoa. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

13.2 **Payment**

Alcoa shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the Issue Date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

If Alcoa has made payment on an estimated bill then:

13.2.1 if the amount of the final bill exceeds the amount of the estimated bill, then Alcoa shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or

13.2.2 if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay Alcoa the difference between the estimated bill and final bill by the 20th day after the final bill's Issue Date. If the

20th day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

13.3 **Late Payments**

After the Due Date, a late payment charge, equal to the higher of:

(1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or

(2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

13.4 **Termination**

If Alcoa has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment in full. If Alcoa does not provide payment within three Business Days after receipt of an additional written notice from BPA, and BPA determines in its sole discretion that Alcoa is unable to make the payments owed, then BPA may terminate this Agreement. Written notices sent under this section must comply with section 18 Notices and Contact Information.

13.5 **Disputed Bills**

13.5.1 If Alcoa disputes any portion of a charge or credit on Alcoa's estimated or final bills, Alcoa shall provide written notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Alcoa shall pay the entire bill by the Due Date. This section 13.5.1 does not allow Alcoa to challenge the validity of any BPA rate.

13.5.2 Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

13.5.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 18, Alcoa is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

14. INFORMATION EXCHANGE AND CONFIDENTIALITY

14.1 General Requirements

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement, and to forecast Alcoa Load, forecast BPA system load, comply with NERC reliability standards, prepare bills, resolve billing disputes, and otherwise implement this Agreement. For example, this obligation includes transmission and power scheduling information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.). Information requested under this section 14.1 shall be provided in a timely manner.

14.2 Reports

Alcoa shall notify BPA of public sources from which Alcoa's annual financial reports and any statements by its authorized officers are readily available and BPA will secure such reports and statements for its use. In the event Alcoa's annual financial reports and statements by its authorized officers become unavailable from public sources Alcoa shall provide such reports upon request by BPA.

14.3 Meter and Billing Data

Alcoa consents to allow Power Services to receive Alcoa's meter data and invoices from Transmission Services, BPA's metering function, or BPA's billing function.

14.4 Confidentiality

Before Alcoa provides information to BPA that Alcoa deems to be confidential commercial or financial information, Alcoa shall clearly designate such information as confidential. BPA shall notify Alcoa as soon as practicable, but in any case no later than as provided by applicable law or regulation, of any request received under the Freedom of Information Act (FOIA) (5 U.S.C. §§ 552 *et seq.*), or under any other federal law or court or administrative order, for any information designated as confidential by Alcoa. BPA shall only release such confidential information consistent with FOIA, or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of such confidential information within BPA to employees who need it for purposes of administering this Agreement.

15. CONSERVATION AND ENVIRONMENTAL ATTRIBUTES

15.1 Conservation

Alcoa shall verify and report all cost-effective (as defined by section 3(4) of the Northwest Power Act) non-BPA-funded conservation measures and projects savings achieved by Alcoa through the Regional Technical Forum's Planning, Tracking and Reporting System or its successor tool. Verification protocols of conservation measures and projects, reporting timelines and documentation requirements shall comply with BPA's Energy Efficiency Implementation Manual or its successor.

15.2 **Renewable Energy Certificates and Carbon Credit Treatment**

15.2.1 "Carbon Credit" means an Environmental Attribute consisting of greenhouse gas emission credits, certificates, or similar instruments.

15.2.2 "Environmental Attributes" means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.

15.2.3 "Renewable Energy Certificates" or "RECs" means the certificates, documentation, or other evidence that demonstrates the ownership of Environmental Attributes.

15.2.4 BPA shall not be obligated to provide Environmental Attributes, Carbon Credits, or RECs, or the value of any or all of them, to Alcoa under this Agreement, absent a, statutory obligation, court decision, or order requiring it to do so.

15.2.5 BPA reserves any ratemaking authority it otherwise possesses to determine and factor in a share of the value and/or cost of any or all of the RECs and Carbon Credits for the purpose of determining applicable wholesale rates pursuant to section 7(c)(2) of the Northwest Power Act. BPA further reserves its ratemaking authority to recover any costs resulting from such ratemaking actions through rates, including rates applicable to Alcoa.

16. NOTICES AND CONTACT INFORMATION

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

(1) delivered in person;

(2) by a nationally recognized delivery service with proof of receipt;

(3) by United States Certified Mail with return receipt requested;

(4) electronically, if both Parties have means to verify the electronic notice's origin, date, time of transmittal and receipt; or

(5) by another method agreed to by the Parties.

References in this Agreement to the "BPA representative" and the "Alcoa representative" are to the persons listed below. Notices are effective when received.

Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

If to Alcoa:

Alcoa Inc.
4050 Mountain View Road
P.O. 937
Ferndale, WA 98248
Attn: Mike Rousseau
Plant Manager
Phone: 360-384-7061
FAX: 360-384-6185
E-Mail: Mike.Rousseau@alcoa.com

If to BPA:

Bonneville Power Administration
905 NE 11th Avenue
P.O. 3621
Portland, OR 97208-3621
Attn: Mark E. Miller
Account Executive
Phone: 503-230-4003
FAX: 503-230-3684
E-Mail: memiller@bpa.gov

17. UNCONTROLLABLE FORCES

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which by exercise of that Party's reasonable care, diligence and foresight such Party was unable to avoid. Uncontrollable Forces include but are not limited to:

17.1 any unplanned curtailment or interruption of firm transmission service used to deliver Firm Power under this Agreement to Alcoa whether such curtailment or interruption occurs on BPA's or a third party's transmission system;

17.2 any failure of Alcoa's production, distribution or transmission facilities that prevents Alcoa from taking Firm Power delivered to the Point of Receipt;

17.3 strikes or work stoppage, including the threat of imminent strikes or work stoppages; *provided, however*, that nothing contained in this provision shall be construed to require any party to settle any strike or labor dispute in which it may be involved.

17.4 floods, earthquakes, or other natural disasters; terrorist acts; and

17.5 final orders or injunctions issued by a court or regulatory body having competent jurisdiction which the party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The

economic hardship of either Party shall not constitute an Uncontrollable Force.

If an Uncontrollable Force prevents a party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify the other party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with section 18, Notices and Contact Information.

18. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be interpreted consistent with and governed by federal law. Alcoa and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 20, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

18.1 Judicial Resolution

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of Alcoa or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 18, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section 18, then Alcoa may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 18.

18.2 Arbitration

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 18.1 above, shall be subject to arbitration, as set forth below.

Alcoa may request that BPA engage in binding arbitration to resolve any dispute. If Alcoa requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. BPA may request that Alcoa engage in binding arbitration to resolve any dispute. In response to BPA's request, Alcoa may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 18.1 above and is not resolved via binding arbitration, unless Alcoa notifies BPA that it does not wish to proceed with nonbinding arbitration.

18.3 **Arbitration Procedure**

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

18.4 **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 18. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

18.5 **Finality**

18.5.1 In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

18.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether

it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

18.6 **Arbitration Costs**
Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

19. STATUTORY PROVISIONS

19.1 **Prohibition on Resale of Firm Power**
Alcoa shall not resell Firm Power purchased from BPA under this Agreement.

19.2 **BPA Appropriations Refinancing Act**
The text of the BPA Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, is incorporated as shown in Exhibit C, Special Provisions.

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20. STANDARD PROVISIONS

20.1 **Amendments**
Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

20.2 **Entire Agreement and Order of Precedence**
This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

20.3 **Assignment**
Alcoa may assign this Agreement upon 90 days written notice, but only to a successor-in-interest that has acquired ownership, through purchase or merger, of Alcoa's facilities that are served, in whole or in part, with power provided under this Agreement, and then only if such assignee expressly

agrees in writing to be bound by the terms of this Agreement. Such assignment will be subject to any reasonable requirement by BPA that the assignee provide credit security, in a form acceptable to BPA, to secure performance of assignee's obligations under this Agreement. It shall not be deemed unreasonable for BPA to require credit security from an assignee with a Moody's credit rating below "A", or the equivalent if rated by another credit rating agency. No other assignment of this Agreement by Alcoa is permitted.

20.4 **No Third-Party Beneficiaries**
This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

20.5 **Waivers**
No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

20.6 **BPA Policies**
Any reference in this Agreement to BPA policies, including any revisions, does not constitute agreement of Alcoa to such policy by execution of this Agreement, nor shall it be construed to be a waiver of the right of Alcoa to seek judicial review of any such policy.

20.7 **Severability**
If any term of this Agreement is found or rendered invalid or unenforceable by a court of competent jurisdiction, then unless that term is not severable from all other provisions of this Agreement, such invalidity or unenforceability shall not otherwise affect any remaining lawful obligations under this Agreement. Neither Party shall be liable to the other Party for any damages associated with any term being severed from this Agreement.

20.8 **Credit Assurance**

20.8.1 Notwithstanding anything in this Agreement to the contrary, BPA may require that Alcoa provide BPA with an irrevocable standby letter of credit in the amount of $30,000,000, issued in a form and by a bank acceptable to BPA. Such letter of credit shall have an expiration date 1 year from its date of issuance, and BPA may require replacement letters of credit in the amount of $30,000,000 so that a letter of credit in the amount of $30,000,000 is in place on a continuous basis for the term of this Agreement.

If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 20.8.1, then BPA may terminate this Agreement.

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Deleted: in the event of any of the following: (a) Alcoa's credit rating from Standard & Poor's drops below BBB-, or Alcoa's credit rating from Moody's drops below Baa3, or the average for a period of 30 or more consecutive days of the 5-year credit default swap for Alcoa as posted by Bloomberg equals or exceeds 700 basis points; (b) Alcoa provides notice of curtailment; or (c) Alcoa provides notice of termination of the Agreement

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Deleted: for the duration of a triggering event in (a) or (b) or (c) above

20.8.2 Notwithstanding anything in section 20.8.1, should Alcoa's financial responsibility or performance viability become unsatisfactory to BPA in BPA's reasonably exercised discretion, then BPA may seek performance assurance from Alcoa consistent with law.

20.8.3 Alcoa shall arrange for any letter of credit requested by BPA pursuant to section 20.8 to be issued to BPA no later than 3 business days following such request.

20.9 **Drafting of Agreement**

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation or other event of negotiation, drafting or execution hereof.

20.10 **Execution by Counterparts**

This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

20.11 **Waiver of Damages**

In the event the Ninth Circuit Court of Appeals or other court of competent jurisdiction issues a final order that declares or renders this Agreement, or any part thereof, void or otherwise unenforceable, neither Party shall be entitled to any damages or restitution of any nature, in law or equity, from the other Party, and each Party hereby expressly waives any right to seek such damages or restitution. For the avoidance of doubt, the Parties agree this provision shall survive the termination of this Agreement or any order as described herein.

21. TERMINATION

For ease of reference, this section 21 is intended to collect into one section termination events specified in various sections of this Agreement, plus describe certain additional termination events not described elsewhere.

21.1 **Alcoa Right to Terminate**

21.1.1 **Alcoa Right to Terminate for Any Reason**

Alcoa may provide written notice to terminate this Agreement anytime after October 1, 2011. Such notice shall include an effective date of termination that is no earlier than 12 months following the date that BPA receives such notice. Such notice shall also specify, for each month during such 12-month period, the amount of Firm Power that Alcoa shall take and pay for, and the applicable provisions of section 8 above shall apply. During this 12-month period prior to termination, Alcoa shall be obligated to pay the IP rate for the monthly amounts of Firm Power it would have otherwise taken. Such

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20.8.2 In the event that conditions (a) and (b) above are simultaneously in place, then BPA may request, and Alcoa shall provide, an additional irrevocable standby letter of credit or an increase to the existing irrevocable standby letter of credit, such that the total amount equals $50 million. In the event that conditions (a) and (c) above are simultaneously in place, then BPA may request, and Alcoa shall provide, an additional irrevocable standby letter of credit or an increase to the existing irrevocable standby letter of credit, such that the total amount equals $100 million or the amount equal to BPA's IP revenue for 320 aMW less the IP revenues associated with the monthly amounts that Alcoa shall take and pay for during the 12-months prior to termination("BPA's Payment Exposure"), whichever is less.. Such letter of credit shall have an expiration date 1 year from its date of issuance, and BPA may require replacement letters of credit for the amounts determined in this section 20.8.2 so that a letter of credit in such amount is in place for the duration of any triggering event.¶
¶
If Alcoa fails to provide any letter of credit requested by BPA pursuant to this section 20.8.2, then BPA may terminate this Agreement.¶

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Deleted: , and until BPA receives assurance it may, if commercially reasonable, suspend its performance. Events that may trigger BPA questioning Alcoa's financial responsibility or performance viability shall be determined according to commercial standards and include, but are not limited to, defaults by Alcoa under other contracts, or other material adverse changes in Alcoa's financial condition. Failure by Alcoa to provide such assurance as is adequate under the circumstances, within a reasonable time not exceeding 30 days, shall be a material breach

monthly amounts shall be equal to 320 aMW less the monthly amounts that Alcoa has agreed to take and pay for, and the provisions of section 8 above shall not apply for such amounts. Following the receipt by BPA of a notice to terminate pursuant to this section 21.1.1, Alcoa agrees that it shall not, during the period that begins on the date of receipt of such notice by BPA and continues through 2400 hours on September 30, 2016, request a power sales agreement from BPA pursuant to section 5(d) of the Northwest Power Act.

21.1.2 **Alcoa Termination Following BPA Notice on or before March 31, 2010**

If, pursuant to section 6.2 above, BPA has provided notice that this Agreement shall terminate at 2400 hours on September 30, 2011, Alcoa may provide written notice to terminate this Agreement anytime. For avoidance of doubt, the effective date of termination may be less than 12-months following the date that BPA receives such notice, and Alcoa shall not be obligated to pay the IP rate for Firm Power not taken from the date of notice through the effective date of termination. In addition BPA agrees to waive section 21.1.5.

21.1.3 **Alcoa Termination During a Period of Curtailment**

If, pursuant to section 21.1.1 above, Alcoa provides BPA with a written notice to terminate during a period of curtailment, then such curtailment shall end as of the date BPA receives such notice, and during the subsequent 12-month period the options described in section 21.1.1 above shall apply.

21.1.4 **Alcoa Right to Terminate if Certain Taxes or Charges are Imposed on Alcoa by BPA**

If costs directly attributable to the Alcoa Load associated with either (1) renewable energy portfolio standard obligations, or (2) costs for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges ("Environmental Costs"), are imposed on BPA directly (as opposed to being indirectly imposed on the cost of third party power acquisitions by BPA) and all Environmental Costs that have not been allocated to, and recovered by BPA through, the IP rate schedule, then BPA shall bill Alcoa for such Environmental Costs, and Alcoa shall be obligated to pay such Environmental Costs and continue performance under this Agreement; *provided, however*, that in the event all Environmental Costs paid by Alcoa to BPA equal or exceed $2 million, then in the event Alcoa is billed any additional Environmental Costs by BPA, Alcoa shall have the option to terminate pursuant to section 21.1.1 above, but Alcoa shall not be obligated to pay the IP rate for Firm Power not taken during the 12-month period prior to such termination.

21.1.5 **No Operation Following Termination**
Except as provided for in section 21.1.2 above, Alcoa agrees that in the event it exercises its right to terminate under this section 21, that the earliest it will restart operations at the Intalco Plant is October 1, 2016.

21.2 **BPA's Right to Terminate**
BPA may terminate this Agreement if:

21.2.1 Alcoa fails to take and pay for Firm Power made available to it under this Agreement, unless such failure is excused under section 9 or section 17.

21.2.2 Alcoa fails to provide payment assurance satisfactory to BPA as required by section 20.8.

21.2.3 Alcoa fails to maintain Employment Levels as required by section 8.

21.2.4 Alcoa resells Firm Power.

21.2.5 Alcoa fails to provide BPA with any irrevocable standby letter of credit provided for in section 20.8.1.

Deleted: or 20.8.2

Termination by BPA under this section 21.2 is without prejudice to any other remedies available to BPA under law.

22. TERMINATION OF PRIOR AGREEMENT
The Prior Agreement, as amended, shall terminate at 2400 hours on September 30, 2009.

23. FEASIBILITY OF ENTERING INTO SUBSEQUENT AGREEMENT BEGINNING OCTOBER 1, 2016
If requested by Alcoa, BPA shall conduct a public process during the FY 2013 through FY 2014 time period to examine the feasibility of entering into a subsequent power sales agreement with Alcoa that would begin on October 1, 2016. In addition to examining the terms of service for any such subsequent agreement, the public process will include a study analyzing the impacts on the regional economy associated with such a subsequent agreement. This section 23 is not intended and shall not be construed as requiring BPA to offer any such subsequent agreement, irrespective of the conclusions or findings following the completion of any public process undertaken.

24. ALCOA COVENANT NOT TO CHALLENGE VALIDITY OF THIS AGREEMENT
Alcoa agrees that it shall not challenge the validity of this Agreement, or any part thereof, in any proceeding before the United States Circuit Court of Appeals for the Ninth Circuit (Ninth Circuit), but Alcoa reserves the right to intervene in any

proceeding in the Ninth Circuit in which a challenge to the validity of this Agreement, or any part thereof, has been filed.

25. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

Alcoa Inc.		UNITED STATES OF AMERICA Department of Energy Bonneville Power Administration	
By	_____	By	_____
Name	John G. Thuestad *(Print / Type)*	Name	Stephen J. Wright *(Print / Type)*
Title	President, US Primary Products	Title	Administrator and Chief Executive Officer
Date	_____	Date	_____

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Exhibit A
BILLING

1. INDUSTRIAL FIRM POWER ENTITLEMENTS

1.1 The MW made available by BPA under this Agreement multiplied by: (1) the number of HLH; and (2) the number of LLH in the applicable month establishes Alcoa's HLH and LLH Energy Entitlements.

1.2 The MW amount made available by BPA under this Agreement establishes Alcoa's Demand Entitlement.

2. UNAUTHORIZED INCREASE CHARGE

Hourly Firm Power scheduled by Alcoa in excess of amounts specified in Exhibit A shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PS.

3. REVISIONS

If this exhibit is inconsistent with BPA's Industrial Firm Power Rate Schedule, or its successor, as finally approved by FERC, the Parties shall make a good faith effort to amend this exhibit so that it is consistent.

Exhibit B
COST CAPS

1. DEFINITIONS

1.1 "Acquisition Cost for FY2011 through FY2012" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, by BPA multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.2 "Acquisition Cost for FY2012 through FY2016" means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, assigned to the Composite Cost Pool under the Tiered Rates Methodology, including DSI loads multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to Alcoa, for the purpose of computing Forecasted Cost under this Agreement.

1.3 "Cost Cap" shall have the meaning described in section 2.1and section 3.1 of this Exhibit.

1.4 "Credit Cost" means the actual cost or forecasted cost to BPA of a credit default swap or other credit risk hedging instrument purchased by BPA.

1.5 "Environment or Regulatory Cost" means costs incurred, or to be incurred, by BPA that are associated with carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs

1.6 "Forecasted Cost" shall have the meaning described in section 4 of this Exhibit.

1.7 "Forecasted Net Cost" means the result on line J of the calculation in section 2.1 or section 3.1 of this Exhibit for the applicable period. Subject to section 2.2 of this Exhibit, $82 million is net cost cap for the period FY2010 through FY2011 and $300 million is the net cost cap for the period FY2012 through FY2016.

1.8 "Inventory Cost" means the weighted average of the monthly actual unit cost of, or opportunity cost of, BPA's surplus inventory, as valued by BPA with reference to then current market prices, forward curves, and BPA market price forecasts, multiplied by the volume in MWh of BPA's surplus inventory as applied each month to make available the Requested Firm Power to Alcoa, for the purposes of computing Forecasted Cost under this Agreement.

1.9 "Requested Firm Power" means the total amount of Firm Power requested by Alcoa in the notice provided to BPA pursuant to section 5.2 of the body of this Agreement.

2. COST CAP IN FY2010 THROUGH FY2011

2.1 Cost Cap

The Forecasted Net Cost for the FY2010 through FY2011 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 1 below:

TABLE 1 - Example Calculation of the Forecasted Net Cost in FY2010 through FY2011	**Maximum Value**	**Example Value**
A) Firm Power	285 aMW	285 aMW
B) Requested Increase in Firm Power *[effective date of request must be provided inclusive of contractual notice]*	35 aMW	35 aMW
C) Requested Firm Power = A+ B	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = (A * 8760 hours * 2 years) + (B * # hours from effective) *[weighted for appropriate effective dates of requested firm power]*	5,530,800	5,530,800
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	5,635,885	5,635,885
G) Weighted Average IP rate for FY10-11 ($ per MWh) *[weighted for appropriate effective dates of requested firm power]*	$ 34.59	$ 34.59
H) Forecasted Cost ($) *[see definition and example in section 4 of this Exhibit]*	$ 273,332,998	$ 266,577,361
I) Forecasted IP Revenue ($) = D * G	$ 191,332,998	$ 191,332,998
J) Forecasted Net Cost = H - I	$ 82,000,000	$ 75,244,363
K) Forecasted Cost ($ per MWh) = H / F	$ 48.50	$ 47.30
L) Forecasted Net Cost ($ per FY in period) = J / (2 fiscal years)	$ 41,000,000	$ 37,622,181

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2010 through FY2011 period and must be forecast to be less than or equal to $82 million (the "Cost Cap"); provided however such Cost Cap may be increased pursuant to section 2.2 of this Exhibit B.

2.2 Effect of DSI Curtailment on Cost Cap

To the extent any other aluminum smelter DSI notifies BPA of a curtailment under its BPA power sales agreement during the FY2010 through FY2011 period, then during the duration of such curtailment, the $82 million Cost Cap applicable to Alcoa under this Agreement for the FY2010 through FY2011 period will be increased by an amount equal to the amount of the Cost Cap forgone by such other aluminum smelter DSI, and the $48 per MWh cost cap will be increased accordingly.

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3. COST CAP IN FY2012 THROUGH FY2016

3.1 Cost Cap

The Forecasted Net Cost for the FY2012 through FY2016 period is determined by subtracting (1) the forecasted IP Revenues to be received from Alcoa from (2) the Forecasted Cost as illustrated on line J of Table 2 below:

TABLE 2 - Example Calculation of the Forecasted Net Cost in FY2012 through FY2016	Maximum Value	Example Value
A) Firm Power	n/a	n/a
B) Requested Increase in Firm Power	n/a	n/a
C) Requested Firm Power = 320 aMW	320 aMW	320 aMW
D) Maximum Contract Volume (MWh) = C * 8760 hours * 5 years	14,016,000	14,016,000
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	14,282,304	14,282,304
G) Weighted Average IP rate for FY12-16 ($ per MWh)	$ 38.22	$ 38.22
H) Forecasted Cost ($) *(see definition and example in section 4 of this Exhibit)*	$ 835,624,476	$ 756,105,174
I) Forecasted IP Revenue ($) = D * G	$ 535,624,476	$ 535,624,476
J) Forecasted Net Cost = H - I	$ 300,000,000	$ 220,480,698
K) Forecasted Cost ($ per MWh) = H / F	$ 58.51	$ 52.94
L) Forecasted Net Cost ($ per FY in period) = J / (5 fiscal years)	$ 60,000,000	$ 44,096,140

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the Alcoa Load with 320 aMW of Firm Power for the FY2012 through FY2016 period and must be forecast to be less than or equal to $300 million (the "Cost Cap").

To the extent Parties anticipate a Forecasted Net Cost exceeding the $300 million Cost Cap, Parties may mutually agree to allow an additional FTE commitment (direct DSI jobs) up to 58 FTE in each year of smelter operation (203 job-years) and increase the Cost Cap an equivalent amount up to but not exceeding $330 million (line K in Table 2 above would increase up to $60.61 per MWh).

4. METHODOLOGY TO DETERMINE FORECASTED COST

The Forecasted Cost shall be determined by BPA in its sole discretion and will include, but is not limited to, the sum of the following costs: Acquisition Cost, Inventory Cost, Credit Cost, Environmental and Regulatory Cost. ("Forecasted Cost")

For each month in the period, BPA will assemble the information in Table 3 in the commercially reasonable manner below:

Deleted: [insert Table 3]

Table 3

Net Cost Check	$ 31,970,002	$ 49,970,301	$ 81,940,303
IP Revenues	$ 93,948,090	$ 97,002,675	$ 190,950,765

$48 per MWh test

	Cost FY2010	FY2011		HLH LLH split
Forecasted Cost	$ -	$ -	$ -	
Acqusition Cost	$ -	$ -	$ -	
Acqusitions Made				
Acqusitions to be Made				
Inventory Cost	$ 125,918,091	$ 146,972,976	$ 272,891,068	
Inventory Applied	$ 125,918,091	$ 146,972,976	$ 272,891,068	
inventory to be Applied				
Credit Cost				
Environmental and Regulatory Cost				
Total - by Fiscal Year				

	$ 49.45	per MWh of Sales to Alcoa during FY10-11
	$ 48.67	per MWh of 320 aMW Sale to Alcoa for the entire FY10-11 period
	5,518,080	MWh Sales to Alcoa during FY10-11
	618,240	MWh of actual sales to thru effective date of increase
assumes 3-month notice given at contract signing	4,899,840	MWh of 320 aMW sales to Alcoa subsequent to the effective date
	730	total days in period

	Volume (MWh incl losses) FY2010	FY2011	
Forecasted Cost			
Acqusition Cost			
Acquistions made	-	-	-
Acqusitions to be Made	2,766,463	2,856,461	5,622,924
Inventory Cost			
Inventory Applied	-	-	-
Inventory to be Applied	-	-	-
Credit Cost	-	-	-
Environmental and Regulatory Cost	-	-	-
Sum of Acquisitions & Inventory - by Fiscal Year	2,766,463	2,856,461	5,622,924

** Loads applied to Credit and E&R Costs may not be additive.

Table 3 continued

Cost to Serve

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11
Forecasted Cost																							
Acquisition Cost																							
Acquisitions made	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Acquisitions to be Made	$ 8,756,743	$ 8,474,267	$ 8,756,743	$ 11,347,401	$ 10,249,266	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 12,865,206	$ 11,620,186	$ 12,865,206	$ 12,450,200	$ 12,985,206	$ 12,450,200	$ 12,865,206	$ 12,865,206
Inventory Cost																							
Inventory Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Inventory to be Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Credit Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Environmental and Regulatory Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total - by Month	$ 8,756,743	$ 8,474,267	$ 8,756,743	$ 11,347,401	$ 10,249,266	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 10,981,356	$ 11,347,401	$ 12,865,206	$ 11,620,186	$ 12,865,206	$ 12,450,200	$ 12,985,206	$ 12,450,200	$ 12,865,206	$ 12,865,206

Volume Required to Serve (MWh incl losses)

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11
Forecasted Cost																							
Acquisition Cost																							
Acquisitions made	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Acquisitions to be Made	212,278	205,430	212,278	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778	242,604	234,778	242,604	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604
Inventory Cost																							
Inventory Applied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Inventory to be Applied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Credit Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Environmental and Regulatory Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sum of Acquisitions & Inventory - by Month	212,278	205,430	212,278	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604	234,778	242,604	234,778	242,604	242,604	219,126	242,604	234,778	242,604	234,778	242,604	242,604

** Loads applied to Credit and E&R Costs may not be additive.

Average Load (aMW, net incl losses)

Days	31	30	31	31	28	31	30	31	30	31	31	30	31	30	31	31	28	31	30	31	30	31	31
	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11
Forecasted Cost																							
Acquisition Cost																							
Acquisitions made	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Acquisitions to be Made	280	280	280	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320
Inventory Cost																							
Inventory Applied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Inventory to be Applied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Environmental and Regulatory Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum of Acquisitions & Inventory - by Month	280	280	280	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320	320

** Loads applied to Credit and E&R Costs may not be additive. how do we deal with the ramp-up? This does not happen overnight.

Weighted Average Unit Cost by Month

	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11
Forecasted Cost																							
Acquisition Cost																							
Acquisitions made	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Acquisitions to be Made	$ 41.25	$ 41.25	$ 41.25	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03
Inventory Cost																							
Inventory Applied	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Inventory to be Applied	$ 41.25	$ 41.25	$ 41.25	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 46.77	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03	$ 53.03
Credit Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Environmental and Regulatory Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Expected acquisitions	$ 38.77	$ 38.77	$ 38.77	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 43.96	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84	$ 49.84

Exhibit C
SPECIAL PROVISIONS

1. **BPA APPROPRIATIONS REFINANCING**
In accordance with section 21.2 of the body of this Agreement, section (i) of the BPA Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. No. 104-134, 110 Stat. 1321–350, is included in this Agreement--

(i) **Contract Provisions**
In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1996, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1996--

(1) the Administrator shall establish rates and charges on the basis that

(A) the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b) of the BPA Refinancing Act;

(B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under subsection (c) of the BPA Refinancing Act;

(C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and

(D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

(2) apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b) of the BPA Refinancing Act and to pay the interest on the principal amount under subsection (c) of the BPA Refinancing Act, no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

(3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United

States on a claim for a breach of the contract provisions required by this Part; and

(4) the contract provisions specified in this Part do not--

(A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or

(B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to--

(i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

(ii) design rates

2. REVISIONS

This exhibit shall be revised by mutual agreement of the Parties to reflect additional special provisions during the term of this Agreement.

Exhibit D
METERING

1. METERING

Directly Connected Points of Delivery

BPA POD Name: Intalco 13.8 kV;
BPA POD Number: TBD*;
WECC Balancing Authority: BPAT;

Location: the point in BPA's Intalco Substation where the 13.8 kV facilities of BPA and Alcoa are connected;

Voltage: 13.8 kV;

TBD* This data element is currently unresolved and shall be determined by BPA prior to June 1, 2011.

2. REVISIONS

Each Party shall notify the other in writing if updates to this exhibit are necessary to accurately reflect the actual characteristics of POD and meter information described in this exhibit. The Parties shall revise this exhibit to reflect such changes. The Parties shall mutually agree on any such exhibit revisions and agreement shall not be unreasonably withheld or delayed. The effective date of any exhibit revision shall be the date the actual circumstances described by the revision occur.

Exhibit E
SCHEDULING

1. **SCHEDULING FEDERAL RESOURCES**
Alcoa is responsible for creating E-Tags for all deliveries of federal power purchased under this Agreement.

In the event of an unplanned outage that affects future hours, Alcoa or its scheduling agent is responsible for adjusting e-Tags to accurately reflect the amount of load actually being served by generation provided by BPA.

2. **AFTER THE FACT**
BPA and Alcoa agree to reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). BPA and Alcoa shall verify all transactions per this Agreement, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

3. **REVISIONS**
BPA may unilaterally revise this exhibit: (1) to implement changes that are applicable to all customers who are subject to this exhibit and that BPA determines are reasonably necessary to meet its power and scheduling obligations under this Agreement or (2) to comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit F
POWER RESERVES

1. DEFINITIONS

(a) "Event" is a system condition under which PS needs additional power to meet its obligations during a system disturbance. The beginning of an Event shall be identified by notice from the TS dispatcher to the TS scheduler that such a system disturbance has occurred, and Alcoa's scheduling agent shall notify Alcoa that Restricted Energy is required. The end of the Event shall occur the earlier of when; a) initially established; b) Alcoa's scheduling agent has notified Alcoa that full service has been restored; or c) 105 minutes from the beginning of the Event. An Event shall not include BPA electing not to purchase power for economic reasons, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.

Deleted: or

(b) "Event Duration" shall be the total cumulative Event Minutes of the Event.

(c) "Event Minute" shall be the minutes of restriction (or any portion thereof) during an Event.

(d) "Contingency Reserves" are those reserves provided by Alcoa under this Agreement for purposes of providing reserves for BPA's firm power loads within the region, as provided for in the Northwest Power Act.

(e) "Reserve Amount" shall be the kilowatt (kW) amount of Contingency Reserves available to BPA by Alcoa specified in Section 2 of this Exhibit.

(f) "Restricted Energy" means the requested megawatt-hour (MWh) amount of energy not made available to Alcoa hereunder because of an Event.

2. AMOUNT AND TYPES RESERVES

When necessary to provide Contingency Reserves, BPA may restrict the Reserve Amount, or the requested portion thereof, for a period of time (Restricted Energy). The Reserve Amount (in kilowatts) shall equal the amount of Minimum DSI Operating Reserve – Supplemental specified in the 2010 GRSP, or its successor.

Notwithstanding any other provision of this Agreement, BPA shall use its best efforts to end an Event as soon as possible, and Alcoa agrees to cooperate in development of mechanisms that will enhance BPA's ability to notify Alcoa of the end of an Event.

The Parties recognize that with the addition of certain electronic controls at the Intalco Plant, the Intalco Load can be varied to help accommodate within-hour fluctuations on BPA's system associated with wind power generation. The Parties agree to undertake discussions within 60 days after the execution of this

Agreement to identify and implement any agreed to actions and agreements necessary to achieve such wind integration benefits.

3. QUALITY AND CHARACTER OF RESERVES

Contingency Reserves provided by Alcoa shall be consistent with North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and Northwest Power Pool (NWPP) standards and criteria:

(a) the Reserve Amount, or the requested portion thereof, must be offline within ten (10) minutes after the first telephone call by Alcoa's scheduling agent to Alcoa;

(b) the Reserve Amount, or the requested portion thereof, must be available to be offline for up to one-hundred five (105) minutes.

Alcoa shall provide a contact at the Facility at the following phone number:

Alcoa
Phone: TBD

Deleted: () –

Alcoa shall maintain such contact for every hour in the Term of the Agreement in which the Minimum DSI Operating Reserve – Supplemental amount is greater than zero megawatts.

Alcoa will provide the Restricted Energy to BPA by an interruption of its loads in an amount equal to or greater than the amount of such specified Restricted Energy, and in each case shall continue such load interruption for the duration of the Event. BPA will bill and Alcoa shall pay for the Restricted Energy as though actually delivered to Alcoa.

The TS dispatcher will notify the TS scheduler of a contingency event. Depending on whether the event occurs less than 30 minutes past the delivery hour, or occurs greater than or equal to 30 minutes past the delivery hour either the TS scheduler or Alcoa's scheduling agent will adjust Alcoa's e-tags in real time. In both cases Alcoa's scheduling agent shall contact Alcoa at the phone number in this section to: (a) initiate each Event; and (b) terminate each Event. Within ten (10) minutes following such notice by the scheduling agent to initiate an Event, Alcoa shall commence providing the Restricted Energy to BPA. Alcoa shall not restore its use of the Restricted Energy until the lesser of: (a) one-hundred five (105) minutes; or (b) immediately following notice from the scheduling agent terminating an Event.

PS retains the right to verify Alcoa's provision of Restricted Energy by comparing the metered amounts before an Event, during an Event, and after an Event is terminated. If such verification fails to demonstrate that the Restricted Energy was made available to BPA by Alcoa for the Event Duration, then PS, in its sole discretion, may: (a) terminate the compensation specified in Section 4 of this

Exhibit for the undemonstrated portion of the Reserve Amount for the remaining Term of the Agreement; and, (b) notify TS of the undemonstrated portion of the Reserve Amount. Alcoa acknowledges that any undemonstrated portion of the Reserve Amount may cause its transmission supplier to take additional actions subject to the provisions of the Transmission Service Agreements Alcoa maintains with its transmission supplier, that may include an assessment of the monetary penalty described in the Failure to Comply provision of the prevailing TS tariff for transmission service.

4. COMPENSATION FOR CONTINGENCY RESERVES

Alcoa will be compensated by PS for Minimum DSI Operating Reserve - Supplemental provided in this Agreement through an adjustment to the IP rate, as provided for in the Northwest Power Act.

5. RETURNED ENERGY

BPA must make any Restricted Energy during an Event available to Alcoa within 24 hours ("Returned Energy") in mutually agreed flat hourly amounts and hours. It is understood by Parties that Returned Energy does not need to be scheduled during hours immediately following an Event and that the Returned Energy will likely be made available during Light Load Hours.

Scheduling of Returned Energy amounts will be in addition to federal power purchased pursuant to section 4 of the body of the Agreement. Alcoa shall be responsible for creating E-Tags and transmission required for the delivery of Returned Energy.

6. TESTING OF RESERVES

BPA shall have the option to conduct annual tests of the procedure specified in this Exhibit and Alcoa shall participate and provide any Restricted Energy requested.

7. REVISIONS

BPA may unilaterally revise this Exhibit F to implement changes that are applicable to Alcoa and that BPA determines are reasonably necessary for reserves provided under this Agreement to: (a) reflect changes in the value of the DSI Reserves Adjustment; and (b) comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to Alcoa unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit G
EMPLOYMENT LEVELS

1. Definitions

1.1 "Average Firm Power" means the average Firm Power during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.

1.2 "Average FTE" means the average FTE, as determined pursuant to Table 1 in section 2 below, during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.

1.3 "Firm Power" shall have the meaning ascribed to it in section 2.11 of the body of this Agreement.

1.4 "FTE" shall have the meaning ascribed to it in Section 8 of the body of this Agreement.

2. Relationship between Firm Power and FTE

For the avoidance of doubt, pursuant to this Exhibit G, Firm Power and FTE are proportional for the purposes of this Agreement, based on the amount of Firm Power Alcoa is consuming. As applicable and as described in Table 1 below, the proportion is 1.65 Average FTE per aMW of Average Firm Power.

Deleted: 1.5 "Proportional Employment" shall have the meaning described in section 2 of this Exhibit G.¶
¶

Deleted: ("Proportional FTE")

Table 1 - Proportional Relationship between Average Firm Power and Average FTE

Average Firm Power (aMW)	Average FTE	Proportional FTE
320	528	1.65
280	462	1.65
240	396	1.65
200	330	1.65
160	264	1.65
120	198	1.65
80	132	1.65
72	**120**	n/a
40	**120**	n/a
0	**120**	n/a

During periods of curtailment, the average of the reported monthly FTE shall be equal to or greater than 120.

Symonds,Mark C - PTL-5

From: Rousseau, Mike F. [Mike.Rousseau@alcoa.com]
Sent: Friday, April 24, 2009 11:55 AM
To: Clark,Harry W - PTL-5
Cc: Burns,Allen L - D-7; Symonds,Mark C - PTL-5
Subject: RE: Steve mtg

Thanks we will have a room set up at the double tree. We have flights out at 2:30 PM so we need to end by 1 PM. We can start earlier if needed.

From: Clark,Harry W - PTL-5 [mailto:hwclark@bpa.gov]
Sent: Friday, April 24, 2009 10:35 AM
To: Rousseau, Mike F.
Cc: Burns,Allen L - PT-5; Symonds,Mark C - PTL-5
Subject: RE: Steve mtg

Mike
We are concerned that Security will not be able to process the form before the 29th. You will need to secure a meeting place offsite.

For future meetings between John and Steve we should get an initial form in place. Processing is simpler with subsequent meeting after the initial processing. The form is attached. If it can be filled out and we process it for an assumed future meeting, the postpone we will be better prepared for the next meeting. Thanks

Harry Clark - PTL-5
Bonneville Power Administration
Long Term Sales & Purchases
905 NE 11th Ave.
Portland, OR 97232
503-230-3662
hwclark@bpa.gov

From: Burns,Allen L - PT-5
Sent: Friday, April 24, 2009 9:31 AM
To: Clark,Harry W - PTL-5; Symonds,Mark C - PTL-5
Cc: 'Mike.Rousseau@alcoa.com'
Subject: FW: Steve mtg

Please work with Mike on this. Thanks

From: Rousseau, Mike F. [mailto:]
Sent: Friday, April 24, 2009 9:03 AM
To: Burns,Allen L - PT-5
Subject: RE: Steve mtg

Thanks. Do we need to get a form filled out ahead of time for John to get in?

From: Burns,Allen L - PT-5 [mailto:alburns@bpa.gov]
Sent: Friday, April 24, 2009 8:54 AM

To: Rousseau, Mike F.
Subject: RE: Steve mtg

ok. See you then.

From: Rousseau, Mike F. [mailto:Mike.Rousseau@alcoa.com]
Sent: Friday, April 24, 2009 8:31 AM
To: Burns,Allen L - PT-5
Subject: RE: Steve mtg

This works. Thanks

From: Burns,Allen L - PT-5 [mailto:alburns@bpa.gov]
Sent: Friday, April 24, 2009 8:16 AM
To: Rousseau, Mike F.
Subject: RE: Steve mtg

12:00 to 1 pm on Wednesday is the only time that works. Let me know if that's ok and we'll get back to you on location, hopefully rates hearing room. I am out of the office this afternoon but back in Monday.

Have a great weekend !

From: Rousseau, Mike F. [mailto:Mike.Rousseau@alcoa.com]
Sent: Friday, April 24, 2009 7:53 AM
To: Burns,Allen L - PT-5
Subject: Steve mtg

Allen,
If at all possible Wed anytime after 11 AM would be the best time for the Steve & John mtg. Is there any way we can get this firmed up today?

Thanks,
Mike

Symonds,Mark C - PTL-5

From: Clark,Harry W - PTL-5
Sent: Friday, April 24, 2009 10:35 AM
To: 'Mike.Rousseau@alcoa.com'
Cc: Burns,Allen L - D-7; Symonds,Mark C - PTL-5
Subject: RE: Steve mtg
Attachments: Form Unclassified Visits.doc

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To: Burns,Allen L - PT-5
Subject: Steve mtg

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Thanks,
Mike

U.S. DEPARTMENT OF ENERGY
BONNEVILLE POWER ADMINISTRATION

Approved by Forms Mgmt.
(03/18/2009)

INSTRUCTIONS FOR COMPLETING THE FOREIGN NATIONAL REGISTRATION (SHORT FORM)

BPA Host will assist the foreign national (FN) in completing the form, and the Host is responsible for completing blocks 8, 9, 10 entirely. All required fields must be completed prior to submitting the form to "Foreign Visits & Assignments" e-mail inbox for processing by the Foreign Visits and Assignments (FV&A) staff. All other fields, though not required, should be completed if the foreign national is able to do so.

NOTE: * DENOTES REQUIRED INFORMATION.

BLOCK 1. *Name of Visitor/Assignee. Enter the complete First, Middle and last Name of the Foreign Visitor. If no middle name, enter the letters "NMI"

BLOCK 2. Form Determination Information

***Name of facility to be visited:** State the name of the facility to be visited
Is the meeting off-site: Mark the appropriate box
***Select the Security Area Type**: Read each definition carefully, then mark the appropriate box
***Country of Employer:** State the country where the foreign national visitor's employer is located.
***Will sensitive subjects be discussed?** Mark the appropriate box *(refer to BPA's CSI list)*
***Is this an IAP-66 (DS2019) assignment?** Before making a selection, read definition on the form, then mark the appropriate box
***Does the Host have a clearance**? Does the BPA Host have an "L" (SECRET level) or "Q" (TOP SECRET level) clearance? If so, mark the appropriate box.
***Type of Request** If the foreign national here for 30 consecutive days they are considered an Assignment. If the FN is here for less than 30 consecutive days they are processed as a Visit. If this is an extension of an existing visit or assignment, mark that box.

BLOCK 3. Biographical Information

***Gender: "Female" or "Male"**: Check the appropriate box
***Country of Citizenship:** self explanatory
***Country of Birth:** self explanatory
***Aliases:** FN shall disclose all aliases
Is the visitor currently in U.S.? Mark the appropriate box
***Date of Birth:** self explanatory
***City of Birth:** self explanatory

BLOCK 4. Employer Information *(Parent Organization Information and Address)*: All fields are Self explanatory

***Institution /Company Name**
***Street Address, if more than one, put it on the form**
***City, State, Zip Code**
Phone Number, Fax Number
Email Address
***Title or Position and Duties**
***Country of Employer**

For BLOCK 5 and 6, at least one section must be completed.

BLOCK 5. VISA Information: self explanatory - For VISA Type: Select one item from the list provided by clicking on the Visa Information link.

BLOCK 6. Passport Information: self explanatory

BLOCK 7. Place of Work (only if different from employer): Self Explanatory
Regarding the block "Interpreter Needed" – can the foreign national speak English? If yes, mark the NO box.

◆BLOCKS 8, 9, and 10 must be completed by the BPA HOST

BLOCK 8. Visit/Assignment Specific Information

***Will this be an off site meeting?** Self explanatory (off site meetings with Foreign Nationals still require pre-approval)
***Will sensitive subjects be discussed?** Self explanatory (refer to BPA's Critical and Sensitive Information List)

BLOCK 9. Host Information *(Must be a BPA Federal Employee or BPA Federal Contractor)*
*All fields are self explanatory and are required.

BLOCK 10. *Visit Information:* *All *required fields must be completed, or form cannot be processed.*
- For "SUBJECTS": select all relevant subjects from the drop down list provided
- For *PURPOSE OF THE VISIT: Select one item from the drop down list provided

SUBMITTING THE FOREIGN NATIONAL REGISTRATION FORM AND OTHER MISCELLANEOUS ITEMS:

- AFTER COMPLETION OF THIS FORM, THE HOST SHOULD REVIEW FOR ACCURACY.
- THE HOST WILL SUBMIT THE FORM TO THE "FOREIGN NATIONALS VISITS & ASSIGNMENTS" E-MAIL INBOX.
- THE FORM WILL THEN BE PROCESSED BY THE FV&A STAFF.
- THE BPA HOST WILL RECEIVE A NOTIFICATION FROM THE FV&A STAFF ONCE THE FN VISIT IS APPROVED.
- THE BPA HOST WILL NEED TO ENSURE THAT A VISITORS ACCESS FORM 5632.11E IS SUBMITTED.
- THE BPA HOST WILL NEED TO COMPLETE HOST TRAINING IF TRAINING HAS NOT ALREADY BEEN COMPLETED (ANNUAL TRAINING REQUIREMENT; WILL BE PROVIDED TO HOST BY FV&A STAFF).
- THE BPA HOST SHALL FOLLOW INSTRUCTIONS AS NOTED IN THE SECURITY PLAN FOR THE FN VISIT.
- LASTLY, THE BPA HOST WILL NEED TO OFFICIALLY CLOSE OUT THE FN VISIT or ASSIGNMENT WHEN THE VIST/ASSIGNMENT IS COMPLETE AND THE FN IS OFF SITE. CLOSE OUT INFORMATION SHALL INCLUDE THE FOLLOWING AND SHALL BE SENT ELECTRONICALLY TO THE FOREIGN NATIONAL VISITS AND ASSIGNMENTS E-MAIL INBOX.

1. Name of Visitor
2. Actual Start Date of Visit
3. Actual End Date of Visit
4. Status of Assignment *(State one of the following: Cancelled After Approved, No-Show, or Complete)*

U.S. DEPARTMENT OF ENERGY
BONNEVILLE POWER ADMINISTRATION

Approved by Forms Mgmt.
(03/18/2009)

UNCLASSIFIED VISITS AND ASSIGNMENTS - FOREIGN NATIONALS REGISTRATION (SHORT FORM)

"In accordance with Department of Energy Order 142.3, the BPA requires all foreign nationals (FN) to complete a foreign national registration form to document the purpose and dates of their intended visit. The BPA Host will assist the foreign national in completing the form. The BPA Host is responsible for completing blocks 8, 9 and 10 prior to submitting the form for processing. Depending on the country of citizenship and the nature of the visit, some forms can take up to 45 days to process. Hosts are responsible for ensuring all required fields are completed on the foreign national form. Completed forms should be sent electronically to the "Foreign National Visits and Assignments" e-mail in box. The Security Office will communicate to the host the status of the approval of the FN form. No FN will be allowed on a BPA site until their FN document has been approved. NOTE: Questions pertaining to a "clearance" is asking if you/Host have a L [SECRET] or Q [TOP SECRET] clearance."

1. Name of Visitor/Assignee

*First Name: *Middle: *Last:

2. Form Determination Information

*Facility to be visited: Is this an off-site meeting? ☐ Yes ☐ No

*Select the Security Area Type at the Facility *(choose highest area type in case multiple areas are to be visited)*:

☐ **Non-Security Area** *(areas where access is controlled because it is a federal facility. The area in question would not contain classified or nuclear material. Also applies to official meetings conducted off-site.)*

☐ **Property Protection Area w/out Sensitive Information** *(an area where high valued government owned property is housed and needs to be protected against damage, destruction, & theft. No critical and or sensitive information exists in the area. Examples: Substation Yard, Warehouse.)*

☐ **Property Protection Area w/Sensitive information** *(an area where high valued government owned property is housed and needs to be protected against damage, destruction, & theft. Critical and or sensitive information exists in the area. Examples: trading floor, regional HQ locations, JTS Rooms, Control Centers.)*

*Country of Employer:

*Will sensitive subjects be discussed? ☐ Yes ☐ No *(Refer to BPA's Critical and Sensitive Information List for subjects)*

*Is this an IAP-66 (DS2019) assignment? ☐ Yes ☐ No *IAP-66 *(supports the Visitor Exchange Program which provides foreign nationals with the opportunity to participate in educational and cultural programs in the U.S.)*

*Does the Host have a clearance? ☐ Yes ☐ No

*Type of Request *(check one)*: ☐ Visit *(less than 30 days)* ☐ Assignment *(30 consecutive days or more)* ☐ Extension of an Assignment

3. Biographical Information

*Gender: ☐ Female ☐ Male *Is Visitor currently in U.S.? ☐ Yes ☐ No

*Country of Citizenship: *Date of Birth *(mm/dd/yyyy)*:

*Country of Birth: *City of Birth:

*Aliases:

4. Employer Information

Affiliation or Company Info:

*Institution or Company Name: Phone Number:

Street (1): Fax Number:

Street (2): Email Address:

City: State:

Zip Code: *Country of Employer:

*Title or Position and Duties:

*** Visa or Passport information must be completed**

5. ♦Visa Information *(For Visa Type, click link below to copy/paste appropriate information.)* Visa Information	6. ♦Passport Information
Visa Number:	Passport Number:
Visa Type:	Country of Issue:
Exp. Date *(mm/dd/yyyy)*:	Exp. Date *(mm/dd/yyyy)*:

7. Place of Work *(if different from Employer)*

*Company Name: *Phone Number:

*Street (1): Fax Number:

Street (2): Email Address:

*City: *State:

*Zip Code: *Country of Employer:

*Title or Position and Duties:

Interpreter Needed? ☐ Yes ☐ No Business Type conducted by Employer:

Educational Background: Field of Research:

Accompanying Family Information:

Additional Biographical Information: ***(If known, FN will complete this section completely)***

Current U.S. Address: City:

Street (1): State:

Street (2): Zip Code:

Permanent Address: City:

Street (1): State:

Street (2): Zip Code:

OFFICIAL USE ONLY

U.S. DEPARTMENT OF ENERGY
BONNEVILLE POWER ADMINISTRATION

Approved by Forms Mgmt.
(03/18/2009)

UNCLASSIFIED VISITS AND ASSIGNMENTS - FOREIGN NATIONALS REGISTRATION (SHORT FORM)

8. Visit/Assignment Specific Information

*Off Site meeting? ☐ Yes ☐ No *Will sensitive subjects be discussed? ☐ Yes ☐ No

9. Host Information

*Host's First Name: _____ Middle: _____ *Last: _____
*Host's Citizenship: _____ *Phone: _____
*Does the host have a clearance? *(L or Q)* ☐ Yes ☐ No

10. Visit Information

*Desired Start Date *(mm/dd/yyyy)*: *Desired End Date *(mm/dd/yyyy)*:
*Subject(s): *(Choose from the drop-down menus)*

_____ _____ _____

International Agreement Code: _____
*Justification of Visit/Assignment, including specific activities or involvement:

*Purpose of visit: *(Choose from the drop-down menu)*
Is the assignment for intermittent access periods? *(Example: 2 days one week, 3 days the next week, 1 day on 3rd week=6 days)* ☐ Yes ☐ No Number of Days On site:
Will there be interactions with individuals with Security Clearances? *(L/Secret or Q/Top Secret clearances)* ☐ Yes ☐ No
List individuals:
First Name: _____ Middle: _____ Last: _____
First Name: _____ Middle: _____ Last: _____
Is this Visit for Employment? ☐ Yes ☐ No
*List Buildings and Rooms to be accessed:
Building: _____ Room: _____ Type: _____
Building: _____ Room: _____ Type: _____
Building: _____ Room: _____ Type: _____
*Cost to DOE/BPA: _____
*DOE/BPA Mission(s) that will be advanced by this Visit/Assignment:

*Anticipated benefits to DOE/BPA Programs:

*DOE/BPA Contact's *(Must be a Federal Employee)*
First Name: _____ Middle: _____ *Last: _____
*DOE/BPA Contact's Phone Number _____
*Will Visitor/Assignee be granted computer access? ☐ Yes ☐ No
If granted computer access, is the access on-site or off-site? ☐ On ☐ Off
List hardware and software to which access is granted:

11. Remarks/Comments *(or additional information that did not fit above)*

*Denotes Required Information
♦ Visa OR Passport Required

Please e-mail this form *(as an attachment)* and supporting documentation to:
Foreign Nationals Visits and Assignments

(BPA must receive this completed form at least 30 days prior to the scheduled visit).

Symonds,Mark C - PTL-5

From: Rousseau, Mike F. [Mike.Rousseau@alcoa.com]
Sent: Friday, April 24, 2009 12:27 PM
To: Clark,Harry W - PTL-5
Subject: RE: Steve mtg

Marc P., Bill Oplinger, myself.

From: Clark,Harry W - PTL-5 [mailto:hwclark@bpa.gov]
Sent: Friday, April 24, 2009 12:24 PM
To: Rousseau, Mike F.
Cc: Burns,Allen L - PT-5; Symonds,Mark C - PTL-5
Subject: RE: Steve mtg

Unsure if we can start early but if we can we will. Who will be attending with John so I can make sure we have the right counterparties.

From: Rousseau, Mike F. [mailto:Mike.Rousseau@alcoa.com]
Sent: Friday, April 24, 2009 11:55 AM
To: Clark,Harry W - PTL-5
Cc: Burns,Allen L - PT-5; Symonds,Mark C - PTL-5
Subject: RE: Steve mtg

Thanks we will have a room set up at the double tree. We have flights out at 2:30 PM so we need to end by 1 PM. We can start earlier if needed.

From: Clark,Harry W - PTL-5 [mailto:hwclark@bpa.gov]
Sent: Friday, April 24, 2009 10:35 AM
To: Rousseau, Mike F.
Cc: Burns,Allen L - PT-5; Symonds,Mark C - PTL-5
Subject: RE: Steve mtg

Mike
We are concerned that Security will not be able to process the form before the 29th. You will need to secure a meeting place offsite.

For future meetings between John and Steve we should get an initial form in place. Processing is simpler with subsequent meeting after the initial processing. The form is attached. If it can be filled out and we process it for an assumed future meeting, the postpone we will be better prepared for the next meeting. Thanks

Harry Clark - PTL-5
Bonneville Power Administration
Long Term Sales & Purchases
905 NE 11th Ave.
Portland, OR 97232
503-230-3662
hwclark@bpa.gov

From: Burns,Allen L - PT-5

Sent: Friday, April 24, 2009 9:31 AM
To: Clark,Harry W - PTL-5; Symonds,Mark C - PTL-5
Cc: 'Mike.Rousseau@alcoa.com'
Subject: FW: Steve mtg

Please work with Mike on this. Thanks

From: Rousseau, Mike F. [mailto:]
Sent: Friday, April 24, 2009 9:03 AM
To: Burns,Allen L - PT-5
Subject: RE: Steve mtg

Thanks. Do we need to get a form filled out ahead of time for John to get in?

From: Burns,Allen L - PT-5 [mailto:alburns@bpa.gov]
Sent: Friday, April 24, 2009 8:54 AM
To: Rousseau, Mike F.
Subject: RE: Steve mtg

ok. See you then.

From: Rousseau, Mike F. [mailto:Mike.Rousseau@alcoa.com]
Sent: Friday, April 24, 2009 8:31 AM
To: Burns,Allen L - PT-5
Subject: RE: Steve mtg

This works. Thanks

From: Burns,Allen L - PT-5 [mailto:alburns@bpa.gov]
Sent: Friday, April 24, 2009 8:16 AM
To: Rousseau, Mike F.
Subject: RE: Steve mtg

12:00 to 1 pm on Wednesday is the only time that works. Let me know if that's ok and we'll get back to you on location, hopefully rates hearing room. I am out of the office this afternoon but back in Monday.

Have a great weekend !

From: Rousseau, Mike F. [mailto:Mike.Rousseau@alcoa.com]
Sent: Friday, April 24, 2009 7:53 AM
To: Burns,Allen L - PT-5
Subject: Steve mtg

Allen,
If at all possible Wed anytime after 11 AM would be the best time for the Steve & John mtg. Is there any way we can get this firmed up today?

Thanks,
Mike

Symonds,Mark C - PTL-5

From: Matthew Lucke/stamford/glen [matthew.lucke@glencore-us.com]
Sent: Thursday, August 13, 2009 9:20 AM
To: Symonds,Mark C - PTL-5
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Appreciate your flexibility Mark. I'm on the road all week and my schedule is pretty full. Let's see how the call goes with Zach and then we can have a follow up call/visit if necessary.

"Symonds,Mark C - PTL-5" <mcsymonds@bpa.gov>

08/13/2009 12:15 PM

To "'Matthew Lucke/stamford/glen'" <matthew.lucke@glencore-us.com>

cc "Clark,Harry W - PTL-5" <hwclark@bpa.gov>, "'Zach Mayer/stamford/glen'" <Zach.Mayer@glencore-us.com>

Subject RE: update

Appreciate the response.

If you would prefer to participate and there is a different time next week that would work for a conf call, please let us know. Otherwise, we will proceed with 10am Wednesday Aug 19th with Zach. Thank you.

Mark

-----Original Message-----
From: Matthew Lucke/stamford/glen [mailto:matthew.lucke@glencore-us.com]
Sent: Thursday, August 13, 2009 8:52 AM
To: Symonds,Mark C - PTL-5
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Thanks for your email Mark. We will not be able to visit next week.
I am unable to join the call but Zach will make himself available at the time below.
Matt

"Symonds,Mark C - PTL-5" <mcsymonds@bpa.gov>

To "'Zach Mayer/stamford/glen'"

08/13/2009 10:19 AM

<Zach.Mayer@glencore-us.com>

cc

"'Matthew Lucke/stamford/glen'" <matthew.lucke@glencore-us.com>, "Clark,Harry W - PTL-5" <hwclark@bpa.gov>

Subject

RE: update

Zach,
Appreciate your time on the phone yesterday. I have cc'd Matt on this because you said you would be out Thu and Fri of this week and wanted to check-in regarding the timeslot we discussed - Wednesday Aug 13th at 10am. I have it reserved on our calendars. Does this time work for you all? You had also mentioned the possibility of coming to Portland? If that something you are considering, then the earlier we know the better in order to proceed with Security clearances. Thanx

Mark

From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Tuesday, August 11, 2009 2:24 PM
To: Symonds,Mark C - PTL-5
Subject: update

Mark,

I'm still waiting to hear back from you guys with your thoughts on a 3-year deal, as promised from our discussion last Thursday (at which time it was said that CFAC should expect to hear back from BPA on Friday). Please confirm that these discussions are ongoing and that BPA still plans to respond to CFAC on this issue. It's frustrating for us to be portrayed as delaying this process, or not recognizing the urgency of the timing, when BPA takes extra days to respond to ideas or proposals, leaving CFAC only to wait.

Thanks

Zach Mayer
Glencore Ltd.
Phone: (203) 328-2478

LEGAL DISCLAIMER. The contents of this e-mail and any attachments are strictly
confidential and they may not be used or disclosed by someone who is not a named recipient.
If you have received this email in error please notify the sender by replying
to this email inserting the word "misdirected" as the message and delete this
e-mail from your system.

Symonds,Mark C - PTL-5

From: Pereira, Marc A. [Marc.Pereira@alcoa.com]
Sent: Monday, July 27, 2009 10:44 AM
To: Symonds,Mark C - PTL-5; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

Mark,
Thanks for the update.
We are making travel arrangements to be in Portland during the week of august 10. We will be available to meet with BPA from Tuesday (august 10) at 3pm until Thursday evening, as needed.
We can always cancel if the draft is perfect, but let's reserve those dates just in case.
marc

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Friday, July 24, 2009 7:43 PM
To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; 'Jack Speer'; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Updated Schedule

Marc et al,
You left a note for Allen earlier in the day regarding schedule. Here are some of the key points:
8/5 - we expect to provide Alcoa with an initial draft contract (less than a week and a half from now)
8/10-14 - intensive contract negotiations and mostly likely week for face-to-face as needed
8/17-21 - we anticipate releasing contract for public review late this week
9/7-11 - public comment period anticipated to end this week (note the holiday weekend)
9/14-18 - BPA works in comments into contract / ROD
9/21-25 - time for approvals

Contract negotiations are a bit more accelerated than you indicated in you message, but I have laid out the rest of the time in an effort to underline why it is important to try to accelerate. Please contact me with any questions you may have. Thanx

Mark

Symonds,Mark C - PTL-5

From: Rousseau, Mike F. [Mike.Rousseau@alcoa.com]
Sent: Thursday, August 06, 2009 8:34 AM
To: Symonds,Mark C - PTL-5; Pereira, Marc A.; Laun, Max W.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule

Thanks Mark

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Wednesday, August 05, 2009 5:25 PM
To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; 'Jack Speer'; 'Mike Dotten'
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7; Hanlon,Douglas W - PTL-5
Subject: RE: Updated Schedule

Marc-
We will be sending out the contract draft in the morning.

A couple things to think about in the meantime:
1) probably useful to have a conf call to review our approach on Friday
2) we remain open to your plans to come out late Tues through Thurs afternoon - let's discuss this Friday also

More in the morning.

Mark

From: Symonds,Mark C - PTL-5
Sent: Monday, July 27, 2009 1:14 PM
To: 'Pereira, Marc A.'; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

Very well.

Just to clarify, you mean you all are available from Tuesday afternoon at 3pm, which is August 11th, right? Just making sure you did not mean Monday.

Thank you.

Mark

From: Pereira, Marc A. [mailto:Marc.Pereira@alcoa.com]
Sent: Monday, July 27, 2009 10:44 AM
To: Symonds,Mark C - PTL-5; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

Mark,
Thanks for the update.
We are making travel arrangements to be in Portland during the week of august 10. We will be available to meet with BPA from Tuesday (august 10) at 3pm until Thursday evening, as needed.
We can always cancel if the draft is perfect, but let's reserve those dates just in case.
marc

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
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To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; 'Jack Speer'; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
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Contract negotiations are a bit more accelerated than you indicated in you message, but I have laid out the rest of the time in an effort to underline why it is important to try to accelerate. Please contact me with any questions you may have. Thanx

Mark

Symonds,Mark C - PTL-5

From: Pereira, Marc A. [Marc.Pereira@alcoa.com]
Sent: Monday, July 27, 2009 1:18 PM
To: Symonds,Mark C - PTL-5; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten; Gregorio, Kimberly A
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

You are correct. It is Tuesday the 11th (not the 10th..my bad).
marc

From: Symonds,Mark C - PTL-5 [mailto:mcsymonds@bpa.gov]
Sent: Monday, July 27, 2009 4:14 PM
To: Pereira, Marc A.; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: RE: Updated Schedule

Very well.

Just to clarify, you mean you all are available from Tuesday afternoon at 3pm, which is August 11th, right? Just making sure you did not mean Monday.

Thank you.

Mark

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To: Symonds,Mark C - PTL-5; Laun, Max W.; Rousseau, Mike F.; Jack Speer; Mike Dotten
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marc

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9/21-25 - time for approvals

Contract negotiations are a bit more accelerated than you indicated in you message, but I have laid out the rest of the time in an effort to underline why it is important to try to accelerate. Please contact me with any questions you may have. Thanx

Mark

Symonds,Mark C - PTL-5

From: Miller,Mark E - PTF-5
Sent: Tuesday, October 06, 2009 8:37 AM
To: Symonds,Mark C - PTL-5
Subject: FW: Modulation & Reserve value

Attachments: Modulation (2).ppt

Modulation (2).ppt
(782 KB)

-----Original Message-----
From: Rousseau, Mike F. [mailto:Mike.Rousseau@alcoa.com]
Sent: Friday, February 20, 2009 7:50 AM
To: Miller,Mark E - PTL-5; Burns,Allen L - PT-5; Pereira, Marc A.
Subject: Modulation & Reserve value

Mark & Allen,
As promised here is a summary menu of what Intalco can provide as service to meet periodic regional load requirements. Look forward to discussing the value of this with you. The slides are the same just sorted differently. This is all based on a 2-line operation. If you have any questions please call.

Line Modulation Mer

fication	MW Available	Duration	Frequen
lone	9	Continuous	Continuo
min	295	0.5 hrs	1 x wee
1 hr	148	2 hrs	3x weel
1 hr	295	1 hr	3x weel
: hrs	37	Continuous	Continuo

Line Modulation Me

vailable	Notification	Duration	Freque
9	None	Continuous	Contin
37	2 hrs	Continuous	Contin
148	1 hr	2 hrs	3x we
160	4 hrs	12 hrs	2x we
295	5 min	0.5 hrs	1 x we

CFAC
Responsive Documents
FOIA #09-048

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Friday, July 24, 2009 11:00 AM
To: 'Zach.Mayer@glencore-us.com'; 'Matthew Lucke/stamford/glen'
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Confirmation of our discussion

Zach,
To confirm our 10:15am conversation, I indicated we were proceeding with posting the 7-year option. You had asked to change the 4-month notice provision to 2-months indicating that CFAC could proceed with the 4-year option with this change. There is no further negotiating. You can find the posting on our website:
http://www.bpa.gov/applications/publiccomments/CommentList.aspx?ID=78

Thanx again for your time.

Mark

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Thursday, February 26, 2009 5:48 PM
To: 'Zach.Mayer@glencore-us.com'
Cc: Miller,Mark E - PTL-5
Subject: Cover Letter and Amendment No 1 to 2007 Block Contract

Attachments: Cover Letter to 2007 Block Contract Amendment - CFAC.pdf; 2007 Block Contract No 06PB-11745 Amendment No1 - CFAC.pdf

Zach,
Please find attached the cover letter and Amendment No.1 to the 2007 Block Contract:

Cover Letter to 2007 Block Con... 2007 Block Contract No 06PB-11...

We faxed to Charles Reali at 406-892-8201 and asked him to please return two signed and dated copies to Mark Miller no later than 4:30pm, February 27, 2009. BPA will return two executed copies with all signatures for your records as soon as possible. Thank you.

Mark Symonds
for Mark Miller

Mark Symonds
Account Specialist
Bulk Marketing, Long-Term Purchases and Sales
Mail Stop: PTL-5

(503) 230-3027 Office
(503) 230-3681 Fax
mcsymonds@bpa.gov

P.O. Box 3621, Portland, OR 97208-3621 (mail)
905 NE 11th Avenue, Portland, OR 97232

Department of Energy

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

POWER SERVICES

February 26, 2009

In reply refer to: PTL-5

Chuck Reali, Vice President and General Manager
Columbia Falls Aluminum Company, LLC
2000 Aluminum Drive
Columbia Falls, MT 59912

Dear Mr. Reali:

As you know, BPA has proposed to substitute an IP sale to CFAC for the surplus power sale in the original 2007 Block Contract, and then monetize that IP sale. This amendment to the applicable contract, if adopted by the parties, will require recalculation of the scheduled payment to CFAC for its December 2008 plant operations and provides for continuing benefits through September 2009, assuming all contractual conditions are satisfied.

Inasmuch as sales by BPA to a DSI at the IP rate are made pursuant to section 5(d) of the Northwest Power Act, and are direct power sales by BPA, payments through the escrow account established in the 2007 Block Contract and administered by Flathead are unnecessary. Therefore, BPA has proposed that Flathead's obligations under the 2007 Block Contract be excused during the Amendment Period. In addition, the amendment places no new or substitute obligations on Flathead for the period before or after the Amendment Period.

Please return two signed and dated copies to me no later that 4:30 p.m., February 27, 2009. I will return executed copies with all signatures for your records as soon as possible.

Sincerely,

Mark E. Miller
Account Executive

Enclosure: Contract No. 06PB-11745, Amendment 1

cc: Ken Sugden. Flathead Electric Cooperative, Inc.

Amendment No. 1
Contract No. 06PB-11745

AMENDMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

COLUMBIA FALLS ALUMINUM COMPANY, LLC

and

FLATHEAD ELECTRIC COOPERATIVE, INC

This AMENDMENT to the BLOCK POWER SALES AGREEMENT is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), COLUMBIA FALLS ALUMINUM COMPANY, LLC (CFAC), and FLATHEAD ELECTRIC COOPERATIVE, INC (Flathead). CFAC is a corporation organized under the laws of the State of Delaware. Flathead is a nonprofit corporation organized under the laws of the State of Montana.

This Amendment No. 1 (Amendment) suspends and replaces for the period March 1, 2009, through September 30, 2009 (Amendment Period) Block Power Sales Agreement No. 06PB-11745 (Agreement) by and between BPA, CFAC, and Flathead. Pursuant to this Amendment, Flathead's obligations under the Agreement are excused during the Amendment Period, and no new or substitute obligations are imposed on or undertaken by Flathead pursuant to this Amendment a) during the Amendment Period, or b) under the Agreement for any period prior to or after the Amendment Period.

On December 17, 2008, the United States Court of Appeals for the Ninth Circuit (Court) filed its opinion in *Pacific Northwest Generating Cooperative, et al., v. Bonneville Power Administration* (December Opinion) that held, among other things, that certain provisions of the Agreement are invalid. As a consequence of the December Opinion, BPA halted Monetary Benefit payments under the Agreement.

This Amendment provides for a replacement monetized power sale to CFAC during the Amendment Period and for the months of December 2008, January 2009, and February 2009, in a manner and amount that is consistent with the December Opinion.

In reliance on the payments to be made to it by BPA under the Agreement, CFAC acquired power in the wholesale power market to serve its industrial load during the full term of the Agreement. The average cost of CFAC's acquisitions exceed BPA's currently forecasted wholesale market price for the Amendment Period. BPA understands the December

Opinion to prohibit payments by BPA to CFAC that would exceed the difference between the Industrial Firm Power (IP) rate, and BPA's forecasted wholesale market price.

In lieu of delivering firm power to CFAC at the IP rate during the Amendment Period, BPA will monetize the value of a physically delivered firm power sale at the IP rate, with such value calculated as the difference between the IP rate applicable to the Amendment Period and BPA's forecasted wholesale market price for the Amendment Period. BPA's decision to monetize this transaction is based, in part, on a desire to avoid the risks associated with making the relatively large wholesale market power purchases BPA would be required to undertake, in a short period of time, to serve CFAC's currently operating load, together with the uncertainty that CFAC will continue operating at existing levels for the duration of the Amendment Period, given current uncertain economic conditions. Monetization will allow BPA to provide benefits to CFAC (and obligate BPA to incur expenditures) only in the event CFAC operates its smelter facility, thereby protecting BPA from making wholesale market purchases that could be both unnecessary in the event CFAC does not operate, and more expensive than anticipated if actual market prices exceed BPA's current market forecast.

This transaction will be structured as a simultaneous purchase and sale, whereby BPA will be deemed to purchase power from CFAC during the Amendment Period, in an amount equal to CFAC's then operating load, at prices equivalent to BPA's currently forecasted wholesale market price for the Amendment Period, and to simultaneously sell back such power to CFAC at the IP rate. As noted, in lieu of actual power deliveries by either party, the transaction will be monetized.

To summarize, this Amendment adjusts the rate that CFAC shall pay for power under the Agreement during the Amendment Period to the IP rate, and adjusts the payment made under the monetized transaction to an amount equal to the difference between the IP rate and BPA's forecasted market price for the Amendment Period, which represents the forecasted price that BPA would otherwise pay to acquire power if it were to physically serve CFAC.

In addition, this Amendment provides for a recalculation (and reduction) of benefits that would have been paid to CFAC for smelter operation in December 2008, January 2009, and February 2009, so that such payments will conform with the December Opinion. BPA has calculated a Monetary Benefit payment for each of these three months based on 1) BPA's forecasted wholesale market price for December 2008 and January 2009 through September 2009 for purchases made by BPA prior to December 2008, 2) the IP rate in effect, and 3) CFAC's operating level. Payments calculated for these three months will not be made immediately, but shall be made by BPA in four equal monthly payments during the April through July 2009 period, but only if CFAC's Total Plant Load, preceding a month in which a payment is due, was either equal to or greater than 37.5 aMW, and CFAC maintained a minimum employee level equal to 85 full-time equivalent employees.

In addition, the Parties have agreed to modify the provisions regarding the determination of unused benefits under the Agreement to take into account CFAC's minimum operating level through the Amendment Period, and such provisions are intended to survive the expiration of the Amendment Period. This modification is designed to encourage operation

of CFAC's facilities through the period of increased power production due to fisheries operations on the Federal Columbia River Power System.

This Amendment allows BPA to provide service to CFAC while it fully considers the December Opinion, including treatment of the payments made to CFAC under the Agreement prior to the Court's ruling, and the ramifications for service to CFAC during the final two years of the Agreement (October 1, 2009, through September 30, 2011) following the termination of this Amendment. This Amendment is not intended, and shall not be interpreted, to establish any precedent or to waive any rights or arguments by BPA, CFAC, or Flathead regarding the legal rights and obligations of any or all of them under the December Opinion, including but not limited to the manner or amount of service provided by BPA to CFAC either prior to the December Opinion or after the expiration of this Amendment. The provisions are intended to provide temporary service to CFAC on terms that BPA, CFAC and Flathead believe adhere to the Court's holdings regarding BPA's authority, while affording the Parties a period of time to negotiate a long term replacement to the Agreement that also is consistent with the December Opinion.

The Parties agree:

1. **EFFECTIVE DATE**
This Amendment shall take effect on March 1, 2009, following execution by the Parties (Effective Date). This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

2. **AMENDMENT OF AGREEMENT**
Each provision of the Agreement is incorporated by reference into this Amendment, except the Parties hereby amend such provisions as follows:

(a) Section 2 of the Agreement (Definitions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following; except that sections 2(j) and 2(n) shall be used for purposes of establishing Unused Benefit Amounts under the Agreement for the period October 1, 2009 through September 30, 2011 when calculating benefits during the period from December 1, 2008 through September 30, 2009:

"2. **DEFINITIONS**
Capitalized terms in this Agreement shall have the meanings defined below, in the exhibits or in context. All other capitalized terms and acronyms are defined in BPA's applicable Wholesale Power Rate Schedule(s), including the General Rate Schedule Provisions (GRSPs).

(a) "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principle place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from

whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

(b) "Contract Year" or "CY" means the period that begins each October 1 and which ends the following September 30. For instance, CY 2007 begins October 1, 2006, and continues through September 30, 2007.

(c) "Demand Entitlement" means during the period when this Agreement operates as a physical Industrial Firm Power sale, the megawatt (MW) amount each hour that CFAC shall purchase from BPA, as specified in Exhibit E.

(d) "Equivalent IP" means the applicable average Industrial Firm Power Rate at 100 percent load factor, as determined pursuant to Exhibit F.

(e) "Escrow Account" means the specific account established pursuant to the provisions in section 9(b) below for receipt of funds from BPA and transfer of funds by Flathead to CFAC.

(f) "Forecast Market Price" means the forecast market price for power at 100 percent load factor for the period from January 1, 2009 though September 30, 2009, as specified in Exhibit F.

(g) "FY 07-09 Rate Period" means the wholesale power rate period that begins on October 1, 2006, and continues through September 30, 2009.

(h) "FY 10-11 Rate Period" means the wholesale power rate period that begins on October 1, 2009, and continues through September 30, 2011.

(i) "Industrial Firm Power" means electric power that PBL makes continuously available to CFAC under this Amendment except during periods when BPA exercises its interruption rights pursuant to section 4(i) below.

(j) "Interim Maximum MB Monthly Payment" means the Demand Entitlement times the hours in the month times the MB Rate.

(k) "MB Monthly Payment" means the monthly Monetary Benefit payment that is available during each month, as calculated in section 6(c)(2) below.

(l) "MB Rate" means the rate in dollars per megawatt-hour ($/MWh) used to calculate MB Monthly Payments pursuant to

section 6(c) below. The MB Rate is determined by subtracting Equivalent IP from Forecast Market Price.

(m) "Maximum Allocation" means, for the purpose of determining MB Monthly Payments, the maximum average megawatt (aMW) amount that may be used to determine a MB Monthly Payment. The Maximum Allocation is shown in Exhibit E.

(n) "Maximum MB Monthly Payment" means the Interim Maximum MB Monthly Payment.

(o) "Minimum Allocation" means, for the purpose of determining MB Monthly Payments, the minimum aMW amount that may be used to determine a MB Monthly Payment.

(p) "Monetary Benefits" means monetary payments made by BPA to CFAC under this Amendment, as determined pursuant to the provisions in section 6 below.

(q) "Monthly Plant Load" means a monthly aMW amount equal to the Total Plant Load for each month divided by the number of hours in each such month.

(r) "Monthly Purchase Deficiency" means the monthly amount(s) of Industrial Firm Power not purchased due to a curtailment, as such amount(s) may be adjusted pursuant to section 4(d)(1) below.

(s) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501.

(t) "Other DSIs" means aluminum smelters other than CFAC that have executed an agreement substantially in the form of this Agreement.

(u) "Points of Measurement" means the interconnection points between BPA, CFAC, and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.

(v) "Point of Receipt" means the points of interconnection on the transmission provider's transmission system where Industrial Firm Power shall be made available by PBL to CFAC's transmission provider.

(w) "Power Business Line" or "PBL" means that portion of the BPA organization or its successor that is responsible for the management and sale of BPA's Federal power.

(x) "Region" means the definition established for "Region" in the Northwest Power Act.

(y) "Total Plant Load" means the amount of electric energy in megawatt-hours (MWh) consumed during each month at CFAC's production facilities. A detailed description of CFAC's production facilities, including station service requirements and metering equipment, is described in Exhibit B.

(z) "Transmission Business Line" or "TBL" means that portion of the BPA organization or its successor that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

(aa) "Unused Benefit Amount" or "UBA" means either: (1) an aMW amount determined pursuant to section 7(a) during any period in which Monetary Benefits are provided, or (2) a MW amount determined pursuant to section 7(b) during any period in which this Agreement operates as a physical Industrial Firm Power sale."

(b) Section 3 of the Agreement (Applicable Rates) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"3. **APPLICABLE RATES**

Purchases by CFAC under this Amendment are subject to the Industrial Firm Power (IP) rate schedule, IP-07R, or its successor, and the General Rate Schedule Provisions (GRSP). Billing determinants for any purchases will be included in the rate schedule. Purchases under the IP rate schedule are established as follows:

If this Amendment operates as a physically delivered Industrial Firm Power sale pursuant to section 4 below, then section 4(a) below and the Industrial Firm Power rate schedule apply. If the Industrial Firm Power sale is monetized, then the provisions of section 6 below shall establish the applicable Equivalent IP rate."

(c) Section 4 of the Agreement (Power Sales Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"4. **Power Sales Provisions**

This section 4 only applies when this Agreement operates as a physically delivered Industrial Firm Power sale. In this event, the Monetary Benefit provisions in section 6 shall not apply. All physically delivered Industrial Firm Power provided by PBL under this section 4 is solely for service to Total Plant Load.

(a) **Power Sale by PBL to CFAC**

(1) **Hourly Amounts**

PBL shall make available and CFAC shall purchase the Demand Entitlement each hour. The Demand Entitlement is specified in Exhibit E.

(2) **HLH and LLH Energy Entitlements and Demand Entitlement**

The Demand Entitlement multiplied by: (A) the number of HLH, and (B) the number of LLH in the applicable month, establishes CFAC's HLH and LLH Energy Entitlements with respect to this Amendment.

(b) **Unauthorized Increase Charge**

CFAC shall not intentionally schedule in excess of the amount specified in section 4(a)(1) above. However, in the event that an excess amount is scheduled due to error, then such amounts taken by CFAC at the Points of Receipt in excess of the amounts specified in section 4(a) above shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PBL. Power that has been provided for energy imbalance service pursuant to an agreement between TBL and CFAC shall not be subject to an Unauthorized Increase Charge for Demand and Energy under this Agreement. Any Unauthorized Increase Charge shall be billed by BPA in accordance with the billing procedures described in section 9(a) below. Any Industrial Firm Power used by CFAC for any other purpose shall be subject to the Unauthorized Increase Charge.

(c) **Curtailment**

If CFAC curtails Total Plant Load in whole or in part, then CFAC may request take-or-pay mitigation for purchases under section 4(a) above pursuant to section 4(d) below.

(d) **Take-or-Pay Mitigation for Curtailments**

If CFAC chooses to curtail its purchase obligation, then the following terms and conditions shall apply:

(1) **Notice of Curtailment**

CFAC shall provide written notice to PBL at least three (3) Business

Days in advance of a curtailment. Such notice shall specify the monthly amounts of power to be curtailed and the duration of the curtailment. The election to curtail such power, and the amount and duration of such curtailment, may not be changed without PBL's consent. PBL's sale shall be reduced by the amount of power curtailed. The Monthly Purchase Deficiency will be reduced by any reduction to the Demand Entitlement pursuant to section 7(b)(2) below.

(2) **Calculation of Damages**

CFAC shall pay directly to BPA damages for each Monthly Purchase Deficiency equal to the amount by which the reasonable market value of such Monthly Purchase Deficiency is less than the price of the applicable rate specified in Exhibit A. For purposes of calculating damages under this section 4(d)(2), the Monthly Purchase Deficiency(s) shall be reduced by any reduction of Demand Entitlement under section 7(b)(3), effective on the date any such reduction becomes effective. No later than 60 days following September 30, 2009, PBL shall, for each month of the previous Contract Year, calculate the reasonable market value for each Monthly Purchase Deficiency during such period. Reasonable market value and calculation of damages shall be determined as follows.

(A) No later than 3 Business Days prior to the commencement of a curtailment under this section 4(d), CFAC may obtain one or more transactable quotes for all or a portion of such power from a third party. The transactable quote may be for any length of time and curtailment amount. Each quote shall be deemed equal to the reasonable market value of such power to which the quote applies for the purpose of calculating damages under this section 4(d)(2). BPA may, but shall not be obligated to, resell the curtailed power to the third party, retain the power, or dispose of the power as it chooses. CFAC shall allow PBL at least 4 hours during normal business hours to decide whether or not to transact under such quote.

(B) BPA shall determine, by any reasonable method, the reasonable market value of the portion of each Monthly Purchase Deficiency for which CFAC has not obtained a transactable quote. The reasonable market value shall be adjusted to reflect volume and BPA transmission costs associated with remarketing each such portion of the Monthly Purchase Deficiency, regardless of whether each such portion is actually remarketed.

(C) BPA shall bill CFAC and CFAC shall directly pay BPA damages for such period equal to the amount by which the sum of the product of (1) each Monthly Purchase Deficiency and

(2) the applicable rate specified in Exhibit A that BPA would have charged each month if the power had been taken under this Agreement, exceeds the sum of the product of (1) each Monthly Purchase Deficiency and (2) the reasonable market value in each month. Amounts for damages under section 4(d)(2)(A) and section 4(d)(2)(B) may only be netted within a Contract Year. BPA is not obligated to pay CFAC the difference when the reasonable market value exceeds the applicable Industrial Firm Power rate.

It is expressly agreed to by the Parties that BPA shall not be obligated to enter into replacement transactions to determine or collect damages under this section 4(d)(2).

It is also expressly agreed that BPA will apply its then-current applicable credit policies if damages are due under this section 4(d)(2), and such policies may include an obligation to prepay for damages.

(e) **Scheduling**

All Industrial Firm Power transactions under this Agreement shall be scheduled and implemented consistent with Exhibit C, BPA Power Business Line Scheduling Provisions. The procedures for scheduling described in Exhibit C are the standard utility procedures followed by BPA for power transactions between PBL and other utilities or entities in the Region that require scheduling.

(f) **Delivery**

(1) **Transmission Service for Industrial Firm Power**

This Agreement does not provide transmission services for, or include the delivery of, Industrial Firm Power by BPA to CFAC. CFAC shall be responsible for executing one or more wheeling agreements with a transmission supplier for the delivery of Industrial Firm Power (Wheeling Agreement). PBL and CFAC agree to take such actions as may be necessary to facilitate the delivery of Industrial Firm Power to CFAC, consistent with the terms, notice, and the time limits contained in the Wheeling Agreement.

(2) **Liability for Delivery**

CFAC waives any claims against PBL arising under this Amendment for nondelivery of power to any points beyond the applicable Points of Receipt. PBL shall not be liable for any third-party claims related to the delivery of power after it leaves the Points of Receipt. In no event shall any Party be liable under this Agreement to any other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership. These limitations on liability apply

regardless of whether or not this Amendment provides for transfer service.

(3) **Points of Receipt**
PBL shall make Industrial Firm Power available to CFAC under this Amendment at Points of Receipt solely for the purpose of CFAC scheduling transmission to points of delivery for service to CFAC's Total Plant Load. CFAC shall schedule, if scheduling is necessary, such Industrial Firm Power solely for use by its Total Plant Load. PBL, for purposes of scheduling transmission for delivery under this Agreement, shall specify Points of Receipt in a written notice to CFAC no later than March 1, 2009.

If required by the Wheeling Agreement, when PBL designates such Points of Receipt, PBL shall provide capacity amounts for transmission under the Wheeling Agreement associated with the initial Points of Receipt that can be accepted as firm Points of Receipt under CFAC's Wheeling Agreement (except in the event that all Points of Receipt on the Federal Columbia River Power System (FCRPS) would be considered nonfirm). The sum of capacity amounts requested by PBL shall not exceed the amount of Industrial Firm Power specified in sections 4(a) above. Such Points of Receipt and their capacity amounts may only be changed through mutual agreement. However, at any time PBL may request the use of a nonfirm Point of Receipt to provide Industrial Firm Power to CFAC, but notwithstanding section 4(f)(2) above, PBL shall reimburse CFAC for any additional costs or production losses incurred by CFAC due to its compliance with such request.

(4) **Transmission Losses**
PBL shall provide CFAC the transmission losses between the Points of Receipt and CFAC's points of delivery for Industrial Firm Power, at no additional charge. Such losses shall be provided at Points of Receipt as established under section 4(f)(3) above, and under the terms and conditions as defined in the transmission provider's tariff.

(g) **Measurement**

(1) Amounts of Industrial Firm Power taken are deemed equal to the amount scheduled by CFAC under section 4(e) above or an amount of power as measured at Points of Measurement, as appropriate.

(2) CFAC shall provide reasonable notice to PBL prior to changing control areas.

(h) **Interruption Rights**
PBL shall have a one-time right during the term of this Amendment to interrupt deliveries of a portion of the Industrial Firm Power

hereunder pursuant to the following provisions. PBL may interrupt a portion of Industrial Firm Power deliveries if PBL anticipates, in its sole and exclusive discretion, that average forward market prices for a flat block of power will exceed $125/MWh during an interruption period to be specified by PBL in a written notice. In this event, PBL shall consult with CFAC prior to providing such written notice. If PBL decides to interrupt, then it will provide 30 days advance written notice to CFAC that specifies the amount of Industrial Firm Power to be interrupted and the associated interruption period; *provided, however,* that a minimum of 6 aMW will not be subject to any such interruption. Unless the Parties mutually agree otherwise, such interruption period shall extend for a minimum of 6 months and for a maximum of the duration of this Amendment, regardless of the level of actual market prices during an interruption period. In the event of an interruption, BPA shall pay CFAC, $24/MWh for amounts interrupted. Payments shall be made pursuant to section 9(b) below. Payments to CFAC under this section 4(h) shall be used first by CFAC to compensate CFAC's employees employed at the time of an interruption under this section 4(h) by providing each such employee, at the election of CFAC, either (1) the opportunity to work a regular work week (40 hours) at regular wage and benefit rates, or (2) special supplemental benefits such that the employee's effective after-tax income (including any available unemployment income) will be equal to what the employee's income would have been working a regular work week, plus all benefits the employee would have received, had the employee been working a regular 40-hour work week. BPA shall have the right to conduct an audit to verify compliance with this section 4(h). If there is an interruption under this section 4(h), then the portion of Demand Entitlement interrupted shall be treated as if taken for purposes of section 7(b)(1)(A) and shall not be subject to the take-or-pay provisions in sections 4(a).

(i) **Modification of Flathead's Obligations**

The Parties agree Flathead shall have no obligation to purchase any power from BPA under this Amendment. The Parties agree Flathead shall have no obligation to make available to CFAC any power under this Amendment."

(d) Section 5 of the Agreement (BPA and CFAC Options) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"5. **BPA Monetary Benefit Option**

BPA has determined that, during the period of this Amendment, in order to minimize the cost risks of supplying Industrial Firm Power, the Parties will monetize the physically delivered Industrial Firm Power sale obligation. As such, BPA will make any MB Monthly

Payments during the period of this Amendment, subject to the provisions of section 6 below."

(e) Section 6 of the Agreement (Monetary Benefit Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"6. **MONETARY BENEFIT PROVISIONS**
This section 6 only applies when the physically delivered Industrial Firm Power sale is monetized. The provisions in section 4 shall not apply to Monetary Benefits.

(a) **Determination of Forecast Market Price and Equivalent IP**
PBL has determined the Forecast Market Price and Equivalent IP for the period of this Amendment as specified in Exhibit F.

(b) **Determination of Monthly Plant Load**
No later than five (5) Business Days following the end of each month, PBL shall determine the Monthly Plant Load for each such month.

(c) **Determination of MB Monthly Payments**
The determinations described in Exhibit F and the following procedure as described in section 6(c)(1) through section 6(c)(3) shall be used to determine the MB Monthly Payment for each month.

(1) The Minimum Allocation shall not affect payment of the MB Monthly Payment.

(2) The MB Monthly Payment for each month shall be the amount determined by the following equation:

MB Monthly Payment = ((Monthly Plant Load) x (number of hours in the month)) x (MB Rate).

(3) Notwithstanding anything to the contrary in this Amendment, in no case shall the Monetary Benefits accrued during the period from December 1, 2008 through September 30, 2009, exceed the Monetary Benefit Limit specified in Exhibit E of this Amendment.

(d) **Recalculated Monetary Benefits Payment**
BPA shall pay CFAC a Monetary Benefit equal to the Monthly Plant Load times the number of hours in the month times $14.26/MWh to monetize deliveries of Industrial Firm Power for the Monthly Plant Load during the month of December

2008 and $15.35/MWh to monetize deliveries of Industrial Firm Power for the Monthly Plant Load during the months of January and February 2009. The payment of the sum of the Monetary Benefit amounts calculated in this section 6(d) shall be made by BPA in four equal monthly payments during the April through July 2009 period, provided, however, that CFAC's Total Plant Load, preceding a month in which a payment is due, must be either equal to or greater than 37.5 aMW, and provided, further, that CFAC must have maintained a minimum of 85 full-time equivalent employees at the CFAC facility. In the event CFAC fails a) to maintain a monthly Total Plant Load either equal to or greater than 37.5 aMW, or b) to maintain a minimum employee level equal to 85 full-time equivalent employees at the CFAC facility, during any month from the Effective Date through June 2009, then BPA may suspend or terminate this Amendment.

(f) Section 7(a)(2) and section 7(a)(3) of the Agreement shall be replaced by the following when calculating benefits accessed under section 7(a)(3) for the period from December 1, 2008, through September 30, 2009 and such benefits accessed, or deemed to be accessed, shall be used for purposes of establishing Unused Benefit Amounts under the Agreement for the period October 1, 2009, through September 30, 2011:

"(2) In order to retain its Maximum Allocation, CFAC must, for at least one month during the preceding 12 months, have received the Maximum MB Monthly Payment. If this condition is not satisfied, then the Maximum Allocation shall be reduced; provided however, if the Monthly Plant Load is either equal to or greater than 37.5 aMW for all months through June 30, 2009, CFAC shall be deemed to have received the Maximum MB Monthly Payment for each month of the period from January 1, 2009, through September 30, 2009.

(3) CFAC shall retain the highest monthly percentage of the available benefits that it accessed during the previous 12 months. As such, CFAC's Maximum Allocation shall be reduced by the percentage of the available benefits, rounded to the nearest aMW, that were not accessed during the month that set the highest monthly percentage of benefits accessed. The amount of aMW from this calculation becomes an Unused Benefit Amount or UBA."

(g) Section 9(b) of the Agreement (Billing and Payment When Monetary Benefit Payments Provided) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"(b) **Payment of Interim Monetary Benefits Provided**

Within five Business Days after the end of each month, beginning April 1, 2009, BPA will review CFAC's metered load measurements to determine the Monthly Plant Load for the month.

Within eight Business Days following the end of the month, BPA shall transfer an amount to CFAC to pay the MB Monthly Payment, provided, however, that CFAC has maintained a Monthly Plant Load equal to, or greater than, 37.5 aMW, and maintained the minimum full-time employment level, as provided in section 6(d), above. Any monthly payment required under section 6(d) shall be in addition to any MB Monthly Payment amount to be made under this section 9(b)."

(h) Section 11 of the Agreement (Uncontrollable Forces) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"11. UNCONTROLLABLE FORCES

(a) **Uncontrollable Forces Provisions During Industrial Firm Power Sale**
If this Agreement operates as a physical Industrial Firm Power Sale, then the following provisions shall apply; *provided however*, that UBA determinations pursuant to section 7 and acquisitions of UBA pursuant to section 8 shall not be subject to Uncontrollable Forces under this section 11(a).

"Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its obligations under this Agreement and which, by exercise of that Party's reasonable diligence and foresight, such Party could not be expected to avoid and was unable to avoid. Uncontrollable Forces include, but are not limited to:

(1) any unplanned curtailment or interruption for any reason of firm transmission used to deliver Industrial Firm Power to CFAC's facilities, including but not limited to unplanned maintenance outages;

(2) any unplanned curtailment or interruption, failure or imminent failure of CFAC's production or transmission facilities, including but not limited to unplanned maintenance outages;

(3) any planned transmission or distribution outage that affects either CFAC or PBL which was provided by a third-party transmission or distribution owner, or by a transmission provider, including TBL, that is functionally

separated from the generation provider in conformance with Federal Energy Regulatory Commission (FERC) Orders 888 and 889 or its successors;

(4) strikes or work stoppage, including the threat of imminent strikes or work stoppage; *provided, however*, that nothing contained in this provision shall be construed to require any Party to settle any strike or labor dispute in which it may be involved.

(5) floods, earthquakes, or other natural disasters; and

(6) orders or injunctions issued by any court having competent subject matter jurisdiction, or any order of an administrative officer which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of any Party shall not constitute an Uncontrollable Force. The Party claiming the Uncontrollable Force shall notify the other Party as soon as practicable of that Party's inability to meet its obligations under this Agreement due to an Uncontrollable Force. The Party claiming the Uncontrollable Force shall notify any control area involved in the scheduling of a transaction which may be curtailed due to an Uncontrollable Force.

All Parties shall be excused from their respective obligations, other than from payment obligations incurred prior to the Uncontrollable Force, without liability to the other, for the duration of the Uncontrollable Force and the period reasonably required for the Party claiming the Uncontrollable Force, using due diligence, to restore its operations to conditions existing prior to the occurrence of the Uncontrollable Force."

(b) **Uncontrollable Forces Provisions During Periods When A Monetary Benefit is Provided**

During periods when the Industrial Firm Power sale is monetized, CFAC understands and agrees that there are no events that will be considered Uncontrollable Forces under this Agreement; provided, however, that BPA may not terminate this Amendment pursuant to section 6(d) in the event that CFAC's failure to maintain a Monthly Plant Load equal to, or greater than, 37.5 aMW or to maintain a minimum employee level equal to 85 full-time equivalent employees at the CFAC facility, is caused by an Uncontrollable Force."

(i) Section 13(b) of the Agreement (Limitation on Resale) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"(b) **Limitation on Resale**
CFAC shall not resell Industrial Firm Power."

(j) Section 16(c) of the Agreement is deleted for the period from the December 1, 2008 through September 30, 2009.

(k) Exhibit A of the Agreement (Surplus Firm Power Rate) shall be inoperative for the period from the Effective Date through September 30, 2009.

(l) Exhibit B of the Agreement (Additional Products, Services, and Special Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 1 of Exhibit B.

(m) Revision No. 1 of Exhibit E of the Agreement (Maximum Allocation, Minimum allocation, and Demand Entitlement) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 2 of Exhibit E.

(n) Exhibit F of the Agreement (Determination of Forecast Market Price and Equivalent PF) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 1 of Exhibit F.

3. SIGNATURES

The signatories represent that they are authorized to enter into this Amendment on behalf of the Party for whom they sign.

COLUMBIA FALLS ALUMINUM COMPANY, LLC	UNITED STATES OF AMERICA Department of Energy Bonneville Power Administration
By _____	By _____ Administrator
Name _____ *(Print/Type)*	Name _____ *(Print/Type)*
Title _____	
Date _____	Date _____

FLATHEAD ELECTRIC COOPERATIVE, INC

By _____

Name _____

Title _____

Date _____

Revision No. 1 of Exhibit B
ADDITIONAL PRODUCTS, SERVICES, AND SPECIAL PROVISIONS
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

1. DESCRIPTION OF CFAC's PRODUCTION FACILITIES, STATION SERVICE REQUIREMENTS, AND METERING EQUIPMENT

Production Facilities: are CFAC's aluminum smelting and other facilities served from the Government's Conkelley Substation, where the 13.8 or 230 kilovolt (kV) facilities of BPA and CFAC are connected.

Metering Equipment: used to measure energy usage of the CFAC facility located in the Government's Conkelley Substation in the 13.8 kV circuits over which such electric power and energy flows.

CFAC agrees to allow PBL access to all hourly load measurements of its Production Facilities necessary to administer this Agreement.

2. REVISIONS

This Exhibit B shall be revised upon mutual agreement of the Parties to reflect any new products, services, and special provisions that may be added during the term of this Agreement.

Revision No. 2, Exhibit E

MAXIMUM ALLOCATION, MINIMUM ALLOCATION, AND DEMAND ENTITLEMENT

(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

1. MAXIMUM AND MINIMUM ALLOCATIONS

During periods when Monetary Benefit payments are provided pursuant to section 6 of the body of this Agreement, the Maximum Allocation, Minimum Allocation, and Monetary Benefit Limit amounts are as follows:

Maximum Allocation:	Demand Entitlement
Minimum Allocation:	0 aMW
Monetary Benefit Limit:	$5,913,455

2. DEMAND ENTITLEMENT

The Demand Entitlement shall be as follows:

- **December 2008 through February 2009**, the Demand Entitlement will equal the average Total Plant Load from December 1, 2008, through December 17, 2008 (which the Parties agree equaled 91.44 aMW); and

- **March 2009 through September 2009**, the Demand Entitlement will equal 37.5 aMW.

3. REVISIONS

BPA shall not revise this Revision No. 2 of Exhibit E to reflect changes to Maximum Allocation, Minimum Allocation, Monetary Benefit Limit, and/or Demand Entitlement for the period it is in effect.

Revision No.1 of Exhibit F
DETERMINATION OF FORECAST MARKET PRICE AND EQUIVALENT IP
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

1. DETERMINATION OF FORECAST MARKET PRICE

The Forecast Market Price for the period from January 1, 2009 through September 30, 2009 shall be $48.05/ MWh.

2. DETERMINATION OF EQUIVALENT IP

The initial Equivalent IP for the period from January 1, 2009 through September 30, 2009 shall be $32.70/MWh.

(a) Each time any adjustment, surcharge, dividend or true-up to the IP Rate is proposed by BPA in writing (which may be before the date such change will actually be applied to the PF Rate), BPA will adjust the Equivalent IP and the MB Rate and MB Monthly Payments for the remaining months of such CY. Such adjustment will take into consideration the Monetary Benefits provided to date and the IP Rate adjustment to provide an end-of-CY total Monetary Benefit to which CFAC is entitled. If such recalculation indicates that BPA has paid CFAC more in Monetary Benefits than the amount to which CFAC is entitled, then BPA will reduce the MB Monthly Payments to CFAC over the next following three months (if full recovery of the amount is not possible in the 3-month period BPA may invoice CFAC for the remaining amount), by the amount needed to recover the overpayment. If adjustments, surcharges, and true-ups are established after the CY, then BPA will calculate the final Equivalent IP rate for such portion of the CY and adjustments to Monetary Benefit will be applied in the following CY.

(b) If, upon termination of this Agreement, a true-up or other adjustment following the end of the final CY results in a payment owed by CFAC to BPA, then BPA shall invoice CFAC for such payment within 90 days following the end of such final CY. Such payment shall be made by CFAC within 20 days following the receipt of such invoice. If, upon termination of this Agreement, a true-up or other adjustment following the end of the final CY results in a payment owed by BPA to CFAC, then BPA shall pay CFAC no later than 90 days following the end of such final CY.

3. REVISIONS

BPA shall have the unilateral right to revise this Exhibit F to reflect changes in Equivalent IP for CY 2009 calculated pursuant to this Exhibit F. Any changes to the procedure used to determine Equivalent IP may only be made upon mutual agreement of the Parties.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Monday, August 03, 2009 4:07 PM
To: 'Zach.Mayer@glencore-us.com'; 'Matthew Lucke/stamford/glen'
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Draft Term Sheet populated with CFAC numbers

Attachments: DRAFT Term Sheet - CFAC 2009-07-17 _7-year option_.pdf

Zach,
Some in the region inquired about what a 2+5 term sheet for CFAC might look like. In response, we populated a term sheet and the draft is attached below:

DRAFT Term Sheet - CFAC 2009-...

Thanx

Mark

DRAFT – Term Sheet
Block Power Sale to CFAC[1]

July 17, 2009

Basic Terms (subject to the Special Conditions below):

Product	Block, firm power, delivered on all hours.
Rate	Industrial Firm Power (IP) rate. Reserves provided consistent with law.
Amount	70 aMW during Initial 2-year Period 140 aMW during Subsequent 5-year Period
Term	October 1, 2009 – September 30, 2016 October 1, 2009 – September 30, 2011 (Initial 2-year Period) October 1, 2011 – September 30, 2016 (Subsequent 5-year Period).

Special Conditions:

1. BPA may provide Columbia Falls Aluminum Company (CFAC) notice of termination prior to March 31, 2010, if, in BPA's sole discretion, it is unable to purchase FBS replacement resources sufficient to serve the Amount for the Subsequent 5-Year Period for less than or equal to $64 per MWh. The cost cap represents a forecasted net cost of less than $150 million for the Subsequent 5-year Period (defined as cost of purchases to serve CFAC load less expected IP revenue from the same).

2. In the event that wholesale power market prices for power purchased by BPA for the Initial 2-year Period are sufficient to serve CFAC 140 aMW at a cost less than or equal to $48 per MWh, then upon CFAC's 3-month request BPA will increase the Amount to 140 aMW for the balance of the Initial 2-year Period. Consistent with BPA's determination that it will not exceed the $48 per MWh cost cap for DSI service, the cost cap represents a forecasted net cost of less than $35 million for the Initial 2-year Period based on then current forecast of market price. To the extent any other aluminum smelter DSI notifies BPA of a curtailment, during the duration of such curtailment, the $35 million cost cap will be increased and the $48 per MWh cost cap will be increased accordingly.

3. Upon CFAC's request BPA will conduct a public process between October 1, 2012, and October 1, 2014, to determine the feasibility of entering into a follow-on contract with CFAC beginning October 1, 2016. In addition to examining the terms of service for any such follow-on contract, the public process will include a study analyzing the impacts on the regional economy associated with such a follow-on contract. This provision is not intended and shall not be construed as requiring BPA to offer any such follow-on

[1] This draft term sheet is for discussion purposes only, is subject to change, and is not binding on BPA or CFAC for any purposes.

contract, irrespective of the conclusions or findings of any public process undertaken.

4. Any costs of carbon taxes or charges, greenhouse gas mitigation costs or other similar environmental or regulatory costs will be included in the net cost calculation, and, as set forth below, BPA intends to require any suppliers to include such costs (excluding costs directly imposed on BPA explained in section 5, below) in their offers of electricity.

   The cost caps in Sections 1 and 2 above represent the maximum amount BPA will pay for average annual blocks of power to support sales to CFAC, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs, and costs incurred by BPA in connection with any credit requirements. Cost caps represent the weighted average of acquisitions made by BPA to support sales to CFAC over all Fiscal Years comprising the particular delivery period. Further,

   a. BPA will not make a plant specific acquisition from a coal-fired resource.

   b. BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to above, that are imposed on the supplier after the date the acquisition contract is entered into.

5. In the event costs associated with either renewable energy portfolio standard obligations, if any, or costs imposed on BPA directly (in contrast with costs imposed upon suppliers to BPA) for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges, if any, are not recovered by BPA through rates but are to be paid by CFAC under the terms of the contract, CFAC shall have the option to terminate pursuant to Section 11 below, but without the obligation to pay the IP rate for the applicable Amount for the 12-month notice period.

6. CFAC commits to employ an average of ___ full time equivalent employees (FTEs) at the Intalco Plant during the period that CFAC receives 140 aMW (2 potlines) under the contract, measured on a 5-year rolling average basis. Equivalent pro rata FTE levels will be developed for different operating levels and addressed in the contract. "FTE" shall mean full time annual employment for both regular employees and on-site and local off-site contractors. If CFAC fails to average FTE levels established in this section or the contract, BPA may terminate the contract; provided however, such minimum requirement shall not apply during periods of curtailment, or if notice of termination has been given.

7. In order to qualify for service beginning October 1, 2009, CFAC's load at the Intalco Plant must have been 70 aMW or more in any one year of the Subscription Period (Fiscal Year 2007 through Fiscal Year 2009).

8. Following a notice of termination by CFAC under Section 11 below (unless triggered under Section 5 above), CFAC agrees that it will not request power service as a Direct Service Industry from BPA.

9. CFAC agrees not to challenge the validity of the contract implementing this Term Sheet in the Ninth Circuit Court of Appeals, but reserves the right to intervene in any proceeding challenging the validity of the contract for the purpose of defending the validity of the contract or any portion thereof.

10. CFAC may curtail deliveries up to twice during the Term. If CFAC elects to curtail, then:
    - **a)** 3-month prior written notice is required, and the curtailment duration may be changed only with BPA's consent;
    - **b)** cumulative curtailment duration shall not exceed 24 months;
    - **c)** no take-or-pay obligation on appropriately noticed curtailed amounts and no compensation by BPA to CFAC; and
    - **d)** provisions in Section 6 above shall be suspended for the duration of each curtailment, proportional to the amount curtailed.
    - **e)** curtailments of the Product may not be replaced by third-party power purchases

11. CFAC may terminate upon 12-months prior written notice, but the provisions in Section 6 above shall be suspended during this period, and CFAC shall be obligated to pay the IP rate (whether or not it takes power and without regard to any mitigation by BPA) for the applicable Amount for the 12-month notice period. CFAC may switch from a curtailment to a termination at any time during a curtailment by providing notice of termination and agreeing to pay the IP rate for the applicable Amount for a period of not less than 12-months following the effective date of the notice of curtailment.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, August 19, 2009 8:57 AM
To: 'Zach Mayer/stamford/glen'
Subject: RE: This morning's call

I set up a bridge. Please call

Thanx

Mark

From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Wednesday, August 19, 2009 8:33 AM
To: Symonds,Mark C - PTL-5
Subject: Re: This morning's call

Mark,

I would prefer that I call you guys if possible. Is there a number I can reach you at?

Zach Mayer
Glencore Ltd.
Phone: (203) 328-2478

"Symonds,Mark C - PTL-5" <mcsymonds@bpa.gov>

08/19/2009 11:23 AM

To "'Zach Mayer/stamford/glen'" <Zach.Mayer@glencore-us.com>
cc
Subject This morning's call

Did you want us to call you at your desk at 10am Pacific or is there another number? Thanx

Mark

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If you have received this email in error please notify the sender by replying to this email inserting the word "misdirected" as the message and delete this e-mail from your system.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, August 19, 2009 3:33 PM
To: 'Zach Mayer/stamford/glen'
Cc: matthew.lucke@Glencore-us.com; Burns,Allen L - D-7
Subject: RE: This morning's call

Zach,
Thanks for the summary. We expect to have the draft confirm we discussed first thing tomorrow morning.

Mark

From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Wednesday, August 19, 2009 2:43 PM
To: Burns,Allen L - D-7; Symonds,Mark C - PTL-5
Cc: matthew.lucke@Glencore-us.com
Subject: RE: This morning's call

Mark/Allen,

Below is a brief summary of the key elements of the structure we proposed in our phone call earlier. Please note that this is not a formal or binding proposal but instead merely intended as a framework.

- 4-year deal
- power price = IP
- minimum operating period of 12 months during the 4 years; once CFAC hits a point where it's not possible that it would operate for at least 12 months during the 4 years the deal automatically terminates
- BPA's option: either 3-month notice required to ramp up or down, but covering the full 2 potlines, OR 2-month notice required to ramp up or down but CFAC commits not to go up or down by more than one potline in any given notice period
- no cost caps for 1st 2-year period
- cost caps for 2nd 2-year period based on pro-rata costs of the Alcoa deal, but that covers the entire CFAC load (in other words, the pro-rata adjustment is based on total dollars, not $/MWh)
- minimum employment levels apply except when curtailed
- no power from coal-fired resources (we are OK with the language BPA has previously proposed - including in the Alcoa term sheet - regarding allocation of environmental costs)
- BPA serves CFAC's wheel-turning load
- LD's due from CFAC to BPA when CFAC fails to meet any 2- or 3-month notice it has given; for example, if CFAC tells BPA it's ramping down in 3 months, but then ends up ramping down after only 2 months, then CFAC must reimburse BPA for any losses BPA incurs in selling that power back into the market for the 3rd month
- liquidated benefits entirely for BPA's account
- BPA has a one-time option to curtail smelter load at CFAC for up to 6 months in the interest of system stability

Please let us know your thoughts at your earliest convenience.

Thanks

Zach Mayer
Glencore Ltd.
Phone: (203) 328-2478

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Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Thursday, August 13, 2009 9:16 AM
To: 'Matthew Lucke/stamford/glen'
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Appreciate the response.

If you would prefer to participate and there is a different time next week that would work for a conf call, please let us know. Otherwise, we will proceed with 10am Wednesday Aug 19th with Zach. Thank you.

Mark

-----Original Message-----
From: Matthew Lucke/stamford/glen [mailto:matthew.lucke@glencore-us.com]
Sent: Thursday, August 13, 2009 8:52 AM
To: Symonds,Mark C - PTL-5
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Thanks for your email Mark. We will not be able to visit next week.
I am unable to join the call but Zach will make himself available at the time below.
Matt

"Symonds,Mark C - PTL-5" <mcsymonds@bpa.gov>

08/13/2009 10:19 AM

To "'Zach Mayer/stamford/glen'" <Zach.Mayer@glencore-us.com>

cc "'Matthew Lucke/stamford/glen'" <matthew.lucke@glencore-us.com>, "Clark,Harry W - PTL-5" <hwclark@bpa.gov>

Subject RE: update

Zach,
Appreciate your time on the phone yesterday. I have cc'd Matt on this because you said you would be out Thu and Fri of this week and wanted to check-in regarding the timeslot we discussed - Wednesday Aug 13th at 10am. I have it reserved on our calendars. Does this time work for you all? You had also mentioned the possibility of coming to Portland? If that something you are considering, then the earlier we know the better in order to proceed with Security clearances. Thanx

Mark

From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Tuesday, August 11, 2009 2:24 PM
To: Symonds,Mark C - PTL-5
Subject: update

Mark,

I'm still waiting to hear back from you guys with your thoughts on a 3-year deal, as promised from our discussion last Thursday (at which time it was said that CFAC should expect to hear back from BPA on Friday). Please confirm that these discussions are ongoing and that BPA still plans to respond to CFAC on this issue. It's frustrating for us to be portrayed as delaying this process, or not recognizing the urgency of the timing, when BPA takes extra days to respond to ideas or proposals, leaving CFAC only to wait.

Thanks

Zach Mayer
Glencore Ltd.
Phone: (203) 328-2478

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e-mail from your system.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Thursday, August 13, 2009 7:20 AM
To: 'Zach Mayer/stamford/glen'
Cc: 'Matthew Lucke/stamford/glen'; Clark,Harry W - PTL-5
Subject: RE: update

Zach,
Appreciate your time on the phone yesterday. I have cc'd Matt on this because you said you would be out Thu and Fri of this week and wanted to check-in regarding the timeslot we discussed - Wednesday Aug 13th at 10am. I have it reserved on our calendars. Does this time work for you all? You had also mentioned the possibility of coming to Portland? If that something you are considering, then the earlier we know the better in order to proceed with Security clearances. Thanx

Mark

From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Tuesday, August 11, 2009 2:24 PM
To: Symonds,Mark C - PTL-5
Subject: update

Mark,

I'm still waiting to hear back from you guys with your thoughts on a 3-year deal, as promised from our discussion last Thursday (at which time it was said that CFAC should expect to hear back from BPA on Friday). Please confirm that these discussions are ongoing and that BPA still plans to respond to CFAC on this issue. It's frustrating for us to be portrayed as delaying this process, or not recognizing the urgency of the timing, when BPA takes extra days to respond to ideas or proposals, leaving CFAC only to wait.

Thanks

Zach Mayer
Glencore Ltd.
Phone: (203) 328-2478

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Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Thursday, August 13, 2009 9:41 AM
To: 'Matthew Lucke/stamford/glen'
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Will do. Thanx

-----Original Message-----
From: Matthew Lucke/stamford/glen [mailto:matthew.lucke@glencore-us.com]
Sent: Thursday, August 13, 2009 9:20 AM
To: Symonds,Mark C - PTL-5
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Appreciate your flexibility Mark. I'm on the road all week and my schedule is pretty full. Let's see how the call goes with Zach and then we can have a follow up call/visit if necessary.

"Symonds,Mark C - PTL-5" <mcsymonds@bpa.gov>

08/13/2009 12:15 PM

To: "'Matthew Lucke/stamford/glen'" <matthew.lucke@glencore-us.com>

cc: "Clark,Harry W - PTL-5" <hwclark@bpa.gov>, "'Zach Mayer/stamford/glen'" <Zach.Mayer@glencore-us.com>

Subject: RE: update

Appreciate the response.

If you would prefer to participate and there is a different time next week that would work for a conf call, please let us know. Otherwise, we will proceed with 10am Wednesday Aug 19th with Zach. Thank you.

Mark

-----Original Message-----
From: Matthew Lucke/stamford/glen [mailto:matthew.lucke@glencore-us.com]
Sent: Thursday, August 13, 2009 8:52 AM
To: Symonds,Mark C - PTL-5
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Thanks for your email Mark. We will not be able to visit next week.

I am unable to join the call but Zach will make himself available at the time below.
Matt

"Symonds,Mark C - PTL-5" <mcsymonds@bpa.gov>

08/13/2009 10:19 AM

To "'Zach Mayer/stamford/glen'" <Zach.Mayer@glencore-us.com>

cc "'Matthew Lucke/stamford/glen'" <matthew.lucke@glencore-us.com>, "Clark,Harry W - PTL-5" <hwclark@bpa.gov>

Subject RE: update

Zach,
Appreciate your time on the phone yesterday. I have cc'd Matt on this because you said you would be out Thu and Fri of this week and wanted to check-in regarding the timeslot we discussed - Wednesday Aug 13th at 10am. I have it reserved on our calendars. Does this time work for you all? You had also mentioned the possibility of coming to Portland? If that something you are considering, then the earlier we know the better in order to proceed with Security clearances. Thanx

Mark

From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Tuesday, August 11, 2009 2:24 PM
To: Symonds,Mark C - PTL-5
Subject: update

Mark,

I'm still waiting to hear back from you guys with your thoughts on a 3-year deal, as promised from our discussion last Thursday (at which time it was said that CFAC should expect to hear back from BPA on Friday). Please confirm that these discussions are ongoing and that BPA still plans to respond to CFAC on this issue. It's frustrating for us to be portrayed as delaying this process, or not recognizing the urgency of the timing, when BPA takes extra days to respond to ideas or proposals, leaving CFAC only to wait.

Thanks

Zach Mayer
Glencore Ltd.
Phone: (203) 328-2478

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to this email inserting the word "misdirected" as the message and delete this
e-mail from your system.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, August 19, 2009 8:24 AM
To: 'Zach Mayer/stamford/glen'
Subject: This morning's call

Did you want us to call you at your desk at 10am Pacific or is there another number? Thanx

Mark

Symonds,Mark C - PTL-5

From: Clark,Harry W - PTL-5
Sent: Thursday, August 27, 2009 1:55 PM
To: 'Zach Mayer/stamford/glen'; 'Matthew Lucke (matthew.lucke@glencore-us.com)'
Cc: Burns,Allen L - D-7; Symonds,Mark C - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: CFAC/BPA Term Sheet

Attachments: DRAFT CFAC Term Sheet (new 4-year concept) - 082509b.doc

Zach/Matt
This is broken in three main parts for this afternoon's discussion: 1) CFAC proposed changes; 2) BPA's proposed terms; and 3) a draft confirmation providing service October 2009 through November 2009.
Harry

Changes/Additions Proposed by CFAC to BPA's FY 2010 – FY 2013 Service Proposal (August 25, 2009)

- CFAC has the option to request an increase in service from BPA anytime during the Term. BPA must respond within 15 days of such request whether it is able to make acquisitions within the Cost Cap to provide service.

- Following the date 135 days prior to the beginning of a fiscal year, if CFAC makes a request to increase service the Cost Cap, used to determine if acquisitions are available within the Cost Cap, will be reduced to the pro rata share of the Alcoa cost of service.

- Term increased from 4 years to 6 years.

- Cost Cap should be adjusted to reflect the fact that CFAC smelter provides more jobs per MWh than the Alcoa smelter.

- If Alcoa's Cost Cap is increased from $300 million to $330 million the CFAC Cost Cap will be increased pro rata.

- CFAC may pay a surcharge in the event the cost of acquisitions exceeds the Cost Cap and CFAC elects to pay the amount above the Cost Cap. [

BPA Draft Term Sheet Presented to CFAC August 25, 2009 (with one change)

DRAFT CFAC Term Sheet (new 4-y...

Draft Confirmation for Service October 2009 through November
As we discussed there is not sufficient time to complete the public process needed for a long-term agreement. BPA has developed a confirmation for service Oct through November to provide parties more time to complete the process for a long-term agreement. The confirmation will be sent prior to this afternoon's call.

Harry Clark - PTL-5
Bonneville Power Administration
Long Term Sales & Purchases
905 NE 11th Ave.
Portland, OR 97232
503-230-3662

hwclark@bpa.gov

DRAFT – Term Sheet
Block Power Sale to CFAC[1]

August 25, 2009

Basic Terms (subject to the Special Conditions below):

Product	Block, firm power, delivered on all hours.
Rate	Industrial Firm Power (IP) rate. Reserves provided consistent with law.
Amount	Up to 70 aMW from December 1, 2009 – September 30, 2010 Up to 140 aMW from October 1, 2010 – September 30, 2013
Term	October 1, 2009 – September 30, 2013

Special Conditions:

1. Cost Caps:

Contract Year	Dates	Cost Cap ($ per MWh)
Year 2	Oct. 1, 2010 – Sep. 30, 2011	$48.00
Year 3	Oct. 1, 2011 – Sep. 30, 2012	$58.00
Year 4	Oct. 1, 2012 – Sep. 30, 2013	$58.00

2. Required Notice: Beginning for FY 2012, BPA will provide notice to CFAC no less than 135 days prior to the beginning of each fiscal year whether BPA will be able to acquire power within the cost cap for the year. In the event BPA is able to acquire power within the cost cap CFAC shall respond within 15 days following notice from BPA of the amount of power CFAC elects to purchase, if any.

3. Choice of Credit Assurance: In the event CFAC elects to purchase from BPA CFAC shall either: 1) post a letter of credit equal the amount power CFAC is entitled for a 60 day period multiplied by the annual average IP rate; or 2) prepay monthly 3 business days prior to the start of delivery.

4. Employment Commitment: CFAC commits to employ the following annual average FTE for each of the following operating levels for each year of operation in the term of this contract:

Amount (aMW)	Job Commitment (FTE)
140	266
70	162
38	86

[1] This draft term sheet is for discussion purposes only, is subject to change, and is not binding on BPA or CFAC for any purposes.

Deleted: 8/27/2009
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Deleted: 11:39:09 AM

"FTE" shall mean full time weighted average annualized employment for both regular employees and on-site and local off-site contractors. The average annualized employment will be weighted by CFAC's actual operating level for each month of the Fiscal Year. If CFAC fails to meet the required FTE over the term of this contract, BPA may terminate this contract; provided however, such minimum requirement shall not apply during periods of curtailment or if notice of termination has been issued. BPA and CFAC will include provisions in the draft contract covering FTE commitments for operating levels beyond what is contemplated in the table above.

5. BPA intends to require any suppliers to include any costs of carbon taxes or charges, greenhouse gas mitigation costs or other similar environmental or regulatory costs in their offers of electricity. Furthermore,

    a. BPA will not make a plant specific acquisition from a coal-fired resource, and

    b. BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to above, that are imposed on the supplier after the date the acquisition contract is entered into.

6. In order to qualify for service beginning October 1, 2009, CFAC's load at the smelter must have been 70 aMW or more in any one year of the Subscription Period (Fiscal Year 2007 through Fiscal Year 2009).

7. CFAC agrees not to challenge the validity of the contract implementing this Term Sheet in the Ninth Circuit Court of Appeals, but reserves the right to intervene in any proceeding challenging the validity of the contract for the purpose of defending the validity of the contract or any portion thereof.

8. If CFAC elects to curtail, then:

    a. 60-day prior written notice is required, curtailment duration may be changed only with BPA's consent;
    b. BPA will serve CFAC's wheel turning load;
    c. CFAC shall pay damages to BPA, if any, equal to the amount by which the reasonable market value of the curtailed amount is less than the value of the power purchased to serve CFAC;
    d. provisions in Section 4 above shall be suspended for the duration of each curtailment;
    e. no compensation by BPA to CFAC; and
    f. curtailments of the Product may not be replaced by third-party power purchases.

9. If the cost to serve CFAC for the Term is forecasted to be less than 90% of the cost cap then BPA's intent would be to offer a 3-year extension to the Term.

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Symonds,Mark C - PTL-5

From: Clark,Harry W - PTL-5
Sent: Wednesday, July 22, 2009 5:12 PM
To: 'Zach Mayer/stamford/glen'; 'Matthew Lucke (matthew.lucke@glencore-us.com)'
Cc: Symonds,Mark C - PTL-5; Burns,Allen L - D-7; Wright,Jon D - LP-7; Runzler,Kurt W - LP-7
Subject: CFAC/BPA Term Sheets - July 22, 2009

Attachments: DRAFT CFAC Term Sheet -072009e.doc; DRAFT CFAC Term Sheet (2-years only) - 072309 (blackline).doc

Zach
Attached are term sheets we discussed or mentioned today.

- The first one is the 4 year with the redline from the July 20 draft accepted. The 6 month notice for curtailment has been revised and is now 4 months. There are several other edits for clarification and are not intended to change the meaning or understanding develop so far -- an example was move to be clearer what it refers to, section 2 made clearer what is meant, and other edits through the document.
- The second on is for 2 years, one potline, at IP with more flexibility.

DRAFT CFAC Term Sheet -072009e...

DRAFT CFAC Term Sheet (2-years...

I will be in at 0730, 0800 the latest and will call you when I get in. Thanks

Harry Clark - PTL-5
Bonneville Power Administration
Long Term Sales & Purchases
905 NE 11th Ave.
Portland, OR 97232
503-230-3662
hwclark@bpa.gov

DRAFT – Term Sheet
Block Power Sale to CFAC[1]

July 23, 2009

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Basic Terms (subject to the Special Conditions below):

Product	Block, firm power, delivered on all hours.
Rate	Industrial Firm Power (IP) rate. Reserves provided consistent with law.
Amount	70 aMW during Initial 2-year Period Up to 140 aMW during Subsequent 2-year Period
Term	October 1, 2009 – September 30, 2013 • October 1, 2009 – September 30, 2011 (Initial 2-year Period) • October 1, 2011 – September 30, 2013 (Subsequent 2-year Period).

Special Conditions:

1. BPA may provide CFAC notice of termination prior to October 1, 2010, if, in BPA's sole discretion, it is unable to purchase FBS replacement resources sufficient to serve the Amount for the Subsequent 2-Year Period for the lesser of (a) $64 per MWh, or (b) the pro rata share of the cost to BPA of purchases to serve two potlines of the Alcoa Intalco smelter load (for example, if the annual BPA cost to serve two potlines at the Alcoa Intalco smelter (320 aMW) was $35 million then the maximum annual cost for service to CFAC would be $15 million ($35m * 140 / 320 = $15m). The cost cap of $64 per MWh represents a forecasted net cost of less than $60 million for the Subsequent 2-year Period (defined as cost of purchases to serve CFAC's smelter load less expected IP revenue from the same).

2. In the event that wholesale power market prices for power purchased by BPA for the Initial 2-year Period are sufficient to serve CFAC with 140 aMW at a cost less than or equal to $48 per MWh based on a then current forecast of market prices, then commencing no earlier than the first day of the seventh month of the contract term BPA will increase the Amount ("Increased Amount") up to 140 aMW for the balance of the Initial 2-year Period. CFAC must provide BPA with 90 days notice of the effective date of its request that BPA increase the Amount. In the event the Amount will be so increased, then BPA shall have the option to serve any increased CFAC load during the 90-days prior to the effective date due to the ramp-up leading to the Increased Amount ("Ramp-Up Load"). BPA will provide notice to CFAC promptly if it wishes to exercise this option; provided however, if BPA decides not to exercise this option the restrictions

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Deleted: <#> For example, if the annual BPA cost to serve two potlines at the Alcoa Intalco smelter (320 aMW) was $35 million then the maximum annual cost for service to CFAC would be $15 million ($35m * 140 / 320 = $15m).¶

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[1] This draft term sheet is for discussion purposes only, is subject to change, and is not binding on BPA or CFAC for any purposes.

in Sections 10(c) and 11(e) will be suspended and CFAC may purchase such Ramp-Up Load from the market.

The cost cap of $48 per MWh represents a forecasted net cost of less than $36 million for the Initial 2-year Period (defined as cost of purchases to serve CFAC's smelter load less expected IP revenue from the same).

If Alcoa notifies BPA of a curtailment under its BPA power sales contract, then during the duration of such Alcoa curtailment the cost caps applicable to CFAC will be increased correspondingly.

3. Upon CFAC's request BPA will conduct a public process between October 1, 2012, and September 30, 2013, to determine the feasibility of entering into a follow-on contract with CFAC beginning October 1, 2013. In addition to examining the terms of service for any such follow-on contract, the public process will include a study analyzing the impacts on the regional economy associated with such a follow-on contract. This provision is not intended and shall not be construed as requiring BPA to offer any such follow-on contract, irrespective of the conclusions or findings of any public process undertaken.

4. Any costs of carbon taxes or charges, greenhouse gas mitigation costs or other similar environmental or regulatory costs will be included in the net cost calculation, and, as set forth below, BPA intends to require any suppliers to include such costs (excluding costs directly imposed on BPA explained in Section 5, below) in their offers of electricity.

   The cost caps in Sections 1 and 2 above represent the maximum amount BPA will pay for average annual blocks of power to support sales to CFAC, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs, and costs incurred by BPA in connection with any credit requirements. Cost caps represent the weighted average of acquisitions made by BPA to support sales to CFAC over all Fiscal Years comprising the particular delivery period. Furthermore:

   a. BPA will not make a plant specific acquisition from a coal-fired resource, and

   b. BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to above, that are imposed on the supplier after the date the acquisition contract is entered into.

5. In the event costs associated with either renewable energy portfolio standard obligations, if any, or costs imposed on BPA directly (in contrast with costs imposed upon suppliers to BPA) for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges, if any, are not recovered by BPA through rates but are to be paid by CFAC under the terms of the contract, CFAC shall have the option to terminate pursuant to section 12 below.

6. CFAC commits to employ an average of 266 full time equivalent employees (FTEs) for two potlines and an average of 162 FTE for one potline through the term of this contract.

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Deleted: In the event BPA's determination indicates CFAC's Amount will be increased and CFAC desires to increase such Amount during 3-month request period, BPA shall have the option to serve such increase in the Amount, and such right will not be unreasonable withheld by BPA, provided however, if BPA decides not to exercise this option the restrictions in Sections 10(c) and 11(e) will be suspended and CFAC may purchase such increase in the Amount during the 3-month request period from a third-party(ies).
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"FTE" shall mean full time weighted average annualized employment for both regular employees and on-site and local off-site contractors.[2] The average annualized employment will be weighted by CFAC's non-curtailed operating level for the months in each Fiscal Year. If CFAC fails to meet the required FTE on a rolling two Fiscal Years basis, BPA may terminate the contract; provided however, such minimum requirement shall not apply during periods of curtailment or if notice of termination has been issued. BPA and CFAC will include provisions in the draft contract covering FTE commitments for operating levels involving partial potline operations.

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7. In order to qualify for service beginning October 1, 2009, CFAC's load at the smelter must have been 70 aMW or more in any one year of the Subscription Period (Fiscal Year 2007 through Fiscal Year 2009).

8. Following a termination under Sections 12 or 13 below, unless triggered under Section 5 above, CFAC agrees that it will not request power service as a Direct Service Industry from BPA.

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9. CFAC agrees not to challenge the validity of the contract implementing this Term Sheet in the Ninth Circuit Court of Appeals, but reserves the right to intervene in any proceeding challenging the validity of the contract for the purpose of defending the validity of the contract or any portion thereof.

10. **October 1, 2009 through March 31, 2010 (Initial 6-Months):**
By the earlier date of 5 business days after the execution date of the contract implementing this Term Sheet or September 23, 2009, CFAC must provide BPA notice of the monthly Amounts for the first six months of the Initial 2-Year Period:
    a) no take-or-pay obligation on curtailed amounts included in this initial notice and no compensation by BPA to CFAC for such curtailment;
    b) commitments in Section 6 above shall be suspended for the duration of such curtailment;
    c) curtailments of the Product may not be replaced by third-party power purchases; and
    d) failure of appropriately noticed curtailed deliveries shall result in take-or-pay.

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CFAC may not increase such Amounts during the Initial 6-Months of the contract term from those initially established by notice but may curtail on a 2 month notice.

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[2] The average annualized employment will be weighted by CFAC's non-curtailed operating level for the months in each Fiscal Year. As an example, if CFAC:
a) employed 85 full-time workers in the first 6-months of FY10 and their operating level was 37.5 aMW;
b) employed 162 full-time workers in the next 4-months of FY10 and their operating level was 70 aMW;
c) did not employ any full-time workers for the final 2-months in FY10 or any month of FY11 due to an appropriately noticed 14-month curtailment; and
d) employed an average of 263 full-time workers for all months in FY12 and their average operating level was 140aMW,

then the minimum required FTE on a rolling two Fiscal Year basis would be 182 and CFAC would have met the test with 189 FTE.

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11. April 1, 2010 through September 30, 2013

If CFAC elects to curtail, then:

a) a 4-month prior written notice is required, curtailment duration may be changed only with BPA's consent;
b) take-or-pay applies to increased amounts above 70 aMW that is subsequently curtailed and there is no compensation by BPA to CFAC;
c) BPA will serve CFAC's wheel turning load;
d) commitments in Section 6 above shall be suspended for the duration of each curtailment;
e) curtailments of the Product may not be replaced by third-party power purchases; and
f) failure of appropriately noticed curtailed deliveries shall result in take-or-pay.

12. CFAC may terminate the contract upon 6 months prior written notice, and CFAC may switch from a curtailment to a termination at any time during a curtailment by providing notice of termination.

13. In the event CFAC fails to operate at a level equal to or greater than one potline (70 aMW) for at least 6 months during the Term, then BPA shall have no obligation to complete the public process specified in Section 3. In addition, on the first day of the month that there are insufficient month(s) remaining in the Term for CFAC to meet the 6 month requirement specified in this Section 13, then the contract will terminate.

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DRAFT – Term Sheet
Block Power Sale to CFAC[1]

July 23, 2009

Basic Terms (subject to the Special Conditions below):

Product	Block, firm power, delivered on all hours.
Rate	Industrial Firm Power (IP) rate. Reserves provided consistent with law.
Amount	70 aMW
Term	October 1, 2009 – September 30, 2011

Special Conditions:

1. BPA intends to require any suppliers to include any costs of carbon taxes or charges, greenhouse gas mitigation costs or other similar environmental or regulatory costs in their offers of electricity. Furthermore,

    a. BPA will not make a plant specific acquisition from a coal-fired resource, and

    b. BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to above, that are imposed on the supplier after the date the acquisition contract is entered into.

2. CFAC commits to employ an average of 162 FTE for one potline through the term of this contract. "FTE" shall mean full time weighted average annualized employment for both regular employees and on-site and local off-site contractors.[2] The average annualized employment will be weighted by CFAC's actual operating level for each month of the Fiscal Year. If CFAC fails to meet the required FTE over the term of this contract, BPA may terminate this contract; provided however, such minimum requirement shall not apply during periods of curtailment or if notice of termination has been issued. BPA and CFAC will include provisions in the draft contract covering FTE commitments for operating levels involving partial potline operations.

---

[1] This draft term sheet is for discussion purposes only, is subject to change, and is not binding on BPA or CFAC for any purposes.

[2] The average annualized employment will be weighted by CFAC's non-curtailed operating level for the months in each Fiscal Year. As an example, if CFAC:

a) employed 87 full-time workers in the first 6-months of FY10 and their operating level was 37.5 aMW;
b) employed 162 full-time workers in the next 4-months of FY10 and their operating level was 70 aMW; and
c) did not employ any full-time workers and their operating level was 0 aMW for the final 2-months in FY10 and all months of FY11 due to an appropriately noticed 14-month curtailment,

then the minimum required FTE over the term would be 117 and CFAC would have met the test with 117 FTE.

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3. In order to qualify for service beginning October 1, 2009, CFAC's load at the smelter must have been 70 aMW or more in any one year of the Subscription Period (Fiscal Year 2007 through Fiscal Year 2009).

4. CFAC agrees not to challenge the validity of the contract implementing this Term Sheet in the Ninth Circuit Court of Appeals, but reserves the right to intervene in any proceeding challenging the validity of the contract for the purpose of defending the validity of the contract or any portion thereof.

5. If CFAC elects to curtail, then:
   a) a 60-day prior written notice is required, curtailment duration may be changed only with BPA's consent;
   b) no take-or-pay obligation on appropriately noticed curtailed amounts and no compensation by BPA to CFAC;
   c) BPA will serve CFAC's wheel turning load;
   d) provisions in Section 2 above shall be suspended for the duration of each curtailment;
   e) curtailments of the Product may not be replaced by third-party power purchases; and
   f) failure of appropriately noticed curtailed amounts shall result in CFAC paying damages to BPA, if any, equal to the amount by which the reasonable market value of the curtailed amount is less than the value of the curtailed amount at the IP rate.

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Symonds,Mark C - PTL-5

From: Miller,Mark E - PTF-5
Sent: Wednesday, February 25, 2009 8:41 AM
To: 'Zach Mayer/stamford/glen'
Cc: Symonds,Mark C - PTL-5; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: DSI CFAC Bridge Agreement 2-13-09 (2).doc

Attachments: DSI CFAC Bridge Agreement 2-13-09 (2).doc

DSI CFAC Bridge Agreement 2-13...

This should be the final draft. I have to check in with a few folks and we could potentially need a couple of real time tweaks that I'm not aware of right now, of which I will check with you before doing.
I think the only changes to the doc from what was posted are in Exh E and F. The Monetary Benefit Limits changed because we were using the wrong number of hours in March and Feb. Daylight savings time for March and I'm not sure why Feb was off.

DRAFT

Amendment No. 1
Contract No. 06PB-11745

AMENDMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

COLUMBIA FALLS ALUMINUM COMPANY, LLC

and

FLATHEAD ELECTRIC COOPERATIVE, INC

This AMENDMENT to the BLOCK POWER SALES AGREEMENT is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), COLUMBIA FALLS ALUMINUM COMPANY, LLC (CFAC), and FLATHEAD ELECTRIC COOPERATIVE, INC (Flathead). CFAC is a corporation organized under the laws of the State of Delaware. Flathead is a nonprofit corporation organized under the laws of the State of Montana.

This Amendment No. 1 (Amendment) suspends and replaces for the period March 1, 2009, through September 30, 2009 (Amendment Period) Block Power Sales Agreement No. 06PB-11745 (Agreement) by and between BPA, CFAC, and Flathead. Pursuant to this Amendment, Flathead's obligations under the Agreement are excused during the Amendment Period, and no new or substitute obligations are imposed on or undertaken by Flathead pursuant to this Amendment a) during the Amendment Period, or b) under the Agreement for any period prior to or after the Amendment Period.

On December 17, 2008, the United States Court of Appeals for the Ninth Circuit (Court) filed its opinion in *Pacific Northwest Generating Cooperative, et al., v. Bonneville Power Administration* (December Opinion) that held, among other things, that certain provisions of the Agreement are invalid. As a consequence of the December Opinion, BPA halted Monetary Benefit payments under the Agreement.

This Amendment provides for a replacement monetized power sale to CFAC during the Amendment Period and for the months of December 2008, January 2009, and February 2009, in a manner and amount that is consistent with the December Opinion.

In reliance on the payments to be made to it by BPA under the Agreement, CFAC acquired power in the wholesale power market to serve its industrial load during the full term of the Agreement. The average cost of CFAC's acquisitions exceed BPA's currently forecasted wholesale market price for the Amendment Period. BPA understands the December

Opinion to prohibit payments by BPA to CFAC that would exceed the difference between the Industrial Firm Power (IP) rate, and BPA's forecasted wholesale market price.

In lieu of delivering firm power to CFAC at the IP rate during the Amendment Period, BPA will monetize the value of a physically delivered firm power sale at the IP rate, with such value calculated as the difference between the IP rate applicable to the Amendment Period and BPA's forecasted wholesale market price for the Amendment Period. BPA's decision to monetize this transaction is based, in part, on a desire to avoid the risks associated with making the relatively large wholesale market power purchases BPA would be required to undertake, in a short period of time, to serve CFAC's currently operating load, together with the uncertainty that CFAC will continue operating at existing levels for the duration of the Amendment Period, given current uncertain economic conditions. Monetization will allow BPA to provide benefits to CFAC (and obligate BPA to incur expenditures) only in the event CFAC operates its smelter facility, thereby protecting BPA from making wholesale market purchases that could be both unnecessary in the event CFAC does not operate, and more expensive than anticipated if actual market prices exceed BPA's current market forecast.

This transaction will be structured as a simultaneous purchase and sale, whereby BPA will be deemed to purchase power from CFAC during the Amendment Period, in an amount equal to CFAC's then operating load, at prices equivalent to BPA's currently forecasted wholesale market price for the Amendment Period, and to simultaneously sell back such power to CFAC at the IP rate. As noted, in lieu of actual power deliveries by either party, the transaction will be monetized.

To summarize, this Amendment adjusts the rate that CFAC shall pay for power under the Agreement during the Amendment Period to the IP rate, and adjusts the payment made under the monetized transaction to an amount equal to the difference between the IP rate and BPA's forecasted market price for the Amendment Period, which represents the forecasted price that BPA would otherwise pay to acquire power if it were to physically serve CFAC.

In addition, this Amendment provides for a recalculation (and reduction) of benefits that would have been paid to CFAC for smelter operation in December 2008, January 2009, and February 2009, so that such payments will conform with the December Opinion. BPA has calculated a Monetary Benefit payment for each of these three months based on 1) actual prices for purchases made by BPA for the month of December, and for January and February BPA's forecasted wholesale market price for January 2009 through September 2009, 2) the IP rate in effect for each month, and 3) CFAC's operating level in each month. Payments calculated for these three months will not be made immediately, but shall be made by BPA in four equal monthly payments during the April through July 2009 period, but only if CFAC's Total Plant Load, preceding a month in which a payment is due is either equal to or greater than 37.5 aMW, and CFAC is maintaining a minuimum employee level equal to 85 full-time employees .

In addition, the Parties have agreed to modify the provisions regarding the determination of unused benefits under the Agreement to take into account CFAC's minimum operating level through the Amendment Period, and such provisions are intended to survive the

expiration of the Amendment Period. This modification is designed to encourage operation of CFAC's facilities through the period of increased power production due to fisheries operations on the Federal Columbia River Power System.

This Amendment allows BPA to provide service to CFAC while it fully considers the December Opinion, including treatment of the payments made to CFAC under the Agreement prior to the Court's ruling, and the ramifications for service to CFAC during the final two years of the Agreement (October 1, 2009, through September 30, 2011) following the termination of this Amendment. This Amendment is not intended, and shall not be interpreted, to establish any precedent or to waive any rights or arguments by BPA, CFAC, or Flathead regarding the legal rights and obligations of any or all of them under the December Opinion, including but not limited to the manner or amount of service provided by BPA to CFAC either prior to the December Opinion or after the expiration of this Amendment. The provisions are intended to provide temporary service to CFAC on terms that BPA, CFAC and Flathead believe adhere to the Court's holdings regarding BPA's authority, while affording the Parties a period of time to negotiate a long term replacement to the Agreement that also is consistent with the December Opinion.

The Parties agree:

1. **EFFECTIVE DATE**
This Amendment shall take effect on March 1, 2009, following execution by the Parties (Effective Date). This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

2. **AMENDMENT OF AGREEMENT**
Each provision of the Agreement is incorporated by reference into this Amendment, except the Parties hereby amend such provisions as follows:

(a) Section 2 of the Agreement (Definitions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following; except that sections 2(j) and 2(n) shall be used for purposes of establishing Unused Benefit Amounts under the Agreement for the period October 1, 2009 through September 30, 2011 when calculating benefits during the period from December 1, 2008 through September 30, 2009:

"2. **DEFINITIONS**
Capitalized terms in this Agreement shall have the meanings defined below, in the exhibits or in context. All other capitalized terms and acronyms are defined in BPA's applicable Wholesale Power Rate Schedule(s), including the General Rate Schedule Provisions (GRSPs).

(a) "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principle place of business. The relevant Party, in each

instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

(b) "Contract Year" or "CY" means the period that begins each October 1 and which ends the following September 30. For instance, CY 2007 begins October 1, 2006, and continues through September 30, 2007.

(c) "Demand Entitlement" means during the period when this Agreement operates as a physical Industrial Firm Power sale, the megawatt (MW) amount each hour that CFAC shall purchase from BPA, as specified in Exhibit E.

(d) "Equivalent IP" means the applicable average Industrial Firm Power Rate at 100 percent load factor, as determined pursuant to Exhibit F.

(e) "Escrow Account" means the specific account established pursuant to the provisions in section 9(b) below for receipt of funds from BPA and transfer of funds by Flathead to CFAC.

(f) "Forecast Market Price" means the forecast market price for power at 100 percent load factor for the period from January 1, 2009 though September 30, 2009, as specified in Exhibit F.

(g) "FY 07-09 Rate Period" means the wholesale power rate period that begins on October 1, 2006, and continues through September 30, 2009.

(h) "FY 10-11 Rate Period" means the wholesale power rate period that begins on October 1, 2009, and continues through September 30, 2011.

(i) "Industrial Firm Power" means electric power that PBL makes continuously available to CFAC under this Amendment except during periods when BPA exercises its interruption rights pursuant to section 4(i) below.

(j) "Interim Maximum MB Monthly Payment" means the Demand Entitlement times the hours in the month times the MB Rate.

(k) "MB Monthly Payment" means the monthly Monetary Benefit payment that is available during each month, as calculated in section 6(c)(2) below.

(l) "MB Rate" means the rate in dollars per megawatt-hour ($/MWh) used to calculate MB Monthly Payments pursuant to

section 6(c) below. The MB Rate is determined by subtracting Equivalent IP from Forecast Market Price.

(m) "Maximum Allocation" means, for the purpose of determining MB Monthly Payments, the maximum average megawatt (aMW) amount that may be used to determine a MB Monthly Payment. The Maximum Allocation is shown in Exhibit E.

(n) "Maximum MB Monthly Payment" means the Interim Maximum MB Monthly Payment.

(o) "Minimum Allocation" means, for the purpose of determining MB Monthly Payments, the minimum aMW amount that may be used to determine a MB Monthly Payment.

(p) "Monetary Benefits" means monetary payments made by BPA to CFAC under this Amendment, as determined pursuant to the provisions in section 6 below.

(q) "Monthly Plant Load" means a monthly aMW amount equal to the Total Plant Load for each month divided by the number of hours in each such month.

(r) "Monthly Purchase Deficiency" means the monthly amount(s) of Industrial Firm Power not purchased due to a curtailment, as such amount(s) may be adjusted pursuant to section 4(d)(1) below.

(s) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501.

(t) "Other DSIs" means aluminum smelters other than CFAC that have executed an agreement substantially in the form of this Agreement.

(u) "Points of Measurement" means the interconnection points between BPA, CFAC, and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.

(v) "Point of Receipt" means the points of interconnection on the transmission provider's transmission system where Industrial Firm Power shall be made available by PBL to CFAC's transmission provider.

(w) "Power Business Line" or "PBL" means that portion of the BPA organization or its successor that is responsible for the management and sale of BPA's Federal power.

(x) "Region" means the definition established for "Region" in the Northwest Power Act.

(y) "Total Plant Load" means the amount of electric energy in megawatt-hours (MWh) consumed during each month at CFAC's production facilities. A detailed description of CFAC's production facilities, including station service requirements and metering equipment, is described in Exhibit B.

(z) "Transmission Business Line" or "TBL" means that portion of the BPA organization or its successor that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

(aa) "Unused Benefit Amount" or "UBA" means either: (1) an aMW amount determined pursuant to section 7(a) during any period in which Monetary Benefits are provided, or (2) a MW amount determined pursuant to section 7(b) during any period in which this Agreement operates as a physical Industrial Firm Power sale."

(b) Section 3 of the Agreement (Applicable Rates) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"3. **APPLICABLE RATES**

Purchases by CFAC under this Amendment are subject to the Industrial Firm Power (IP) rate schedule, IP-07R, or its successor, and the General Rate Schedule Provisions (GRSP). Billing determinants for any purchases will be included in the rate schedule. Purchases under the IP rate schedule are established as follows:

If this Amendment operates as a physically delivered Industrial Firm Power sale pursuant to section 4 below, then section 4(a) below and the Industrial Firm Power rate schedule apply. If the Industrial Firm Power sale is monetized, then the provisions of section 6 below shall establish the applicable Equivalent IP rate."

(c) Section 4 of the Agreement (Power Sales Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"4. **Power Sales Provisions**

This section 4 only applies when this Agreement operates as a physically delivered Industrial Firm Power sale. In this event, the Monetary Benefit provisions in section 6 shall not apply. All physically delivered Industrial Firm Power provided by PBL under this section 4 is solely for service to Total Plant Load.

(a) **Power Sale by PBL to CFAC**

(1) **Hourly Amounts**

PBL shall make available and CFAC shall purchase the Demand Entitlement each hour. The Demand Entitlement is specified in Exhibit E.

(2) **HLH and LLH Energy Entitlements and Demand Entitlement**

The Demand Entitlement multiplied by: (A) the number of HLH, and (B) the number of LLH in the applicable month, establishes CFAC's HLH and LLH Energy Entitlements with respect to this Amendment.

(b) **Unauthorized Increase Charge**

CFAC shall not intentionally schedule in excess of the amount specified in section 4(a)(1) above. However, in the event that an excess amount is scheduled due to error, then such amounts taken by CFAC at the Points of Receipt in excess of the amounts specified in section 4(a) above shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PBL. Power that has been provided for energy imbalance service pursuant to an agreement between TBL and CFAC shall not be subject to an Unauthorized Increase Charge for Demand and Energy under this Agreement. Any Unauthorized Increase Charge shall be billed by BPA in accordance with the billing procedures described in section 9(a) below. Any Industrial Firm Power used by CFAC for any other purpose shall be subject to the Unauthorized Increase Charge.

(c) **Curtailment**

If CFAC curtails Total Plant Load in whole or in part, then CFAC may request take-or-pay mitigation for purchases under section 4(a) above pursuant to section 4(d) below.

(d) **Take-or-Pay Mitigation for Curtailments**

If CFAC chooses to curtail its purchase obligation, then the following terms and conditions shall apply:

(1) **Notice of Curtailment**

CFAC shall provide written notice to PBL at least three (3) Business

Days in advance of a curtailment. Such notice shall specify the monthly amounts of power to be curtailed and the duration of the curtailment. The election to curtail such power, and the amount and duration of such curtailment, may not be changed without PBL's consent. PBL's sale shall be reduced by the amount of power curtailed. The Monthly Purchase Deficiency will be reduced by any reduction to the Demand Entitlement pursuant to section 7(b)(2) below.

(2) **Calculation of Damages**

CFAC shall pay directly to BPA damages for each Monthly Purchase Deficiency equal to the amount by which the reasonable market value of such Monthly Purchase Deficiency is less than the price of the applicable rate specified in Exhibit A. For purposes of calculating damages under this section 4(d)(2), the Monthly Purchase Deficiency(s) shall be reduced by any reduction of Demand Entitlement under section 7(b)(3), effective on the date any such reduction becomes effective. No later than 60 days following September 30, 2009, PBL shall, for each month of the previous Contract Year, calculate the reasonable market value for each Monthly Purchase Deficiency during such period. Reasonable market value and calculation of damages shall be determined as follows.

(A) No later than 3 Business Days prior to the commencement of a curtailment under this section 4(d), CFAC may obtain one or more transactable quotes for all or a portion of such power from a third party. The transactable quote may be for any length of time and curtailment amount. Each quote shall be deemed equal to the reasonable market value of such power to which the quote applies for the purpose of calculating damages under this section 4(d)(2). BPA may, but shall not be obligated to, resell the curtailed power to the third party, retain the power, or dispose of the power as it chooses. CFAC shall allow PBL at least 4 hours during normal business hours to decide whether or not to transact under such quote.

(B) BPA shall determine, by any reasonable method, the reasonable market value of the portion of each Monthly Purchase Deficiency for which CFAC has not obtained a transactable quote. The reasonable market value shall be adjusted to reflect volume and BPA transmission costs associated with remarketing each such portion of the Monthly Purchase Deficiency, regardless of whether each such portion is actually remarketed.

(C) BPA shall bill CFAC and CFAC shall directly pay BPA damages for such period equal to the amount by which the sum of the product of (1) each Monthly Purchase Deficiency and

(2) the applicable rate specified in Exhibit A that BPA would have charged each month if the power had been taken under this Agreement, exceeds the sum of the product of (1) each Monthly Purchase Deficiency and (2) the reasonable market value in each month. Amounts for damages under section 4(d)(2)(A) and section 4(d)(2)(B) may only be netted within a Contract Year. BPA is not obligated to pay CFAC the difference when the reasonable market value exceeds the applicable Industrial Firm Power rate.

It is expressly agreed to by the Parties that BPA shall not be obligated to enter into replacement transactions to determine or collect damages under this section 4(d)(2).

It is also expressly agreed that BPA will apply its then-current applicable credit policies if damages are due under this section 4(d)(2), and such policies may include an obligation to prepay for damages.

(e) **Scheduling**

All Industrial Firm Power transactions under this Agreement shall be scheduled and implemented consistent with Exhibit C, BPA Power Business Line Scheduling Provisions. The procedures for scheduling described in Exhibit C are the standard utility procedures followed by BPA for power transactions between PBL and other utilities or entities in the Region that require scheduling.

(f) **Delivery**

(1) **Transmission Service for Industrial Firm Power**

This Agreement does not provide transmission services for, or include the delivery of, Industrial Firm Power by BPA to CFAC. CFAC shall be responsible for executing one or more wheeling agreements with a transmission supplier for the delivery of Industrial Firm Power (Wheeling Agreement). PBL and CFAC agree to take such actions as may be necessary to facilitate the delivery of Industrial Firm Power to CFAC, consistent with the terms, notice, and the time limits contained in the Wheeling Agreement.

(2) **Liability for Delivery**

CFAC waives any claims against PBL arising under this Amendment for nondelivery of power to any points beyond the applicable Points of Receipt. PBL shall not be liable for any third-party claims related to the delivery of power after it leaves the Points of Receipt. In no event shall any Party be liable under this Agreement to any other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership. These limitations on liability apply

regardless of whether or not this Amendment provides for transfer service.

(3) **Points of Receipt**
PBL shall make Industrial Firm Power available to CFAC under this Amendment at Points of Receipt solely for the purpose of CFAC scheduling transmission to points of delivery for service to CFAC's Total Plant Load. CFAC shall schedule, if scheduling is necessary, such Industrial Firm Power solely for use by its Total Plant Load. PBL, for purposes of scheduling transmission for delivery under this Agreement, shall specify Points of Receipt in a written notice to CFAC no later than March 1, 2009.

If required by the Wheeling Agreement, when PBL designates such Points of Receipt, PBL shall provide capacity amounts for transmission under the Wheeling Agreement associated with the initial Points of Receipt that can be accepted as firm Points of Receipt under CFAC's Wheeling Agreement (except in the event that all Points of Receipt on the Federal Columbia River Power System (FCRPS) would be considered nonfirm). The sum of capacity amounts requested by PBL shall not exceed the amount of Industrial Firm Power specified in sections 4(a) above. Such Points of Receipt and their capacity amounts may only be changed through mutual agreement. However, at any time PBL may request the use of a nonfirm Point of Receipt to provide Industrial Firm Power to CFAC, but notwithstanding section 4(f)(2) above, PBL shall reimburse CFAC for any additional costs or production losses incurred by CFAC due to its compliance with such request.

(4) **Transmission Losses**
PBL shall provide CFAC the transmission losses between the Points of Receipt and CFAC's points of delivery for Industrial Firm Power, at no additional charge. Such losses shall be provided at Points of Receipt as established under section 4(f)(3) above, and under the terms and conditions as defined in the transmission provider's tariff.

(g) **Measurement**

(1) Amounts of Industrial Firm Power taken are deemed equal to the amount scheduled by CFAC under section 4(e) above or an amount of power as measured at Points of Measurement, as appropriate.

(2) CFAC shall provide reasonable notice to PBL prior to changing control areas.

(h) **Interruption Rights**
PBL shall have a one-time right during the term of this Amendment to interrupt deliveries of a portion of the Industrial Firm Power

hereunder pursuant to the following provisions. PBL may interrupt a portion of Industrial Firm Power deliveries if PBL anticipates, in its sole and exclusive discretion, that average forward market prices for a flat block of power will exceed $125/MWh during an interruption period to be specified by PBL in a written notice. In this event, PBL shall consult with CFAC prior to providing such written notice. If PBL decides to interrupt, then it will provide 30 days advance written notice to CFAC that specifies the amount of Industrial Firm Power to be interrupted and the associated interruption period; *provided, however,* that a minimum of 6 aMW will not be subject to any such interruption. Unless the Parties mutually agree otherwise, such interruption period shall extend for a minimum of 6 months and for a maximum of the duration of this Amendment, regardless of the level of actual market prices during an interruption period. In the event of an interruption, BPA shall pay CFAC, $24/MWh for amounts interrupted. Payments shall be made pursuant to section 9(b) below. Payments to CFAC under this section 4(h) shall be used first by CFAC to compensate CFAC's employees employed at the time of an interruption under this section 4(h) by providing each such employee, at the election of CFAC, either (1) the opportunity to work a regular work week (40 hours) at regular wage and benefit rates, or (2) special supplemental benefits such that the employee's effective after-tax income (including any available unemployment income) will be equal to what the employee's income would have been working a regular work week, plus all benefits the employee would have received, had the employee been working a regular 40-hour work week. BPA shall have the right to conduct an audit to verify compliance with this section 4(h). If there is an interruption under this section 4(h), then the portion of Demand Entitlement interrupted shall be treated as if taken for purposes of section 7(b)(1)(A) and shall not be subject to the take-or-pay provisions in sections 4(a).

(i) **Modification of Flathead's Obligations**

The Parties agree Flathead shall have no obligation to purchase any power from BPA under this Amendment. The Parties agree Flathead shall have no obligation to make available to CFAC any power under this Amendment."

(d) Section 5 of the Agreement (BPA and CFAC Options) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"5. **BPA Monetary Benefit Option**

BPA has determined that, during the period of this Amendment, in order to minimize the cost risks of supplying Industrial Firm Power, the Parties will monetize the physically delivered Industrial Firm Power sale obligation. As such, BPA will make any MB Monthly

Payments during the period of this Amendment, subject to the provisions of section 6 below."

(e) Section 6 of the Agreement (Monetary Benefit Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"6. **MONETARY BENEFIT PROVISIONS**

This section 6 only applies when the physically delivered Industrial Firm Power sale is monetized. The provisions in section 4 shall not apply to Monetary Benefits.

(a) **Determination of Forecast Market Price and Equivalent IP**

PBL has determined the Forecast Market Price and Equivalent IP for the period of this Amendment as specified in Exhibit F.

(b) **Determination of Monthly Plant Load**

No later than five (5) Business Days following the end of each month, PBL shall determine the Monthly Plant Load for each such month.

(c) **Determination of MB Monthly Payments**

The determinations described in Exhibit F and the following procedure as described in section 6(c)(1) through section 6(c)(3) shall be used to determine the MB Monthly Payment for each month.

(1) The Minimum Allocation shall not affect payment of the MB Monthly Payment.

(2) The MB Monthly Payment for each month shall be the amount determined by the following equation:

MB Monthly Payment = ((Monthly Plant Load) x (number of hours in the month)) x (MB Rate).

(3) Notwithstanding anything to the contrary in this Amendment, in no case shall the Monetary Benefits accrued during the period from December 1, 2008 through September 30, 2009, exceed the Monetary Benefit Limit specified in Exhibit E of this Amendment.

(d) **Recalculated Monetary Benefits Payment**

BPA shall pay CFAC a Monetary Benefit equal to the Monthly Plant Load times the number of hours in the month times $14.26/MWh to monetize deliveries of Industrial Firm Power for the Monthly Plant Load during the month of December

2008 and $15.35/MWh to monetize deliveries of Industrial Firm Power for the Monthly Plant Load during the months of January and February 2009. The payment of the sum of the Monetary Benefit amounts calculated in this section 6(d) shall be made by BPA in four equal monthly payments during the April through July 2009 period, provided, however, that CFAC's Total Plant Load, preceding a month in which a payment is due, must be either equal to or greater than 37.5 aMW, and provided, further, that CFAC must have maintained a minimum of 85 full-time employees at the CFAC facility. In the event CFAC fails a) to maintain a monthly Total Plant Load either equal to or greater than 37.5 aMW, and b) to maintain a minuimum employee level equal to 85 full-time employees, during any month from the Effective Date through June 2009, then BPA may suspend or terminate this Amendment.

(f) Section 7(a)(2) and section 7(a)(3) of the Agreement shall be replaced by the following when calculating benefits accessed under section 7(a)(3) for the period from December 1, 2008, through September 30, 2009 and such benefits accessed, or deemed to be accessed, shall be used for purposes of establishing Unused Benefit Amounts under the Agreement for the period October 1, 2009, through September 30, 2011:

"(2) In order to retain its Maximum Allocation, CFAC must, for at least one month during the preceding 12 months, have received the Maximum MB Monthly Payment. If this condition is not satisfied, then the Maximum Allocation shall be reduced; provided however, if the Monthly Plant Load is either equal to or greater than 37.5 aMW for all months through June 30, 2009, CFAC shall be deemed to have received the Maximum MB Monthly Payment for each month of the period from January 1, 2009, through September 30, 2009.

(3) CFAC shall retain the highest monthly percentage of the available benefits that it accessed during the previous 12 months. As such, CFAC's Maximum Allocation shall be reduced by the percentage of the available benefits, rounded to the nearest aMW, that were not accessed during the month that set the highest monthly percentage of benefits accessed. The amount of aMW from this calculation becomes an Unused Benefit Amount or UBA."

(g) Section 9(b) of the Agreement (Billing and Payment When Monetary Benefit Payments Provided) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"(b) **Payment of Interim Monetary Benefits Provided**

Within five Business Days after the end of each month, beginning April 1, 2009, BPA will review CFAC's metered load measurements to determine the Monthly Plant Load for the month.

Within eight Business Days following the end of the month, BPA shall transfer an amount to CFAC to pay the MB Monthly Payment, provided, however, that CFAC has maintained a Monthly Plant Load equal to, or greater than, 37.5 aMW, and maintained the minimum full-time employment level, as provided in section 6(d), above. Any monthly payment required under section 6(d) shall be in addition to any MB Monthly Payment amount to be made under this section 9(b)."

(h) Section 11 of the Agreement (Uncontrollable Forces) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"11. UNCONTROLLABLE FORCES

(a) **Uncontrollable Forces Provisions During Industrial Firm Power Sale**
If this Agreement operates as a physical Industrial Firm Power Sale, then the following provisions shall apply; *provided however,* that UBA determinations pursuant to section 7 and acquisitions of UBA pursuant to section 8 shall not be subject to Uncontrollable Forces under this section 11(a).

"Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its obligations under this Agreement and which, by exercise of that Party's reasonable diligence and foresight, such Party could not be expected to avoid and was unable to avoid. Uncontrollable Forces include, but are not limited to:

(1) any unplanned curtailment or interruption for any reason of firm transmission used to deliver Industrial Firm Power to CFAC's facilities, including but not limited to unplanned maintenance outages;

(2) any unplanned curtailment or interruption, failure or imminent failure of CFAC's production or transmission facilities, including but not limited to unplanned maintenance outages;

(3) any planned transmission or distribution outage that affects either CFAC or PBL which was provided by a third-party transmission or distribution owner, or by a transmission provider, including TBL, that is functionally

separated from the generation provider in conformance with Federal Energy Regulatory Commission (FERC) Orders 888 and 889 or its successors;

(4) strikes or work stoppage, including the threat of imminent strikes or work stoppage; *provided, however*, that nothing contained in this provision shall be construed to require any Party to settle any strike or labor dispute in which it may be involved.

(5) floods, earthquakes, or other natural disasters; and

(6) orders or injunctions issued by any court having competent subject matter jurisdiction, or any order of an administrative officer which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of any Party shall not constitute an Uncontrollable Force. The Party claiming the Uncontrollable Force shall notify the other Party as soon as practicable of that Party's inability to meet its obligations under this Agreement due to an Uncontrollable Force. The Party claiming the Uncontrollable Force shall notify any control area involved in the scheduling of a transaction which may be curtailed due to an Uncontrollable Force.

All Parties shall be excused from their respective obligations, other than from payment obligations incurred prior to the Uncontrollable Force, without liability to the other, for the duration of the Uncontrollable Force and the period reasonably required for the Party claiming the Uncontrollable Force, using due diligence, to restore its operations to conditions existing prior to the occurrence of the Uncontrollable Force."

(b) **Uncontrollable Forces Provisions During Periods When A Monetary Benefit is Provided**

During periods when the Industrial Firm Power sale is monetized, CFAC understands and agrees that there are no events that will be considered Uncontrollable Forces under this Agreement; provided, however, that BPA may not terminate this Amendment pursuant section 6(d) in the event that CFAC's failure to maintain a Monthly Plant Load equal to, or greater than, 37.5 aMW or to maintain a minuimum employee level equal to 85 full-time employees, is caused by an Uncontrollable Force."

(i) Section 13(b) of the Agreement (Limitation on Resale) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"(b) **Limitation on Resale**
CFAC shall not resell Industrial Firm Power."

(j) Section 16(c) of the Agreement is deleted for the period from the December 1, 2008 through September 30, 2009.

(k) Exhibit A of the Agreement (Surplus Firm Power Rate) shall be inoperative for the period from the Effective Date through September 30, 2009.

(l) Exhibit B of the Agreement (Additional Products, Services, and Special Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 1 of Exhibit B.

(m) Revision No. 1 of Exhibit E of the Agreement (Maximum Allocation, Minimum allocation, and Demand Entitlement) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 2 of Exhibit E.

(n) Exhibit F of the Agreement (Determination of Forecast Market Price and Equivalent PF) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 1 of Exhibit F.

3. SIGNATURES

The signatories represent that they are authorized to enter into this Amendment on behalf of the Party for whom they sign.

COLUMBIA FALLS ALUMINUM COMPANY, LLC	UNITED STATES OF AMERICA Department of Energy Bonneville Power Administration
By _____	By _____ Administrator
Name _____ *(Print/Type)*	Name _____ *(Print/Type)*
Title _____	
Date _____	Date _____

FLATHEAD ELECTRIC COOPERATIVE, INC

By _____

Name _____

Title _____

Date _____

Revision No. 1 of Exhibit B
ADDITIONAL PRODUCTS, SERVICES, AND SPECIAL PROVISIONS
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

1. DESCRIPTION OF CFAC's PRODUCTION FACILITIES, STATION SERVICE REQUIREMENTS, AND METERING EQUIPMENT

Production Facilities: are CFAC's aluminum smelting and other facilities served from the Government's Conkelley Substation, where the 13.8 or 230 kilovolt (kV) facilities of BPA and CFAC are connected.

Metering Equipment: used to measure energy usage of the CFAC facility located in the Government's Conkelley Substation in the 13.8 kV circuits over which such electric power and energy flows.

CFAC agrees to allow PBL access to all hourly load measurements of its Production Facilities necessary to administer this Agreement.

2. REVISIONS

This Exhibit B shall be revised upon mutual agreement of the Parties to reflect any new products, services, and special provisions that may be added during the term of this Agreement.

Revision No. 2, Exhibit E
MAXIMUM ALLOCATION, MINIMUM ALLOCATION, AND DEMAND ENTITLEMENT
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

Deleted: 4

1. MAXIMUM AND MINIMUM ALLOCATIONS

During periods when Monetary Benefit payments are provided pursuant to section 6 of the body of this Agreement, the Maximum Allocation, Minimum Allocation, and Monetary Benefit Limit amounts are as follows:

Maximum Allocation:	Demand Entitlement
Minimum Allocation:	0 aMW
Monetary Benefit Limit:	$5,913,455

Deleted: 5,056

2. DEMAND ENTITLEMENT

The Demand Entitlement shall be as follows:

- **December 2008 through February 2009**, the Demand Entitlement will equal the average Total Plant Load from December 1, 2008, through December 17, 2008 (which the Parties agree equaled 91.11 aMW); and

- **March 2009 through September 2009**, the Demand Entitlement will equal 37.5 aMW.

3. REVISIONS

BPA shall not revise this Revision No. 2 of Exhibit E to reflect changes to Maximum Allocation, Minimum Allocation, Monetary Benefit Limit, and/or Demand Entitlement for the period it is in effect.

Revision No.1 of Exhibit F
DETERMINATION OF FORECAST MARKET PRICE AND EQUIVALENT IP
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

Deleted: 4

1. DETERMINATION OF FORECAST MARKET PRICE

The Forecast Market Price for the period from January 1, 2009 through September 30, 2009 shall be $48.05/ MWh.

2. DETERMINATION OF EQUIVALENT IP

The initial Equivalent IP for the period from January 1, 2009 through September 30, 2009 shall be $32.70/MWh.

(a) Each time any adjustment, surcharge, dividend or true-up to the IP Rate is proposed by BPA in writing (which may be before the date such change will actually be applied to the PF Rate), BPA will adjust the Equivalent IP and the MB Rate and MB Monthly Payments for the remaining months of such CY. Such adjustment will take into consideration the Monetary Benefits provided to date and the IP Rate adjustment to provide an end-of-CY total Monetary Benefit to which CFAC is entitled. If such recalculation indicates that BPA has paid CFAC more in Monetary Benefits than the amount to which CFAC is entitled, then BPA will reduce the MB Monthly Payments to CFAC over the next following three months (if full recovery of the amount is not possible in the 3-month period BPA may invoice CFAC for the remaining amount), by the amount needed to recover the overpayment. If adjustments, surcharges, and true-ups are established after the CY, then BPA will calculate the final Equivalent IP rate for such portion of the CY and adjustments to Monetary Benefit will be applied in the following CY.

(b) If, upon termination of this Agreement, a true-up or other adjustment following the end of the final CY results in a payment owed by CFAC to BPA, then BPA shall invoice CFAC for such payment within 90 days following the end of such final CY. Such payment shall be made by CFAC within 20 days following the receipt of such invoice. If, upon termination of this Agreement, a true-up or other adjustment following the end of the final CY results in a payment owed by BPA to CFAC, then BPA shall pay CFAC no later than 90 days following the end of such final CY.

3. REVISIONS

BPA shall have the unilateral right to revise this Exhibit F to reflect changes in Equivalent IP for CY 2009 calculated pursuant to this Exhibit F. Any changes to the procedure used to determine Equivalent IP may only be made upon mutual agreement of the Parties.

Symonds,Mark C - PTL-5

From: Clark,Harry W - PTL-5
Sent: Monday, May 11, 2009 4:58 PM
To: 'Mayer,Zach - Glencore'
Subject: RE: Cross Testimony Information

Zach
Could more points.
Tomorrow parties will have the opportunity to cross or ask questions about the BPA Sur-Rebuttal that was submitted today. If you are unable to participate there will be a transcript available, unsure when, of the entire proceeding sometime in the future.
Harry

From: Clark,Harry W - PTL-5
Sent: Monday, May 11, 2009 4:23 PM
To: 'Mayer,Zach - Glencore'
Cc: Burns,Allen L - D-7
Subject: Cross Testimony Information

Zach
Allen asked that I get this information to you.

BPA Sur-Rebuttal submitted today
We are still pulling together the electronic version of the Exhibits but testimony is attached. I will be a huge file. Let me know if you will want it.
<< File: WP-10-E-BPA-49.pdf >>

Cross Examination
Cross Examination will begin tomorrow at 1000. No phone bridge is available for rate parties to participate in a formal proceeding such as this. Parties must participate in person.

Harry Clark - PTL-5
Bonneville Power Administration
Long Term Sales & Purchases
905 NE 11th Ave.
Portland, OR 97232
503-230-3662
hwclark@bpa.gov

Amendment No. 1
Contract No. 06PB-11745

AMENDMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

COLUMBIA FALLS ALUMINUM COMPANY, LLC

and

FLATHEAD ELECTRIC COOPERATIVE, INC

This AMENDMENT to the BLOCK POWER SALES AGREEMENT is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), COLUMBIA FALLS ALUMINUM COMPANY, LLC (CFAC), and FLATHEAD ELECTRIC COOPERATIVE, INC (Flathead). CFAC is a corporation organized under the laws of the State of Delaware. Flathead is a nonprofit corporation organized under the laws of the State of Montana.

This Amendment No. 1 (Amendment) suspends and replaces for the period March 1, 2009, through September 30, 2009 (Amendment Period) Block Power Sales Agreement No. 06PB-11745 (Agreement) by and between BPA, CFAC, and Flathead. Pursuant to this Amendment, Flathead's obligations under the Agreement are excused during the Amendment Period, and no new or substitute obligations are imposed on or undertaken by Flathead pursuant to this Amendment a) during the Amendment Period, or b) under the Agreement for any period prior to or after the Amendment Period.

On December 17, 2008, the United States Court of Appeals for the Ninth Circuit (Court) filed its opinion in *Pacific Northwest Generating Cooperative, et al., v. Bonneville Power Administration* (December Opinion) that held, among other things, that certain provisions of the Agreement are invalid. As a consequence of the December Opinion, BPA halted Monetary Benefit payments under the Agreement.

This Amendment provides for a replacement monetized power sale to CFAC during the Amendment Period and for the months of December 2008, January 2009, and February 2009, in a manner and amount that is consistent with the December Opinion.

In reliance on the payments to be made to it by BPA under the Agreement, CFAC acquired power in the wholesale power market to serve its industrial load during the full term of the Agreement. The average cost of CFAC's acquisitions exceed BPA's currently forecasted wholesale market price for the Amendment Period. BPA understands the December

Opinion to prohibit payments by BPA to CFAC that would exceed the difference between the Industrial Firm Power (IP) rate, and BPA's forecasted wholesale market price.

In lieu of delivering firm power to CFAC at the IP rate during the Amendment Period, BPA will monetize the value of a physically delivered firm power sale at the IP rate, with such value calculated as the difference between the IP rate applicable to the Amendment Period and BPA's forecasted wholesale market price for the Amendment Period. BPA's decision to monetize this transaction is based, in part, on a desire to avoid the risks associated with making the relatively large wholesale market power purchases BPA would be required to undertake, in a short period of time, to serve CFAC's currently operating load, together with the uncertainty that CFAC will continue operating at existing levels for the duration of the Amendment Period, given current uncertain economic conditions. Monetization will allow BPA to provide benefits to CFAC (and obligate BPA to incur expenditures) only in the event CFAC operates its smelter facility, thereby protecting BPA from making wholesale market purchases that could be both unnecessary in the event CFAC does not operate, and more expensive than anticipated if actual market prices exceed BPA's current market forecast.

This transaction will be structured as a simultaneous purchase and sale, whereby BPA will be deemed to purchase power from CFAC during the Amendment Period, in an amount equal to CFAC's then operating load, at prices equivalent to BPA's currently forecasted wholesale market price for the Amendment Period, and to simultaneously sell back such power to CFAC at the IP rate. As noted, in lieu of actual power deliveries by either party, the transaction will be monetized.

To summarize, this Amendment adjusts the rate that CFAC shall pay for power under the Agreement during the Amendment Period to the IP rate, and adjusts the payment made under the monetized transaction to an amount equal to the difference between the IP rate and BPA's forecasted market price for the Amendment Period, which represents the forecasted price that BPA would otherwise pay to acquire power if it were to physically serve CFAC.

In addition, this Amendment provides for a recalculation (and reduction) of benefits that would have been paid to CFAC for smelter operation in December 2008, January 2009, and February 2009, so that such payments will conform with the December Opinion. BPA has calculated a Monetary Benefit payment for each of these three months based on 1) BPA's forecasted wholesale market price for December 2008 and January 2009 through September 2009 for purchases made by BPA prior to December 2008, 2) the IP rate in effect, and 3) CFAC's operating level. Payments calculated for these three months will not be made immediately, but shall be made by BPA in four equal monthly payments during the April through July 2009 period, but only if CFAC's Total Plant Load, preceding a month in which a payment is due, was either equal to or greater than 37.5 aMW, and CFAC maintained a minimum employee level equal to 85 full-time equivalent employees.

In addition, the Parties have agreed to modify the provisions regarding the determination of unused benefits under the Agreement to take into account CFAC's minimum operating level through the Amendment Period, and such provisions are intended to survive the expiration of the Amendment Period. This modification is designed to encourage operation

of CFAC's facilities through the period of increased power production due to fisheries operations on the Federal Columbia River Power System.

This Amendment allows BPA to provide service to CFAC while it fully considers the December Opinion, including treatment of the payments made to CFAC under the Agreement prior to the Court's ruling, and the ramifications for service to CFAC during the final two years of the Agreement (October 1, 2009, through September 30, 2011) following the termination of this Amendment. This Amendment is not intended, and shall not be interpreted, to establish any precedent or to waive any rights or arguments by BPA, CFAC, or Flathead regarding the legal rights and obligations of any or all of them under the December Opinion, including but not limited to the manner or amount of service provided by BPA to CFAC either prior to the December Opinion or after the expiration of this Amendment. The provisions are intended to provide temporary service to CFAC on terms that BPA, CFAC and Flathead believe adhere to the Court's holdings regarding BPA's authority, while affording the Parties a period of time to negotiate a long term replacement to the Agreement that also is consistent with the December Opinion.

The Parties agree:

1. **EFFECTIVE DATE**
This Amendment shall take effect on March 1, 2009, following execution by the Parties (Effective Date). This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

2. **AMENDMENT OF AGREEMENT**
Each provision of the Agreement is incorporated by reference into this Amendment, except the Parties hereby amend such provisions as follows:

(a) Section 2 of the Agreement (Definitions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following; except that sections 2(j) and 2(n) shall be used for purposes of establishing Unused Benefit Amounts under the Agreement for the period October 1, 2009 through September 30, 2011 when calculating benefits during the period from December 1, 2008 through September 30, 2009:

"2. **DEFINITIONS**
Capitalized terms in this Agreement shall have the meanings defined below, in the exhibits or in context. All other capitalized terms and acronyms are defined in BPA's applicable Wholesale Power Rate Schedule(s), including the General Rate Schedule Provisions (GRSPs).

(a) "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principle place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from

whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

(b) "Contract Year" or "CY" means the period that begins each October 1 and which ends the following September 30. For instance, CY 2007 begins October 1, 2006, and continues through September 30, 2007.

(c) "Demand Entitlement" means during the period when this Agreement operates as a physical Industrial Firm Power sale, the megawatt (MW) amount each hour that CFAC shall purchase from BPA, as specified in Exhibit E.

(d) "Equivalent IP" means the applicable average Industrial Firm Power Rate at 100 percent load factor, as determined pursuant to Exhibit F.

(e) "Escrow Account" means the specific account established pursuant to the provisions in section 9(b) below for receipt of funds from BPA and transfer of funds by Flathead to CFAC.

(f) "Forecast Market Price" means the forecast market price for power at 100 percent load factor for the period from January 1, 2009 though September 30, 2009, as specified in Exhibit F.

(g) "FY 07-09 Rate Period" means the wholesale power rate period that begins on October 1, 2006, and continues through September 30, 2009.

(h) "FY 10-11 Rate Period" means the wholesale power rate period that begins on October 1, 2009, and continues through September 30, 2011.

(i) "Industrial Firm Power" means electric power that PBL makes continuously available to CFAC under this Amendment except during periods when BPA exercises its interruption rights pursuant to section 4(i) below.

(j) "Interim Maximum MB Monthly Payment" means the Demand Entitlement times the hours in the month times the MB Rate.

(k) "MB Monthly Payment" means the monthly Monetary Benefit payment that is available during each month, as calculated in section 6(c)(2) below.

(l) "MB Rate" means the rate in dollars per megawatt-hour ($/MWh) used to calculate MB Monthly Payments pursuant to

section 6(c) below. The MB Rate is determined by subtracting Equivalent IP from Forecast Market Price.

(m) "Maximum Allocation" means, for the purpose of determining MB Monthly Payments, the maximum average megawatt (aMW) amount that may be used to determine a MB Monthly Payment. The Maximum Allocation is shown in Exhibit E.

(n) "Maximum MB Monthly Payment" means the Interim Maximum MB Monthly Payment.

(o) "Minimum Allocation" means, for the purpose of determining MB Monthly Payments, the minimum aMW amount that may be used to determine a MB Monthly Payment.

(p) "Monetary Benefits" means monetary payments made by BPA to CFAC under this Amendment, as determined pursuant to the provisions in section 6 below.

(q) "Monthly Plant Load" means a monthly aMW amount equal to the Total Plant Load for each month divided by the number of hours in each such month.

(r) "Monthly Purchase Deficiency" means the monthly amount(s) of Industrial Firm Power not purchased due to a curtailment, as such amount(s) may be adjusted pursuant to section 4(d)(1) below.

(s) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501.

(t) "Other DSIs" means aluminum smelters other than CFAC that have executed an agreement substantially in the form of this Agreement.

(u) "Points of Measurement" means the interconnection points between BPA, CFAC, and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.

(v) "Point of Receipt" means the points of interconnection on the transmission provider's transmission system where Industrial Firm Power shall be made available by PBL to CFAC's transmission provider.

(w) "Power Business Line" or "PBL" means that portion of the BPA organization or its successor that is responsible for the management and sale of BPA's Federal power.

(x) "Region" means the definition established for "Region" in the Northwest Power Act.

(y) "Total Plant Load" means the amount of electric energy in megawatt-hours (MWh) consumed during each month at CFAC's production facilities. A detailed description of CFAC's production facilities, including station service requirements and metering equipment, is described in Exhibit B.

(z) "Transmission Business Line" or "TBL" means that portion of the BPA organization or its successor that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

(aa) "Unused Benefit Amount" or "UBA" means either: (1) an aMW amount determined pursuant to section 7(a) during any period in which Monetary Benefits are provided, or (2) a MW amount determined pursuant to section 7(b) during any period in which this Agreement operates as a physical Industrial Firm Power sale."

(b) Section 3 of the Agreement (Applicable Rates) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"3. **APPLICABLE RATES**

Purchases by CFAC under this Amendment are subject to the Industrial Firm Power (IP) rate schedule, IP-07R, or its successor, and the General Rate Schedule Provisions (GRSP). Billing determinants for any purchases will be included in the rate schedule. Purchases under the IP rate schedule are established as follows:

If this Amendment operates as a physically delivered Industrial Firm Power sale pursuant to section 4 below, then section 4(a) below and the Industrial Firm Power rate schedule apply. If the Industrial Firm Power sale is monetized, then the provisions of section 6 below shall establish the applicable Equivalent IP rate."

(c) Section 4 of the Agreement (Power Sales Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"4. **Power Sales Provisions**

This section 4 only applies when this Agreement operates as a physically delivered Industrial Firm Power sale. In this event, the Monetary Benefit provisions in section 6 shall not apply. All physically delivered Industrial Firm Power provided by PBL under this section 4 is solely for service to Total Plant Load.

(a) **Power Sale by PBL to CFAC**

(1) **Hourly Amounts**

PBL shall make available and CFAC shall purchase the Demand Entitlement each hour. The Demand Entitlement is specified in Exhibit E.

(2) **HLH and LLH Energy Entitlements and Demand Entitlement**

The Demand Entitlement multiplied by: (A) the number of HLH, and (B) the number of LLH in the applicable month, establishes CFAC's HLH and LLH Energy Entitlements with respect to this Amendment.

(b) **Unauthorized Increase Charge**

CFAC shall not intentionally schedule in excess of the amount specified in section 4(a)(1) above. However, in the event that an excess amount is scheduled due to error, then such amounts taken by CFAC at the Points of Receipt in excess of the amounts specified in section 4(a) above shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PBL. Power that has been provided for energy imbalance service pursuant to an agreement between TBL and CFAC shall not be subject to an Unauthorized Increase Charge for Demand and Energy under this Agreement. Any Unauthorized Increase Charge shall be billed by BPA in accordance with the billing procedures described in section 9(a) below. Any Industrial Firm Power used by CFAC for any other purpose shall be subject to the Unauthorized Increase Charge.

(c) **Curtailment**

If CFAC curtails Total Plant Load in whole or in part, then CFAC may request take-or-pay mitigation for purchases under section 4(a) above pursuant to section 4(d) below.

(d) **Take-or-Pay Mitigation for Curtailments**

If CFAC chooses to curtail its purchase obligation, then the following terms and conditions shall apply:

(1) **Notice of Curtailment**

CFAC shall provide written notice to PBL at least three (3) Business

Days in advance of a curtailment. Such notice shall specify the monthly amounts of power to be curtailed and the duration of the curtailment. The election to curtail such power, and the amount and duration of such curtailment, may not be changed without PBL's consent. PBL's sale shall be reduced by the amount of power curtailed. The Monthly Purchase Deficiency will be reduced by any reduction to the Demand Entitlement pursuant to section 7(b)(2) below.

(2) **Calculation of Damages**

CFAC shall pay directly to BPA damages for each Monthly Purchase Deficiency equal to the amount by which the reasonable market value of such Monthly Purchase Deficiency is less than the price of the applicable rate specified in Exhibit A. For purposes of calculating damages under this section 4(d)(2), the Monthly Purchase Deficiency(s) shall be reduced by any reduction of Demand Entitlement under section 7(b)(3), effective on the date any such reduction becomes effective. No later than 60 days following September 30, 2009, PBL shall, for each month of the previous Contract Year, calculate the reasonable market value for each Monthly Purchase Deficiency during such period. Reasonable market value and calculation of damages shall be determined as follows.

(A) No later than 3 Business Days prior to the commencement of a curtailment under this section 4(d), CFAC may obtain one or more transactable quotes for all or a portion of such power from a third party. The transactable quote may be for any length of time and curtailment amount. Each quote shall be deemed equal to the reasonable market value of such power to which the quote applies for the purpose of calculating damages under this section 4(d)(2). BPA may, but shall not be obligated to, resell the curtailed power to the third party, retain the power, or dispose of the power as it chooses. CFAC shall allow PBL at least 4 hours during normal business hours to decide whether or not to transact under such quote.

(B) BPA shall determine, by any reasonable method, the reasonable market value of the portion of each Monthly Purchase Deficiency for which CFAC has not obtained a transactable quote. The reasonable market value shall be adjusted to reflect volume and BPA transmission costs associated with remarketing each such portion of the Monthly Purchase Deficiency, regardless of whether each such portion is actually remarketed.

(C) BPA shall bill CFAC and CFAC shall directly pay BPA damages for such period equal to the amount by which the sum of the product of (1) each Monthly Purchase Deficiency and

(2) the applicable rate specified in Exhibit A that BPA would have charged each month if the power had been taken under this Agreement, exceeds the sum of the product of (1) each Monthly Purchase Deficiency and (2) the reasonable market value in each month. Amounts for damages under section 4(d)(2)(A) and section 4(d)(2)(B) may only be netted within a Contract Year. BPA is not obligated to pay CFAC the difference when the reasonable market value exceeds the applicable Industrial Firm Power rate.

It is expressly agreed to by the Parties that BPA shall not be obligated to enter into replacement transactions to determine or collect damages under this section 4(d)(2).

It is also expressly agreed that BPA will apply its then-current applicable credit policies if damages are due under this section 4(d)(2), and such policies may include an obligation to prepay for damages.

(e) **Scheduling**

All Industrial Firm Power transactions under this Agreement shall be scheduled and implemented consistent with Exhibit C, BPA Power Business Line Scheduling Provisions. The procedures for scheduling described in Exhibit C are the standard utility procedures followed by BPA for power transactions between PBL and other utilities or entities in the Region that require scheduling.

(f) **Delivery**

(1) **Transmission Service for Industrial Firm Power**

This Agreement does not provide transmission services for, or include the delivery of, Industrial Firm Power by BPA to CFAC. CFAC shall be responsible for executing one or more wheeling agreements with a transmission supplier for the delivery of Industrial Firm Power (Wheeling Agreement). PBL and CFAC agree to take such actions as may be necessary to facilitate the delivery of Industrial Firm Power to CFAC, consistent with the terms, notice, and the time limits contained in the Wheeling Agreement.

(2) **Liability for Delivery**

CFAC waives any claims against PBL arising under this Amendment for nondelivery of power to any points beyond the applicable Points of Receipt. PBL shall not be liable for any third-party claims related to the delivery of power after it leaves the Points of Receipt. In no event shall any Party be liable under this Agreement to any other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership. These limitations on liability apply

regardless of whether or not this Amendment provides for transfer service.

(3) **Points of Receipt**
PBL shall make Industrial Firm Power available to CFAC under this Amendment at Points of Receipt solely for the purpose of CFAC scheduling transmission to points of delivery for service to CFAC's Total Plant Load. CFAC shall schedule, if scheduling is necessary, such Industrial Firm Power solely for use by its Total Plant Load. PBL, for purposes of scheduling transmission for delivery under this Agreement, shall specify Points of Receipt in a written notice to CFAC no later than March 1, 2009.

If required by the Wheeling Agreement, when PBL designates such Points of Receipt, PBL shall provide capacity amounts for transmission under the Wheeling Agreement associated with the initial Points of Receipt that can be accepted as firm Points of Receipt under CFAC's Wheeling Agreement (except in the event that all Points of Receipt on the Federal Columbia River Power System (FCRPS) would be considered nonfirm). The sum of capacity amounts requested by PBL shall not exceed the amount of Industrial Firm Power specified in sections 4(a) above. Such Points of Receipt and their capacity amounts may only be changed through mutual agreement. However, at any time PBL may request the use of a nonfirm Point of Receipt to provide Industrial Firm Power to CFAC, but notwithstanding section 4(f)(2) above, PBL shall reimburse CFAC for any additional costs or production losses incurred by CFAC due to its compliance with such request.

(4) **Transmission Losses**
PBL shall provide CFAC the transmission losses between the Points of Receipt and CFAC's points of delivery for Industrial Firm Power, at no additional charge. Such losses shall be provided at Points of Receipt as established under section 4(f)(3) above, and under the terms and conditions as defined in the transmission provider's tariff.

(g) **Measurement**

(1) Amounts of Industrial Firm Power taken are deemed equal to the amount scheduled by CFAC under section 4(e) above or an amount of power as measured at Points of Measurement, as appropriate.

(2) CFAC shall provide reasonable notice to PBL prior to changing control areas.

(h) **Interruption Rights**
PBL shall have a one-time right during the term of this Amendment to interrupt deliveries of a portion of the Industrial Firm Power

hereunder pursuant to the following provisions. PBL may interrupt a portion of Industrial Firm Power deliveries if PBL anticipates, in its sole and exclusive discretion, that average forward market prices for a flat block of power will exceed $125/MWh during an interruption period to be specified by PBL in a written notice. In this event, PBL shall consult with CFAC prior to providing such written notice. If PBL decides to interrupt, then it will provide 30 days advance written notice to CFAC that specifies the amount of Industrial Firm Power to be interrupted and the associated interruption period; *provided, however,* that a minimum of 6 aMW will not be subject to any such interruption. Unless the Parties mutually agree otherwise, such interruption period shall extend for a minimum of 6 months and for a maximum of the duration of this Amendment, regardless of the level of actual market prices during an interruption period. In the event of an interruption, BPA shall pay CFAC, $24/MWh for amounts interrupted. Payments shall be made pursuant to section 9(b) below. Payments to CFAC under this section 4(h) shall be used first by CFAC to compensate CFAC's employees employed at the time of an interruption under this section 4(h) by providing each such employee, at the election of CFAC, either (1) the opportunity to work a regular work week (40 hours) at regular wage and benefit rates, or (2) special supplemental benefits such that the employee's effective after-tax income (including any available unemployment income) will be equal to what the employee's income would have been working a regular work week, plus all benefits the employee would have received, had the employee been working a regular 40-hour work week. BPA shall have the right to conduct an audit to verify compliance with this section 4(h). If there is an interruption under this section 4(h), then the portion of Demand Entitlement interrupted shall be treated as if taken for purposes of section 7(b)(1)(A) and shall not be subject to the take-or-pay provisions in sections 4(a).

(i) **Modification of Flathead's Obligations**

The Parties agree Flathead shall have no obligation to purchase any power from BPA under this Amendment. The Parties agree Flathead shall have no obligation to make available to CFAC any power under this Amendment."

(d) Section 5 of the Agreement (BPA and CFAC Options) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"5. **BPA Monetary Benefit Option**

BPA has determined that, during the period of this Amendment, in order to minimize the cost risks of supplying Industrial Firm Power, the Parties will monetize the physically delivered Industrial Firm Power sale obligation. As such, BPA will make any MB Monthly

Payments during the period of this Amendment, subject to the provisions of section 6 below."

(e) Section 6 of the Agreement (Monetary Benefit Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"6. **MONETARY BENEFIT PROVISIONS**

This section 6 only applies when the physically delivered Industrial Firm Power sale is monetized. The provisions in section 4 shall not apply to Monetary Benefits.

(a) **Determination of Forecast Market Price and Equivalent IP**

PBL has determined the Forecast Market Price and Equivalent IP for the period of this Amendment as specified in Exhibit F.

(b) **Determination of Monthly Plant Load**

No later than five (5) Business Days following the end of each month, PBL shall determine the Monthly Plant Load for each such month.

(c) **Determination of MB Monthly Payments**

The determinations described in Exhibit F and the following procedure as described in section 6(c)(1) through section 6(c)(3) shall be used to determine the MB Monthly Payment for each month.

(1) The Minimum Allocation shall not affect payment of the MB Monthly Payment.

(2) The MB Monthly Payment for each month shall be the amount determined by the following equation:

MB Monthly Payment = ((Monthly Plant Load) x (number of hours in the month)) x (MB Rate).

(3) Notwithstanding anything to the contrary in this Amendment, in no case shall the Monetary Benefits accrued during the period from December 1, 2008 through September 30, 2009, exceed the Monetary Benefit Limit specified in Exhibit E of this Amendment.

(d) **Recalculated Monetary Benefits Payment**

BPA shall pay CFAC a Monetary Benefit equal to the Monthly Plant Load times the number of hours in the month times $14.26/MWh to monetize deliveries of Industrial Firm Power for the Monthly Plant Load during the month of December

2008 and $15.35/MWh to monetize deliveries of Industrial Firm Power for the Monthly Plant Load during the months of January and February 2009. The payment of the sum of the Monetary Benefit amounts calculated in this section 6(d) shall be made by BPA in four equal monthly payments during the April through July 2009 period, provided, however, that CFAC's Total Plant Load, preceding a month in which a payment is due, must be either equal to or greater than 37.5 aMW, and provided, further, that CFAC must have maintained a minimum of 85 full-time equivalent employees at the CFAC facility. In the event CFAC fails a) to maintain a monthly Total Plant Load either equal to or greater than 37.5 aMW, or b) to maintain a minimum employee level equal to 85 full-time equivalent employees at the CFAC facility, during any month from the Effective Date through June 2009, then BPA may suspend or terminate this Amendment.

(f) Section 7(a)(2) and section 7(a)(3) of the Agreement shall be replaced by the following when calculating benefits accessed under section 7(a)(3) for the period from December 1, 2008, through September 30, 2009 and such benefits accessed, or deemed to be accessed, shall be used for purposes of establishing Unused Benefit Amounts under the Agreement for the period October 1, 2009, through September 30, 2011:

"(2) In order to retain its Maximum Allocation, CFAC must, for at least one month during the preceding 12 months, have received the Maximum MB Monthly Payment. If this condition is not satisfied, then the Maximum Allocation shall be reduced; provided however, if the Monthly Plant Load is either equal to or greater than 37.5 aMW for all months through June 30, 2009, CFAC shall be deemed to have received the Maximum MB Monthly Payment for each month of the period from January 1, 2009, through September 30, 2009.

(3) CFAC shall retain the highest monthly percentage of the available benefits that it accessed during the previous 12 months. As such, CFAC's Maximum Allocation shall be reduced by the percentage of the available benefits, rounded to the nearest aMW, that were not accessed during the month that set the highest monthly percentage of benefits accessed. The amount of aMW from this calculation becomes an Unused Benefit Amount or UBA."

(g) Section 9(b) of the Agreement (Billing and Payment When Monetary Benefit Payments Provided) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"(b) **Payment of Interim Monetary Benefits Provided**

Within five Business Days after the end of each month, beginning April 1, 2009, BPA will review CFAC's metered load measurements to determine the Monthly Plant Load for the month.

Within eight Business Days following the end of the month, BPA shall transfer an amount to CFAC to pay the MB Monthly Payment, provided, however, that CFAC has maintained a Monthly Plant Load equal to, or greater than, 37.5 aMW, and maintained the minimum full-time employment level, as provided in section 6(d), above. Any monthly payment required under section 6(d) shall be in addition to any MB Monthly Payment amount to be made under this section 9(b)."

(h) Section 11 of the Agreement (Uncontrollable Forces) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"11. UNCONTROLLABLE FORCES

(a) **Uncontrollable Forces Provisions During Industrial Firm Power Sale**

If this Agreement operates as a physical Industrial Firm Power Sale, then the following provisions shall apply; *provided however*, that UBA determinations pursuant to section 7 and acquisitions of UBA pursuant to section 8 shall not be subject to Uncontrollable Forces under this section 11(a).

"Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its obligations under this Agreement and which, by exercise of that Party's reasonable diligence and foresight, such Party could not be expected to avoid and was unable to avoid. Uncontrollable Forces include, but are not limited to:

(1) any unplanned curtailment or interruption for any reason of firm transmission used to deliver Industrial Firm Power to CFAC's facilities, including but not limited to unplanned maintenance outages;

(2) any unplanned curtailment or interruption, failure or imminent failure of CFAC's production or transmission facilities, including but not limited to unplanned maintenance outages;

(3) any planned transmission or distribution outage that affects either CFAC or PBL which was provided by a third-party transmission or distribution owner, or by a transmission provider, including TBL, that is functionally

separated from the generation provider in conformance with Federal Energy Regulatory Commission (FERC) Orders 888 and 889 or its successors;

(4) strikes or work stoppage, including the threat of imminent strikes or work stoppage; *provided, however*, that nothing contained in this provision shall be construed to require any Party to settle any strike or labor dispute in which it may be involved.

(5) floods, earthquakes, or other natural disasters; and

(6) orders or injunctions issued by any court having competent subject matter jurisdiction, or any order of an administrative officer which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of any Party shall not constitute an Uncontrollable Force. The Party claiming the Uncontrollable Force shall notify the other Party as soon as practicable of that Party's inability to meet its obligations under this Agreement due to an Uncontrollable Force. The Party claiming the Uncontrollable Force shall notify any control area involved in the scheduling of a transaction which may be curtailed due to an Uncontrollable Force.

All Parties shall be excused from their respective obligations, other than from payment obligations incurred prior to the Uncontrollable Force, without liability to the other, for the duration of the Uncontrollable Force and the period reasonably required for the Party claiming the Uncontrollable Force, using due diligence, to restore its operations to conditions existing prior to the occurrence of the Uncontrollable Force."

(b) **Uncontrollable Forces Provisions During Periods When A Monetary Benefit is Provided**

During periods when the Industrial Firm Power sale is monetized, CFAC understands and agrees that there are no events that will be considered Uncontrollable Forces under this Agreement; provided, however, that BPA may not terminate this Amendment pursuant to section 6(d) in the event that CFAC's failure to maintain a Monthly Plant Load equal to, or greater than, 37.5 aMW or to maintain a minimum employee level equal to 85 full-time equivalent employees at the CFAC facility, is caused by an Uncontrollable Force."

(i) Section 13(b) of the Agreement (Limitation on Resale) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"(b) **Limitation on Resale**
CFAC shall not resell Industrial Firm Power."

(j) Section 16(c) of the Agreement is deleted for the period from the December 1, 2008 through September 30, 2009.

(k) Exhibit A of the Agreement (Surplus Firm Power Rate) shall be inoperative for the period from the Effective Date through September 30, 2009.

(l) Exhibit B of the Agreement (Additional Products, Services, and Special Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 1 of Exhibit B.

(m) Revision No. 1 of Exhibit E of the Agreement (Maximum Allocation, Minimum allocation, and Demand Entitlement) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 2 of Exhibit E.

(n) Exhibit F of the Agreement (Determination of Forecast Market Price and Equivalent PF) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 1 of Exhibit F.

3. SIGNATURES

The signatories represent that they are authorized to enter into this Amendment on behalf of the Party for whom they sign.

COLUMBIA FALLS ALUMINUM COMPANY, LLC	UNITED STATES OF AMERICA Department of Energy Bonneville Power Administration
By _____	By _____ Administrator
Name _____ *(Print/Type)*	Name _____ *(Print/Type)*
Title _____	
Date _____	Date _____

FLATHEAD ELECTRIC COOPERATIVE, INC

By _____

Name _____

Title _____

Date _____

Revision No. 1 of Exhibit B
ADDITIONAL PRODUCTS, SERVICES, AND SPECIAL PROVISIONS
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

1. DESCRIPTION OF CFAC's PRODUCTION FACILITIES, STATION SERVICE REQUIREMENTS, AND METERING EQUIPMENT

Production Facilities: are CFAC's aluminum smelting and other facilities served from the Government's Conkelley Substation, where the 13.8 or 230 kilovolt (kV) facilities of BPA and CFAC are connected.

Metering Equipment: used to measure energy usage of the CFAC facility located in the Government's Conkelley Substation in the 13.8 kV circuits over which such electric power and energy flows.

CFAC agrees to allow PBL access to all hourly load measurements of its Production Facilities necessary to administer this Agreement.

2. REVISIONS

This Exhibit B shall be revised upon mutual agreement of the Parties to reflect any new products, services, and special provisions that may be added during the term of this Agreement.

Revision No. 2, Exhibit E
MAXIMUM ALLOCATION, MINIMUM ALLOCATION, AND DEMAND ENTITLEMENT
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

1. MAXIMUM AND MINIMUM ALLOCATIONS

During periods when Monetary Benefit payments are provided pursuant to section 6 of the body of this Agreement, the Maximum Allocation, Minimum Allocation, and Monetary Benefit Limit amounts are as follows:

Maximum Allocation:	Demand Entitlement
Minimum Allocation:	0 aMW
Monetary Benefit Limit:	$5,913,455

2. DEMAND ENTITLEMENT

The Demand Entitlement shall be as follows:

- **December 2008 through February 2009**, the Demand Entitlement will equal the average Total Plant Load from December 1, 2008, through December 17, 2008 (which the Parties agree equaled 91.44 aMW); and

- **March 2009 through September 2009**, the Demand Entitlement will equal 37.5 aMW.

3. REVISIONS

BPA shall not revise this Revision No. 2 of Exhibit E to reflect changes to Maximum Allocation, Minimum Allocation, Monetary Benefit Limit, and/or Demand Entitlement for the period it is in effect.

Revision No.1 of Exhibit F
DETERMINATION OF FORECAST MARKET PRICE AND EQUIVALENT IP
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

1. DETERMINATION OF FORECAST MARKET PRICE

The Forecast Market Price for the period from January 1, 2009 through September 30, 2009 shall be $48.05/ MWh.

2. DETERMINATION OF EQUIVALENT IP

The initial Equivalent IP for the period from January 1, 2009 through September 30, 2009 shall be $32.70/MWh.

(a) Each time any adjustment, surcharge, dividend or true-up to the IP Rate is proposed by BPA in writing (which may be before the date such change will actually be applied to the PF Rate), BPA will adjust the Equivalent IP and the MB Rate and MB Monthly Payments for the remaining months of such CY. Such adjustment will take into consideration the Monetary Benefits provided to date and the IP Rate adjustment to provide an end-of-CY total Monetary Benefit to which CFAC is entitled. If such recalculation indicates that BPA has paid CFAC more in Monetary Benefits than the amount to which CFAC is entitled, then BPA will reduce the MB Monthly Payments to CFAC over the next following three months (if full recovery of the amount is not possible in the 3-month period BPA may invoice CFAC for the remaining amount), by the amount needed to recover the overpayment. If adjustments, surcharges, and true-ups are established after the CY, then BPA will calculate the final Equivalent IP rate for such portion of the CY and adjustments to Monetary Benefit will be applied in the following CY.

(b) If, upon termination of this Agreement, a true-up or other adjustment following the end of the final CY results in a payment owed by CFAC to BPA, then BPA shall invoice CFAC for such payment within 90 days following the end of such final CY. Such payment shall be made by CFAC within 20 days following the receipt of such invoice. If, upon termination of this Agreement, a true-up or other adjustment following the end of the final CY results in a payment owed by BPA to CFAC, then BPA shall pay CFAC no later than 90 days following the end of such final CY.

3. REVISIONS

BPA shall have the unilateral right to revise this Exhibit F to reflect changes in Equivalent IP for CY 2009 calculated pursuant to this Exhibit F. Any changes to the procedure used to determine Equivalent IP may only be made upon mutual agreement of the Parties.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Monday, August 03, 2009 4:07 PM
To: 'Zach.Mayer@glencore-us.com'; 'Matthew Lucke/stamford/glen'
Cc: Burns,Allen L - D-7; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: Draft Term Sheet populated with CFAC numbers

Attachments: DRAFT Term Sheet - CFAC 2009-07-17 _7-year option_.pdf

Zach,
Some in the region inquired about what a 2+5 term sheet for CFAC might look like. In response, we populated a term sheet and the draft is attached below:

DRAFT Term Sheet - CFAC 2009-...

Thanx

Mark

DRAFT – Term Sheet
Block Power Sale to CFAC[1]

July 17, 2009

Basic Terms (subject to the Special Conditions below):

Product	Block, firm power, delivered on all hours.
Rate	Industrial Firm Power (IP) rate. Reserves provided consistent with law.
Amount	70 aMW during Initial 2-year Period 140 aMW during Subsequent 5-year Period
Term	October 1, 2009 – September 30, 2016 October 1, 2009 – September 30, 2011 (Initial 2-year Period) October 1, 2011 – September 30, 2016 (Subsequent 5-year Period).

Special Conditions:

1. BPA may provide Columbia Falls Aluminum Company (CFAC) notice of termination prior to March 31, 2010, if, in BPA's sole discretion, it is unable to purchase FBS replacement resources sufficient to serve the Amount for the Subsequent 5-Year Period for less than or equal to $64 per MWh. The cost cap represents a forecasted net cost of less than $150 million for the Subsequent 5-year Period (defined as cost of purchases to serve CFAC load less expected IP revenue from the same).

2. In the event that wholesale power market prices for power purchased by BPA for the Initial 2-year Period are sufficient to serve CFAC 140 aMW at a cost less than or equal to $48 per MWh, then upon CFAC's 3-month request BPA will increase the Amount to 140 aMW for the balance of the Initial 2-year Period. Consistent with BPA's determination that it will not exceed the $48 per MWh cost cap for DSI service, the cost cap represents a forecasted net cost of less than $35 million for the Initial 2-year Period based on then current forecast of market price. To the extent any other aluminum smelter DSI notifies BPA of a curtailment, during the duration of such curtailment, the $35 million cost cap will be increased and the $48 per MWh cost cap will be increased accordingly.

3. Upon CFAC's request BPA will conduct a public process between October 1, 2012, and October 1, 2014, to determine the feasibility of entering into a follow-on contract with CFAC beginning October 1, 2016. In addition to examining the terms of service for any such follow-on contract, the public process will include a study analyzing the impacts on the regional economy associated with such a follow-on contract. This provision is not intended and shall not be construed as requiring BPA to offer any such follow-on

[1] This draft term sheet is for discussion purposes only, is subject to change, and is not binding on BPA or CFAC for any purposes.

contract, irrespective of the conclusions or findings of any public process undertaken.

4. Any costs of carbon taxes or charges, greenhouse gas mitigation costs or other similar environmental or regulatory costs will be included in the net cost calculation, and, as set forth below, BPA intends to require any suppliers to include such costs (excluding costs directly imposed on BPA explained in section 5, below) in their offers of electricity.

   The cost caps in Sections 1 and 2 above represent the maximum amount BPA will pay for average annual blocks of power to support sales to CFAC, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs, and costs incurred by BPA in connection with any credit requirements. Cost caps represent the weighted average of acquisitions made by BPA to support sales to CFAC over all Fiscal Years comprising the particular delivery period. Further,

   a. BPA will not make a plant specific acquisition from a coal-fired resource.

   b. BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to above, that are imposed on the supplier after the date the acquisition contract is entered into.

5. In the event costs associated with either renewable energy portfolio standard obligations, if any, or costs imposed on BPA directly (in contrast with costs imposed upon suppliers to BPA) for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges, if any, are not recovered by BPA through rates but are to be paid by CFAC under the terms of the contract, CFAC shall have the option to terminate pursuant to Section 11 below, but without the obligation to pay the IP rate for the applicable Amount for the 12-month notice period.

6. CFAC commits to employ an average of ___ full time equivalent employees (FTEs) at the Intalco Plant during the period that CFAC receives 140 aMW (2 potlines) under the contract, measured on a 5-year rolling average basis. Equivalent pro rata FTE levels will be developed for different operating levels and addressed in the contract. "FTE" shall mean full time annual employment for both regular employees and on-site and local off-site contractors. If CFAC fails to average FTE levels established in this section or the contract, BPA may terminate the contract; provided however, such minimum requirement shall not apply during periods of curtailment, or if notice of termination has been given.

7. In order to qualify for service beginning October 1, 2009, CFAC's load at the Intalco Plant must have been 70 aMW or more in any one year of the Subscription Period (Fiscal Year 2007 through Fiscal Year 2009).

8. Following a notice of termination by CFAC under Section 11 below (unless triggered under Section 5 above), CFAC agrees that it will not request power service as a Direct Service Industry from BPA.

9. CFAC agrees not to challenge the validity of the contract implementing this Term Sheet in the Ninth Circuit Court of Appeals, but reserves the right to intervene in any proceeding challenging the validity of the contract for the purpose of defending the validity of the contract or any portion thereof.

10. CFAC may curtail deliveries up to twice during the Term. If CFAC elects to curtail, then:
    - **a)** 3-month prior written notice is required, and the curtailment duration may be changed only with BPA's consent;
    - **b)** cumulative curtailment duration shall not exceed 24 months;
    - **c)** no take-or-pay obligation on appropriately noticed curtailed amounts and no compensation by BPA to CFAC; and
    - **d)** provisions in Section 6 above shall be suspended for the duration of each curtailment, proportional to the amount curtailed.
    - **e)** curtailments of the Product may not be replaced by third-party power purchases

11. CFAC may terminate upon 12-months prior written notice, but the provisions in Section 6 above shall be suspended during this period, and CFAC shall be obligated to pay the IP rate (whether or not it takes power and without regard to any mitigation by BPA) for the applicable Amount for the 12-month notice period. CFAC may switch from a curtailment to a termination at any time during a curtailment by providing notice of termination and agreeing to pay the IP rate for the applicable Amount for a period of not less than 12-months following the effective date of the notice of curtailment.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, August 19, 2009 8:57 AM
To: 'Zach Mayer/stamford/glen'
Subject: RE: This morning's call

I set up a bridge. Please call

Thanx

Mark

From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Wednesday, August 19, 2009 8:33 AM
To: Symonds,Mark C - PTL-5
Subject: Re: This morning's call

Mark,

I would prefer that I call you guys if possible. Is there a number I can reach you at?

Zach Mayer
Glencore Ltd.
Phone: (203) 328-2478

"Symonds,Mark C - PTL-5" <mcsymonds@bpa.gov>

08/19/2009 11:23 AM

To "'Zach Mayer/stamford/glen'" <Zach.Mayer@glencore-us.com>
cc
Subject This morning's call

Did you want us to call you at your desk at 10am Pacific or is there another number? Thanx

Mark

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Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, August 19, 2009 3:33 PM
To: 'Zach Mayer/stamford/glen'
Cc: matthew.lucke@Glencore-us.com; Burns,Allen L - D-7
Subject: RE: This morning's call

Zach,
Thanks for the summary. We expect to have the draft confirm we discussed first thing tomorrow morning.

Mark

From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Wednesday, August 19, 2009 2:43 PM
To: Burns,Allen L - D-7; Symonds,Mark C - PTL-5
Cc: matthew.lucke@Glencore-us.com
Subject: RE: This morning's call

Mark/Allen,

Below is a brief summary of the key elements of the structure we proposed in our phone call earlier. Please note that this is not a formal or binding proposal but instead merely intended as a framework.

- 4-year deal
- power price = IP
- minimum operating period of 12 months during the 4 years; once CFAC hits a point where it's not possible that it would operate for at least 12 months during the 4 years the deal automatically terminates
- BPA's option: either 3-month notice required to ramp up or down, but covering the full 2 potlines, OR 2-month notice required to ramp up or down but CFAC commits not to go up or down by more than one potline in any given notice period
- no cost caps for 1st 2-year period
- cost caps for 2nd 2-year period based on pro-rata costs of the Alcoa deal, but that covers the entire CFAC load (in other words, the pro-rata adjustment is based on total dollars, not $/MWh)
- minimum employment levels apply except when curtailed
- no power from coal-fired resources (we are OK with the language BPA has previously proposed - including in the Alcoa term sheet - regarding allocation of environmental costs)
- BPA serves CFAC's wheel-turning load
- LD's due from CFAC to BPA when CFAC fails to meet any 2- or 3-month notice it has given; for example, if CFAC tells BPA it's ramping down in 3 months, but then ends up ramping down after only 2 months, then CFAC must reimburse BPA for any losses BPA incurs in selling that power back into the market for the 3rd month
- liquidated benefits entirely for BPA's account
- BPA has a one-time option to curtail smelter load at CFAC for up to 6 months in the interest of system stability

Please let us know your thoughts at your earliest convenience.

Thanks

Zach Mayer
Glencore Ltd.
Phone: (203) 328-2478

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Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Thursday, August 13, 2009 9:16 AM
To: 'Matthew Lucke/stamford/glen'
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Appreciate the response.

If you would prefer to participate and there is a different time next week that would work for a conf call, please let us know. Otherwise, we will proceed with 10am Wednesday Aug 19th with Zach. Thank you.

Mark

-----Original Message-----
From: Matthew Lucke/stamford/glen [mailto:matthew.lucke@glencore-us.com]
Sent: Thursday, August 13, 2009 8:52 AM
To: Symonds,Mark C - PTL-5
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Thanks for your email Mark. We will not be able to visit next week.
I am unable to join the call but Zach will make himself available at the time below.
Matt

"Symonds,Mark C - PTL-5" <mcsymonds@bpa.gov>
08/13/2009 10:19 AM

To "'Zach Mayer/stamford/glen'" <Zach.Mayer@glencore-us.com>
cc "'Matthew Lucke/stamford/glen'" <matthew.lucke@glencore-us.com>, "Clark,Harry W - PTL-5" <hwclark@bpa.gov>
Subject RE: update

Zach,
Appreciate your time on the phone yesterday. I have cc'd Matt on this because you said you would be out Thu and Fri of this week and wanted to check-in regarding the timeslot we discussed - Wednesday Aug 13th at 10am. I have it reserved on our calendars. Does this time work for you all? You had also mentioned the possibility of coming to Portland? If that something you are considering, then the earlier we know the better in order to proceed with Security clearances. Thanx

Mark

From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Tuesday, August 11, 2009 2:24 PM
To: Symonds,Mark C - PTL-5
Subject: update

Mark,

I'm still waiting to hear back from you guys with your thoughts on a 3-year deal, as promised from our discussion last Thursday (at which time it was said that CFAC should expect to hear back from BPA on Friday). Please confirm that these discussions are ongoing and that BPA still plans to respond to CFAC on this issue. It's frustrating for us to be portrayed as delaying this process, or not recognizing the urgency of the timing, when BPA takes extra days to respond to ideas or proposals, leaving CFAC only to wait.

Thanks

Zach Mayer
Glencore Ltd.
Phone: (203) 328-2478

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Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Thursday, August 13, 2009 7:20 AM
To: 'Zach Mayer/stamford/glen'
Cc: 'Matthew Lucke/stamford/glen'; Clark,Harry W - PTL-5
Subject: RE: update

Zach,
Appreciate your time on the phone yesterday. I have cc'd Matt on this because you said you would be out Thu and Fri of this week and wanted to check-in regarding the timeslot we discussed - Wednesday Aug 13th at 10am. I have it reserved on our calendars. Does this time work for you all? You had also mentioned the possibility of coming to Portland? If that something you are considering, then the earlier we know the better in order to proceed with Security clearances. Thanx

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From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Tuesday, August 11, 2009 2:24 PM
To: Symonds,Mark C - PTL-5
Subject: update

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Zach Mayer
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Phone: (203) 328-2478

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Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Thursday, August 13, 2009 9:41 AM
To: 'Matthew Lucke/stamford/glen'
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Will do. Thanx

-----Original Message-----
From: Matthew Lucke/stamford/glen [mailto:matthew.lucke@glencore-us.com]
Sent: Thursday, August 13, 2009 9:20 AM
To: Symonds,Mark C - PTL-5
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Appreciate your flexibility Mark. I'm on the road all week and my schedule is pretty full. Let's see how the call goes with Zach and then we can have a follow up call/visit if necessary.

"Symonds,Mark C - PTL-5" <mcsymonds@bpa.gov>

08/13/2009 12:15 PM

To "'Matthew Lucke/stamford/glen'" <matthew.lucke@glencore-us.com>

cc "Clark,Harry W - PTL-5" <hwclark@bpa.gov>, "'Zach Mayer/stamford/glen'" <Zach.Mayer@glencore-us.com>

Subject RE: update

Appreciate the response.

If you would prefer to participate and there is a different time next week that would work for a conf call, please let us know. Otherwise, we will proceed with 10am Wednesday Aug 19th with Zach. Thank you.

Mark

-----Original Message-----
From: Matthew Lucke/stamford/glen [mailto:matthew.lucke@glencore-us.com]
Sent: Thursday, August 13, 2009 8:52 AM
To: Symonds,Mark C - PTL-5
Cc: Clark,Harry W - PTL-5; 'Zach Mayer/stamford/glen'
Subject: RE: update

Thanks for your email Mark. We will not be able to visit next week.

I am unable to join the call but Zach will make himself available at the time below.
Matt

"Symonds,Mark C - PTL-5" <mcsymonds@bpa.gov>

08/13/2009 10:19 AM

To "'Zach Mayer/stamford/glen'" <Zach.Mayer@glencore-us.com>

cc "'Matthew Lucke/stamford/glen'" <matthew.lucke@glencore-us.com>, "Clark,Harry W - PTL-5" <hwclark@bpa.gov>

Subject RE: update

Zach,
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From: Zach Mayer/stamford/glen [mailto:Zach.Mayer@Glencore-us.com]
Sent: Tuesday, August 11, 2009 2:24 PM
To: Symonds,Mark C - PTL-5
Subject: update

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Thanks

Zach Mayer
Glencore Ltd.
Phone: (203) 328-2478

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e-mail from your system.

Symonds,Mark C - PTL-5

From: Symonds,Mark C - PTL-5
Sent: Wednesday, August 19, 2009 8:24 AM
To: 'Zach Mayer/stamford/glen'
Subject: This morning's call

Did you want us to call you at your desk at 10am Pacific or is there another number? Thanx

Mark

Symonds,Mark C - PTL-5

From: Clark,Harry W - PTL-5
Sent: Thursday, August 27, 2009 1:55 PM
To: 'Zach Mayer/stamford/glen'; 'Matthew Lucke (matthew.lucke@glencore-us.com)'
Cc: Burns,Allen L - D-7; Symonds,Mark C - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: CFAC/BPA Term Sheet

Attachments: DRAFT CFAC Term Sheet (new 4-year concept) - 082509b.doc

Zach/Matt
This is broken in three main parts for this afternoon's discussion: 1) CFAC proposed changes; 2) BPA's proposed terms; and 3) a draft confirmation providing service October 2009 through November 2009.
Harry

Changes/Additions Proposed by CFAC to BPA's FY 2010 – FY 2013 Service Proposal (August 25, 2009)

- CFAC has the option to request an increase in service from BPA anytime during the Term. BPA must respond within 15 days of such request whether it is able to make acquisitions within the Cost Cap to provide service.

- Following the date 135 days prior to the beginning of a fiscal year, if CFAC makes a request to increase service the Cost Cap, used to determine if acquisitions are available within the Cost Cap, will be reduced to the pro rata share of the Alcoa cost of service.

- Term increased from 4 years to 6 years.

- Cost Cap should be adjusted to reflect the fact that CFAC smelter provides more jobs per MWh than the Alcoa smelter.

- If Alcoa's Cost Cap is increased from $300 million to $330 million the CFAC Cost Cap will be increased pro rata.

- CFAC may pay a surcharge in the event the cost of acquisitions exceeds the Cost Cap and CFAC elects to pay the amount above the Cost Cap. [

BPA Draft Term Sheet Presented to CFAC August 25, 2009 (with one change)

DRAFT CFAC Term Sheet (new 4-y...

Draft Confirmation for Service October 2009 through November
As we discussed there is not sufficient time to complete the public process needed for a long-term agreement. BPA has developed a confirmation for service Oct through November to provide parties more time to complete the process for a long-term agreement. The confirmation will be sent prior to this afternoon's call.

Harry Clark - PTL-5
Bonneville Power Administration
Long Term Sales & Purchases
905 NE 11th Ave.
Portland, OR 97232
503-230-3662

hwclark@bpa.gov

DRAFT – Term Sheet
Block Power Sale to CFAC[1]

August 25, 2009

Basic Terms (subject to the Special Conditions below):

Product	Block, firm power, delivered on all hours.
Rate	Industrial Firm Power (IP) rate. Reserves provided consistent with law.
Amount	Up to 70 aMW from December 1, 2009 – September 30, 2010 Up to 140 aMW from October 1, 2010 – September 30, 2013
Term	October 1, 2009 – September 30, 2013

Special Conditions:

1. Cost Caps:

Contract Year	Dates	Cost Cap ($ per MWh)
Year 2	Oct. 1, 2010 – Sep. 30, 2011	$48.00
Year 3	Oct. 1, 2011 – Sep. 30, 2012	$58.00
Year 4	Oct. 1, 2012 – Sep. 30, 2013	$58.00

2. Required Notice: Beginning for FY 2012, BPA will provide notice to CFAC no less than 135 days prior to the beginning of each fiscal year whether BPA will be able to acquire power within the cost cap for the year. In the event BPA is able to acquire power within the cost cap CFAC shall respond within 15 days following notice from BPA of the amount of power CFAC elects to purchase, if any.

3. Choice of Credit Assurance: In the event CFAC elects to purchase from BPA CFAC shall either: 1) post a letter of credit equal the amount power CFAC is entitled for a 60 day period multiplied by the annual average IP rate; or 2) prepay monthly 3 business days prior to the start of delivery.

4. Employment Commitment: CFAC commits to employ the following annual average FTE for each of the following operating levels for each year of operation in the term of this contract:

Amount (aMW)	Job Commitment (FTE)
140	266
70	162
38	86

[1] This draft term sheet is for discussion purposes only, is subject to change, and is not binding on BPA or CFAC for any purposes.

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"FTE" shall mean full time weighted average annualized employment for both regular employees and on-site and local off-site contractors. The average annualized employment will be weighted by CFAC's actual operating level for each month of the Fiscal Year. If CFAC fails to meet the required FTE over the term of this contract, BPA may terminate this contract; provided however, such minimum requirement shall not apply during periods of curtailment or if notice of termination has been issued. BPA and CFAC will include provisions in the draft contract covering FTE commitments for operating levels beyond what is contemplated in the table above.

5. BPA intends to require any suppliers to include any costs of carbon taxes or charges, greenhouse gas mitigation costs or other similar environmental or regulatory costs in their offers of electricity. Furthermore,

    a. BPA will not make a plant specific acquisition from a coal-fired resource, and

    b. BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to above, that are imposed on the supplier after the date the acquisition contract is entered into.

6. In order to qualify for service beginning October 1, 2009, CFAC's load at the smelter must have been 70 aMW or more in any one year of the Subscription Period (Fiscal Year 2007 through Fiscal Year 2009).

7. CFAC agrees not to challenge the validity of the contract implementing this Term Sheet in the Ninth Circuit Court of Appeals, but reserves the right to intervene in any proceeding challenging the validity of the contract for the purpose of defending the validity of the contract or any portion thereof.

8. If CFAC elects to curtail, then:

    a. 60-day prior written notice is required, curtailment duration may be changed only with BPA's consent;
    b. BPA will serve CFAC's wheel turning load;
    c. CFAC shall pay damages to BPA, if any, equal to the amount by which the reasonable market value of the curtailed amount is less than the value of the power purchased to serve CFAC;
    d. provisions in Section 4 above shall be suspended for the duration of each curtailment;
    e. no compensation by BPA to CFAC; and
    f. curtailments of the Product may not be replaced by third-party power purchases.

9. If the cost to serve CFAC for the Term is forecasted to be less than 90% of the cost cap then BPA's intent would be to offer a 3-year extension to the Term.

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Symonds,Mark C - PTL-5

From: Clark,Harry W - PTL-5
Sent: Wednesday, July 22, 2009 5:12 PM
To: 'Zach Mayer/stamford/glen'; 'Matthew Lucke (matthew.lucke@glencore-us.com)'
Cc: Symonds,Mark C - PTL-5; Burns,Allen L - D-7; Wright,Jon D - LP-7; Runzler,Kurt W - LP-7
Subject: CFAC/BPA Term Sheets - July 22, 2009

Attachments: DRAFT CFAC Term Sheet -072009e.doc; DRAFT CFAC Term Sheet (2-years only) - 072309 (blackline).doc

Zach
Attached are term sheets we discussed or mentioned today.

- The first one is the 4 year with the redline from the July 20 draft accepted. The 6 month notice for curtailment has been revised and is now 4 months. There are several other edits for clarification and are not intended to change the meaning or understanding develop so far -- an example was move to be clearer what it refers to, section 2 made clearer what is meant, and other edits through the document.
- The second on is for 2 years, one potline, at IP with more flexibility.

DRAFT CFAC Term Sheet -072009e...

DRAFT CFAC Term Sheet (2-years...

I will be in at 0730, 0800 the latest and will call you when I get in. Thanks

Harry Clark - PTL-5
Bonneville Power Administration
Long Term Sales & Purchases
905 NE 11th Ave.
Portland, OR 97232
503-230-3662
hwclark@bpa.gov

DRAFT – Term Sheet
Block Power Sale to CFAC[1]

July 23, 2009

Deleted: 20

Basic Terms (subject to the Special Conditions below):

Product	Block, firm power, delivered on all hours.
Rate	Industrial Firm Power (IP) rate. Reserves provided consistent with law.
Amount	70 aMW during Initial 2-year Period Up to 140 aMW during Subsequent 2-year Period
Term	October 1, 2009 – September 30, 2013 • October 1, 2009 – September 30, 2011 (Initial 2-year Period) • October 1, 2011 – September 30, 2013 (Subsequent 2-year Period).

Special Conditions:

1. BPA may provide CFAC notice of termination prior to October 1, 2010, if, in BPA's sole discretion, it is unable to purchase FBS replacement resources sufficient to serve the Amount for the Subsequent 2-Year Period for the lesser of (a) $64 per MWh, or (b) the pro rata share of the cost to BPA of purchases to serve two potlines of the Alcoa Intalco smelter load (for example, if the annual BPA cost to serve two potlines at the Alcoa Intalco smelter (320 aMW) was $35 million then the maximum annual cost for service to CFAC would be $15 million ($35m * 140 / 320 = $15m). The cost cap of $64 per MWh represents a forecasted net cost of less than $60 million for the Subsequent 2-year Period (defined as cost of purchases to serve CFAC's smelter load less expected IP revenue from the same).

2. In the event that wholesale power market prices for power purchased by BPA for the Initial 2-year Period are sufficient to serve CFAC with 140 aMW at a cost less than or equal to $48 per MWh based on a then current forecast of market prices, then commencing no earlier than the first day of the seventh month of the contract term BPA will increase the Amount ("Increased Amount") up to 140 aMW for the balance of the Initial 2-year Period. CFAC must provide BPA with 90 days notice of the effective date of its request that BPA increase the Amount. In the event the Amount will be so increased, then BPA shall have the option to serve any increased CFAC load during the 90-days prior to the effective date due to the ramp-up leading to the Increased Amount ("Ramp-Up Load"). BPA will provide notice to CFAC promptly if it wishes to exercise this option; provided however, if BPA decides not to exercise this option the restrictions

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Deleted: <#> For example, if the annual BPA cost to serve two potlines at the Alcoa Intalco smelter (320 aMW) was $35 million then the maximum annual cost for service to CFAC would be $15 million ($35m * 140 / 320 = $15m).¶

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[1] This draft term sheet is for discussion purposes only, is subject to change, and is not binding on BPA or CFAC for any purposes.

in Sections 10(c) and 11(e) will be suspended and CFAC may purchase such Ramp-Up Load from the market.

The cost cap of $48 per MWh represents a forecasted net cost of less than $36 million for the Initial 2-year Period (defined as cost of purchases to serve CFAC's smelter load less expected IP revenue from the same).

If Alcoa notifies BPA of a curtailment under its BPA power sales contract, then during the duration of such Alcoa curtailment the cost caps applicable to CFAC will be increased correspondingly.

3. Upon CFAC's request BPA will conduct a public process between October 1, 2012, and September 30, 2013, to determine the feasibility of entering into a follow-on contract with CFAC beginning October 1, 2013. In addition to examining the terms of service for any such follow-on contract, the public process will include a study analyzing the impacts on the regional economy associated with such a follow-on contract. This provision is not intended and shall not be construed as requiring BPA to offer any such follow-on contract, irrespective of the conclusions or findings of any public process undertaken.

4. Any costs of carbon taxes or charges, greenhouse gas mitigation costs or other similar environmental or regulatory costs will be included in the net cost calculation, and, as set forth below, BPA intends to require any suppliers to include such costs (excluding costs directly imposed on BPA explained in Section 5, below) in their offers of electricity.

   The cost caps in Sections 1 and 2 above represent the maximum amount BPA will pay for average annual blocks of power to support sales to CFAC, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs, and costs incurred by BPA in connection with any credit requirements. Cost caps represent the weighted average of acquisitions made by BPA to support sales to CFAC over all Fiscal Years comprising the particular delivery period. Furthermore:

   a. BPA will not make a plant specific acquisition from a coal-fired resource, and

   b. BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to above, that are imposed on the supplier after the date the acquisition contract is entered into.

5. In the event costs associated with either renewable energy portfolio standard obligations, if any, or costs imposed on BPA directly (in contrast with costs imposed upon suppliers to BPA) for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges, if any, are not recovered by BPA through rates but are to be paid by CFAC under the terms of the contract, CFAC shall have the option to terminate pursuant to section 12 below.

6. CFAC commits to employ an average of 266 full time equivalent employees (FTEs) for two potlines and an average of 162 FTE for one potline through the term of this contract.

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Deleted: In the event BPA's determination indicates CFAC's Amount will be increased and CFAC desires to increase such Amount during 3-month request period, BPA shall have the option to serve such increase in the Amount, and such right will not be unreasonable withheld by BPA, provided however, if BPA decides not to exercise this option the restrictions in Sections 10(c) and 11(e) will be suspended and CFAC may purchase such increase in the Amount during the 3-month request period from a third-party(ies).
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"FTE" shall mean full time weighted average annualized employment for both regular employees and on-site and local off-site contractors.[2] The average annualized employment will be weighted by CFAC's non-curtailed operating level for the months in each Fiscal Year. If CFAC fails to meet the required FTE on a rolling two Fiscal Years basis, BPA may terminate the contract; provided however, such minimum requirement shall not apply during periods of curtailment or if notice of termination has been issued. BPA and CFAC will include provisions in the draft contract covering FTE commitments for operating levels involving partial potline operations.

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7. In order to qualify for service beginning October 1, 2009, CFAC's load at the smelter must have been 70 aMW or more in any one year of the Subscription Period (Fiscal Year 2007 through Fiscal Year 2009).

8. Following a termination under Sections 12 or 13 below, unless triggered under Section 5 above, CFAC agrees that it will not request power service as a Direct Service Industry from BPA.

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9. CFAC agrees not to challenge the validity of the contract implementing this Term Sheet in the Ninth Circuit Court of Appeals, but reserves the right to intervene in any proceeding challenging the validity of the contract for the purpose of defending the validity of the contract or any portion thereof.

10. **October 1, 2009 through March 31, 2010 (Initial 6-Months):**
By the earlier date of 5 business days after the execution date of the contract implementing this Term Sheet or September 23, 2009, CFAC must provide BPA notice of the monthly Amounts for the first six months of the Initial 2-Year Period:
    a) no take-or-pay obligation on curtailed amounts included in this initial notice and no compensation by BPA to CFAC for such curtailment;
    b) commitments in Section 6 above shall be suspended for the duration of such curtailment;
    c) curtailments of the Product may not be replaced by third-party power purchases; and
    d) failure of appropriately noticed curtailed deliveries shall result in take-or-pay.

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CFAC may not increase such Amounts during the Initial 6-Months of the contract term from those initially established by notice but may curtail on a 2 month notice.

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[2] The average annualized employment will be weighted by CFAC's non-curtailed operating level for the months in each Fiscal Year. As an example, if CFAC:
    a) employed 85 full-time workers in the first 6-months of FY10 and their operating level was 37.5 aMW;
    b) employed 162 full-time workers in the next 4-months of FY10 and their operating level was 70 aMW;
    c) did not employ any full-time workers for the final 2-months in FY10 or any month of FY11 due to an appropriately noticed 14-month curtailment; and
    d) employed an average of 263 full-time workers for all months in FY12 and their average operating level was 140aMW,

then the minimum required FTE on a rolling two Fiscal Year basis would be 182 and CFAC would have met the test with 189 FTE.

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11. April 1, 2010 through September 30, 2013

If CFAC elects to curtail, then:

a) a 4-month prior written notice is required, curtailment duration may be changed only with BPA's consent;

b) take-or-pay applies to increased amounts above 70 aMW that is subsequently curtailed and there is no compensation by BPA to CFAC;

c) BPA will serve CFAC's wheel turning load;

d) commitments in Section 6 above shall be suspended for the duration of each curtailment;

e) curtailments of the Product may not be replaced by third-party power purchases; and

f) failure of appropriately noticed curtailed deliveries shall result in take-or-pay.

12. CFAC may terminate the contract upon 6 months prior written notice, and CFAC may switch from a curtailment to a termination at any time during a curtailment by providing notice of termination.

13. In the event CFAC fails to operate at a level equal to or greater than one potline (70 aMW) for at least 6 months during the Term, then BPA shall have no obligation to complete the public process specified in Section 3. In addition, on the first day of the month that there are insufficient month(s) remaining in the Term for CFAC to meet the 6 month requirement specified in this Section 13, then the contract will terminate.

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DRAFT – Term Sheet
Block Power Sale to CFAC[1]

July 23, 2009

Basic Terms (subject to the Special Conditions below):

Product	Block, firm power, delivered on all hours.
Rate	Industrial Firm Power (IP) rate. Reserves provided consistent with law.
Amount	70 aMW
Term	October 1, 2009 – September 30, 2011

Special Conditions:

1. BPA intends to require any suppliers to include any costs of carbon taxes or charges, greenhouse gas mitigation costs or other similar environmental or regulatory costs in their offers of electricity. Furthermore,

    a. BPA will not make a plant specific acquisition from a coal-fired resource, and

    b. BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to above, that are imposed on the supplier after the date the acquisition contract is entered into.

2. CFAC commits to employ an average of 162 FTE for one potline through the term of this contract. "FTE" shall mean full time weighted average annualized employment for both regular employees and on-site and local off-site contractors.[2] The average annualized employment will be weighted by CFAC's actual operating level for each month of the Fiscal Year. If CFAC fails to meet the required FTE over the term of this contract, BPA may terminate this contract; provided however, such minimum requirement shall not apply during periods of curtailment or if notice of termination has been issued. BPA and CFAC will include provisions in the draft contract covering FTE commitments for operating levels involving partial potline operations.

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[1] This draft term sheet is for discussion purposes only, is subject to change, and is not binding on BPA or CFAC for any purposes.

[2] The average annualized employment will be weighted by CFAC's non-curtailed operating level for the months in each Fiscal Year. As an example, if CFAC:

a) employed 87 full-time workers in the first 6-months of FY10 and their operating level was 37.5 aMW;
b) employed 162 full-time workers in the next 4-months of FY10 and their operating level was 70 aMW; and
c) did not employ any full-time workers and their operating level was 0 aMW for the final 2-months in FY10 and all months of FY11 due to an appropriately noticed 14-month curtailment,

then the minimum required FTE over the term would be 117 and CFAC would have met the test with 117 FTE.

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3. In order to qualify for service beginning October 1, 2009, CFAC's load at the smelter must have been 70 aMW or more in any one year of the Subscription Period (Fiscal Year 2007 through Fiscal Year 2009).

4. CFAC agrees not to challenge the validity of the contract implementing this Term Sheet in the Ninth Circuit Court of Appeals, but reserves the right to intervene in any proceeding challenging the validity of the contract for the purpose of defending the validity of the contract or any portion thereof.

5. If CFAC elects to curtail, then:
   a) a 60-day prior written notice is required, curtailment duration may be changed only with BPA's consent;
   b) no take-or-pay obligation on appropriately noticed curtailed amounts and no compensation by BPA to CFAC;
   c) BPA will serve CFAC's wheel turning load;
   d) provisions in Section 2 above shall be suspended for the duration of each curtailment;
   e) curtailments of the Product may not be replaced by third-party power purchases; and
   f) failure of appropriately noticed curtailed amounts shall result in CFAC paying damages to BPA, if any, equal to the amount by which the reasonable market value of the curtailed amount is less than the value of the curtailed amount at the IP rate.

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Symonds,Mark C - PTL-5

From: Miller,Mark E - PTF-5
Sent: Wednesday, February 25, 2009 8:41 AM
To: 'Zach Mayer/stamford/glen'
Cc: Symonds,Mark C - PTL-5; Clark,Harry W - PTL-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Subject: DSI CFAC Bridge Agreement 2-13-09 (2).doc

Attachments: DSI CFAC Bridge Agreement 2-13-09 (2).doc

DSI CFAC Bridge Agreement 2-13...

This should be the final draft. I have to check in with a few folks and we could potentially need a couple of real time tweaks that I'm not aware of right now, of which I will check with you before doing.
I think the only changes to the doc from what was posted are in Exh E and F. The Monetary Benefit Limits changed because we were using the wrong number of hours in March and Feb. Daylight savings time for March and I'm not sure why Feb was off.

DRAFT

Amendment No. 1
Contract No. 06PB-11745

AMENDMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

COLUMBIA FALLS ALUMINUM COMPANY, LLC

and

FLATHEAD ELECTRIC COOPERATIVE, INC

This AMENDMENT to the BLOCK POWER SALES AGREEMENT is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), COLUMBIA FALLS ALUMINUM COMPANY, LLC (CFAC), and FLATHEAD ELECTRIC COOPERATIVE, INC (Flathead). CFAC is a corporation organized under the laws of the State of Delaware. Flathead is a nonprofit corporation organized under the laws of the State of Montana.

This Amendment No. 1 (Amendment) suspends and replaces for the period March 1, 2009, through September 30, 2009 (Amendment Period) Block Power Sales Agreement No. 06PB-11745 (Agreement) by and between BPA, CFAC, and Flathead. Pursuant to this Amendment, Flathead's obligations under the Agreement are excused during the Amendment Period, and no new or substitute obligations are imposed on or undertaken by Flathead pursuant to this Amendment a) during the Amendment Period, or b) under the Agreement for any period prior to or after the Amendment Period.

On December 17, 2008, the United States Court of Appeals for the Ninth Circuit (Court) filed its opinion in *Pacific Northwest Generating Cooperative, et al., v. Bonneville Power Administration* (December Opinion) that held, among other things, that certain provisions of the Agreement are invalid. As a consequence of the December Opinion, BPA halted Monetary Benefit payments under the Agreement.

This Amendment provides for a replacement monetized power sale to CFAC during the Amendment Period and for the months of December 2008, January 2009, and February 2009, in a manner and amount that is consistent with the December Opinion.

In reliance on the payments to be made to it by BPA under the Agreement, CFAC acquired power in the wholesale power market to serve its industrial load during the full term of the Agreement. The average cost of CFAC's acquisitions exceed BPA's currently forecasted wholesale market price for the Amendment Period. BPA understands the December

Opinion to prohibit payments by BPA to CFAC that would exceed the difference between the Industrial Firm Power (IP) rate, and BPA's forecasted wholesale market price.

In lieu of delivering firm power to CFAC at the IP rate during the Amendment Period, BPA will monetize the value of a physically delivered firm power sale at the IP rate, with such value calculated as the difference between the IP rate applicable to the Amendment Period and BPA's forecasted wholesale market price for the Amendment Period. BPA's decision to monetize this transaction is based, in part, on a desire to avoid the risks associated with making the relatively large wholesale market power purchases BPA would be required to undertake, in a short period of time, to serve CFAC's currently operating load, together with the uncertainty that CFAC will continue operating at existing levels for the duration of the Amendment Period, given current uncertain economic conditions. Monetization will allow BPA to provide benefits to CFAC (and obligate BPA to incur expenditures) only in the event CFAC operates its smelter facility, thereby protecting BPA from making wholesale market purchases that could be both unnecessary in the event CFAC does not operate, and more expensive than anticipated if actual market prices exceed BPA's current market forecast.

This transaction will be structured as a simultaneous purchase and sale, whereby BPA will be deemed to purchase power from CFAC during the Amendment Period, in an amount equal to CFAC's then operating load, at prices equivalent to BPA's currently forecasted wholesale market price for the Amendment Period, and to simultaneously sell back such power to CFAC at the IP rate. As noted, in lieu of actual power deliveries by either party, the transaction will be monetized.

To summarize, this Amendment adjusts the rate that CFAC shall pay for power under the Agreement during the Amendment Period to the IP rate, and adjusts the payment made under the monetized transaction to an amount equal to the difference between the IP rate and BPA's forecasted market price for the Amendment Period, which represents the forecasted price that BPA would otherwise pay to acquire power if it were to physically serve CFAC.

In addition, this Amendment provides for a recalculation (and reduction) of benefits that would have been paid to CFAC for smelter operation in December 2008, January 2009, and February 2009, so that such payments will conform with the December Opinion. BPA has calculated a Monetary Benefit payment for each of these three months based on 1) actual prices for purchases made by BPA for the month of December, and for January and February BPA's forecasted wholesale market price for January 2009 through September 2009, 2) the IP rate in effect for each month, and 3) CFAC's operating level in each month. Payments calculated for these three months will not be made immediately, but shall be made by BPA in four equal monthly payments during the April through July 2009 period, but only if CFAC's Total Plant Load, preceding a month in which a payment is due is either equal to or greater than 37.5 aMW, and CFAC is maintaining a minuimum employee level equal to 85 full-time employees .

In addition, the Parties have agreed to modify the provisions regarding the determination of unused benefits under the Agreement to take into account CFAC's minimum operating level through the Amendment Period, and such provisions are intended to survive the

expiration of the Amendment Period. This modification is designed to encourage operation of CFAC's facilities through the period of increased power production due to fisheries operations on the Federal Columbia River Power System.

This Amendment allows BPA to provide service to CFAC while it fully considers the December Opinion, including treatment of the payments made to CFAC under the Agreement prior to the Court's ruling, and the ramifications for service to CFAC during the final two years of the Agreement (October 1, 2009, through September 30, 2011) following the termination of this Amendment. This Amendment is not intended, and shall not be interpreted, to establish any precedent or to waive any rights or arguments by BPA, CFAC, or Flathead regarding the legal rights and obligations of any or all of them under the December Opinion, including but not limited to the manner or amount of service provided by BPA to CFAC either prior to the December Opinion or after the expiration of this Amendment. The provisions are intended to provide temporary service to CFAC on terms that BPA, CFAC and Flathead believe adhere to the Court's holdings regarding BPA's authority, while affording the Parties a period of time to negotiate a long term replacement to the Agreement that also is consistent with the December Opinion.

The Parties agree:

1. **EFFECTIVE DATE**
This Amendment shall take effect on March 1, 2009, following execution by the Parties (Effective Date). This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

2. **AMENDMENT OF AGREEMENT**
Each provision of the Agreement is incorporated by reference into this Amendment, except the Parties hereby amend such provisions as follows:

(a) Section 2 of the Agreement (Definitions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following; except that sections 2(j) and 2(n) shall be used for purposes of establishing Unused Benefit Amounts under the Agreement for the period October 1, 2009 through September 30, 2011 when calculating benefits during the period from December 1, 2008 through September 30, 2009:

"2. **DEFINITIONS**
Capitalized terms in this Agreement shall have the meanings defined below, in the exhibits or in context. All other capitalized terms and acronyms are defined in BPA's applicable Wholesale Power Rate Schedule(s), including the General Rate Schedule Provisions (GRSPs).

(a) "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principle place of business. The relevant Party, in each

instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

(b) "Contract Year" or "CY" means the period that begins each October 1 and which ends the following September 30. For instance, CY 2007 begins October 1, 2006, and continues through September 30, 2007.

(c) "Demand Entitlement" means during the period when this Agreement operates as a physical Industrial Firm Power sale, the megawatt (MW) amount each hour that CFAC shall purchase from BPA, as specified in Exhibit E.

(d) "Equivalent IP" means the applicable average Industrial Firm Power Rate at 100 percent load factor, as determined pursuant to Exhibit F.

(e) "Escrow Account" means the specific account established pursuant to the provisions in section 9(b) below for receipt of funds from BPA and transfer of funds by Flathead to CFAC.

(f) "Forecast Market Price" means the forecast market price for power at 100 percent load factor for the period from January 1, 2009 though September 30, 2009, as specified in Exhibit F.

(g) "FY 07-09 Rate Period" means the wholesale power rate period that begins on October 1, 2006, and continues through September 30, 2009.

(h) "FY 10-11 Rate Period" means the wholesale power rate period that begins on October 1, 2009, and continues through September 30, 2011.

(i) "Industrial Firm Power" means electric power that PBL makes continuously available to CFAC under this Amendment except during periods when BPA exercises its interruption rights pursuant to section 4(i) below.

(j) "Interim Maximum MB Monthly Payment" means the Demand Entitlement times the hours in the month times the MB Rate.

(k) "MB Monthly Payment" means the monthly Monetary Benefit payment that is available during each month, as calculated in section 6(c)(2) below.

(l) "MB Rate" means the rate in dollars per megawatt-hour ($/MWh) used to calculate MB Monthly Payments pursuant to

section 6(c) below. The MB Rate is determined by subtracting Equivalent IP from Forecast Market Price.

(m) "Maximum Allocation" means, for the purpose of determining MB Monthly Payments, the maximum average megawatt (aMW) amount that may be used to determine a MB Monthly Payment. The Maximum Allocation is shown in Exhibit E.

(n) "Maximum MB Monthly Payment" means the Interim Maximum MB Monthly Payment.

(o) "Minimum Allocation" means, for the purpose of determining MB Monthly Payments, the minimum aMW amount that may be used to determine a MB Monthly Payment.

(p) "Monetary Benefits" means monetary payments made by BPA to CFAC under this Amendment, as determined pursuant to the provisions in section 6 below.

(q) "Monthly Plant Load" means a monthly aMW amount equal to the Total Plant Load for each month divided by the number of hours in each such month.

(r) "Monthly Purchase Deficiency" means the monthly amount(s) of Industrial Firm Power not purchased due to a curtailment, as such amount(s) may be adjusted pursuant to section 4(d)(1) below.

(s) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501.

(t) "Other DSIs" means aluminum smelters other than CFAC that have executed an agreement substantially in the form of this Agreement.

(u) "Points of Measurement" means the interconnection points between BPA, CFAC, and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.

(v) "Point of Receipt" means the points of interconnection on the transmission provider's transmission system where Industrial Firm Power shall be made available by PBL to CFAC's transmission provider.

(w) "Power Business Line" or "PBL" means that portion of the BPA organization or its successor that is responsible for the management and sale of BPA's Federal power.

(x) "Region" means the definition established for "Region" in the Northwest Power Act.

(y) "Total Plant Load" means the amount of electric energy in megawatt-hours (MWh) consumed during each month at CFAC's production facilities. A detailed description of CFAC's production facilities, including station service requirements and metering equipment, is described in Exhibit B.

(z) "Transmission Business Line" or "TBL" means that portion of the BPA organization or its successor that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).

(aa) "Unused Benefit Amount" or "UBA" means either: (1) an aMW amount determined pursuant to section 7(a) during any period in which Monetary Benefits are provided, or (2) a MW amount determined pursuant to section 7(b) during any period in which this Agreement operates as a physical Industrial Firm Power sale."

(b) Section 3 of the Agreement (Applicable Rates) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"3. **APPLICABLE RATES**

Purchases by CFAC under this Amendment are subject to the Industrial Firm Power (IP) rate schedule, IP-07R, or its successor, and the General Rate Schedule Provisions (GRSP). Billing determinants for any purchases will be included in the rate schedule. Purchases under the IP rate schedule are established as follows:

If this Amendment operates as a physically delivered Industrial Firm Power sale pursuant to section 4 below, then section 4(a) below and the Industrial Firm Power rate schedule apply. If the Industrial Firm Power sale is monetized, then the provisions of section 6 below shall establish the applicable Equivalent IP rate."

(c) Section 4 of the Agreement (Power Sales Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"4. **Power Sales Provisions**

This section 4 only applies when this Agreement operates as a physically delivered Industrial Firm Power sale. In this event, the Monetary Benefit provisions in section 6 shall not apply. All physically delivered Industrial Firm Power provided by PBL under this section 4 is solely for service to Total Plant Load.

(a) **Power Sale by PBL to CFAC**

(1) **Hourly Amounts**

PBL shall make available and CFAC shall purchase the Demand Entitlement each hour. The Demand Entitlement is specified in Exhibit E.

(2) **HLH and LLH Energy Entitlements and Demand Entitlement**

The Demand Entitlement multiplied by: (A) the number of HLH, and (B) the number of LLH in the applicable month, establishes CFAC's HLH and LLH Energy Entitlements with respect to this Amendment.

(b) **Unauthorized Increase Charge**

CFAC shall not intentionally schedule in excess of the amount specified in section 4(a)(1) above. However, in the event that an excess amount is scheduled due to error, then such amounts taken by CFAC at the Points of Receipt in excess of the amounts specified in section 4(a) above shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PBL. Power that has been provided for energy imbalance service pursuant to an agreement between TBL and CFAC shall not be subject to an Unauthorized Increase Charge for Demand and Energy under this Agreement. Any Unauthorized Increase Charge shall be billed by BPA in accordance with the billing procedures described in section 9(a) below. Any Industrial Firm Power used by CFAC for any other purpose shall be subject to the Unauthorized Increase Charge.

(c) **Curtailment**

If CFAC curtails Total Plant Load in whole or in part, then CFAC may request take-or-pay mitigation for purchases under section 4(a) above pursuant to section 4(d) below.

(d) **Take-or-Pay Mitigation for Curtailments**

If CFAC chooses to curtail its purchase obligation, then the following terms and conditions shall apply:

(1) **Notice of Curtailment**

CFAC shall provide written notice to PBL at least three (3) Business

Days in advance of a curtailment. Such notice shall specify the monthly amounts of power to be curtailed and the duration of the curtailment. The election to curtail such power, and the amount and duration of such curtailment, may not be changed without PBL's consent. PBL's sale shall be reduced by the amount of power curtailed. The Monthly Purchase Deficiency will be reduced by any reduction to the Demand Entitlement pursuant to section 7(b)(2) below.

(2) **Calculation of Damages**

CFAC shall pay directly to BPA damages for each Monthly Purchase Deficiency equal to the amount by which the reasonable market value of such Monthly Purchase Deficiency is less than the price of the applicable rate specified in Exhibit A. For purposes of calculating damages under this section 4(d)(2), the Monthly Purchase Deficiency(s) shall be reduced by any reduction of Demand Entitlement under section 7(b)(3), effective on the date any such reduction becomes effective. No later than 60 days following September 30, 2009, PBL shall, for each month of the previous Contract Year, calculate the reasonable market value for each Monthly Purchase Deficiency during such period. Reasonable market value and calculation of damages shall be determined as follows.

(A) No later than 3 Business Days prior to the commencement of a curtailment under this section 4(d), CFAC may obtain one or more transactable quotes for all or a portion of such power from a third party. The transactable quote may be for any length of time and curtailment amount. Each quote shall be deemed equal to the reasonable market value of such power to which the quote applies for the purpose of calculating damages under this section 4(d)(2). BPA may, but shall not be obligated to, resell the curtailed power to the third party, retain the power, or dispose of the power as it chooses. CFAC shall allow PBL at least 4 hours during normal business hours to decide whether or not to transact under such quote.

(B) BPA shall determine, by any reasonable method, the reasonable market value of the portion of each Monthly Purchase Deficiency for which CFAC has not obtained a transactable quote. The reasonable market value shall be adjusted to reflect volume and BPA transmission costs associated with remarketing each such portion of the Monthly Purchase Deficiency, regardless of whether each such portion is actually remarketed.

(C) BPA shall bill CFAC and CFAC shall directly pay BPA damages for such period equal to the amount by which the sum of the product of (1) each Monthly Purchase Deficiency and

(2) the applicable rate specified in Exhibit A that BPA would have charged each month if the power had been taken under this Agreement, exceeds the sum of the product of (1) each Monthly Purchase Deficiency and (2) the reasonable market value in each month. Amounts for damages under section 4(d)(2)(A) and section 4(d)(2)(B) may only be netted within a Contract Year. BPA is not obligated to pay CFAC the difference when the reasonable market value exceeds the applicable Industrial Firm Power rate.

It is expressly agreed to by the Parties that BPA shall not be obligated to enter into replacement transactions to determine or collect damages under this section 4(d)(2).

It is also expressly agreed that BPA will apply its then-current applicable credit policies if damages are due under this section 4(d)(2), and such policies may include an obligation to prepay for damages.

(e) **Scheduling**

All Industrial Firm Power transactions under this Agreement shall be scheduled and implemented consistent with Exhibit C, BPA Power Business Line Scheduling Provisions. The procedures for scheduling described in Exhibit C are the standard utility procedures followed by BPA for power transactions between PBL and other utilities or entities in the Region that require scheduling.

(f) **Delivery**

(1) **Transmission Service for Industrial Firm Power**

This Agreement does not provide transmission services for, or include the delivery of, Industrial Firm Power by BPA to CFAC. CFAC shall be responsible for executing one or more wheeling agreements with a transmission supplier for the delivery of Industrial Firm Power (Wheeling Agreement). PBL and CFAC agree to take such actions as may be necessary to facilitate the delivery of Industrial Firm Power to CFAC, consistent with the terms, notice, and the time limits contained in the Wheeling Agreement.

(2) **Liability for Delivery**

CFAC waives any claims against PBL arising under this Amendment for nondelivery of power to any points beyond the applicable Points of Receipt. PBL shall not be liable for any third-party claims related to the delivery of power after it leaves the Points of Receipt. In no event shall any Party be liable under this Agreement to any other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership. These limitations on liability apply

regardless of whether or not this Amendment provides for transfer service.

(3) **Points of Receipt**
PBL shall make Industrial Firm Power available to CFAC under this Amendment at Points of Receipt solely for the purpose of CFAC scheduling transmission to points of delivery for service to CFAC's Total Plant Load. CFAC shall schedule, if scheduling is necessary, such Industrial Firm Power solely for use by its Total Plant Load. PBL, for purposes of scheduling transmission for delivery under this Agreement, shall specify Points of Receipt in a written notice to CFAC no later than March 1, 2009.

If required by the Wheeling Agreement, when PBL designates such Points of Receipt, PBL shall provide capacity amounts for transmission under the Wheeling Agreement associated with the initial Points of Receipt that can be accepted as firm Points of Receipt under CFAC's Wheeling Agreement (except in the event that all Points of Receipt on the Federal Columbia River Power System (FCRPS) would be considered nonfirm). The sum of capacity amounts requested by PBL shall not exceed the amount of Industrial Firm Power specified in sections 4(a) above. Such Points of Receipt and their capacity amounts may only be changed through mutual agreement. However, at any time PBL may request the use of a nonfirm Point of Receipt to provide Industrial Firm Power to CFAC, but notwithstanding section 4(f)(2) above, PBL shall reimburse CFAC for any additional costs or production losses incurred by CFAC due to its compliance with such request.

(4) **Transmission Losses**
PBL shall provide CFAC the transmission losses between the Points of Receipt and CFAC's points of delivery for Industrial Firm Power, at no additional charge. Such losses shall be provided at Points of Receipt as established under section 4(f)(3) above, and under the terms and conditions as defined in the transmission provider's tariff.

(g) **Measurement**

(1) Amounts of Industrial Firm Power taken are deemed equal to the amount scheduled by CFAC under section 4(e) above or an amount of power as measured at Points of Measurement, as appropriate.

(2) CFAC shall provide reasonable notice to PBL prior to changing control areas.

(h) **Interruption Rights**
PBL shall have a one-time right during the term of this Amendment to interrupt deliveries of a portion of the Industrial Firm Power

hereunder pursuant to the following provisions. PBL may interrupt a portion of Industrial Firm Power deliveries if PBL anticipates, in its sole and exclusive discretion, that average forward market prices for a flat block of power will exceed $125/MWh during an interruption period to be specified by PBL in a written notice. In this event, PBL shall consult with CFAC prior to providing such written notice. If PBL decides to interrupt, then it will provide 30 days advance written notice to CFAC that specifies the amount of Industrial Firm Power to be interrupted and the associated interruption period; *provided, however*, that a minimum of 6 aMW will not be subject to any such interruption. Unless the Parties mutually agree otherwise, such interruption period shall extend for a minimum of 6 months and for a maximum of the duration of this Amendment, regardless of the level of actual market prices during an interruption period. In the event of an interruption, BPA shall pay CFAC, $24/MWh for amounts interrupted. Payments shall be made pursuant to section 9(b) below. Payments to CFAC under this section 4(h) shall be used first by CFAC to compensate CFAC's employees employed at the time of an interruption under this section 4(h) by providing each such employee, at the election of CFAC, either (1) the opportunity to work a regular work week (40 hours) at regular wage and benefit rates, or (2) special supplemental benefits such that the employee's effective after-tax income (including any available unemployment income) will be equal to what the employee's income would have been working a regular work week, plus all benefits the employee would have received, had the employee been working a regular 40-hour work week. BPA shall have the right to conduct an audit to verify compliance with this section 4(h). If there is an interruption under this section 4(h), then the portion of Demand Entitlement interrupted shall be treated as if taken for purposes of section 7(b)(1)(A) and shall not be subject to the take-or-pay provisions in sections 4(a).

(i) **Modification of Flathead's Obligations**

The Parties agree Flathead shall have no obligation to purchase any power from BPA under this Amendment. The Parties agree Flathead shall have no obligation to make available to CFAC any power under this Amendment."

(d) Section 5 of the Agreement (BPA and CFAC Options) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"5. **BPA Monetary Benefit Option**

BPA has determined that, during the period of this Amendment, in order to minimize the cost risks of supplying Industrial Firm Power, the Parties will monetize the physically delivered Industrial Firm Power sale obligation. As such, BPA will make any MB Monthly

Payments during the period of this Amendment, subject to the provisions of section 6 below."

(e) Section 6 of the Agreement (Monetary Benefit Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"6. **MONETARY BENEFIT PROVISIONS**
This section 6 only applies when the physically delivered Industrial Firm Power sale is monetized. The provisions in section 4 shall not apply to Monetary Benefits.

(a) **Determination of Forecast Market Price and Equivalent IP**
PBL has determined the Forecast Market Price and Equivalent IP for the period of this Amendment as specified in Exhibit F.

(b) **Determination of Monthly Plant Load**
No later than five (5) Business Days following the end of each month, PBL shall determine the Monthly Plant Load for each such month.

(c) **Determination of MB Monthly Payments**
The determinations described in Exhibit F and the following procedure as described in section 6(c)(1) through section 6(c)(3) shall be used to determine the MB Monthly Payment for each month.

(1) The Minimum Allocation shall not affect payment of the MB Monthly Payment.

(2) The MB Monthly Payment for each month shall be the amount determined by the following equation:

MB Monthly Payment = ((Monthly Plant Load) x (number of hours in the month)) x (MB Rate).

(3) Notwithstanding anything to the contrary in this Amendment, in no case shall the Monetary Benefits accrued during the period from December 1, 2008 through September 30, 2009, exceed the Monetary Benefit Limit specified in Exhibit E of this Amendment.

(d) **Recalculated Monetary Benefits Payment**
BPA shall pay CFAC a Monetary Benefit equal to the Monthly Plant Load times the number of hours in the month times $14.26/MWh to monetize deliveries of Industrial Firm Power for the Monthly Plant Load during the month of December

2008 and $15.35/MWh to monetize deliveries of Industrial Firm Power for the Monthly Plant Load during the months of January and February 2009. The payment of the sum of the Monetary Benefit amounts calculated in this section 6(d) shall be made by BPA in four equal monthly payments during the April through July 2009 period, provided, however, that CFAC's Total Plant Load, preceding a month in which a payment is due, must be either equal to or greater than 37.5 aMW, and provided, further, that CFAC must have maintained a minimum of 85 full-time employees at the CFAC facility. In the event CFAC fails a) to maintain a monthly Total Plant Load either equal to or greater than 37.5 aMW, and b) to maintain a minuimum employee level equal to 85 full-time employees, during any month from the Effective Date through June 2009, then BPA may suspend or terminate this Amendment.

(f) Section 7(a)(2) and section 7(a)(3) of the Agreement shall be replaced by the following when calculating benefits accessed under section 7(a)(3) for the period from December 1, 2008, through September 30, 2009 and such benefits accessed, or deemed to be accessed, shall be used for purposes of establishing Unused Benefit Amounts under the Agreement for the period October 1, 2009, through September 30, 2011:

"(2) In order to retain its Maximum Allocation, CFAC must, for at least one month during the preceding 12 months, have received the Maximum MB Monthly Payment. If this condition is not satisfied, then the Maximum Allocation shall be reduced; provided however, if the Monthly Plant Load is either equal to or greater than 37.5 aMW for all months through June 30, 2009, CFAC shall be deemed to have received the Maximum MB Monthly Payment for each month of the period from January 1, 2009, through September 30, 2009.

(3) CFAC shall retain the highest monthly percentage of the available benefits that it accessed during the previous 12 months. As such, CFAC's Maximum Allocation shall be reduced by the percentage of the available benefits, rounded to the nearest aMW, that were not accessed during the month that set the highest monthly percentage of benefits accessed. The amount of aMW from this calculation becomes an Unused Benefit Amount or UBA."

(g) Section 9(b) of the Agreement (Billing and Payment When Monetary Benefit Payments Provided) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"(b) **Payment of Interim Monetary Benefits Provided**

Within five Business Days after the end of each month, beginning April 1, 2009, BPA will review CFAC's metered load measurements to determine the Monthly Plant Load for the month.

Within eight Business Days following the end of the month, BPA shall transfer an amount to CFAC to pay the MB Monthly Payment, provided, however, that CFAC has maintained a Monthly Plant Load equal to, or greater than, 37.5 aMW, and maintained the minimum full-time employment level, as provided in section 6(d), above. Any monthly payment required under section 6(d) shall be in addition to any MB Monthly Payment amount to be made under this section 9(b)."

(h) Section 11 of the Agreement (Uncontrollable Forces) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"11. UNCONTROLLABLE FORCES

(a) **Uncontrollable Forces Provisions During Industrial Firm Power Sale**
If this Agreement operates as a physical Industrial Firm Power Sale, then the following provisions shall apply; *provided however,* that UBA determinations pursuant to section 7 and acquisitions of UBA pursuant to section 8 shall not be subject to Uncontrollable Forces under this section 11(a).

"Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its obligations under this Agreement and which, by exercise of that Party's reasonable diligence and foresight, such Party could not be expected to avoid and was unable to avoid. Uncontrollable Forces include, but are not limited to:

(1) any unplanned curtailment or interruption for any reason of firm transmission used to deliver Industrial Firm Power to CFAC's facilities, including but not limited to unplanned maintenance outages;

(2) any unplanned curtailment or interruption, failure or imminent failure of CFAC's production or transmission facilities, including but not limited to unplanned maintenance outages;

(3) any planned transmission or distribution outage that affects either CFAC or PBL which was provided by a third-party transmission or distribution owner, or by a transmission provider, including TBL, that is functionally

separated from the generation provider in conformance with Federal Energy Regulatory Commission (FERC) Orders 888 and 889 or its successors;

(4) strikes or work stoppage, including the threat of imminent strikes or work stoppage; *provided, however*, that nothing contained in this provision shall be construed to require any Party to settle any strike or labor dispute in which it may be involved.

(5) floods, earthquakes, or other natural disasters; and

(6) orders or injunctions issued by any court having competent subject matter jurisdiction, or any order of an administrative officer which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of any Party shall not constitute an Uncontrollable Force. The Party claiming the Uncontrollable Force shall notify the other Party as soon as practicable of that Party's inability to meet its obligations under this Agreement due to an Uncontrollable Force. The Party claiming the Uncontrollable Force shall notify any control area involved in the scheduling of a transaction which may be curtailed due to an Uncontrollable Force.

All Parties shall be excused from their respective obligations, other than from payment obligations incurred prior to the Uncontrollable Force, without liability to the other, for the duration of the Uncontrollable Force and the period reasonably required for the Party claiming the Uncontrollable Force, using due diligence, to restore its operations to conditions existing prior to the occurrence of the Uncontrollable Force."

(b) **Uncontrollable Forces Provisions During Periods When A Monetary Benefit is Provided**

During periods when the Industrial Firm Power sale is monetized, CFAC understands and agrees that there are no events that will be considered Uncontrollable Forces under this Agreement; provided, however, that BPA may not terminate this Amendment pursuant section 6(d) in the event that CFAC's failure to maintain a Monthly Plant Load equal to, or greater than, 37.5 aMW or to maintain a minuimum employee level equal to 85 full-time employees, is caused by an Uncontrollable Force."

(i) Section 13(b) of the Agreement (Limitation on Resale) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the following:

"(b) **Limitation on Resale**
CFAC shall not resell Industrial Firm Power."

(j) Section 16(c) of the Agreement is deleted for the period from the December 1, 2008 through September 30, 2009.

(k) Exhibit A of the Agreement (Surplus Firm Power Rate) shall be inoperative for the period from the Effective Date through September 30, 2009.

(l) Exhibit B of the Agreement (Additional Products, Services, and Special Provisions) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 1 of Exhibit B.

(m) Revision No. 1 of Exhibit E of the Agreement (Maximum Allocation, Minimum allocation, and Demand Entitlement) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 2 of Exhibit E.

(n) Exhibit F of the Agreement (Determination of Forecast Market Price and Equivalent PF) shall be inoperative for the period from the Effective Date through September 30, 2009 and replaced by the attached Revision No. 1 of Exhibit F.

3. SIGNATURES

The signatories represent that they are authorized to enter into this Amendment on behalf of the Party for whom they sign.

COLUMBIA FALLS ALUMINUM COMPANY, LLC	UNITED STATES OF AMERICA Department of Energy Bonneville Power Administration
By _____	By _____ Administrator
Name _____ *(Print/Type)*	Name _____ *(Print/Type)*
Title _____	
Date _____	Date _____

FLATHEAD ELECTRIC COOPERATIVE, INC

By _____

Name _____

Title _____

Date _____

Revision No. 1 of Exhibit B
ADDITIONAL PRODUCTS, SERVICES, AND SPECIAL PROVISIONS
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

1. DESCRIPTION OF CFAC's PRODUCTION FACILITIES, STATION SERVICE REQUIREMENTS, AND METERING EQUIPMENT

Production Facilities: are CFAC's aluminum smelting and other facilities served from the Government's Conkelley Substation, where the 13.8 or 230 kilovolt (kV) facilities of BPA and CFAC are connected.

Metering Equipment: used to measure energy usage of the CFAC facility located in the Government's Conkelley Substation in the 13.8 kV circuits over which such electric power and energy flows.

CFAC agrees to allow PBL access to all hourly load measurements of its Production Facilities necessary to administer this Agreement.

2. REVISIONS

This Exhibit B shall be revised upon mutual agreement of the Parties to reflect any new products, services, and special provisions that may be added during the term of this Agreement.

Revision No. 2, Exhibit E
MAXIMUM ALLOCATION, MINIMUM ALLOCATION, AND DEMAND ENTITLEMENT
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

Deleted: 4

1. MAXIMUM AND MINIMUM ALLOCATIONS

During periods when Monetary Benefit payments are provided pursuant to section 6 of the body of this Agreement, the Maximum Allocation, Minimum Allocation, and Monetary Benefit Limit amounts are as follows:

Maximum Allocation:	Demand Entitlement
Minimum Allocation:	0 aMW
Monetary Benefit Limit:	$5,913,455

Deleted: 5,056

2. DEMAND ENTITLEMENT

The Demand Entitlement shall be as follows:

- **December 2008 through February 2009**, the Demand Entitlement will equal the average Total Plant Load from December 1, 2008, through December 17, 2008 (which the Parties agree equaled 91.11 aMW); and

- **March 2009 through September 2009**, the Demand Entitlement will equal 37.5 aMW.

3. REVISIONS

BPA shall not revise this Revision No. 2 of Exhibit E to reflect changes to Maximum Allocation, Minimum Allocation, Monetary Benefit Limit, and/or Demand Entitlement for the period it is in effect.

Revision No.1 of Exhibit F
DETERMINATION OF FORECAST MARKET PRICE AND EQUIVALENT IP
(Amendment No.1 of Contract No. 06PB-11745)
Effective on the Effective Date

Deleted: 4

1. DETERMINATION OF FORECAST MARKET PRICE

The Forecast Market Price for the period from January 1, 2009 through September 30, 2009 shall be $48.05/ MWh.

2. DETERMINATION OF EQUIVALENT IP

The initial Equivalent IP for the period from January 1, 2009 through September 30, 2009 shall be $32.70/MWh.

(a) Each time any adjustment, surcharge, dividend or true-up to the IP Rate is proposed by BPA in writing (which may be before the date such change will actually be applied to the PF Rate), BPA will adjust the Equivalent IP and the MB Rate and MB Monthly Payments for the remaining months of such CY. Such adjustment will take into consideration the Monetary Benefits provided to date and the IP Rate adjustment to provide an end-of-CY total Monetary Benefit to which CFAC is entitled. If such recalculation indicates that BPA has paid CFAC more in Monetary Benefits than the amount to which CFAC is entitled, then BPA will reduce the MB Monthly Payments to CFAC over the next following three months (if full recovery of the amount is not possible in the 3-month period BPA may invoice CFAC for the remaining amount), by the amount needed to recover the overpayment. If adjustments, surcharges, and true-ups are established after the CY, then BPA will calculate the final Equivalent IP rate for such portion of the CY and adjustments to Monetary Benefit will be applied in the following CY.

(b) If, upon termination of this Agreement, a true-up or other adjustment following the end of the final CY results in a payment owed by CFAC to BPA, then BPA shall invoice CFAC for such payment within 90 days following the end of such final CY. Such payment shall be made by CFAC within 20 days following the receipt of such invoice. If, upon termination of this Agreement, a true-up or other adjustment following the end of the final CY results in a payment owed by BPA to CFAC, then BPA shall pay CFAC no later than 90 days following the end of such final CY.

3. REVISIONS

BPA shall have the unilateral right to revise this Exhibit F to reflect changes in Equivalent IP for CY 2009 calculated pursuant to this Exhibit F. Any changes to the procedure used to determine Equivalent IP may only be made upon mutual agreement of the Parties.

Symonds,Mark C - PTL-5

From: Clark,Harry W - PTL-5
Sent: Monday, May 11, 2009 4:58 PM
To: 'Mayer,Zach - Glencore'
Subject: RE: Cross Testimony Information

Zach
Could more points.
Tomorrow parties will have the opportunity to cross or ask questions about the BPA Sur-Rebuttal that was submitted today. If you are unable to participate there will be a transcript available, unsure when, of the entire proceeding sometime in the future.
Harry

From: Clark,Harry W - PTL-5
Sent: Monday, May 11, 2009 4:23 PM
To: 'Mayer,Zach - Glencore'
Cc: Burns,Allen L - D-7
Subject: Cross Testimony Information

Zach
Allen asked that I get this information to you.

BPA Sur-Rebuttal submitted today
We are still pulling together the electronic version of the Exhibits but testimony is attached. I will be a huge file. Let me know if you will want it.
<< File: WP-10-E-BPA-49.pdf >>

Cross Examination
Cross Examination will begin tomorrow at 1000. No phone bridge is available for rate parties to participate in a formal proceeding such as this. Parties must participate in person.

Harry Clark - PTL-5
Bonneville Power Administration
Long Term Sales & Purchases
905 NE 11th Ave.
Portland, OR 97232
503-230-3662
hwclark@bpa.gov