**Department of Energy**

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

PUBLIC AFFAIRS

September 29, 2009

In reply refer to: DK-7

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

RE: FOIA #09-049

Dear Mr. Seligman:

Thank you for the request for information that you made to Bonneville Power Administration (BPA) under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

**You requested the following:**
A copy of all communications since January 1, 2009, between BPA and member of Congress (or their staff) regarding BPA's existing or proposed contracts with Alcoa and Columbia Falls Aluminum Co. ("CFAC").

**Response:**
BPA has provided the responsive documents in their entirety. There is no charge for your request.

I appreciate the opportunity to assist you with this matter. If you have any questions 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

Enclosure(s): Responsive Documents

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Tuesday, June 02, 2009 11:52 AM
**To:** 'Shimek, Jaime (Murray)'; 'Merkel, Joel (Cantwell)'; 'Modaff, Pete'; 'Andrew Dohrmann'; 'Tara Robertson'; 'Todd Ungerecht'; 'Todd Young'; 'Osborne, Beth'; 'James Bradbury'; 'Mark Middaugh'; 'Jayme White'; 'Chrissy Poe'; 'Kelsey E. Knowles'; 'Wilkins, Paul (Baucus)'; 'Jason Bohrer'; 'Flanz, Ken (Crapo)'; 'Tomanelli, Luke (Crapo)'; 'Courtney Thompson'; 'Jennings, Matt (Tester)'; 'Berick, Dave (Wyden)'; 'Janine Benner'; 'Hillary Barbour'; 'Mahar-Piersma, Auke'; 'Susan Jane Brown'; 'Mary Heller'; 'Small, Malisah'; 'Colby Marshall'; 'Rea, Nathan'; 'nils.tillstrom@mail.house.gov'; 'Stephen Marx'; 'beth.nelson@mail.house.gov'
**Subject:** BPA Continues Discussion on Service to DSIs - Public Meeting June 8

**Attachments:** DSI letter to the region - May 2009.pdf

Welcome back from your Memorial Day recess. I want to let you know that BPA is restarting discussions on long-term DSI benefits. BPA is hosting a public meeting on June 8. See the email below that was sent to customer representatives and other stakeholders.

If you have any questions about this, please feel free to call or email me. Thanks.

Sonya Baskerville
Manager, National Relations
1000 Independence Ave, SW
8G-061
Washington, DC 20585
202-586-5640 O
202-253-7352 C

---

**From:** Larson,Cheryl A - PS-6
**Sent:** Monday, June 01, 2009 5:13 PM
**To:** Ackerman,Sue; Adams,Dick ; Adams,Doug; Andersen,Steve; Andrea,Michael; Andrus,Craig; Andrus,Stephanie; Aspaas,Lynn; Baker,Loren; Baker,Nancy; Beardry, Haley; Beatty, Theodore; Beaulieu,Christine; Beck, BJ; Beck,Barbara; Bedbury,Dan; Beyer,Lee; Bleakney,Leann; Bond,Sarah; Boomer,Linda; BPA Average System Cost; Brattebo,Scott; Brawley,Doug; Brost,Ed; Brown,Stefan; Byers,Dick ; Caldwell,Carol; Callca,Direlle; Carr,Geoff; Castille,Tim; Chevis,Cheryl; Christensen,Eric; Conger,Kurt; Corwin,Scott; Courm, Ken; Cross,Robin; Davis, Jeff; Deen,Michael; Dennison-Leonard, Sarah; Deren,Jeffrey; Dolan,Jim; Dotten,Michael; Dragoon,Ken; Drummond,Bill; Drury,Chris; Edmonds,Sarah; Elg,Jo; Elliott, Doug; Emtman,Trevor; Engel,Lee; Enright,Diana; Essex,Bob; Falcon,Anna ; Falkenburg,Humaira; Finnen,Ray; Fisher,Ann; Flynn, Ryan; Ford,Brad; Gadeburg,Ron; Gall, James; Goode, Ralph; Gray,Catherine; Gregg,Randy; Greisel, Andi; Hannaford,William; Hiaasen, Eric; Howell,Don; Hardy,Randy; Harris,Deb Bone; Haymaker,Tom; Hellman,Marc; Herring,Morgan; Hill,Michael; Himlie,Jay; Hocken,Natalie; Huber,Bob; Huhta,Gary; Hunt,Sandy; Hunter,Ian; Jackson-Gistelli,Richard; James,Dan; Jenks,Bob; Johnson, James R.; Johnson,Chris; Johnson,Erick; Johnson,Jim; Johnson,Sara; Jourabchi,Massoud; Kallstrom,Jeff; Kandra,Lindsay; Kari,Don; Kester,Greg; Kindley,Ray; Knipschield,Debbie; Knitter,Keith; Krekel,Randall; Labolle,Larry; Langer,Dwight; Lawrence,Rhett; Lay,Henry; Leach,Randi; Lewis,Steven; Lindstrom,Shirley; Litchfield,Jim; Lobdell,Jim; Lovely,Rick; Marshall, George; Mayer,Zach; Mayson, Jack ; Mayson,Jack; McGary,Pat; McKinsey,Tom; Melcalfe,Travis; Mendonca, Greg; Metcalfe,Dennis; Mey,Ken; Miles,Anna ; Miller,Doug; Mitchell,Fred; Morlan,Terry; Mount,Ed; Muller, Dave; Mundorf,Terry; Munz,Paul; Murphy,Paul; Nelson,Jeff; Nichols, Patty; Nieborsky, Gary; Nordstrom,Lisa; Nutley,Busse; Obenchain,Phil; O'Connor,Tom; O'Meara,Kevin; Opatrny,CC; Pace,Charles; Palmer,Steve; Paulson,Colleen; Peters,Lon; Piliaris,Jon; Pollock,Walt; Porter,John; Price,Neil; Radcliffe,Sania; Rettenmund,Fred; Richardson,Peter; Rodol,Ali; Roehm,Jenny; Roman,Edward; Rozanski,Rick; Russell,Jim; Samuelson,Matt; Sanders,Jim; Sanger,Irion; Sargent,Rich; Saven,John; Schaff,Margie; Scheel,Jim; Schneider,Russ; Schoenbeck,Don; Schwartz,Howard; Schwendiman, Celeste; Scott,Aleka; Seifert,Caryn; Sheets,Ed; Shimshank,Rachel; Shurts,John; Sidhu, David ; Sirois,Brenda; Sirvaitis,Rob; Skeahan,Brian; Skidmore,Lara; Smith,Doug; Speer,Jack; Staker, Doug ; Stauffer,Mark; Stratman,Megan; Strong,R. Blair; Tarp,Kelly; Taylor,Ardyce; Taylor,Steven; Thompson,Mark; Tilghman,Henry; Tinker,Don; Titus,Paul; Toulson,Dana; Towner,Zaybn; Trotter,Don; Tsui,Jonah; Vaughn,Greg; Ward,Bill; Wheeler, Brenna; Weems,Ryan; Weiss,Steve; Westerfield,Louann; Williams,Ed; Wilson,Mike; Wissler,Jon; Wittenburg,Bob; Wolverton,Linc; Wood,Wyla; Wright,Cindy; Wrigley,Paul; Yarkowski,Cameron; Young,Robert; Zell, Troy; Zwick,Sharon
**Subject:** BPA Continues Discussion on Service to DSIs - Public Meeting June 8
**Importance:** High

BPA is looking to the region for help as it seeks to find a balance between providing the aluminum direct service

industries a chance to continue operating in the Pacific Northwest and minimizing impacts to BPA rates. Specifically, BPA is looking for input to help it decide if the amount of power previously negotiated between Alcoa and BPA under an unsigned, draft contract released in January 2009 should be changed, and what changes are needed for the term of future contracts. The end goal is to be able to develop a contract or contracts that provide power to DSIs as early as October 1, 2009, and beyond.

BPA will hold a public meeting from **1-4 p.m., June 8, in the Rates Hearing Room**, to continue the discussion of determining appropriate levels of long-term service to the DSIs. The primary purpose of the meeting is to enable BPA to more fully understand the views and concerns of the parties and allow parties who have closely followed and participated in the previous development of the draft contract find common ground. To participate by phone, please call Dolena Fernandez at (503) 230-4297.

A letter to the region about this issue is attached and will be posted on BPA's external Web site at www.bpa.gov/power/pl/regionaldialogue/implementation/documents/. The draft contract mentioned above also is posted at this site.

Anyone interested is invited to review the draft contract and offer suggestions based on the questions raised in the letter. Written public comments should be submitted by close of business June 22, 2009, via BPA's public comment Web site at www.bpa.gov/applications/publiccomments/OpenCommentListing.aspx or by calling (800) 622-4519.

For more information, call Harry Clark at (503) 230-3662.

Thank you,
Cheryl Larson
Customer Communications Specialist
BPA Power Services
503-230-5356

**Letter to the Region**

DSI letter to the region - May...

Sonya Baskerville
Manager, National Relations
1000 Independence Ave, SW
8G-061
Washington, DC 20585
202-586-5640 O
202-253-7352 C

**Department of Energy**

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

EXECUTIVE OFFICE

May 29, 2009

In reply refer to: D-7

**To regional customers, stakeholders, and other interested parties:**

BPA is conducting a meeting to have an open public discussion for determining long-term service to the aluminum direct service industries (DSIs). The meeting is scheduled for 1-4 p.m., June 8, in the Rates Hearing Room, 911 N.E. 11th Avenue, Portland, Ore.

BPA is seeking to find a balance between providing the DSIs a chance to continue operating in the Pacific Northwest and minimizing impacts to BPA rates. BPA wants to hear from the region on this issue and would like to explain other processes that will move BPA forward in developing a DSI service strategy.

Included in this letter is clarification of the different processes that will be underway during the next several months regarding service to DSI customers.

**Long-Term DSI Service Process**

BPA is looking to the region to help it decide if the amount of power previously negotiated between Alcoa and BPA under the unsigned, draft contract released in January 2009 should be changed, and what changes are needed for the term of future contracts. The end goal is to be able to develop a contract or contracts that provide power to DSIs as early as Oct. 1, 2009 and beyond.

BPA and Alcoa Inc. worked several months last year and early this year to develop a long-term contract to provide service to the company's Intalco plant near Ferndale, Wash. While both BPA and Alcoa worked diligently to reach agreement, the parties were unable, given the sudden collapse of world aluminum prices, to settle on terms that serve the long-term interests of both parties. Since that time a couple of things have changed. The most significant development is that wholesale power prices are now considerably lower than they were last fall, including forward markets for future years. Also, while aluminum prices still have not rebounded significantly, they are no longer in a free fall and prices have remained fairly stable for the past several weeks. The draft contract was posted Jan. 23, 2009 on BPA's external Web site at www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/DSI/2009-01-23_09PB-13268.pdf.

*BPA is looking for specific feedback on changes to the draft contract:*

1. Increasing industrial firm power (IP) to an amount sufficient to operate two potlines at Alcoa's Ferndale smelter and the Columbia Falls Aluminum Company smelter located in Montana (460 aMW).
2. Should the contract term be shortened to 5 years, 7 years or maybe 10 years?

3. Should there be a short-term contract/amendment for FY2010 – FY2011 followed by a long-term contract with some type of off-ramp or a single contract extending beyond FY2011? If both a short-term and long-term contract are decided upon, what linkages should be put in place between the two?
4. If the contract term is shortened, can there now be less risk mitigation in the contract from that proposed in the Jan. 23 draft contract?

While this will be a meeting open to the public, it is not intended to be a forum to solicit broad public input and comment. The primary purpose is to enable a limited group of participants from the DSIs, BPA and other interested parties to engage in an in-depth discussion of these issues. The goal is to allow parties who have closely followed and participated in the previous development of the contract to find common ground and enable BPA to more fully understand the views and concerns of the parties. BPA will listen and consider any feedback received at the meeting, but written public comments should also be submitted by close of business June 22, 2009, via BPA's public comment Website at www.bpa.gov/applications/publiccomments/OpenCommentListing.aspx or by calling (800) 622-4519 to have them included as part of the administrative record. Additional opportunities for broad public participation will be provided later in the process.

**Different Processes Related to DSI Service**

Because there will be several processes simultaneously underway that regard past and future service to the aluminum DSIs we have listed these processes with a brief explanation. The three processes listed below are in addition to the WP-10 rate case in which a variable rate is being considered for the IP-10 Rate Schedule.

1. **Lookback Process**
   As a result of the United States Court of Appeals for the Ninth Circuit's December 17, 2008 opinion in *Pacific Northwest Generating Cooperation et al. v. Bonneville Power Administration*, 550 F.3d 846 (9th Cir. 2008) (PNGC), BPA is undertaking this process, to determine whether, and in what amount, BPA or a DSI is entitled to payments as a consequence of payments made by BPA to the aluminum DSIs from October 2006 through November 2008. BPA will issue a separate letter to announce the start of this process very soon.

2. **Long-Term DSI Service**
   BPA is undertaking this process to develop a contract(s) for the FY2010 through FY2011 period and the Regional Dialogue period that begins October 2011, or perhaps combine the two periods. This process will start with the June 8 public meeting announced earlier in this letter. BPA is interested in the region's thoughts about what changes that might be made to the draft contract that was shared with the region Jan. 23, particularly considering the fact wholesale market prices are lower than when the contract draft was initially negotiated.

3. **Long-Term Variable Rate Process**
   BPA may be undertaking this course to establish a long-term variable rate. This decision will be made as part of the WP-10 rate case. It is intended that this long-term variable rate take into consideration any over or under recovery of revenue from a variable IP-10 rate, if one is adopted. This process has not formally begun but would be an additional section 7(i) rate process that

begins when BPA issues the Initial Proposal for this process sometime prior to the end of September 2009. The final record of decision for this 7(i) process would plan to be completed during the spring of 2010.

If your group or organization wishes to have primary spokesperson who will participate in the limited group discussion please notify BPA by close of business June 4. If you have additional questions about this issue, please call BPA's Harry Clark at (503) 230-3662.

Sincerely,

//s// *Allen Burns, 5/29/09*

Allen Burns
Acting Deputy Administrator
Bonneville Power Administration

## Atterbury,Laura M - DK-7

**From:** Wilkins, Paul (Baucus) [Paul_Wilkins@baucus.senate.gov]
**Sent:** Tuesday, June 09, 2009 5:57 AM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: CFAC update

This is very helpful. Thank you, Sonya.

-----Original Message-----
From: Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
Sent: Monday, June 08, 2009 9:21 PM
To: Wilkins, Paul (Baucus)
Subject: CFAC update

Paul, I was correct that the current deal is good through the end of FY09 (September 30). I got an update from Allen after the public meeting today.

At the workshop, BPA indicated that we will need to have a draft contract out for review and comment in August that would cover service starting on Oct. 1, 2009 after the current deal expires. We indicated that we are considering various terms for that deal. One option is for a short term contract for FY 2010/2011 with a longer term deal to follow later that would also depend on what we do with a long term variable rate. The other option is for a simplified 7 year deal (i.e. FY 2010/2011 plus an additional 5 years) for 2 potlines of IP power (no variable rate) as long as we can purchase the power for the last five years under our price cap targets which have not changed.

The public comment period is open for two weeks. For either option, we plan to have a final record of decision and contract offer in September before the current deal expires, so CFAC should be covered assuming we reach agreement.

Here are documents that were shared at the meeting today.
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Let me know if you need any additional information. Thanks.
Sonya Baskerville
202.253.7352

## Atterbury,Laura M - DK-7

**From:** BPA National Relations
**Sent:** Monday, July 20, 2009 1:36 PM
**To:** Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Carrie Desmond; Catherine Ransom; Chrissy Poe; Colby Marshall; Corey McDaniel; Courtney Thompson; Dave Berick; Devin Nagy; Ethan Pittleman; Hillary Barbour; Jaime Shimek; James Bradbury; Janine Benner; Jason Bohrer; Jayme White; Jeremiah Baumann; Joel Merkel; Jon DeVaney; Kelsey E. Knowles; Ken Flanz; Luke Tomanelli; Malisah Small; Mark Middaugh; Mary Heller; Michele Miranda; Nathan Rea; Nils Tillstrom; Paul Wilkins; Pete Modaff; Ryan Shauers; Stephen Marx; Stephenne Harding; Susan Jane Brown; Todd Ungerecht; Todd Young
**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** BPA Releases Proposed Terms of Service to DSIs

Please feel free to contact me if you have any questions.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Larson, Cheryl A - PS-6
**Sent:** Monday, July 20, 2009 2:33 PM
**To:** Ackerman,Sue; Adams,Dick ; Adams,Doug; Andersen,Steve; Andrea,Michael; Andrus,Craig; Andrus,Stephanie; Aspaas,Lynn; Baker, Jack; Baker,Loren; Baker,Nancy; Beardry, Haley; Beatty, Theodore; Beaulieu,Christine; Beck, BJ; Beck,Barbara; Bedbury,Dan; Beyer,Lee; Bickford, Dan; Bleakney,Leann; Boomer,Linda; BPA Average System Cost; Brattebo,Scott; Brawley,Doug; Brost,Ed; Brown,Stefan; Byers,Dick ; Caldwell,Carol; Calica,Direlle; Carr,Geoff; Castille,Tim; Chevis,Cheryl; Christensen,Eric; Conger,Kurt; Corwin,Scott; Courm, Ken; Cross,Robin; Davis, Jeff; Deen,Michael; Dennison-Leonard, Sarah; Deren,Jeffrey; Dolan,Jim; Dotten,Michael; Dragoon,Ken; Drummond,Bill; Drury,Chris; Edmonds,Sarah; Elg,Jo; Elliott, Doug; Emtman,Trevor; Engel,Lee; Enright,Diana; Essex,Bob; Falcon,Anna ; Falkenburg,Humaira; Finnen,Ray; Fisher,Ann; Flynn, Ryan; Ford,Brad; Gadeburg,Ron; Gallagher, Greg; Goode, Ralph; Gray,Catherine; Gregg,Randy; Greisel, Andi; Hannaford,William; Hiaasen, Eric; Howell,Don; Hardy,Randy; Harris,Deb Bone; Haymaker,Tom; Hellman,Marc; Herring,Morgan; Hill,Michael; Himlie,Jay; Hocken,Natalie; Huber,Bob; Huhta,Gary; Hunt,Sandy; Hunter,Ian; Jackson-Gistelli,Richard; James,Dan; Jenks,Bob; Johnson, James R.; Johnson,Chris; Johnson,Erick; Johnson,Jim; Johnson,Sara; Jourabchi,Massoud; Kallstrom,Jeff; Kandra,Lindsay; Kari,Don; Kester,Greg; Kindley,Ray; Knipschield,Debbie; Knitter,Keith; Krekel,Randall; Labolle,Larry; Langer,Dwight; Lawrence,Rhett; Leach,Randi; Lewis,Steven; Lindstrom,Shirley; Litchfield,Jim; Lobdell,Jim; Lovely,Rick; Marshall, George; Mayer,Zach; Mayson, Jack ; Mayson,Jack; McGary,Pat; McKinsey,Tom; Melcalfe,Travis; Mendonca, Greg; Metcalfe,Dennis; Mey,Ken; Miles,Anna ; Miller,Doug; Mitchell,Fred; Morlan,Terry; Mount,Ed; Muller, Dave; Mundorf,Terry; Munz,Paul; Murphy,Paul; Murray, Mike ; Nelson,Jeff; Nichols, Patty; Nieborsky, Gary; Nordstrom,Lisa; Nutley,Busse; Obenchain,Phil; O'Connor,Tom; O'Meara,Kevin; Opatrny,CC; Pace,Charles; Palmer,Steve; Paulson,Colleen; Peters,Lon; Piliaris,Jon; Plotz, David; Pollock,Walt; Porter,John; Price,Neil; Radcliffe,Sania; Rettenmund,Fred; Richardson,Peter; Rodol,Ali; Roehm,Jenny; Roman,Edward; Rozanski,Rick; Russell,Jim; Samuelson,Matt; Sanders,Jim; Sanger,Irion; Sargent,Rich; Saven,John; Schaff,Margie; Scheel,Jim; Schneider,Russ; Schoenbeck,Don; Schwartz,Howard; Schwendiman, Celeste; Scott,Aleka; Seifert,Caryn; Sheets,Ed; Shimshank,Rachel; Shurts,John; Sidhu, David ; Sieler, Rick; Sirois,Brenda; Sirvaitis,Rob; Skeahan,Brian; Skidmore,Lara; Smith,Doug; Speer,Jack; Staker, Doug ; Stauffer,Mark; Stratman,Megan; Strong,R. Blair; Tarp,Kelly; Taylor,Ardyce; Taylor,Steven; Thompson,Mark; Tilghman,Henry; Tinker,Don; Titus,Paul; Toulson,Dana; Towner,Zaybn; Trotter,Don; Tsui,Jonah; Vaughn,Greg; Ward,Bill; Wheeler, Brenna; Weems,Ryan; Weiss,Steve; Westerfield,Louann; Williams,Ed; Wilson,Mike; Wissler,Jon; Wittenburg,Bob; Wolverton,Linc; Wood,Wyla; Wright,Cindy; Wrigley,Paul; Yarkowski,Cameron; Young,Robert; Zell, Troy; Zwick,Sharon
**Subject:** BPA Releases Proposed Terms of Service to DSIs

BPA and the two aluminum direct service industries have finished negotiating terms for drafting a long-term service contract. BPA is releasing for public review and comment two separate options for the terms of potential new service to Alcoa, Inc., and Columbia Falls Aluminum Company. Both term sheets reflect a proposed power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' loads. The proposed power sales would begin Oct. 1, 2009, and extend through either Sept. 30, 2013, or Sept. 30, 2016, depending on the option selected.

Any resulting long-term contract offers would be made available for additional public review likely in mid- to late-August.

CFAC has expressed a desire for a four-year option and Alcoa Inc., a preference for a seven-year option; the term sheets reflect these options respectively. Either DSI, however, can choose the terms of either option prior to the contracts being finalized. If BPA and the DSI move forward on either option, BPA hopes to have final selections made by September 2009.

The seven-year (Alcoa) proposed term sheet will be available for public review and comment at www.bpa.gov/comment from July 17, 2009, through Aug. 3, 2009. The four-year (CFAC) proposed term sheet also will be available for public review through Aug. 3; it will be ready for release the week of July 20.

When the CFAC term sheet is released, BPA also will release for review and comment a document titled "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept." This document is BPA's update to the results of the "*2006 Regional Employment and Economic Study.*" The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

The term sheets and a letter to the region will be posted on BPA's Web site at:
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Thank you,

Cheryl Larson
Customer Communications Specialist
BPA Power Services
503-230-5356

## Atterbury,Laura M - DK-7

**From:** Berick, Dave (Wyden) [Dave_Berick@wyden.senate.gov]

**Sent:** Monday. July 20. 2009 1:58 PM

**To:** BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch): Thompson. Courtney (Merkley): Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young

**Cc:** Baskerville,Sonya L - DKN-WASH

**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Please provide an economic analysis of what this will actually cost Bonneville and it's ratepayers since this is not clear from the letter or the term sheet.

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**From:** BPA National Relations [mailto:national@BPA.GOV]
**Sent:** Monday, July 20, 2009 4:36 PM
**To:** Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Berick, Dave (Wyden); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** BPA Releases Proposed Terms of Service to DSIs

Please feel free to contact me if you have any questions.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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yl A - PS-6
20, 2009 2:33 PM
Adams,Dick ; Adams,Doug; Andersen,Steve; Andrea,Michael; Andrus,Craig; Andrus,Stephanie; Aspaas,Lynn; Baker, Jack; Baker,Loren; Baker,Nancy; Beardry, Haley; Beatty, Theodore; Beaulieu,Christine; Beck, BJ; Beck,Barbara; Bedbury,Dan; Beyer,Lee; Bickford, Dan; Bleakney,Leann; Boomer,Linda; BPA Average System Cost; Brattebo,Scott; Brawley,Doug; Brost,Ed; Brown,Stefan; Byers,Dick ; Caldwell,Carol; Calica,Direlle; Carr,Geoff; Castille,Tim; Chevis,Cheryl; Christensen,Eric; Conger,Kurt; Corwin,Scott; Courm, Ken; Cross,Robin; Davis, Jeff; Deen,Michael; Dennison-Leonard, Sarah; Deren,Jeffrey; Dolan,Jim; Dotten,Michael; Dragoon,Ken; Drummond,Bill; Drury,Chris; Edmonds,Sarah; Elg,Jo; Elliott, Doug; Emtman,Trevor; Engel,Lee; Enright,Diana; Essex,Bob; Falcon,Anna ; Falkenburg,Humaira; Finnen,Ray; Fisher,Ann; Flynn, Ryan; Ford,Brad; Gadeburg,Ron; Gallagher, Greg; Goode, Ralph; Gray,Catherine; Gregg,Randy; Greisel, Andi; Hannaford,William; Hiaasen, Eric; Howell,Don; Hardy,Randy; Harris,Deb Bone; Haymaker,Tom; Hellman,Marc; Herring,Morgan; Hill,Michael; Himlie,Jay; Hocken,Natalie; Huber,Bob; Huhta,Gary; Hunt,Sandy; Hunter,Ian; Jackson-Gistelli,Richard; James,Dan; Jenks,Bob; Johnson, James R.; Johnson,Chris; Johnson,Erick; Johnson,Jim; Johnson,Sara; Jourabchi,Massoud; Kallstrom,Jeff; Kandra,Lindsay; Kari,Don; Kester,Greg; Kindley,Ray; Knipschield,Debbie; Knitter,Keith; Krekel,Randall; Labolle,Larry; Langer,Dwight; Lawrence,Rhett; Leach,Randi; Lewis,Steven; Lindstrom,Shirley; Litchfield,Jim; Lobdell,Jim; Lovely,Rick; Marshall, George; Mayer,Zach; Mayson, Jack ; Mayson,Jack; McGary,Pat; McKinsey,Tom; Melcalfe,Travis; Mendonca, Greg; Metcalfe,Dennis; Mey,Ken; Miles,Anna ; Miller,Doug; Mitchell,Fred; Morlan,Terry; Mount,Ed; Muller, Dave; Mundorf,Terry; Munz,Paul; Murphy,Paul; Murray, Mike ; Nelson,Jeff; Nichols, Patty; Nieborsky, Gary; Nordstrom,Lisa; Nulley,Busse; Obenchain,Phil; O'Connor,Tom; O'Meara,Kevin; Opatrny,CC; Pace,Charles; Palmer,Steve; Paulson,Colleen; Peters,Lon; Piliaris,Jon; Plotz, David; Pollock,Walt; Porter,John; Price,Neil; Radcliffe,Sania; Rettenmund,Fred; Richardson,Peter; Rodol,Ali; Roehm,Jenny; Roman,Edward;

|,Jim; Samuelson,Matt; Sanders,Jim; Sanger,Irion; Sargent,Rich; Saven,John; Schaff,Margie; Scheel,Jim; Schneider,Russ; Schoenbeck,Don; Schwartz,Howard; Schwendiman, Celeste; Scott,Aleka; Seifert,Caryn; Sheets,Ed; Shimshank,Rachel; Shurts,John; Sidhu, David ; Sieler, Rick; Sirois,Brenda; Sirvaitis,Rob; Skeahan,Brian; Skidmore,Lara; Smith,Doug; Speer,Jack; Staker, Doug ; Stauffer,Mark; Stratman,Megan; Strong,R. Blair; Tarp,Kelly; Taylor,Ardyce; Taylor,Steven; Thompson,Mark; Tilghman,Henry; Tinker,Don; Titus,Paul; Toulson,Dana; Towner,Zaybn; Trotter,Don; Tsui,Jonah; Vaughn,Greg; Ward,Bill; Wheeler, Brenna; Weems,Ryan; Weiss,Steve; Westerfield,Louann; Williams,Ed; Wilson,Mike; Wissler,Jon; Wittenburg,Bob; Wolverton,Linc; Wood,Wyla; Wright,Cindy; Wrigley,Paul; Yarkowski,Cameron; Young,Robert; Zell, Troy; Zwick,Sharon
:leases Proposed Terms of Service to DSIs

BPA and the two aluminum direct service industries have finished negotiating terms for drafting a long-term service contract. BPA is releasing for public review and comment two separate options for the terms of potential new service to Alcoa, Inc., and Columbia Falls Aluminum Company. Both term sheets reflect a proposed power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' loads. The proposed power sales would begin Oct. 1, 2009, and extend through either Sept. 30, 2013, or Sept. 30, 2016, depending on the option selected.

Any resulting long-term contract offers would be made available for additional public review likely in mid- to late-August.

CFAC has expressed a desire for a four-year option and Alcoa Inc., a preference for a seven-year option; the term sheets reflect these options respectively. Either DSI, however, can choose the terms of either option prior to the contracts being finalized. If BPA and the DSI move forward on either option, BPA hopes to have final selections made by September 2009.

The seven-year (Alcoa) proposed term sheet will be available for public review and comment at www.bpa.gov/comment from July 17, 2009, through Aug. 3, 2009. The four-year (CFAC) proposed term sheet also will be available for public review through Aug. 3; it will be ready for release the week of July 20.

When the CFAC term sheet is released, BPA also will release for review and comment a document titled "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept." This document is BPA's update to the results of the "*2006 Regional Employment and Economic Study.*" The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

The term sheets and a letter to the region will be posted on BPA's Web site at:
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Thank you,

Cheryl Larson
Customer Communications Specialist
BPA Power Services
503-230-5356

ok #5

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 7:11 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** CFAC

Hey, Paul. I see you called. I'm in the Secretary's staff meeting now.

There likely will be CFAC news today. I'll call you when I'm out of the meeting.
Sonya Baskerville
202.253.7352

ok #6

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 7:33 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** Re: DSI term sheet

Hi, Paul. Take or pay contracts are very standard power sales contracts, but I'm checking on your questions with Allen now. Thanks.
Sonya Baskerville
202.253.7352

---

**From**: Wilkins, Paul (Baucus)
**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Thu Jul 23 07:18:01 2009
**Subject**: DSI term sheet

Hi Sonya,

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Any insights you can provide would be greatly appreciated! Thanks for all your work to try to find a mutually acceptable agreement with CFAC.

Thanks!

Paul

#7

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 2:15 PM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** RE: DSI term sheet

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http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-07-17_DRAFT-TermSheet-Alcoa.pdf (Alcoa's term sheet)

Allen and others were waiting for CFAC to get back to them today, but as of now, I don't believe they have heard back. Looks like this might not come together today for a CFAC specific term sheet. I'll keep you posted as I hear more. If you hear anything from CFAC that you can share, let me know!

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 10:33 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** Re: DSI term sheet

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#8

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday. July 23. 2009 3:18 PM
**To:** Burns,Allen L - D-7; Kuntz,Gail K - DKR-MSGL; Klumpp,Elizabeth C - DKR-WSGL; Clark,Harry W - PTL-5; Helwig,Heidi Y - DKE-7; Symonds,Mark C - PTL-5
**Subject:** FW: DSI term sheet

FYI. Tried to call, but left a VM with the note below. Let me know when the call to CFAC is made re: the note. Thanks.

Sonya Baskerville
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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 6:14 PM
**To:** 'Wilkins, Paul (Baucus)'
**Subject:** RE: DSI term sheet

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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Thursday, July 23, 2009 5:28 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: DSI term sheet

Sonya,

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Thanks!

Paul

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**To:** Wilkins, Paul (Baucus)
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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 10:33 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** Re: DSI term sheet

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202.253.7352

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**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Thu Jul 23 07:18:01 2009
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Thanks!

Paul

#9

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 3:39 PM
**To:** Burns,Allen L - D-7; Kuntz,Gail K - DKR-MSGL; Klumpp,Elizabeth C - DKR-WSGL; Clark,Harry W - PTL-5; Helwig,Heidi Y - DKE-7; Symonds,Mark C - PTL-5; Miller,Mark E - PTF-5
**Subject:** FW: DSI term sheet

FYI.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
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Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Thursday, July 23, 2009 6:37 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: DSI term sheet

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---

**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, July 23, 2009 6:31 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: DSI term sheet

My understanding is that BPA did finally hear back from CFAC, but CFAC did not agree to either the 2- or 4-year option. I can check in with my folks again, but I think they had just gotten off the phone with CFAC when they called me. I'm surprised CFAC did not call to inform you they were going to do that.

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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Thursday, July 23, 2009 6:26 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: DSI term sheet

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I would strongly urge BPA to reconsider this decision to only offer the term sheet offered to Alcoa and allow for at least another day for CFAC indicate a final preference.

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**To:** Wilkins, Paul (Baucus)
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**Sent:** Thursday, July 23, 2009 5:28 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: DSI term sheet

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 10:33 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
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Paul

#10

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 6:15 PM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** Re: UPDATE: DSI term sheet
**Importance:** High

Hey, Paul. I also left you a voicemail on your cell. BPA is going to hold-off until 10:00a pacific tomorrow to allow you some time to talk with CFAC and also allow time for CFAC to contact BPA if they want to accept the 2- or the 4-year option.

At 10:00a pacific, Mark Symonds will call CFAC and tell them the posting of the notice will initiate at 10:00a and be up by around 10:30a unless CFAC tells us they will take the 2- or 4-year option.

Hope that provides you time to have a conversation with CFAC. Gail Kuntz also has been sharing information with Virginia in Senator Tester's office, so she will have this information as well. Thanks!
Sonya Baskerville
202.253.7352

---

**From**: Wilkins, Paul (Baucus)
**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Thu Jul 23 15:36:36 2009
**Subject**: RE: DSI term sheet

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Paul

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, July 23, 2009 5:15 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: DSI term sheet

Hey, Paul. My understanding is that CFAC has a two year version that does not have take-or-pay as long as they give BPA as little as a 2 month notice on where they plan to operate, anywhere between 0 to 70 aMW (i.e. one potline). If they make the decision to ramp up to 140 MW in the second option/alternative which is a four year deal, then take-or-pay applies to only the last 70 MW (or the second potline). Take-or-pay for the first 70 MW in this second option only comes into play if they fail to give us a 4 month notice. So, BPA folks believe there already is flexibility built into the take-or-pay character of the contract. Recall that the ALCOA's term sheet has a 12-month advance notice period and take or pay is in effect during that notice period. http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-07-17_DRAFT-TermSheet-Alcoa.pdf (Alcoa's term sheet)

Allen and others were waiting for CFAC to get back to them today, but as of now, I don't believe they have heard back. Looks like this might not come together today for a CFAC specific term sheet. I'll keep you posted as I hear more. If you hear anything from CFAC that you can share, let me know!

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 10:33 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** Re: DSI term sheet

Hi, Paul. Take or pay contracts are very standard power sales contracts, but I'm checking on your questions with Allen now. Thanks.
Sonya Baskerville
202.253.7352

---

**From**: Wilkins, Paul (Baucus)
**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Thu Jul 23 07:18:01 2009
**Subject**: DSI term sheet
Hi Sonya,

I wanted to check in with you to get some clarity on the take or pay issue in the draft term sheet with CFAC. Specifically, it is my understanding that BPA's position is that if BPA purchases power for CFAC, and CFAC shuts down before the agreement expires, CFAC must reimburse BPA for the full value of the power, and BPA also keeps the power and could resell it on the market. Is this correct, and if so, what is BPA's rationale for this position? If the goal is to keep BPA whole should CFAC shut down, isn't it sufficient to simply require CFAC to cover the spread between the purchase price and resale price?

Any insights you can provide would be greatly appreciated! Thanks for all your work to try to find a mutually acceptable agreement with CFAC.

Thanks!

Paul

#11

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Friday, July 24, 2009 10:23 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** Re: UPDATE: DSI term sheet

I just got a call from Allen that BPA is about to make the call to CFAC. Any news on your end on what CFAC has decided? Steve got a call from Senator Tester who expressed appreciation to us for holding this open, but he didn't indicate what CFAC had decided (he may not have known at the time).

As soon as the call is concluded, Allen or Mark will let me know what transpired. I'll be back in touch then. Thanks!
Sonya Baskerville
202.253.7352

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**From**: Baskerville,Sonya L - DKN-WASH
**To**: 'Paul_Wilkins@baucus.senate.gov'
**Sent**: Thu Jul 23 18:14:46 2009
**Subject**: Re: UPDATE: DSI term sheet

Hey, Paul. I also left you a voicemail on your cell. BPA is going to hold-off until 10:00a pacific tomorrow to allow you some time to talk with CFAC and also allow time for CFAC to contact BPA if they want to accept the 2- or the 4-year option.

At 10:00a pacific, Mark Symonds will call CFAC and tell them the posting of the notice will initiate at 10:00a and be up by around 10:30a unless CFAC tells us they will take the 2- or 4-year option.

Hope that provides you time to have a conversation with CFAC. Gail Kuntz also has been sharing information with Virginia in Senator Tester's office, so she will have this information as well. Thanks!
Sonya Baskerville
202.253.7352

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**From**: Wilkins, Paul (Baucus)
**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Thu Jul 23 15:36:36 2009
**Subject**: RE: DSI term sheet

Thanks for checking. If there is still room, I can push CFAC from my end.

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, July 23, 2009 6:31 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: DSI term sheet

My understanding is that BPA did finally hear back from CFAC, but CFAC did not agree to either the 2- or 4-year option. I can check in with my folks again, but I think they had just gotten off the phone with CFAC when they called me. I'm surprised CFAC did not call to inform you they were going to do that.

Let me check in again with my folks and I'll be back in touch very soon. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Thursday, July 23, 2009 6:26 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: DSI term sheet

Hi Sonya,

I'm a little shocked to hear this. It sounded to me as recently as this morning that there were three options under consideration from BPA's perspective. CFAC had indicated that the 4 year options with slight tweaks was their preference but the 2 year option as it stood might be workable as well. When was the last time BPA contacted CFAC to discuss the status of the term sheet? Was CFAC notified before a decision was made to go forward with only the seven year option? I don't believe that our office was.

I would strongly urge BPA to reconsider this decision to only offer the term sheet offered to Alcoa and allow for at least another day for CFAC indicate a final preference.

Thanks,

Paul

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, July 23, 2009 6:14 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: DSI term sheet

BPA purchases forward. We are buying now for the winter requirements for example. Those purchases are typically about 6 months in advance to take advantage of market conditions but more importantly for our trading floor's planning needs as they assure they have the power necessary to serve our obligations. A 140 MW purchase is large, and the trading floor needs time to make the necessary power purchases to meet not only that large load requirement but any other future power obligations.

I just got off the phone with Mark Miller and Harry Clark who have been negotiating this contract with CFAC. They told me that we are now out of time at this point to work through the different term sheet. We still have our public process review requirements in place and we don't have time now for the appropriate amount of review time. My understanding now is that the 7-year option is the remaining option. It is currently out for comment through August 3. BPA plans to post a note to clarify what is happening now that we were unable to reach agreement with CFAC - the note is to clarify what we said in the July 17 letter that there could

be separate options for Alcoa and CFAC.

My understanding is that CFAC will get a call when that note is posted. I'll let you know when that happens. Thanks.

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Manager, National Relations Office
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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Thursday, July 23, 2009 5:28 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: DSI term sheet

Sonya,

Thanks for getting back to me. In regards to the 4 year option, what is the rational for a 4 month notice requirement for the second potline as opposed to a two month requirement? Essentially, if the notification requirement for the first potline is 2 months what does it matter to BPA whether the notification requirement for the second potline is 2 months or 4 months?

Thanks!

Paul

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**Sent:** Thursday, July 23, 2009 5:15 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: DSI term sheet

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Allen and others were waiting for CFAC to get back to them today, but as of now, I don't believe they have heard back. Looks like this might not come together today for a CFAC specific term sheet. I'll keep you posted as I hear more. If you hear anything from CFAC that

you can share, let me know!

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**Sent:** Thursday, July 23, 2009 10:33 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
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Sonya Baskerville
202.253.7352

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**From**: Wilkins, Paul (Baucus)
**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Thu Jul 23 07:18:01 2009
**Subject**: DSI term sheet
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Any insights you can provide would be greatly appreciated! Thanks for all your work to try to find a mutually acceptable agreement with CFAC.

Thanks!

Paul

#12

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Friday, July 24, 2009 10:57 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** Fw: We did not get agreement with CFAC
**Importance:** High

Paul, Allen's note below summarizes what has finally occurred. I assume you have heard from CFAC by now. BPA's leadership can not justify taking on the additional risk associated with reducing the notice any further.

I'm in a meeting with FERC right now, but I'm available via email. Thanks.
Sonya Baskerville
202.253.7352

---

**From**: Burns,Allen L - D-7
**To**: Baskerville,Sonya L - DKN-WASH; Wright,Stephen J - A-7; Kuntz,Gail K - DKR-MSGL; Symonds,Mark C - PTL-5
**Sent**: Fri Jul 24 10:40:31 2009
**Subject**: We did not get agreement with CFAC

Mark just called CFAC to let them know that since we had not heard from them that we were going to post the note that we were now planning to proceed with only a 7 year option. Rather than agree to either the four year or two option alternatives Zach said they'd agree to the four year if we'd make an additional change so they can make a 2 months notice to change the amount of power they are taking rather than a 4 month notice ( recall we agreed to lower it from 6 months to 4 months just a couple of days ago and to be honest I had a lot of hard burn over us taking on that additional risk in these volatile power markets). Mark told him the purpose of the call was not to negotiate and make further concessions, so we are now proceeding to post the notice of a 7 year deal only. I really appreciate all the work Sonya and Gail have done on this.

#13

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Friday, July 24, 2009 11:54 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** Re: We did not get agreement with CFAC

I just heard back from Allen. He did not want to post the 4-year agreement without CFAC's agreement to the terms which would imply the door was open to more negotiation. So I believe the posting is being made now with the 7-year term sheet. Thanks.
Sonya Baskerville
202.253.7352

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**From**: Baskerville,Sonya L - DKN-WASH
**To**: 'Paul_Wilkins@baucus.senate.gov'
**Sent**: Fri Jul 24 11:07:30 2009
**Subject**: Re: We did not get agreement with CFAC

I'm checking now.
Sonya Baskerville
202.253.7352

---

**From**: Wilkins, Paul (Baucus)
**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Fri Jul 24 11:01:03 2009
**Subject**: Re: We did not get agreement with CFAC

Can you notice the four year deal described below as well? Given a choice between that and the alcoa term sheet, we might be able to force them into the four year deal.

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**From**: Baskerville,Sonya L - DKN-WASH <slbaskerville@bpa.gov>
**To**: Wilkins, Paul (Baucus)
**Sent**: Fri Jul 24 13:56:37 2009
**Subject**: Fw: We did not get agreement with CFAC

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#14

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Monday, July 27, 2009 12:02 PM
**To:** 'Wilkins, Paul (Baucus)'
**Subject:** RE: We did not get agreement with CFAC

Paul, I just tried to return your call. Here is the information you've requested.

1. Did BPA indeed post a notice that only the 7 year term sheet would be offered?

**Draft Term Sheet - CFAC**
The Bonneville Power Administration (BPA) issued a letter July 17 regarding service to the aluminum direct-service industries (DSIs) commencing in FY 2010 that indicated BPA is proposing two separate options for the terms of the potential new service.

Columbia Falls Aluminum Company (CFAC) had expressed a desire for a shorter term option that, in return, could provide them a bit more flexibility. However, BPA and CFAC have not been able to agree on principles needed to release a term sheet for a shorter term.

BPA is now proposing only one option for a power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' load. The proposed power sales would begin Oct. 1, 2009, and extend through Sept. 30, 2016. The proposed seven-year term sheet was made available for public review and comment beginning July 17, 2009, on BPA's Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

2. Did BPA ever receive any communication from CFAC after BPA agreed to hold open the issue for an additional day on Thursday?

We agreed to hold open the discussion until 10:00a pacific on Friday. I received on Friday after that deadline the email below (the first one in the email chain) describing what occurred on that call. CFAC declined to take the shorter term deals. I just checked with Mark Symonds, and to his knowledge, CFAC has not contacted BPA again since that time on Friday; but, both Allen Burns and Harry Clark are on vacation this week, so I don't know whether or not they were contacted again.

3. What if any flexibility does BPA now have to adjust the seven year term sheet to meet the needs of CFAC?

I don't believe there is any flexibility left - we were working through the shorter term arrangements to provide flexibility. BPA made certain commitments to customers for public comment of the terms. The customers have complained that BPA has provided a limited amount of time for the review, so if we were to make more changes, we would be even further limiting the time they would have to review the proposed terms. Allen and Steve are unwilling to do that.

Have you heard what CFAC is thinking now? I can't say for certain what would happen if CFAC came back to accept either the 2- or the 4-year agreement as is. We would have the same problems with the timing of the public review which is why we needed them to commit last week. Thanks.

Sonya Baskerville
Manager, National Relations Office

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Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Monday, July 27, 2009 12:27 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: We did not get agreement with CFAC

Hi Sonya,

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1. Did BPA indeed post a notice that only the 7 year term sheet would be offered?
2. Did BPA ever receive any communication from CFAC after BPA agreed to hold open the issue for an additional day on Thursday?
3. What if any flexibility does BPA now have to adjust the seven year term sheet to meet the needs of CFAC?

Thanks!

Paul

---

**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Friday, July 24, 2009 2:54 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** Re: We did not get agreement with CFAC

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202.253.7352

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**To**: 'Paul_Wilkins@baucus.senate.gov'
**Sent**: Fri Jul 24 11:07:30 2009
**Subject**: Re: We did not get agreement with CFAC

I'm checking now.
Sonya Baskerville
202.253.7352

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**From**: Wilkins, Paul (Baucus)
**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Fri Jul 24 11:01:03 2009

**Subject**: Re: We did not get agreement with CFAC
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**To**: Baskerville,Sonya L - DKN-WASH; Wright,Stephen J - A-7; Kuntz,Gail K - DKR-MSGL; Symonds,Mark C - PTL-5
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#15

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**Sent:** Monday, July 27, 2009 12:31 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: We did not get agreement with CFAC

Thanks, Sonya. This is very helpful. We're getting the lay of the land and will be in touch.

Thanks again for your help on this.

Best,

Paul

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Monday, July 27, 2009 3:02 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: We did not get agreement with CFAC

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**Sent**: Fri Jul 24 11:01:03 2009
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**To**: Baskerville,Sonya L - DKN-WASH; Wright,Stephen J - A-7; Kuntz,Gail K - DKR-MSGL; Symonds,Mark C - PTL-5
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Mark just called CFAC to let them know that since we had not heard from them that we were going to post the note that we were now planning to proceed with only a 7 year option. Rather than agree to either the four year or two option alternatives Zach said they'd agree to the four year if we'd make an additional change so they can make a 2 months notice to change the amount of power they are taking rather than a 4 month notice ( recall we agreed to lower it from 6 months to 4 months just a couple of days ago and to be honest I had a lot of hard burn over us taking on that additional risk in these volatile power markets). Mark told him the purpose of the call was not to negotiate and make further concessions, so we are now proceeding to post the notice of a 7 year deal only. I really appreciate all the work Sonya and Gail have done on this.

#16

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH

**Sent:** Tuesday, July 28, 2009 12:10 PM

**To:** 'Berick, Dave (Wyden)'; BPA National Relations; 'Amit Roen'; 'Andrew Dohrmann'; 'Auke Mahar-Piersma'; 'Beth Nelson'; 'Beth Osborne'; 'Desmond, Carrie (Murray)'; 'Catherine Ransom'; 'Chrissy Poe'; 'Colby Marshall'; 'McDaniel, Corey (Risch)'; 'Thompson, Courtney (Merkley)'; 'Devin Nagy'; 'Ethan Pittleman'; 'Hillary Barbour'; 'Shimek, Jaime (Murray)'; 'James Bradbury'; 'Janine Benner'; 'Bohrer, Jason (Risch)'; 'Jayme White'; 'Baumann, Jeremiah (Merkley)'; 'Merkel, Joel (Cantwell)'; 'Jon DeVaney'; 'Kelsey E. Knowles'; 'Flanz, Ken (Crapo)'; 'Tomanelli, Luke (Crapo)'; 'Malisah Small'; 'Mark Middaugh'; 'Mary Heller'; 'Miranda, Michele (Wyden)'; 'Nathan Rea'; 'Nils Tillstrom'; 'Wilkins, Paul (Baucus)'; 'Pete Modaff'; 'Ryan Shauers'; 'Stephen Marx'; 'Harding, Stephenne (Tester)'; 'Susan Jane Brown'; 'Todd Ungerecht'; 'Todd Young'

**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

I agree with you that a plain language review of this agreement would be helpful. This a complex agreement that relies on a number of assumptions regarding the amount of power benefit that may be provided, the assumptions about aluminum prices, etc. I will try to set-up a briefing prior to the recess, but Allen Burns, currently the Acting Deputy Administration (he carried this project with him to his new post), is on leave this week and I'm sure he would want to do this himself.

I have asked one of the executive assistants to hold Tuesday, August 4, at 2:00p eastern for a discussion of the term sheet. I will confirm that with you later in the week. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Berick, Dave (Wyden) [mailto:Dave_Berick@wyden.senate.gov]
**Sent:** Tuesday, July 28, 2009 2:50 PM
**To:** Baskerville,Sonya L - DKN-WASH; BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Tuesday, July 28, 2009 2:04 PM
**To:** Berick, Dave (Wyden); BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

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http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-07-23_Summary_Regional_Economic_Study.pdf

I will provide more information about the rate impact when I have that information from staff. Thanks.

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1000 Independence Ave., SW, 8G-061
Washington, DC 20585

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**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

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**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** BPA Releases Proposed Terms of Service to DSIs

Please feel free to contact me if you have any questions.

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Washington, DC 20585
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yl A - PS-6
20, 2009 2:33 PM
Adams,Dick ; Adams,Doug; Andersen,Steve; Andrea,Michael; Andrus,Craig; Andrus,Stephanie; Aspaas,Lynn; Baker, Jack; Baker,Loren; Baker,Nancy; Beardry, Haley; Beatty, Theodore; Beaulieu,Christine; Beck, BJ; Beck,Barbara; Bedbury,Dan; Beyer,Lee; Bickford, Dan; Bleakney,Leann; Boomer,Linda; BPA Average System Cost; Brattebo,Scott; Brawley,Doug; Brost,Ed; Brown,Stefan; Byers,Dick ; Caldwell,Carol; Calica,Direlle; Carr,Geoff; Castille,Tim; Chevis,Cheryl; Christensen,Eric; Conger,Kurt; Corwin,Scott; Courm, Ken; Cross,Robin; Davis, Jeff; Deen,Michael; Dennison-Leonard, Sarah; Deren,Jeffrey; Dolan,Jim; Dotten,Michael; Dragoon,Ken; Drummond,Bill; Drury,Chris; Edmonds,Sarah; Elg,Jo; Elliott, Doug; Emtman,Trevor; Engel,Lee; Enright,Diana; Essex,Bob; Falcon,Anna ; Falkenburg,Humaira; Finnen,Ray; Fisher,Ann; Flynn, Ryan; Ford,Brad; Gadeburg,Ron; Gallagher, Greg; Goode, Ralph; Gray,Catherine; Gregg,Randy; Greisel, Andi; Hannaford,William; Hiaasen, Eric; Howell,Don; Hardy,Randy; Harris,Deb Bone; Haymaker,Tom; Hellman,Marc; Herring,Morgan; Hill,Michael; Himlie,Jay; Hocken,Natalie; Huber,Bob; Huhta,Gary; Hunt,Sandy; Hunter,Ian; Jackson-Gistelli,Richard; James,Dan; Jenks,Bob; Johnson, James R.; Johnson,Chris; Johnson,Erick; Johnson,Jim; Johnson,Sara; Jourabchi,Massoud; Kallstrom,Jeff; Kandra,Lindsay; Kari,Don; Kester,Greg; Kindley,Ray; Knipschield,Debbie; Knitter,Keith; Krekel,Randall; Labolle,Larry; Langer,Dwight; Lawrence,Rhett; Leach,Randi; Lewis,Steven; Lindstrom,Shirley; Litchfield,Jim; Lobdell,Jim; Lovely,Rick; Marshall, George; Mayer,Zach; Mayson, Jack ; Mayson,Jack; McGary,Pat; McKinsey,Tom; Melcalfe,Travis; Mendonca, Greg; Metcalfe,Dennis; Mey,Ken; Miles,Anna ; Miller,Doug; Mitchell,Fred; Morlan,Terry; Mount,Ed; Muller, Dave; Mundorf,Terry; Munz,Paul; Murphy,Paul; Murray, Mike ; Nelson,Jeff; Nichols, Patty; Nieborsky, Gary; Nordstrom,Lisa; Nutley,Busse; Obenchain,Phil; O'Connor,Tom; O'Meara,Kevin; Opatrny,CC; Pace,Charles; Palmer,Steve; Paulson,Colleen; Peters,Lon; Piliaris,Jon; Plotz,

'orter,John; Price,Neil; Radcliffe,Sania; Rettenmund,Fred; Richardson,Peter; Rodol,Ali; Roehm,Jenny; Roman,Edward; Rozanski,Rick; Russell,Jim; Samuelson,Matt; Sanders,Jim; Sanger,Irion; Sargent,Rich; Saven,John; Schaff,Margie; Scheel,Jim; Schneider,Russ; Schoenbeck,Don; Schwartz,Howard; Schwendiman, Celeste; Scott,Aleka; Seifert,Caryn; Sheets,Ed; Shimshank,Rachel; Shurts,John; Sidhu, David ; Sieler, Rick; Sirois,Brenda; Sirvaitis,Rob; Skeahan,Brian; Skidmore,Lara; Smith,Doug; Speer,Jack; Staker, Doug ; Stauffer,Mark; Stratman,Megan; Strong,R. Blair; Tarp,Kelly; Taylor,Ardyce; Taylor,Steven; Thompson,Mark; Tilghman,Henry; Tinker,Don; Titus,Paul; Toulson,Dana; Towner,Zaybn; Trotter,Don; Tsui,Jonah; Vaughn,Greg; Ward,Bill; Wheeler, Brenna; Weems,Ryan; Weiss,Steve; Westerfield,Louann; Williams,Ed; Wilson,Mike; Wissler,Jon; Wittenburg,Bob; Wolverton,Linc; Wood,Wyla; Wright,Cindy; Wrigley,Paul; Yarkowski,Cameron; Young,Robert; Zell, Troy; Zwick,Sharon
'leases Proposed Terms of Service to DSIs

BPA and the two aluminum direct service industries have finished negotiating terms for drafting a long-term service contract. BPA is releasing for public review and comment two separate options for the terms of potential new service to Alcoa, Inc., and Columbia Falls Aluminum Company. Both term sheets reflect a proposed power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' loads. The proposed power sales would begin Oct. 1, 2009, and extend through either Sept. 30, 2013, or Sept. 30, 2016, depending on the option selected.

Any resulting long-term contract offers would be made available for additional public review likely in mid- to late-August.

CFAC has expressed a desire for a four-year option and Alcoa Inc., a preference for a seven-year option; the term sheets reflect these options respectively. Either DSI, however, can choose the terms of either option prior to the contracts being finalized. If BPA and the DSI move forward on either option, BPA hopes to have final selections made by September 2009.

The seven-year (Alcoa) proposed term sheet will be available for public review and comment at www.bpa.gov/comment from July 17, 2009, through Aug. 3, 2009. The four-year (CFAC) proposed term sheet also will be available for public review through Aug. 3; it will be ready for release the week of July 20.

When the CFAC term sheet is released, BPA also will release for review and comment a document titled "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept." This document is BPA's update to the results of the "*2006 Regional Employment and Economic Study.*" The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

The term sheets and a letter to the region will be posted on BPA's Web site at:
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Thank you,

Cheryl Larson
Customer Communications Specialist
BPA Power Services
503-230-5356

#17

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Tuesday, July 28, 2009 12:12 PM
**To:** 'Ronen, Amit (Cantwell)'
**Subject:** FW: BPA Releases Proposed Terms of Service to DSIs

Forgot to change the email again!

Sonya Baskerville
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yl A PS 6
20, 2009 2:33 PM
Adams,Dick ; Adams,Doug; Andersen,Steve; Andrea,Michael; Andrus,Craig; Andrus,Stephanie; Aspaas,Lynn; Baker, Jack; Baker,Loren; Baker,Nancy; Beardry, Haley; Beatty, Theodore; Beaulieu,Christine; Beck, BJ; Beck,Barbara; Bedbury,Dan; Beyer,Lee; Bickford, Dan; Bleakney,Leann; Boomer,Linda; BPA Average System Cost; Brattebo,Scott; Brawley,Doug; Brost,Ed; Brown,Stefan; Byers,Dick ; Caldwell,Carol; Calica,Direlle; Carr,Geoff; Castille,Tim; Chevis,Cheryl; Christensen,Eric; Conger,Kurt; Corwin,Scott; Courm, Ken; Cross,Robin; Davis, Jeff; Deen,Michael; Dennison-Leonard, Sarah; Deren,Jeffrey; Dolan,Jim; Dotten,Michael; Dragoon,Ken; Drummond,Bill; Drury,Chris; Edmonds,Sarah; Elg,Jo; Elliott, Doug; Emtman,Trevor; Engel,Lee; Enright,Diana; Essex,Bob; Falcon,Anna ; Falkenburg,Humaira; Finnen,Ray; Fisher,Ann; Flynn, Ryan; Ford,Brad; Gadeburg,Ron; Gallagher, Greg; Goode, Ralph; Gray,Catherine; Gregg,Randy; Greisel, Andi; Hannaford,William; Hiaasen, Eric; Howell,Don; Hardy,Randy; Harris,Deb Bone; Haymaker,Tom; Hellman,Marc; Herring,Morgan; Hill,Michael; Himlie,Jay; Hocken,Natalie; Huber,Bob; Huhta,Gary; Hunt,Sandy; Hunter,Ian; Jackson-Gistelli,Richard; James,Dan; Jenks,Bob; Johnson, James R.; Johnson,Chris; Johnson,Erick; Johnson,Jim; Johnson,Sara; Jourabchi,Massoud; Kallstrom,Jeff; Kandra,Lindsay; Kari,Don; Kester,Greg; Kindley,Ray; Knipschield,Debbie; Knitter,Keith; Krekel,Randall; Labolle,Larry; Langer,Dwight; Lawrence,Rhett; Leach,Randi; Lewis,Steven; Lindstrom,Shirley; Litchfield,Jim; Lobdell,Jim; Lovely,Rick; Marshall, George; Mayer,Zach; Mayson, Jack ; Mayson,Jack; McGary,Pat; McKinsey,Tom; Melcalfe,Travis; Mendonca, Greg; Metcalfe,Dennis; Mey,Ken; Miles,Anna ; Miller,Doug; Mitchell,Fred; Morlan,Terry; Mount,Ed; Muller, Dave; Mundorf,Terry; Munz,Paul; Murphy,Paul; Murray, Mike ; Nelson,Jeff; Nichols, Patty; Nieborsky, Gary; Nordstrom,Lisa; Nutley,Busse; Obenchain,Phil; O'Connor,Tom; O'Meara,Kevin; Opatrny,CC; Pace,Charles; Palmer,Steve; Paulson,Colleen; Peters,Lon; Piliaris,Jon; Plotz, David; Pollock,Walt; Porter,John; Price,Neil; Radcliffe,Sania; Rettenmund,Fred; Richardson,Peter; Rodol,Ali; Roehm,Jenny; Roman,Edward; Rozanski,Rick; Russell,Jim; Samuelson,Matt; Sanders,Jim; Sanger,Irion; Sargent,Rich; Saven,John; Schaff,Margie; Scheel,Jim; Schneider,Russ; Schoenbeck,Don; Schwartz,Howard; Schwendiman, Celeste; Scott,Aleka; Seifert,Caryn; Sheets,Ed; Shimshank,Rachel; Shurts,John; Sidhu, David ; Sieler, Rick; Sirois,Brenda; Sirvaitis,Rob; Skeahan,Brian; Skidmore,Lara; Smith,Doug; Speer,Jack; Staker, Doug ; Stauffer,Mark; Stratman,Megan; Strong,R. Blair; Tarp,Kelly; Taylor,Ardyce; Taylor,Steven; Thompson,Mark; Tilghman,Henry; Tinker,Don; Titus,Paul; Toulson,Dana; Towner,Zaybn; Trotter,Don; Tsui,Jonah; Vaughn,Greg; Ward,Bill; Wheeler, Brenna; Weems,Ryan; Weiss,Steve; Westerfield,Louann; Williams,Ed; Wilson,Mike; Wissler,Jon; Wittenburg,Bob; Wolverton,Linc; Wood,Wyla; Wright,Cindy; Wrigley,Paul; Yarkowski,Cameron; Young,Robert; Zell, Troy; Zwick,Sharon
leases Proposed Terms of Service to DSIs

BPA and the two aluminum direct service industries have finished negotiating terms for drafting a long-term service contract. BPA is releasing for public review and comment two separate options for the terms of potential new service to Alcoa, Inc., and Columbia Falls Aluminum Company. Both term sheets reflect a proposed power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' loads. The proposed power sales would begin Oct. 1, 2009, and extend through either Sept. 30, 2013, or Sept. 30, 2016, depending on the option selected.

Any resulting long-term contract offers would be made available for additional public review likely in mid- to late-August.

CFAC has expressed a desire for a four-year option and Alcoa Inc., a preference for a seven-year option; the term sheets reflect these options respectively. Either DSI, however, can choose the terms of either option prior to the contracts being finalized. If BPA and the DSI move forward on either option, BPA hopes to have final selections made by September 2009.

The seven-year (Alcoa) proposed term sheet will be available for public review and comment at www.bpa.gov/comment from July 17, 2009, through Aug. 3, 2009. The four-year (CFAC) proposed term sheet also will be available for public review through Aug. 3; it will be ready for release the week of July 20.

When the CFAC term sheet is released, BPA also will release for review and comment a document titled "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept." This document is BPA's update to the results of the "*2006 Regional Employment and Economic Study.*" The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

The term sheets and a letter to the region will be posted on BPA's Web site at:
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Thank you,

Cheryl Larson
Customer Communications Specialist
BPA Power Services
503-230-5356

#18

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH

**Sent:** Tuesday, July 28, 2009 1:05 PM

**To:** 'Berick, Dave (Wyden)'; 'Ronen, Amit (Cantwell)'; 'Andrew Dohrmann'; 'Auke Mahar-Piersma'; 'Beth Nelson'; 'Beth Osborne'; 'Desmond, Carrie (Murray)'; 'Catherine Ransom'; 'Chrissy Poe'; 'Colby Marshall'; 'McDaniel, Corey (Risch)'; 'Thompson, Courtney (Merkley)'; 'Devin Nagy'; 'Ethan Pittleman'; 'Hillary Barbour'; 'Shimek, Jaime (Murray)'; 'James Bradbury'; 'Janine Benner'; 'Bohrer, Jason (Risch)'; 'Jayme White'; 'Baumann, Jeremiah (Merkley)'; 'Merkel, Joel (Cantwell)'; 'Jon DeVaney'; 'Kelsey E. Knowles'; 'Flanz, Ken (Crapo)'; 'Tomanelli, Luke (Crapo)'; 'Malisah Small'; 'Mark Middaugh'; 'Mary Heller'; 'Miranda, Michele (Wyden)'; 'Nathan Rea'; 'Nils Tillstrom'; 'Wilkins, Paul (Baucus)'; 'Pete Modaff'; 'Ryan Shauers'; 'Stephen Marx'; 'Harding, Stephenne (Tester)'; 'Susan Jane Brown'; 'Todd Ungerecht'; 'Todd Young'; 'Betz, Kimberly'

**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Thanks. And thanks for a reminder that I must have neglected to send you an update on what has occurred with CFAC. As I mentioned, last week BPA was attempting to negotiate a term sheet with different terms for CFAC. We were unable to reach agreement on those different terms.

On Friday, BPA posted a notice indicating that it was unable to reach agreement with CFAC and the only term sheet for DSI service is the proposed 7-year term sheet. Customers were notified on Friday.

Here is the posting:

**Draft Term Sheet - CFAC**

The Bonneville Power Administration (BPA) issued a letter July 17 regarding service to the aluminum direct-service industries (DSIs) commencing in FY 2010 that indicated BPA is proposing two separate options for the terms of the potential new service.

Columbia Falls Aluminum Company (CFAC) had expressed a desire for a shorter term option that, in return, could provide them a bit more flexibility. However, BPA and CFAC have not been able to agree on principles needed to release a term sheet for a shorter term.

BPA is now proposing only one option for a power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' load. The proposed power sales would begin Oct. 1, 2009, and extend through Sept. 30, 2016. The proposed seven-year term sheet was made available for public review and comment beginning July 17, 2009, on BPA's Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

**From:** Berick, Dave (Wyden) [mailto:Dave_Berick@wyden.senate.gov]
**Sent:** Tuesday, July 28, 2009 3:21 PM

**To:** Baskerville,Sonya L - DKN-WASH; BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Thanks for the quick response. I look forward to the call. I just want to note that the comment period specified in the July 17, 2009 letter to regional customers ends at 5:00 pm on August 3rd. So it's going to be hard to finish comments on this by then, especially when the Columbia Falls term sheet still doesn't seem to be available yet.

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Tuesday, July 28, 2009 3:10 PM
**To:** Berick, Dave (Wyden); BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

I agree with you that a plain language review of this agreement would be helpful. This a complex agreement that relies on a number of assumptions regarding the amount of power benefit that may be provided, the assumptions about aluminum prices, etc. I will try to set-up a briefing prior to the recess, but Allen Burns, currently the Acting Deputy Administration (he carried this project with him to his new post), is on leave this week and I'm sure he would want to do this himself.

I have asked one of the executive assistants to hold Tuesday, August 4, at 2:00p eastern for a discussion of the term sheet. I will confirm that with you later in the week. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Berick, Dave (Wyden) [mailto:Dave_Berick@wyden.senate.gov]
**Sent:** Tuesday, July 28, 2009 2:50 PM
**To:** Baskerville,Sonya L - DKN-WASH; BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek,

Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

I think a conference call on this would be helpful because the Alcoa term sheet simply doesn't line up with what you are saying. There is nothing in the Alcoa term sheet that caps the combined amount for both plants at $100 million annually. Second, to the extent there are any cost caps, they appear to be $ per average megawatt for each period not total dollars per year, or even over the life of the proposed sale. Where totals are discussed, in the term sheet and economic summary, they are discussed as "forecasted" or "intended" exposure.

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Tuesday, July 28, 2009 2:04 PM
**To:** Berick, Dave (Wyden); BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Dave, thanks for your question and apologies for taking some time to get back to you on your question. I want to give you all a complete (and of course accurate) response. The BPA leads on the DSI issues were tied up last week on issues related to Columbia Falls Aluminum. I still need to get specific information from the staff regarding the rate impact.

For FYs 2010-2011, the total cost is still capped at $59 million. The term sheet points out that the total cost of the follow-on 5-years is capped at $100 million annually for Alcoa and CFAC combined. However, the cost changes depending on what amount of power benefit is provided - it may be lower.

Part of the response to your question has been posted on the BPA website. The 7-year proposal is similar to what BPA discussed at the public workshop in June and still is based on trying to give the DSIs a reasonable chance to survive while having at least a slight net positive impact on expected overall jobs in the region. BPA's views on providing this benefit has not changed for some time, particularly given the 9th Circuit's ruling affirming BPA's discretion to provide these benefits and on what conditions.

Here's what has been posted regarding the economic study:

BPA's "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept," which is BPA's update to the results of the "2006 Regional Employment and Economic Study," is also available now for public review on the Web site. The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

- Summary of BPA's Use of the Regional Economic Study to Contemplate these Service Concepts (7/23/09)
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-07-

23 Summary Regional Economic Study.pdf

I will provide more information about the rate impact when I have that information from staff. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Berick, Dave (Wyden) [mailto:Dave_Berick@wyden.senate.gov]
**Sent:** Monday, July 20, 2009 4:58 PM
**To:** BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Please provide an economic analysis of what this will actually cost Bonneville and it's ratepayers since this is not clear from the letter or the term sheet.

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**From:** BPA National Relations [mailto:national@BPA.GOV]
**Sent:** Monday, July 20, 2009 4:36 PM
**To:** Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Berick, Dave (Wyden); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** BPA Releases Proposed Terms of Service to DSIs

Please feel free to contact me if you have any questions.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
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20, 2009 2:33 PM
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Thank you,

Cheryl Larson
Customer Communications Specialist
BPA Power Services
503-230-5356

#19

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Tuesday, July 28, 2009 1:11 PM
**To:** 'Ransom, Catharine (Baucus)'
**Subject:** FW: BPA Releases Proposed Terms of Service to DSIs

I just noticed that I have your name misspelled in the email chain below. It has been fixed!

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**To:** 'Berick, Dave (Wyden)'; 'Ronen, Amit (Cantwell)'; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young; 'Betz, Kimberly'
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

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**From:** Berick, Dave (Wyden) [mailto:Dave_Berick@wyden.senate.gov]
**Sent:** Tuesday, July 28, 2009 3:21 PM
**To:** Baskerville,Sonya L - DKN-WASH; BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Thanks for the quick response. I look forward to the call. I just want to note that the comment period specified in the July 17, 2009 letter to regional customers ends at 5:00 pm on August 3rd. So it's going to be hard to finish comments on this by then, especially when the Columbia Falls term sheet still doesn't seem to be available yet.

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**Sent:** Tuesday, July 28, 2009 3:10 PM
**To:** Berick, Dave (Wyden); BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

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I have asked one of the executive assistants to hold Tuesday, August 4, at 2:00p eastern for a discussion of the term sheet. I will confirm that with you later in the week. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

---

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http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-07-23_Summary_Regional_Economic_Study.pdf

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**Sent:** Monday, July 20, 2009 4:58 PM
**To:** BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

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**Sent:** Monday, July 20, 2009 4:36 PM

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**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** BPA Releases Proposed Terms of Service to DSIs

Please feel free to contact me if you have any questions.

Sonya Baskerville
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Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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yl A - PS-6
20, 2009 2:33 PM
Adams,Dick ; Adams,Doug; Andersen,Steve; Andrea,Michael; Andrus,Craig; Andrus,Stephanie; Aspaas,Lynn; Baker, Jack; Baker,Loren; Baker,Nancy; Beardry, Haley; Beatty, Theodore; Beaulieu,Christine; Beck, BJ; Beck,Barbara; Bedbury,Dan; Beyer,Lee; Bickford, Dan; Bleakney,Leann; Boomer,Linda; BPA Average System Cost; Brattebo,Scott; Brawley,Doug; Brost,Ed; Brown,Stefan; Byers,Dick ; Caldwell,Carol; Calica,Direlle; Carr,Geoff; Castille,Tim; Chevis,Cheryl; Christensen,Eric; Conger,Kurt; Corwin,Scott; Courm, Ken; Cross,Robin; Davis, Jeff; Deen,Michael; Dennison-Leonard, Sarah; Deren,Jeffrey; Dolan,Jim; Dotten,Michael; Dragoon,Ken; Drummond,Bill; Drury,Chris; Edmonds,Sarah; Elg,Jo; Elliott, Doug; Emtman,Trevor; Engel,Lee; Enright,Diana; Essex,Bob; Falcon,Anna ; Falkenburg,Humaira; Finnen,Ray; Fisher,Ann; Flynn, Ryan; Ford,Brad; Gadeburg,Ron; Gallagher, Greg; Goode, Ralph; Gray,Catherine; Gregg,Randy; Greisel, Andi; Hannaford,William; Hiaasen, Eric; Howell,Don; Hardy,Randy; Harris,Deb Bone; Haymaker,Tom; Hellman,Marc; Herring,Morgan; Hill,Michael; Himlie,Jay; Hocken,Natalie; Huber,Bob; Huhta,Gary; Hunt,Sandy; Hunter,Ian; Jackson-Gistelli,Richard; James,Dan; Jenks,Bob; Johnson, James R.; Johnson,Chris; Johnson,Erick; Johnson,Jim; Johnson,Sara; Jourabchi,Massoud; Kallstrom,Jeff; Kandra,Lindsay; Kari,Don; Kester,Greg; Kindley,Ray; Knipschield,Debbie; Knitter,Keith; Krekel,Randall; Labolle,Larry; Langer,Dwight; Lawrence,Rhett; Leach,Randi; Lewis,Steven; Lindstrom,Shirley; Litchfield,Jim; Lobdell,Jim; Lovely,Rick; Marshall, George; Mayer,Zach; Mayson, Jack ; Mayson,Jack; McGary,Pat; McKinsey,Tom; Melcalfe,Travis; Mendonca, Greg; Metcalfe,Dennis; Mey,Ken; Miles,Anna ; Miller,Doug; Mitchell,Fred; Morlan,Terry; Mount,Ed; Muller, Dave; Mundorf,Terry; Munz,Paul; Murphy,Paul; Murray, Mike ; Nelson,Jeff; Nichols, Patty; Nieborsky, Gary; Nordstrom,Lisa; Nutley,Busse; Obenchain,Phil; O'Connor,Tom; O'Meara,Kevin; Opatrny,CC; Pace,Charles; Palmer,Steve; Paulson,Colleen; Peters,Lon; Piliaris,Jon; Plotz, David; Pollock,Walt; Porter,John; Price,Neil; Radcliffe,Sania; Rettenmund,Fred; Richardson,Peter; Rodol,Ali; Roehm,Jenny; Roman,Edward; Rozanski,Rick; Russell,Jim; Samuelson,Matt; Sanders,Jim; Sanger,Irion; Sargent,Rich; Saven,John; Schaff,Margie; Scheel,Jim; Schneider,Russ; Schoenbeck.Don; Schwartz.Howard; Schwendiman, Celeste; Scott.Aleka; Seifert.Caryn; Sheets.Ed; Shimshank.Rachel; Shurts.John; Sidhu, David ; Sieler, Rick; Sirois,Brenda; Sirvaitis,Rob; Skeahan,Brian; Skidmore,Lara; Smith,Doug; Speer,Jack; Staker, Doug ; Stauffer,Mark; Stratman,Megan; Strong,R. Blair; Tarp,Kelly; Taylor,Ardyce; Taylor,Steven; Thompson,Mark; Tilghman,Henry; Tinker,Don; Titus,Paul; Toulson,Dana; Towner,Zaybn; Trotter,Don; Tsui,Jonah; Vaughn,Greg; Ward,Bill; Wheeler, Brenna; Weems,Ryan; Weiss,Steve; Westerfield,Louann; Williams,Ed; Wilson,Mike; Wissler,Jon; Wittenburg,Bob; Wolverton,Linc; Wood,Wyla; Wright,Cindy; Wrigley,Paul; Yarkowski,Cameron; Young,Robert; Zell, Troy; Zwick,Sharon
leases Proposed Terms of Service to DSIs

BPA and the two aluminum direct service industries have finished negotiating terms for drafting a long-term service contract. BPA is releasing for public review and comment two separate options for the terms of potential new service to Alcoa, Inc., and Columbia Falls Aluminum Company. Both term sheets reflect a proposed power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' loads. The proposed power sales would begin Oct. 1, 2009, and extend through either Sept. 30, 2013, or Sept. 30, 2016, depending on the option selected.

Any resulting long-term contract offers would be made available for additional public review likely in mid- to late-August.

CFAC has expressed a desire for a four-year option and Alcoa Inc., a preference for a seven-year option; the term sheets reflect these options respectively. Either DSI, however, can choose the terms of either option prior to the contracts being finalized. If BPA and the DSI move forward on either option, BPA hopes to have final selections made by September 2009.

The seven-year (Alcoa) proposed term sheet will be available for public review and comment at

www.bpa.gov/comment from July 17, 2009, through Aug. 3, 2009. The four-year (CFAC) proposed term sheet also will be available for public review through Aug. 3; it will be ready for release the week of July 20.

When the CFAC term sheet is released, BPA also will release for review and comment a document titled "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept." This document is BPA's update to the results of the "*2006 Regional Employment and Economic Study.*" The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

The term sheets and a letter to the region will be posted on BPA's Web site at:
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Thank you,

Cheryl Larson
Customer Communications Specialist
BPA Power Services
503-230-5356

#20

## Atterbury,Laura M - DK-7

**From:** Berick, Dave (Wyden) [Dave_Berick@wyden.senate.gov]
**Sent:** Tuesday, July 28, 2009 2:12 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

The math on the economic analysis seems wrong...Table 21. You don't seem to have taken credit for the direct jobs. The 152 jobs claimed is the difference between indirect DSI and indirect non-DSI jobs. Not my goal, but don't you need to add back in the 528 direct jobs to get the total?

---

**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Tuesday, July 28, 2009 4:05 PM
**To:** Berick, Dave (Wyden); Ronen, Amit (Cantwell); Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young; 'Betz, Kimberly'
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Thanks. And thanks for a reminder that I must have neglected to send you an update on what has occurred with CFAC. As I mentioned, last week BPA was attempting to negotiate a term sheet with different terms for CFAC. We were unable to reach agreement on those different terms.

On Friday, BPA posted a notice indicating that it was unable to reach agreement with CFAC and the only term sheet for DSI service is the proposed 7-year term sheet. Customers were notified on Friday.

Here is the posting:
**Draft Term Sheet - CFAC**
The Bonneville Power Administration (BPA) issued a letter July 17 regarding service to the aluminum direct-service industries (DSIs) commencing in FY 2010 that indicated BPA is proposing two separate options for the terms of the potential new service.

Columbia Falls Aluminum Company (CFAC) had expressed a desire for a shorter term option that, in return, could provide them a bit more flexibility. However, BPA and CFAC have not been able to agree on principles needed to release a term sheet for a shorter term.

BPA is now proposing only one option for a power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' load. The proposed power sales would begin Oct. 1, 2009, and extend through Sept. 30, 2016. The proposed seven-year term sheet was made available for public review and comment beginning July 17, 2009, on BPA's Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Sonya Baskerville
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**From:** BPA National Relations [mailto:national@BPA.GOV]
**Sent:** Monday, July 20, 2009 4:36 PM
**To:** Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Berick, Dave (Wyden); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** BPA Releases Proposed Terms of Service to DSIs

Please feel free to contact me if you have any questions.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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yl A - PS-6
20, 2009 2:33 PM
Adams,Dick ; Adams,Doug; Andersen,Steve; Andrea,Michael; Andrus,Craig; Andrus,Stephanie; Aspaas,Lynn; Baker, Jack; Baker,Loren; Baker,Nancy; Beardry, Haley; Beatty, Theodore; Beaulieu,Christine; Beck, BJ; Beck,Barbara; Bedbury,Dan; Beyer,Lee; Bickford, Dan; Bleakney,Leann; Boomer,Linda; BPA Average System Cost; Brattebo,Scott; Brawley,Doug; Brost,Ed; Brown,Stefan; Byers,Dick ; Caldwell,Carol; Calica,Direlle; Carr,Geoff; Castille,Tim; Chevis,Cheryl; Christensen,Eric; Conger,Kurt; Corwin,Scott; Courm, Ken; Cross,Robin; Davis, Jeff; Deen,Michael; Dennison-Leonard, Sarah; Deren,Jeffrey; Dolan,Jim; Dotten,Michael; Dragoon,Ken; Drummond,Bill; Drury,Chris; Edmonds,Sarah; Elg,Jo; Elliott, Doug; Emtman,Trevor; Engel,Lee; Enright,Diana; Essex,Bob; Falcon,Anna ; Falkenburg,Humaira; Finnen,Ray; Fisher,Ann; Flynn, Ryan; Ford,Brad; Gadeburg,Ron; Gallagher, Greg; Goode, Ralph; Gray,Catherine; Gregg,Randy; Greisel, Andi; Hannaford,William; Hiaasen, Eric; Howell,Don; Hardy,Randy; Harris,Deb Bone; Haymaker,Tom; Heliman,Marc; Herring,Morgan; Hill,Michael; Himlie,Jay; Hocken,Natalie; Huber,Bob; Huhta,Gary; Hunt,Sandy; Hunter,Ian; Jackson-Gistelli,Richard; James,Dan; Jenks,Bob; Johnson, James R.; Johnson,Chris; Johnson,Erick; Johnson,Jim; Johnson,Sara; Jourabchi,Massoud; Kallstrom,Jeff; Kandra,Lindsay; Kari,Don; Kester,Greg; Kindley,Ray; Knipschield,Debbie; Knitter,Keith; Krekel,Randall; Labolle,Larry; Langer,Dwight; Lawrence,Rhett; Leach,Randi; Lewis,Steven; Lindstrom,Shirley; Litchfield,Jim; Lobdell,Jim; Lovely,Rick; Marshall, George; Mayer,Zach; Mayson, Jack ; Mayson,Jack; McGary,Pat; McKinsey,Tom; Melcalfe,Travis; Mendonca, Greg; Metcalfe,Dennis; Mey,Ken; Miles,Anna ; Miller,Doug; Mitchell,Fred; Morlan,Terry; Mount,Ed; Muller, Dave; Mundorf,Terry; Munz,Paul; Murphy,Paul; Murray, Mike ; Nelson,Jeff; Nichols, Patty; Nieborsky, Gary; Nordstrom,Lisa; Nutley,Busse; Obenchain,Phil; O'Connor,Tom; O'Meara,Kevin; Opatrny,CC; Pace,Charles; Palmer,Steve; Paulson,Colleen; Peters,Lon; Piliaris,Jon; Plotz, David; Pollock,Walt; Porter,John; Price,Neil; Radcliffe,Sania; Rettenmund,Fred; Richardson,Peter; Rodol,Ali; Roehm,Jenny; Roman,Edward; Rozanski,Rick; Russell,Jim; Samuelson,Matt; Sanders,Jim; Sanger,Irion; Sargent,Rich; Saven,John; Schaff,Margie; Scheel,Jim; Schneider,Russ; Schoenbeck,Don; Schwartz,Howard; Schwendiman, Celeste; Scott,Aleka; Seifert,Caryn; Sheets,Ed; Shimshank,Rachel; Shurts,John; Sidhu, David ; Sieler, Rick; Sirois,Brenda; Sirvaitis,Rob; Skeahan,Brian; Skidmore,Lara; Smith,Doug; Speer,Jack; Staker, Doug ; Stauffer,Mark; Stratman,Megan; Strong,R. Blair; Tarp,Kelly; Taylor,Ardyce; Taylor,Steven; Thompson,Mark; Tilghman,Henry; Tinker,Don; Titus,Paul; Toulson,Dana; Towner,Zaybn; Trotter,Don; Tsui,Jonah; Vaughn,Greg; Ward,Bill; Wheeler, Brenna; Weems,Ryan; Weiss,Steve; Westerfield,Louann; Williams,Ed; Wilson,Mike; Wissler,Jon; Wittenburg,Bob; Wolverton,Linc; Wood,Wyla; Wright,Cindy; Wrigley,Paul; Yarkowski,Cameron; Young,Robert; Zell, Troy; Zwick,Sharon
leases Proposed Terms of Service to DSIs

BPA and the two aluminum direct service industries have finished negotiating terms for drafting a long-term service contract. BPA is releasing for public review and comment two separate options for the terms of potential new service to Alcoa, Inc., and Columbia Falls Aluminum Company. Both term sheets reflect a proposed power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' loads. The proposed power sales would begin Oct. 1, 2009, and extend through either Sept. 30, 2013, or Sept. 30, 2016, depending on the option selected.

Any resulting long-term contract offers would be made available for additional public review likely in mid- to late-August.

CFAC has expressed a desire for a four-year option and Alcoa Inc., a preference for a seven-year option; the term sheets reflect these options respectively. Either DSI, however, can choose the terms of either option prior to the contracts being finalized. If BPA and the DSI move forward on either option, BPA hopes to have final selections made by September 2009.

The seven-year (Alcoa) proposed term sheet will be available for public review and comment at www.bpa.gov/comment from July 17, 2009, through Aug. 3, 2009. The four-year (CFAC) proposed term sheet also will be available for public review through Aug. 3; it will be ready for release the week of July 20.

When the CFAC term sheet is released, BPA also will release for review and comment a document titled "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept." This document is BPA's update to the results of the "*2006 Regional Employment and Economic Study.*" The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs

compared to the proposal that was under consideration earlier in January 2009.

The term sheets and a letter to the region will be posted on BPA's Web site at: http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Thank you,

Cheryl Larson
Customer Communications Specialist
BPA Power Services
503-230-5356

#21

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Friday, July 31, 2009 12:40 PM
**To:** Swedo,Robert L - DKR-SPOKANE; Klumpp,Elizabeth C - DKR-WSGL; Kuntz,Gail K - DKR-MSGL; Reller,Mark D - DKR-MSGL; Williams,John J - DKR-BOISE; Cogswell,Peter - DKR-7
**Cc:** Hunt,Karen A - DKR-7; Marker,Douglas R - DKR-7; Taves,John M - DKR-7
**Subject:** FW: REMINDER: Briefings next week on the Wind Integration Team Work Plan and DSI term sheet

CAEs, please feel free to invite your Congressional contacts. This new line has enough ports to accommodate them (and you). Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

---

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Friday, July 31, 2009 3:37 PM
**To:** Amit Ronen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Carrie Desmond; Catharine Ransom; Colby Marshall; Corey McDaniel; Courtney Thompson; Dave Berick; Devin Nagy; Ethan Pittleman; Hillary Barbour; Jaime Shimek; James Bradbury; Janine Benner; Jason Bohrer; Jayme White; Jeremiah Baumann; Joel Merkel; Jon DeVaney; Kelsey E. Knowles; Ken Flanz; Kim Betz; Luke Tomanelli; Malisah Small; Mark Middaugh; Mary Heller; Michele Miranda; Nathan Rea; Nils Tillstrom; Paul Wilkins; Pete Modaff; Ryan Shauers; Stephen Marx; Stephenne Harding; Susan Jane Brown
**Cc:** 'Ameila Jenkins'; 'Doug Clapp'; 'Kelly Donnelly'; 'Kiel Weaver'; 'Nick Strader'; 'Todd Ungerecht'; 'Todd Young'; 'Tyler Kruzich'
**Subject:** RE: REMINDER: Briefings next week on the Wind Integration Team Work Plan and DSI term sheet

I just want to remind you of two briefings BPA is hosting next week.

Wind Integration Team Work Plan: **Monday, August 3 at 2:00p eastern/11:00a pacific**; passcode for your bridge is **9582738#** To dial into the bridge, all participants must dial **218-339-7777**

DSI term sheet: **Tuesday, August 4, at 2:00p eastern**; passcode for your bridge is **9582738#** To dial into the bridge, all participants must dial **218-339-7777**

Mute/Unmute - press *6 once to mute, press *6 again to unmute

Hope you all can attend. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
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Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** BPA National Relations

**Sent:** Tuesday, July 28, 2009 1:42 PM
**To:** Amit Ronen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Carrie Desmond; Catharine Ransom; Colby Marshall; Corey McDaniel; Courtney Thompson; Dave Berick; Devin Nagy; Ethan Pittleman; Hillary Barbour; Jaime Shimek; James Bradbury; Janine Benner; Jason Bohrer; Jayme White; Jeremiah Baumann; Joel Merkel; Jon DeVaney; Kelsey E. Knowles; Ken Flanz; Kim Betz; Luke Tomanelli; Malisah Small; Mark Middaugh; Mary Heller; Michele Miranda; Nathan Rea; Nils Tillstrom; Paul Wilkins; Pete Modaff; Ryan Shauers; Stephen Marx; Stephenne Harding; Susan Jane Brown
**Cc:** 'Ameila Jenkins'; 'Doug Clapp'; 'Kelly Donnelly'; 'Kiel Weaver'; 'Nick Strader'; 'Todd Ungerecht'; 'Todd Young'; 'Tyler Kruzich'; Baskerville,Sonya L - DKN-WASH
**Subject:** Briefing on the Wind Integration Team Work Plan
**Importance:** High

I mentioned to some of you that I intended to set-up a conference briefing on the Wind Integration Team's work plan. That briefing has been set for August 3 at 2:00p eastern/11:00a pacific. Elliot Mainzer, BPA's Vice-President for Corporate Strategy, will lead the discussion. Here is a link to the work plan: http://www.bpa.gov/corporate/WindPower/docs/WIT_Work_Plan_-_June_16.pdf.

I've also attached AWEA's statement regarding the final decision on the wind balancing rate. In their statement, they recognize the improvements that will be continue through implementation of the work plan. Our goals are to reduce the costs associated with wind integration, implement operational changes that assure reliable integration of wind generation, and allow wind generators the choice to have their necessary ancillary services provided by other suppliers.

<< File: 090723--Statement on BPA rate decision.doc >>
Here is the call-in information:
The passcode for your bridge is **9582738#** To dial into the bridge, all participants must dial 218-339-7777. Mute/Unmute - press *6 once to mute, press *6 again to unmute

I will send a reminder about the call at the end of the week. Thanks!

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Monday, July 13, 2009 5:56 PM
**To:** 'Berick, Dave (Wyden)'; 'Osborne, Beth'; 'Bradbury, James'; 'jeremiah_baumann@merkley.senate.gov'; 'Mahar-Piersma, Auke'; 'stephen.marx@mail.house.gov'; 'nils.tillstrom@mail.house.gov'; 'Huckleberry, Chris'; 'james.atkin@mail.house.gov'; 'janine.benner@mail.house.gov'; 'hillary.barbour@mail.house.gov'
**Subject:** FW: BPA's Response to Members' Letter re: BPA's Wind Integration Rate
**Importance:** High

Hello, all. You may have received by now BPA's response to your boss' letter to regarding BPA's proposed rate for wind integration. I believe it was sent out to offices on Friday.

Here is a .pdf of the response with its attachment. I would like to set-up a conference call for you and other Congressional staff on our final Record of Decision (ROD) and the Wind Integration Team work plan effort that also should help to reduce even more wind integration costs. The final ROD is to be published at the end of this month, so we could schedule the call during that first week of August which I believe is prior to the start of your summer recess. Also, if that timing doesn't work for you, please let me know, and we can work on a specially scheduled briefing for you. Thanks.

<< File: BPA Response to Wyden et al re Overall Wind Strategy.pdf >>

Here's Attachment:

<< File: BPA Draft ROD re Wind Generation Capacity.pdf >>

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Wednesday, July 01, 2009 4:36 PM
**To:** 'ken_flanz@crapo.senate.gov'; 'jason_borher@risch.senate.gov'; 'devin.nagy@mail.house.gov'; 'malisah.small@mail.house.gov'; 'paul_wilkins@baucus.senate.gov'; 'catharine_ransom@baucus.senate.gov'; 'matt_jennings@tester.senate.gov'; 'Heller, Mary'; 'jeremiah_baumann@merkley.senate.gov'; 'Dave_Berick@wyden.senate.gov'; 'janine.benner@mail.house.gov'; 'hillary.barbour@mail.house.gov'; 'Mahar-Piersma, Auke'; 'susanjane.brown@mail.house.gov'; 'james.atkin@mail.house.gov'; 'huck@mail.house.gov'; 'Colby Marshall'; 'nathan.rea@mail.house.gov'; 'stephen.marx@mail.house.gov'; 'nils.tillstrom@mail.house.gov'; 'Merkel, Joel (Cantwell)'; 'Shimek, Jaime (Murray)'; 'Andrew Dohrmann'; 'Modaff, Pete'; 'ryan.shauers@mail.house.gov'; 'george.behan@mail.house.gov'; 'jon.devaney@mail.house.gov'; 'Osborne, Beth'; 'Bradbury, James'; 'Middaugh, Mark'; 'jayme.white@mail.house.gov'; 'chrissy.poe@mail.house.gov'; 'beth.nelson@mail.house.gov'; 'kelsey.knowles@mail.house.gov'
**Subject:** RE: BPA's Draft Record of Decision for FYs 2010-2011 Rates

Since last week when I sent to you the information below about the release of the Draft Record of Decision, BPA has released more specific information about the wind integration rate. As you all know, questions have arisen recently about what BPA is trying to accomplish with the wind integration rate. I've attached for your convenience the preface to the draft ROD that describes from the Administrator's perspective the variety of issues surrounding the explosion of wind on the BPA system and how BPA is taking action so it will not be in the position of needing to limit wind power interconnections on BPA's system in order to avoid reliability problems.

It is also important to note that the rate proposed in the draft ROD is substantially reduced from the initial proposal in large part due to actions wind operators have taken to reduce the costs to BPA of providing integration services (BPA's initial proposal set the rate at $2.72 cents per KW month - that is reduced to $1.58 KW/month in the draft ROD). The draft ROD also poses a question regarding the quality of service wind operators wish to receive versus the rate they will pay and solicits all parties comments on the matter. Depending upon the reaction it is possible the rate could be further reduced.

Thanks and enjoy your recess.

<< File: Preface.doc >>

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, June 25, 2009 5:25 PM
**To:** 'ken_flanz@crapo.senate.gov'; 'jason_borher@risch.senate.gov'; 'devin.nagy@mail.house.gov'; 'malisah.small@mail.house.gov'; paul_wilkins@baucus.senate.gov; catharine_ransom@baucus.senate.gov; matt_jennings@tester.senate.gov; Heller, Mary; 'jeremiah_baumann@merkley.senate.gov'; Dave_Berick@wyden.senate.gov; 'janine.benner@mail.house.gov';

'hillary.barbour@mail.house.gov'; 'Mahar-Piersma, Auke'; 'susanjane.brown@mail.house.gov'; 'james.atkin@mail.house.gov'; huck@mail.house.gov; Colby Marshall; nathan.rea@mail.house.gov; 'stephen.marx@mail.house.gov'; 'nils.tillstrom@mail.house.gov'; Merkel, Joel (Cantwell); Shimek, Jaime (Murray); Andrew Dohrmann; Modaff, Pete; 'ryan.shauers@mail.house.gov'; 'george.behan@mail.house.gov'; 'jon.devaney@mail.house.gov'; Osborne, Beth; Bradbury, James; 'Middaugh, Mark'; 'jayme.white@mail.house.gov'; 'chrissy.poe@mail.house.gov'; 'beth.nelson@mail.house.gov'; 'kelsey.knowles@mail.house.gov'

**Subject:** BPA's Draft Record of Decision for FYs 2010-2011 Rates

Hello, everyone. I want to let you know that BPA has released its draft Record of Decision for the FY 2010-2011 rates. The draft ROD does not include the rates levels, but addresses, preliminarily, the decisions that underlie those rates. The final Record of Decision is expected to be published at the end of July after which the rate case record will be filed with the Federal Energy Regulatory Commission for approval of the rates.

Here is a link to the draft Record of Decision: http://www.bpa.gov/corporate/ratecase/2008/2010_BPA_Rate_Case/docs/Final_Draft_ROD_Rev062409.pdf. Let me know if you have trouble opening the document with the link. I can send to you a .pdf of the document - it's 8 MB, so I didn't want send that very large attachment to everyone.

A quick guide to a couple of the issues that have made their way back to DC:

**Wind integration**: the discussion starts on page 389. The draft decisions result in a significantly lower wind integration rate than the initial proposal rate. The draft decisions reflect a reduced need for reserves based on improvements in scheduling by wind generators – assuming 45 minute scheduling accuracy versus the two-hour assumption in the initial proposal. The forecast amount of installed wind generation on BPA's system has also decreased. In addition, the unit cost of reserve capacity is reduced given the draft decision to allocate costs over an increased amount of capacity uses. Certain operational costs attributed to the use of INC reserves are also reduced.

BPA's draft decision is to offer a wind integration rate design that provides partial credit to generators that self supply one or more of the three types of capacity reserves that BPA provides as within-hour balancing service. The rate schedule will have a separate rate for regulating reserve, following reserve and imbalance reserve each.

In addition, BPA will consider a rate under which the Administrator could exercise discretion to adjust the amount of reserves being held and the level of the rate in the event that experience with DSO (dispatcher standing order) 216 causes the industry to request BPA to hold additional reserves to avoid future operational limitations.

Note, the Administrator is specifically seeking feedback from rate case parties on the explicit tradeoff between the level of the wind integration rate and the amount of operational limitations (curtailments and feathering) on wind generation. The draft decision is to assume an amount of reserves based on a 45-minute scheduling accuracy. If BPA sets aside lower amounts of reserves that would be associated with 30-minute scheduling accuracy, the result will be a lower wind integration rate but more operational limitations. If BPA sets aside higher amounts of reserves, there will be a higher wind integration rate but fewer operational limitations.

BPA will share its updated analysis on forecast operational limitations at a July 29 rate case meeting to ensure that rate case parties have BPA's most current analysis of expected operational limitations and wind rate levels.

Small wind generators (20 MW or less) will be exempt from the wind within-hour balancing rate for the first year of this two-year rate period.

**DSI benefits**: the discussion starts on page 173. The draft decision is to assume 385 aMW of service to the aluminum smelters and 17 aMW for Port Townsend Paper to be sold at the IP rates established

in this rate case.

BPA is still subject to an ex parte communications limitation so I can not address the merits of case. But, of course please feel free to contact me about this. Also, I would like to schedule a time to have our rates managers brief you on the key aspects of the FYs 2010-2011 rates after the case is filed with FERC. I don't know how ideal the recess period is for a meeting, so we can schedule it right after you return. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

#22

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Tuesday, August 04, 2009 10:58 AM
**To:** 'Amit Ronen'; 'Andrew Dohrmann'; 'Auke Mahar-Piersma'; 'Beth Nelson'; 'Beth Osborne'; 'Carrie Desmond'; 'Catharine Ransom'; 'Colby Marshall'; 'Corey McDaniel'; 'Courtney Thompson'; 'Dave Berick'; 'Devin Nagy'; 'Ethan Pittleman'; 'Hillary Barbour'; 'Jaime Shimek'; 'James Bradbury'; 'Janine Benner'; 'Jason Bohrer'; 'Jayme White'; 'Jeremiah Baumann'; 'Joel Merkel'; 'Jon DeVaney'; 'Kelsey E. Knowles'; 'Ken Flanz'; 'Kim Betz'; 'Luke Tomanelli'; 'Malisah Small'; 'Mark Middaugh'; 'Mary Heller'; 'Michele Miranda'; 'Nathan Rea'; 'Nils Tillstrom'; 'Paul Wilkins'; 'Pete Modaff'; 'Ryan Shauers'; 'Stephen Marx'; 'Stephenne Harding'; 'Susan Jane Brown'
**Cc:** 'Ameila Jenkins'; 'Doug Clapp'; 'Kelly Donnelly'; 'Kiel Weaver'; 'Nick Strader'; 'Todd Ungerecht'; 'Todd Young'; 'Tyler Kruzich'
**Subject:** RE: REMINDER: DSI term sheet briefing today

See call-in information below for the DSI term sheet. The briefing starts in 3 minutes. Thanks!

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

---

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Friday, July 31, 2009 3:37 PM
**To:** Amit Ronen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Carrie Desmond; Catharine Ransom; Colby Marshall; Corey McDaniel; Courtney Thompson; Dave Berick; Devin Nagy; Ethan Pittleman; Hillary Barbour; Jaime Shimek; James Bradbury; Janine Benner; Jason Bohrer; Jayme White; Jeremiah Baumann; Joel Merkel; Jon DeVaney; Kelsey E. Knowles; Ken Flanz; Kim Betz; Luke Tomanelli; Malisah Small; Mark Middaugh; Mary Heller; Michele Miranda; Nathan Rea; Nils Tillstrom; Paul Wilkins; Pete Modaff; Ryan Shauers; Stephen Marx; Stephenne Harding; Susan Jane Brown
**Cc:** 'Ameila Jenkins'; 'Doug Clapp'; 'Kelly Donnelly'; 'Kiel Weaver'; 'Nick Strader'; 'Todd Ungerecht'; 'Todd Young'; 'Tyler Kruzich'
**Subject:** RE: REMINDER: Briefings next week on the Wind Integration Team Work Plan and DSI term sheet

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Mute/Unmute - press *6 once to mute, press *6 again to unmute

Hope you all can attend. Thanks.

Sonya Baskerville
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**Cc:** 'Ameila Jenkins'; 'Doug Clapp'; 'Kelly Donnelly'; 'Kiel Weaver'; 'Nick Strader'; 'Todd Ungerecht'; 'Todd Young'; 'Tyler Kruzich'; Baskerville,Sonya L - DKN-WASH
**Subject:** Briefing on the Wind Integration Team Work Plan
**Importance:** High

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I've also attached AWEA's statement regarding the final decision on the wind balancing rate. In their statement, they recognize the improvements that will be continue through implementation of the work plan. Our goals are to reduce the costs associated with wind integration, implement operational changes that assure reliable integration of wind generation, and allow wind generators the choice to have their necessary ancillary services provided by other suppliers.

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Monday, July 13, 2009 5:56 PM
**To:** 'Berick, Dave (Wyden)'; 'Osborne, Beth'; 'Bradbury, James'; 'jeremiah_baumann@merkley.senate.gov'; 'Mahar-Piersma, Auke'; 'stephen.marx@mail.house.gov'; 'nils.tillstrom@mail.house.gov'; 'Huckleberry, Chris'; 'james.atkin@mail.house.gov'; 'janine.benner@mail.house.gov'; 'hillary.barbour@mail.house.gov'
**Subject:** FW: BPA's Response to Members' Letter re: BPA's Wind Integration Rate
**Importance:** High

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<< File: BPA Response to Wyden et al re Overall Wind Strategy.pdf >>

Here's Attachment:

<< File: BPA Draft ROD re Wind Generation Capacity.pdf >>

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
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Washington, DC 20585
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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Wednesday, July 01, 2009 4:36 PM
**To:** 'ken_flanz@crapo.senate.gov'; 'jason_borher@risch.senate.gov'; 'devin.nagy@mail.house.gov'; 'malisah.small@mail.house.gov'; 'paul_wilkins@baucus.senate.gov'; 'catharine_ransom@baucus.senate.gov'; 'matt_jennings@tester.senate.gov'; 'Heller, Mary'; 'jeremiah_baumann@merkley.senate.gov'; 'Dave_Berick@wyden.senate.gov'; 'janine.benner@mail.house.gov'; 'hillary.barbour@mail.house.gov'; 'Mahar-Piersma, Auke'; 'susanjane.brown@mail.house.gov'; 'james.atkin@mail.house.gov'; 'huck@mail.house.gov'; 'Colby Marshall'; 'nathan.rea@mail.house.gov'; 'stephen.marx@mail.house.gov'; 'nils.tillstrom@mail.house.gov'; 'Merkel, Joel (Cantwell)'; 'Shimek, Jaime (Murray)'; 'Andrew Dohrmann'; 'Modaff, Pete'; 'ryan.shauers@mail.house.gov'; 'george.behan@mail.house.gov'; 'jon.devaney@mail.house.gov'; 'Osborne, Beth'; 'Bradbury, James'; 'Middaugh, Mark'; 'jayme.white@mail.house.gov'; 'chrissy.poe@mail.house.gov'; 'beth.nelson@mail.house.gov'; 'kelsey.knowles@mail.house.gov'
**Subject:** RE: BPA's Draft Record of Decision for FYs 2010-2011 Rates

Since last week when I sent to you the information below about the release of the Draft Record of Decision. BPA has released more specific information about the wind integration rate. As you all know, questions have arisen recently about what BPA is trying to accomplish with the wind integration rate. I've attached for your convenience the preface to the draft ROD that describes from the Administrator's perspective the variety of issues surrounding the explosion of wind on the BPA system and how BPA is taking action so it will not be in the position of needing to limit wind power interconnections on BPA's system in order to avoid reliability problems.

It is also important to note that the rate proposed in the draft ROD is substantially reduced from the initial proposal in large part due to actions wind operators have taken to reduce the costs to BPA of providing integration services (BPA's initial proposal set the rate at $2.72 cents per KW month - that is reduced to $1.58 KW/month in the draft ROD). The draft ROD also poses a question regarding the quality of service wind operators wish to receive versus the rate they will pay and solicits all parties comments on the matter. Depending upon the reaction it is possible the rate could be further reduced.

Thanks and enjoy your recess.

<< File: Preface.doc >>

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, June 25, 2009 5:25 PM
**To:** 'ken_flanz@crapo.senate.gov'; 'jason_borher@risch.senate.gov'; 'devin.nagy@mail.house.gov'; 'malisah.small@mail.house.gov'; paul_wilkins@baucus.senate.gov; catharine_ransom@baucus.senate.gov; matt_jennings@tester.senate.gov; Heller, Mary; 'jeremiah_baumann@merkley.senate.gov'; Dave_Berick@wyden.senate.gov; 'janine.benner@mail.house.gov'; 'hillary.barbour@mail.house.gov'; 'Mahar-Piersma, Auke'; 'susanjane.brown@mail.house.gov'; 'james.atkin@mail.house.gov'; huck@mail.house.gov; Colby Marshall; nathan.rea@mail.house.gov; 'stephen.marx@mail.house.gov'; 'nils.tillstrom@mail.house.gov'; Merkel, Joel (Cantwell); Shimek, Jaime (Murray); Andrew Dohrmann; Modaff, Pete; 'ryan.shauers@mail.house.gov'; 'george.behan@mail.house.gov'; 'jon.devaney@mail.house.gov'; Osborne, Beth; Bradbury, James; 'Middaugh, Mark'; 'jayme.white@mail.house.gov'; 'chrissy.poe@mail.house.gov'; 'beth.nelson@mail.house.gov'; 'kelsey.knowles@mail.house.gov'
**Subject:** BPA's Draft Record of Decision for FYs 2010-2011 Rates

Hello, everyone. I want to let you know that BPA has released its draft Record of Decision for the FY 2010-2011 rates. The draft ROD does not include the rates levels, but addresses, preliminarily, the decisions that underlie those rates. The final Record of Decision is expected to be published at the end of July after which the rate case record will be filed with the Federal Energy Regulatory Commission for approval of the rates.

Here is a link to the draft Record of Decision: http://www.bpa.gov/corporate/ratecase/2008/2010_BPA_Rate_Case/docs/Final_Draft_ROD_Rev062409.pdf. Let me know if you have trouble opening the document with the link. I can send to you a .pdf of the document - it's 8 MB, so I didn't want send that very large attachment to everyone.

A quick guide to a couple of the issues that have made their way back to DC:

**Wind integration**: the discussion starts on page 389. The draft decisions result in a significantly lower wind integration rate than the initial proposal rate. The draft decisions reflect a reduced need for reserves based on improvements in scheduling by wind generators – assuming 45 minute scheduling accuracy versus the two-hour assumption in the initial proposal. The forecast amount of installed wind generation on BPA's system has also decreased. In addition, the unit cost of reserve capacity is reduced given the draft decision to allocate costs over an increased amount of capacity uses. Certain operational costs attributed to the use of INC reserves are also reduced.

BPA's draft decision is to offer a wind integration rate design that provides partial credit to generators that self supply one or more of the three types of capacity reserves that BPA provides as within-hour balancing service. The rate schedule will have a separate rate for regulating reserve, following reserve and imbalance reserve each.

In addition, BPA will consider a rate under which the Administrator could exercise discretion to adjust the amount of reserves being held and the level of the rate in the event that experience with DSO (dispatcher standing order) 216 causes the industry to request BPA to hold additional reserves to avoid future operational limitations.

Note, the Administrator is specifically seeking feedback from rate case parties on the explicit tradeoff between the level of the wind integration rate and the amount of operational limitations (curtailments and feathering) on wind generation. The draft decision is to assume an amount of reserves based on a 45-minute scheduling accuracy. If BPA sets aside lower amounts of reserves that would be associated with 30-minute scheduling accuracy, the result will be a lower wind integration rate but more operational limitations. If BPA sets aside higher amounts of reserves, there will be a higher wind integration rate but fewer operational limitations.

BPA will share its updated analysis on forecast operational limitations at a July 29 rate case meeting to ensure that rate case parties have BPA's most current analysis of expected operational limitations and wind rate levels.

Small wind generators (20 MW or less) will be exempt from the wind within-hour balancing rate for the first year of this two-year rate period.

**DSI benefits**: the discussion starts on page 173. The draft decision is to assume 385 aMW of service to the aluminum smelters and 17 aMW for Port Townsend Paper to be sold at the IP rates established in this rate case.

BPA is still subject to an ex parte communications limitation so I can not address the merits of case. But, of course please feel free to contact me about this. Also, I would like to schedule a time to have our rates managers brief you on the key aspects of the FYs 2010-2011 rates after the case is filed with FERC. I don't know how ideal the recess period is for a meeting, so we can schedule it right after you return. Thanks.

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#23

**Atterbury,Laura M - DK-7**

**From:** Betz, Kimberly [Kimberly.Betz@mail.house.gov]
**Sent:** Wednesday, August 05, 2009 11:28 AM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** Re: BPA Releases Proposed Terms of Service to DSIs

Thank you!

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**From:** Baskerville,Sonya L - DKN-WASH <slbaskerville@bpa.gov>
**To:** Betz, Kimberly
**Sent:** Wed Aug 05 14:08:54 2009
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Kim, I took some notes during the Q/A portion of the discussion. The discussion opened with a summary of the information below (if you start from the first email in the chain below to the final, you'll have the background). After that, we opened up for Q/A. Once we get a full draft contract, that will be available for comment also and should help to answer the questions about the vagueness of some of the items in the term sheet. When that contract is in draft, I will get it out to Congressional staff and explain what has been more fleshed out in the contract. Thanks.

Q/A and Statements (S)

Q. The cost caps are not in the term sheets.

A. The term sheet is not as specific as the contract will be. At this point, we don't know what the IP rate will be. Based on a forecasted IP rate which we will lay out in the K, and ALCOA's 320 MW at $70 million/year, that adds up to the megawatt-hour cap.

Q. There is no indication of a $100 million cost cap in the term sheet. It doesn't say, "not to exceed" anywhere.

A. It's based on a forecasted IP rate at this time, but we believe that the total cost will be less than the $100 million.

Q. Sounds like BPA is not going to cap anything.

A. We are capping the price at which we will buy the power. What the total amounts to depends on the actual IP rate that has to be set in the next rate period.

Q. Do you have an idea of what the cost range could be?

A. The cost could be about $4 million higher/year depending on the rate and how ALCOA intends to operate. We believe we are only off about 1 mill. We are not contemplating allowing ALCOA to use CFAC's allocated dollars in the follow-on 5 years. ALCOA's benefit is 70-percent of the deal.

S. You're signing up BPA and customers to a pretty significant commitment. Want to understand the

actual commitment and the risks.

Q. Where are you with CFAC?

A. This offer will be made available to both, but CFAC didn't want this deal. We tried to give them more flexibility in a 2- or 4-year deal, but they did not take one of those.

Q. Has anyone run a new cost/benefit analysis?

A. We didn't do a new study, but we updated the old study, particularly the jobs multiplier and put in the parameters for the specific deal. It was updated only for ALCOA, but would improve if CFAC was included. If the IP rate improves, the jobs impact improves.

Q. How does BPA handle the risks associated with the flexibilities in the contract, particularly the risk if they don't operate?

A. If they don't operate, we sell the power in the market. Our view is that even in the current market, we can still get a better price than BPA's cost-based power. Financially, we're better off. If they terminate, we'll have about 12-months of IP revenues on top of the sale of the power in the market.

Q. Do you have a risk analysis?

A. The forecast is in the rate case - about 90% of the time we're better off. We can show you what has been forecasted in the rate case out seven years. We will get that to you.

Q. How do you collect the additional costs if they terminate?

A. They pay the 12-months of IP revenues; we sell power on the market. The power sale should help us recoup any additional costs.

Q. What's the underlying assumption for that?

A. We would be selling at the market price - we have an Aurora model which forecasts the market prices. The margin is the price for natural gas.

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Tuesday, July 28, 2009 4:05 PM

**To:** 'Berick, Dave (Wyden)'; 'Ronen, Amit (Cantwell)'; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young; 'Betz, Kimberly'
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Thanks. And thanks for a reminder that I must have neglected to send you an update on what has occurred with CFAC. As I mentioned, last week BPA was attempting to negotiate a term sheet with different terms for CFAC. We were unable to reach agreement on those different terms.

On Friday, BPA posted a notice indicating that it was unable to reach agreement with CFAC and the only term sheet for DSI service is the proposed 7-year term sheet. Customers were notified on Friday.

Here is the posting:

**Draft Term Sheet - CFAC**

The Bonneville Power Administration (BPA) issued a letter July 17 regarding service to the aluminum direct-service industries (DSIs) commencing in FY 2010 that indicated BPA is proposing two separate options for the terms of the potential new service.

Columbia Falls Aluminum Company (CFAC) had expressed a desire for a shorter term option that, in return, could provide them a bit more flexibility. However, BPA and CFAC have not been able to agree on principles needed to release a term sheet for a shorter term.

BPA is now proposing only one option for a power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' load. The proposed power sales would begin Oct. 1, 2009, and extend through Sept. 30, 2016. The proposed seven-year term sheet was made available for public review and comment beginning July 17, 2009, on BPA's Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

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**From:** Berick, Dave (Wyden) [mailto:Dave_Berick@wyden.senate.gov]
**Sent:** Tuesday, July 28, 2009 3:21 PM
**To:** Baskerville,Sonya L - DKN-WASH; BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane

Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Thanks for the quick response. I look forward to the call. I just want to note that the comment period specified in the July 17, 2009 letter to regional customers ends at 5:00 pm on August 3rd. So it's going to be hard to finish comments on this by then, especially when the Columbia Falls term sheet still doesn't seem to be available yet.

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Tuesday, July 28, 2009 3:10 PM
**To:** Berick, Dave (Wyden); BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

I agree with you that a plain language review of this agreement would be helpful. This a complex agreement that relies on a number of assumptions regarding the amount of power benefit that may be provided, the assumptions about aluminum prices, etc. I will try to set-up a briefing prior to the recess, but Allen Burns, currently the Acting Deputy Administration (he carried this project with him to his new post), is on leave this week and I'm sure he would want to do this himself.

I have asked one of the executive assistants to hold Tuesday, August 4, at 2:00p eastern for a discussion of the term sheet. I will confirm that with you later in the week. Thanks.

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**From:** Berick, Dave (Wyden) [mailto:Dave_Berick@wyden.senate.gov]
**Sent:** Tuesday, July 28, 2009 2:50 PM
**To:** Baskerville,Sonya L - DKN-WASH; BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

I think a conference call on this would be helpful because the Alcoa term sheet simply doesn't line up with what you are saying. There is nothing in the Alcoa term sheet that caps the combined amount for both plants at $100 million annually. Second, to the extent there are any cost caps, they appear to be $ per average megawatt for each period not total dollars per year, or even over the life of the proposed sale. Where totals are discussed, in the term sheet and economic summary, they are discussed as "forecasted" or "intended" exposure.

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Tuesday, July 28, 2009 2:04 PM
**To:** Berick, Dave (Wyden); BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Dave, thanks for your question and apologies for taking some time to get back to you on your question. I want to give you all a complete (and of course accurate) response. The BPA leads on the DSI issues were tied up last week on issues related to Columbia Falls Aluminum. I still need to get specific information from the staff regarding the rate impact.

For FYs 2010-2011, the total cost is still capped at $59 million. The term sheet points out that the total cost of the follow-on 5-years is capped at $100 million annually for Alcoa and CFAC combined. However, the cost changes depending on what amount of power benefit is provided - it may be lower.

Part of the response to your question has been posted on the BPA website. The 7-year proposal is similar to what BPA discussed at the public workshop in June and still is based on trying to give the DSIs a reasonable chance to survive while having at least a slight net positive impact on expected overall jobs in the region. BPA's views on providing this benefit has not changed for some time, particularly given the 9th Circuit's ruling affirming BPA's discretion to provide these benefits and on what conditions.

Here's what has been posted regarding the economic study:

BPA's "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept," which is BPA's update to the results of the "2006 Regional Employment and Economic Study," is also available now for public review on the Web site. The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

- Summary of BPA's Use of the Regional Economic Study to Contemplate these Service Concepts (7/23/09)
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-07-23_Summary_Regional_Economic_Study.pdf

I will provide more information about the rate impact when I have that information from staff. Thanks.

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**From:** Berick, Dave (Wyden) [mailto:Dave_Berick@wyden.senate.gov]
**Sent:** Monday, July 20, 2009 4:58 PM
**To:** BPA National Relations; Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: BPA Releases Proposed Terms of Service to DSIs

Please provide an economic analysis of what this will actually cost Bonneville and it's ratepayers since this is not clear from the letter or the term sheet.

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**From:** BPA National Relations [mailto:national@BPA.GOV]
**Sent:** Monday, July 20, 2009 4:36 PM
**To:** Amit Roen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Desmond, Carrie (Murray); Catherine Ransom; Chrissy Poe; Colby Marshall; McDaniel, Corey (Risch); Thompson, Courtney (Merkley); Berick, Dave (Wyden); Devin Nagy; Ethan Pittleman; Hillary Barbour; Shimek, Jaime (Murray); James Bradbury; Janine Benner; Bohrer, Jason (Risch); Jayme White; Baumann, Jeremiah (Merkley); Merkel, Joel (Cantwell); Jon DeVaney; Kelsey E. Knowles; Flanz, Ken (Crapo); Tomanelli, Luke (Crapo); Malisah Small; Mark Middaugh; Mary Heller; Miranda, Michele (Wyden); Nathan Rea; Nils Tillstrom; Wilkins, Paul (Baucus); Pete Modaff; Ryan Shauers; Stephen Marx; Harding, Stephenne (Tester); Susan Jane Brown; Todd Ungerecht; Todd Young
**Cc:** Baskerville,Sonya L - DKN-WASH
**Subject:** BPA Releases Proposed Terms of Service to DSIs

Please feel free to contact me if you have any questions.

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yl A - PS-6
20, 2009 2:33 PM
Adams,Dick ; Adams,Doug; Andersen,Steve; Andrea,Michael; Andrus,Craig; Andrus,Stephanie; Aspaas,Lynn; Baker, Jack; Baker,Loren; Baker,Nancy; Beardry, Haley; Beatty, Theodore; Beaulieu,Christine; Beck, BJ; Beck,Barbara; Bedbury,Dan; Beyer,Lee; Bickford, Dan; Bleakney,Leann; Boomer,Linda; BPA Average System Cost; Brattebo,Scott; Brawley,Doug; Brost,Ed; Brown,Stefan; Byers,Dick ; Caldwell,Carol; Calica,Direlle; Carr,Geoff; Castille,Tim; Chevis,Cheryl; Christensen,Eric; Conger,Kurt; Corwin,Scott; Courm, Ken; Cross,Robin; Davis, Jeff; Deen,Michael; Dennison-Leonard, Sarah; Deren,Jeffrey; Dolan,Jim; Dotten,Michael; Dragoon,Ken; Drummond,Bill; Drury,Chris; Edmonds,Sarah; Elg,Jo; Elliott, Doug; Emtman,Trevor; Engel,Lee; Enright,Diana; Essex,Bob; Falcon,Anna ; Falkenburg,Humaira; Finnen,Ray; Fisher,Ann; Flynn, Ryan; Ford,Brad; Gadeburg,Ron; Gallagher, Greg; Goode, Ralph; Gray,Catherine; Gregg,Randy; Greisel, Andi; Hannaford,William; Hiaasen, Eric; Howell,Don; Hardy,Randy; Harris,Deb Bone; Haymaker,Tom; Hellman,Marc; Herring,Morgan; Hill,Michael; Himlie,Jay; Hocken,Natalie; Huber,Bob; Huhta,Gary; Hunt,Sandy; Hunter,Ian; Jackson-Gistelli,Richard;

ɔ; Johnson, James R.; Johnson,Chris; Johnson,Erick; Johnson,Jim; Johnson,Sara; Jourabchi,Massoud; Kallstrom,Jeff; Kandra,Lindsay; Kari,Don; Kester,Greg; Kindley,Ray; Knipschield,Debbie; Knitter,Keith; Krekel,Randall; Labolle,Larry; Langer,Dwight; Lawrence,Rhett; Leach,Randi; Lewis,Steven; Lindstrom,Shirley; Litchfield,Jim; Lobdell,Jim; Lovely,Rick; Marshall, George; Mayer,Zach; Mayson, Jack ; Mayson,Jack; McGary,Pat; McKinsey,Tom; Melcalfe,Travis; Mendonca, Greg; Metcalfe,Dennis; Mey,Ken; Miles,Anna ; Miller,Doug; Mitchell,Fred; Morlan,Terry; Mount,Ed; Muller, Dave; Mundorf,Terry; Munz,Paul; Murphy,Paul; Murray, Mike ; Nelson,Jeff; Nichols, Patty; Nieborsky, Gary; Nordstrom,Lisa; Nutley,Busse; Obenchain,Phil; O'Connor,Tom; O'Meara,Kevin; Opatrny,CC; Pace,Charles; Palmer,Steve; Paulson,Colleen; Peters,Lon; Piliaris,Jon; Plotz, David; Pollock,Walt; Porter,John; Price,Neil; Radcliffe,Sania; Rettenmund,Fred; Richardson,Peter; Rodol,Ali; Roehm,Jenny; Roman,Edward; Rozanski,Rick; Russell,Jim; Samuelson,Matt; Sanders,Jim; Sanger,Irion; Sargent,Rich; Saven,John; Schaff,Margie; Scheel,Jim; Schneider,Russ; Schoenbeck,Don; Schwartz,Howard; Schwendiman, Celeste; Scott,Aleka; Seifert,Caryn; Sheets,Ed; Shimshank,Rachel; Shurts,John; Sidhu, David ; Sieler, Rick; Sirois,Brenda; Sirvaitis,Rob; Skeahan,Brian; Skidmore,Lara; Smith,Doug; Speer,Jack; Staker, Doug ; Stauffer,Mark; Stratman,Megan; Strong,R. Blair; Tarp,Kelly; Taylor,Ardyce; Taylor,Steven; Thompson,Mark; Tilghman,Henry; Tinker,Don; Titus,Paul; Toulson,Dana; Towner,Zaybn; Trotter,Don; Tsui,Jonah; Vaughn,Greg; Ward,Bill; Wheeler, Brenna; Weems,Ryan; Weiss,Steve; Westerfield,Louann; Williams,Ed; Wilson,Mike; Wissler,Jon; Wittenburg,Bob; Wolverton,Linc; Wood,Wyla; Wright,Cindy; Wrigley,Paul; Yarkowski,Cameron; Young,Robert; Zell, Troy; Zwick,Sharon
leases Proposed Terms of Service to DSIs

BPA and the two aluminum direct service industries have finished negotiating terms for drafting a long-term service contract. BPA is releasing for public review and comment two separate options for the terms of potential new service to Alcoa, Inc., and Columbia Falls Aluminum Company. Both term sheets reflect a proposed power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' loads. The proposed power sales would begin Oct. 1, 2009, and extend through either Sept. 30, 2013, or Sept. 30, 2016, depending on the option selected.

Any resulting long-term contract offers would be made available for additional public review likely in mid- to late-August.

CFAC has expressed a desire for a four-year option and Alcoa Inc., a preference for a seven-year option; the term sheets reflect these options respectively. Either DSI, however, can choose the terms of either option prior to the contracts being finalized. If BPA and the DSI move forward on either option, BPA hopes to have final selections made by September 2009.

The seven-year (Alcoa) proposed term sheet will be available for public review and comment at www.bpa.gov/comment from July 17, 2009, through Aug. 3, 2009. The four-year (CFAC) proposed term sheet also will be available for public review through Aug. 3; it will be ready for release the week of July 20.

When the CFAC term sheet is released, BPA also will release for review and comment a document titled "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept." This document is BPA's update to the results of the "*2006 Regional Employment and Economic Study.*" The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

The term sheets and a letter to the region will be posted on BPA's Web site at:
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Thank you,

Cheryl Larson
Customer Communications Specialist
BPA Power Services
503-230-5356

#24

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, August 06, 2009 2:37 PM
**To:** 'Stephenne Harding'
**Subject:** FW: DSI term sheet

Stephenne, here is the first of two emails that I'm sending for background on the CFAC issue. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 6:14 PM
**To:** 'Wilkins, Paul (Baucus)'
**Subject:** RE: DSI term sheet

BPA purchases forward. We are buying now for the winter requirements for example. Those purchases are typically about 6 months in advance to take advantage of market conditions but more importantly for our trading floor's planning needs as they assure they have the power necessary to serve our obligations. A 140 MW purchase is large, and the trading floor needs time to make the necessary power purchases to meet not only that large load requirement but any other future power obligations.

I just got off the phone with Mark Miller and Harry Clark who have been negotiating this contract with CFAC. They told me that we are now out of time at this point to work through the different term sheet. We still have our public process review requirements in place and we don't have time now for the appropriate amount of review time. My understanding now is that the 7-year option is the remaining option. It is currently out for comment through August 3. BPA plans to post a note to clarify what is happening now that we were unable to reach agreement with CFAC - the note is to clarify what we said in the July 17 letter that there could be separate options for Alcoa and CFAC.

My understanding is that CFAC will get a call when that note is posted. I'll let you know when that happens. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585

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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Thursday, July 23, 2009 5:28 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: DSI term sheet

Sonya,

Thanks for getting back to me. In regards to the 4 year option, what is the rational for a 4 month notice requirement for the second potline as opposed to a two month requirement? Essentially, if the notification requirement for the first potline is 2 months what does it matter to BPA whether the notification requirement for the second potline is 2 months or 4 months?

Thanks!

Paul

---

**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, July 23, 2009 5:15 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: DSI term sheet

Hey, Paul. My understanding is that CFAC has a two year version that does not have take-or-pay as long as they give BPA as little as a 2 month notice on where they plan to operate, anywhere between 0 to 70 aMW (i.e. one potline). If they make the decision to ramp up to 140 MW in the second option/alternative which is a four year deal, then take-or-pay applies to only the last 70 MW (or the second potline). Take-or-pay for the first 70 MW in this second option only comes into play if they fail to give us a 4 month notice. So, BPA folks believe there already is flexibility built into the take-or-pay character of the contract. Recall that the ALCOA's term sheet has a 12-month advance notice period and take or pay is in effect during that notice period. http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-07-17_DRAFT-TermSheet-Alcoa.pdf (Alcoa's term sheet)

Allen and others were waiting for CFAC to get back to them today, but as of now, I don't believe they have heard back. Looks like this might not come together today for a CFAC specific term sheet. I'll keep you posted as I hear more. If you hear anything from CFAC that you can share, let me know!

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 10:33 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** Re: DSI term sheet

Hi, Paul. Take or pay contracts are very standard power sales contracts, but I'm checking on your questions with Allen now. Thanks.
Sonya Baskerville
202.253.7352

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**From**: Wilkins, Paul (Baucus)
**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Thu Jul 23 07:18:01 2009
**Subject**: DSI term sheet
Hi Sonya,

I wanted to check in with you to get some clarity on the take or pay issue in the draft term sheet with CFAC. Specifically, it is my understanding that BPA's position is that if BPA purchases power for CFAC, and CFAC shuts down before the agreement expires, CFAC must reimburse BPA for the full value of the power, and BPA also keeps the power and could resell it on the market. Is this correct, and if so, what is BPA's rationale for this position? If the goal is to keep BPA whole should CFAC shut down, isn't it sufficient to simply require CFAC to cover the spread between the purchase price and resale price?

Any insights you can provide would be greatly appreciated! Thanks for all your work to try to find a mutually acceptable agreement with CFAC.

Thanks!

Paul

#25

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, August 06, 2009 2:37 PM
**To:** 'Stephenne Harding'
**Subject:** FW: We did not get agreement with CFAC

Second email.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Monday, July 27, 2009 3:31 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: We did not get agreement with CFAC

Thanks, Sonya. This is very helpful. We're getting the lay of the land and will be in touch.

Thanks again for your help on this.

Best,

Paul

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Monday, July 27, 2009 3:02 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: We did not get agreement with CFAC

Paul, I just tried to return your call. Here is the information you've requested.

1. Did BPA indeed post a notice that only the 7 year term sheet would be offered?

**Draft Term Sheet - CFAC**
The Bonneville Power Administration (BPA) issued a letter July 17 regarding service to the aluminum direct-service industries (DSIs) commencing in FY 2010 that indicated BPA is proposing two separate options for the terms of the potential new service.

Columbia Falls Aluminum Company (CFAC) had expressed a desire for a shorter term option that, in return, could provide them a bit more flexibility. However, BPA and CFAC have not been able to agree

on principles needed to release a term sheet for a shorter term.

BPA is now proposing only one option for a power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' load. The proposed power sales would begin Oct. 1, 2009, and extend through Sept. 30, 2016. The proposed seven-year term sheet was made available for public review and comment beginning July 17, 2009, on BPA's Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

2. Did BPA ever receive any communication from CFAC after BPA agreed to hold open the issue for an additional day on Thursday?

We agreed to hold open the discussion until 10:00a pacific on Friday. I received on Friday after that deadline the email below (the first one in the email chain) describing what occurred on that call. CFAC declined to take the shorter term deals. I just checked with Mark Symonds, and to his knowledge, CFAC has not contacted BPA again since that time on Friday; but, both Allen Burns and Harry Clark are on vacation this week, so I don't know whether or not they were contacted again.

3. What if any flexibility does BPA now have to adjust the seven year term sheet to meet the needs of CFAC?

I don't believe there is any flexibility left - we were working through the shorter term arrangements to provide flexibility. BPA made certain commitments to customers for public comment of the terms. The customers have complained that BPA has provided a limited amount of time for the review, so if we were to make more changes, we would be even further limiting the time they would have to review the proposed terms. Allen and Steve are unwilling to do that.

Have you heard what CFAC is thinking now? I can't say for certain what would happen if CFAC came back to accept either the 2- or the 4-year agreement as is. We would have the same problems with the timing of the public review which is why we needed them to commit last week. Thanks.

Sonya Baskerville
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Bonneville Power Administration
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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Monday, July 27, 2009 12:27 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: We did not get agreement with CFAC

Hi Sonya,

After last week's flurry of activity, I wanted to check in to see where things stand.

4. Did BPA indeed post a notice that only the 7 year term sheet would be offered?
5. Did BPA ever receive any communication from CFAC after BPA agreed to hold open the issue for an additional day on Thursday?
6. What if any flexibility does BPA now have to adjust the seven year term sheet to meet the needs of CFAC?

Thanks!

Paul

---

**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Friday, July 24, 2009 2:54 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** Re: We did not get agreement with CFAC

I just heard back from Allen. He did not want to post the 4-year agreement without CFAC's agreement to the terms which would imply the door was open to more negotiation. So I believe the posting is being made now with the 7-year term sheet. Thanks.
Sonya Baskerville
202.253.7352

---

**From**: Baskerville,Sonya L - DKN-WASH
**To**: 'Paul_Wilkins@baucus.senate.gov'
**Sent**: Fri Jul 24 11:07:30 2009
**Subject**: Re: We did not get agreement with CFAC

I'm checking now.
Sonya Baskerville
202.253.7352

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**From**: Wilkins, Paul (Baucus)
**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Fri Jul 24 11:01:03 2009
**Subject**: Re: We did not get agreement with CFAC
Can you notice the four year deal described below as well? Given a choice between that and the alcoa term sheet, we might be able to force them into the four year deal.

---

**From**: Baskerville,Sonya L - DKN-WASH <slbaskerville@bpa.gov>
**To**: Wilkins, Paul (Baucus)
**Sent**: Fri Jul 24 13:56:37 2009
**Subject**: Fw: We did not get agreement with CFAC

Paul, Allen's note below summarizes what has finally occurred. I assume you have heard from CFAC by now. BPA's leadership can not justify taking on the additional risk associated with reducing the notice any further.

I'm in a meeting with FERC right now, but I'm available via email. Thanks.
Sonya Baskerville
202.253.7352

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**From**: Burns,Allen L - D-7

**To**: Baskerville,Sonya L - DKN-WASH; Wright,Stephen J - A-7; Kuntz,Gail K - DKR-MSGL; Symonds,Mark C - PTL-5
**Sent**: Fri Jul 24 10:40:31 2009
**Subject**: We did not get agreement with CFAC

Mark just called CFAC to let them know that since we had not heard from them that we were going to post the note that we were now planning to proceed with only a 7 year option. Rather than agree to either the four year or two option alternatives Zach said they'd agree to the four year if we'd make an additional change so they can make a 2 months notice to change the amount of power they are taking rather than a 4 month notice ( recall we agreed to lower it from 6 months to 4 months just a couple of days ago and to be honest I had a lot of hard burn over us taking on that additional risk in these volatile power markets). Mark told him the purpose of the call was not to negotiate and make further concessions, so we are now proceeding to post the notice of a 7 year deal only. I really appreciate all the work Sonya and Gail have done on this.

#26

**Atterbury,Laura M - DK-7**

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, August 06, 2009 3:36 PM
**To:** 'Harding, Stephenne (Tester)'
**Subject:** RE: We did not get agreement with CFAC

No problem! You may want to let them know that the sooner they can let us know what they want to do, the better because we'll have to figure out how to go forward given the short timeframe between now and October 1. Thanks!

Sonya Baskerville
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Bonneville Power Administration
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Washington, DC 20585
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**From:** Harding, Stephenne (Tester) [mailto:Stephenne_Harding@tester.senate.gov]
**Sent:** Thursday, August 06, 2009 6:32 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: We did not get agreement with CFAC

Cool thanks, well it looks like they are wanting to consider that again... Thanks for going back and forth with me on this!

---

**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, August 06, 2009 6:30 PM
**To:** Harding, Stephenne (Tester)
**Subject:** RE: We did not get agreement with CFAC

That's the same as the 2-year agreement that had been offered before, but as we've posted, we didn't reach agreement with them on that. So, the only agreement posted now is the 7-year deal. They need to call us if they want to talk about taking the offer they had. We haven't heard from them about that. Thanks.

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**From:** Harding, Stephenne (Tester) [mailto:Stephenne_Harding@tester.senate.gov]
**Sent:** Thursday, August 06, 2009 6:23 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: We did not get agreement with CFAC

He said Allen and Mark offered 2 years without on the 1 year "penalty" in the Alcoa term sheet. Wow I feel like I am playing telephone! ☺

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, August 06, 2009 6:20 PM
**To:** Harding, Stephenne (Tester)
**Subject:** RE: We did not get agreement with CFAC

CFAC was offered the 7-year term sheet just as ALCOA, that's probably what they are referring to. If they want to talk to Allen and crew about the 2- or 4-year deal that we had offered, they can do that but I don't know how we would be able to work that in given the short timeframe we're in. That issue would have to be discussed. Thanks!

Sonya Baskerville
Manager, National Relations Office
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**From:** Harding, Stephenne (Tester) [mailto:Stephenne_Harding@tester.senate.gov]
**Sent:** Thursday, August 06, 2009 6:08 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: We did not get agreement with CFAC

Gee. Glencore said they were offered other terms today. Could you check into that for me. so I can have it verified by both sides?

---

**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, August 06, 2009 6:04 PM
**To:** Harding, Stephenne (Tester)
**Subject:** RE: We did not get agreement with CFAC

Not that I know of. The only option at this point is the posted 7-year term sheet. Here is the link to it. Thanks.

- Draft Term Sheet - Alcoa (7/17/09)
- **Draft Term Sheet - CFAC**

The Bonneville Power Administration (BPA) issued a letter July 17 regarding service to the aluminum direct-service industries (DSIs) commencing in FY 2010 that indicated BPA is proposing two separate options for the terms of the potential new service.

Columbia Falls Aluminum Company (CFAC) had expressed a desire for a shorter term option that, in

return, could provide them a bit more flexibility. However, BPA and CFAC have not been able to agree on principles needed to release a term sheet for a shorter term.

BPA is now proposing only one option for a power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' load. The proposed power sales would begin Oct. 1, 2009, and extend through Sept. 30, 2016. The proposed seven-year term sheet was made available for public review and comment beginning July 17, 2009, on BPA's Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

BPA's "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept," which is BPA's update to the results of the "2006 Regional Employment and Economic Study," is also available now for public review on the Web site. The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

- Summary of BPA's Use of the Regional Economic Study to Contemplate these Service Concepts (7/23/09)

*Note: this document was updated July 28, 2009, to correct the presentation of Table 21.*

Sonya Baskerville
Manager, National Relations Office
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**From:** Harding, Stephenne (Tester) [mailto:Stephenne_Harding@tester.senate.gov]
**Sent:** Thursday, August 06, 2009 5:52 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: We did not get agreement with CFAC

I am on the phone with Glencore...Are people still talking with other options?

---

**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, August 06, 2009 5:37 PM
**To:** Harding, Stephenne (Tester)
**Subject:** FW: We did not get agreement with CFAC

Second email.

Sonya Baskerville
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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Monday, July 27, 2009 3:31 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: We did not get agreement with CFAC

Thanks, Sonya. This is very helpful. We're getting the lay of the land and will be in touch.

Thanks again for your help on this.

Best,

Paul

---

**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Monday, July 27, 2009 3:02 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: We did not get agreement with CFAC

Paul, I just tried to return your call. Here is the information you've requested.

1. Did BPA indeed post a notice that only the 7 year term sheet would be offered?

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We agreed to hold open the discussion until 10:00a pacific on Friday. I received on Friday after that deadline the email below (the first one in the email chain) describing what occurred on that call. CFAC declined to take the shorter term deals. I just checked with Mark Symonds, and to his knowledge, CFAC has not contacted BPA again since that time on Friday; but, both Allen Burns and Harry Clark are on vacation this week, so I don't know whether or not they were contacted again.

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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Monday, July 27, 2009 12:27 PM
**To:** Baskerville,Sonya L - DKN-WASH
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4. Did BPA indeed post a notice that only the 7 year term sheet would be offered?
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Thanks!

Paul

---

**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Friday, July 24, 2009 2:54 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** Re: We did not get agreement with CFAC

I just heard back from Allen. He did not want to post the 4-year agreement without CFAC's agreement to the terms which would imply the door was open to more negotiation. So I believe the posting is being made now with the 7-year term sheet. Thanks.
Sonya Baskerville
202.253.7352

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**To**: 'Paul_Wilkins@baucus.senate.gov'
**Sent**: Fri Jul 24 11:07:30 2009
**Subject**: Re: We did not get agreement with CFAC

I'm checking now.
Sonya Baskerville
202.253.7352

---

**From**: Wilkins, Paul (Baucus)
**To**: Baskerville,Sonya L - DKN-WASH
**Sent**: Fri Jul 24 11:01:03 2009
**Subject**: Re: We did not get agreement with CFAC
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---

**From**: Baskerville,Sonya L - DKN-WASH <slbaskerville@bpa.gov>
**To**: Wilkins, Paul (Baucus)
**Sent**: Fri Jul 24 13:56:37 2009
**Subject**: Fw: We did not get agreement with CFAC

Paul, Allen's note below summarizes what has finally occurred. I assume you have heard from CFAC by now. BPA's leadership can not justify taking on the additional risk associated with reducing the notice any further.

I'm in a meeting with FERC right now, but I'm available via email. Thanks.
Sonya Baskerville
202.253.7352

---

**From**: Burns,Allen L - D-7
**To**: Baskerville,Sonya L - DKN-WASH; Wright,Stephen J - A-7; Kuntz,Gail K - DKR-MSGL; Symonds,Mark C - PTL-5
**Sent**: Fri Jul 24 10:40:31 2009
**Subject**: We did not get agreement with CFAC

Mark just called CFAC to let them know that since we had not heard from them that we were going to post the note that we were now planning to proceed with only a 7 year option. Rather than agree to either the four year or two option alternatives Zach said they'd agree to the four year if we'd make an additional change so they can make a 2 months notice to change the amount of power they are taking rather than a 4 month notice ( recall we agreed to lower it from 6 months to 4 months just a couple of days ago and to be honest I had a lot of hard burn over us taking on that additional risk in these volatile power markets). Mark told him the purpose of the call was not to negotiate and make further concessions, so we are now proceeding to post the notice of a 7 year deal only. I really appreciate all the work Sonya and Gail have done on this.

#27

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, August 13, 2009 10:40 AM
**To:** 'stephenne_harding@tester.senate.gov'; 'Paul_Wilkins@baucus.senate.gov'
**Subject:** CFAC update

I understand that CFAC is coming in talk with BPA today. I have been out of the office all week and I'm still out but now have BlackBerry service. I don't know much more other than Senator Tester did call the Administrator on Tuesday to briefly discuss what was possible. My understanding is that CFAC still appears to want terms that would have BPA take on more risk than we believe is doable.

I should know more tomorrow and will be back in touch. Thanks.
Sonya Baskerville
202.253.7352

#28

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Friday, August 14, 2009 10:29 PM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** CFAC update

Hey, Paul. Just getting back to you on the latest stage of negotiations. BPA has a call scheduled with CFAC on August 19th.

While there is some slim possibility of an agreement on contract terms being reached prior to October 1, BPA still does not have enough time to finalize a contact before then (no time to draft and conduct a public process). My understanding is that BPA is working toward two priorities: 1) attempt to set-up a bridge agreement for a month or two after October 1 and 2) establish principles for longer-term arrangements.
Sonya Baskerville
202.253.7352

#29

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Monday, August 24, 2009 2:21 PM
**To:** 'Wilkins, Paul (Baucus)'; 'Stephenne Harding'
**Subject:** RE: CFAC update

Paul, thanks for the email - it reminded me that I did have an update to send to you! I'm including Stephenne also.

BPA will be providing a draft bridge agreement to CFAC to provide CFAC with power, BPA with jobs, and allow both parties an additional month or two to engage in an appropriate public process on a longer-term solution. There will be meeting with CFAC this week to discuss longer-term alternatives. CFAC is supposed to send to BPA prior to that meeting a list of principles for a 4-year proposal.

Some of the concerns raised by the publics on the ALCOA term sheet that have been addressed in Alcoa's draft contract would be expected to apply to CFAC: a) the cost caps and maintaining net gain on the jobs and b) BPA cannot allow any smelter to curtail or terminate IP service in order to buy power from the market. My understanding is that CFAC understood that concern and reiterated that they have no intention to play BPA power against the market.

The target date to get a term sheet out for public review is the week of September 7. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

-----Original Message-----
From: Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
Sent: Monday, August 24, 2009 9:50 AM
To: Baskerville,Sonya L - DKN-WASH
Subject: RE: CFAC update

Hi Sonya,

Thanks for this update. Can you share any new details in light of the August 19th call? Also, what is the schedule for future meetings between CFAC and BPA?

Thanks!

Paul

-----Original Message-----
From: Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
Sent: Saturday, August 15, 2009 1:29 AM
To: Wilkins, Paul (Baucus)
Subject: CFAC update

Hey, Paul. Just getting back to you on the latest stage of negotiations. BPA has a call scheduled with CFAC on August 19th.

While there is some slim possibility of an agreement on contract terms being reached prior to October 1, BPA still does not have enough time to finalize a contact before then (no time to draft and conduct a public process). My understanding is that BPA is working toward two priorities: 1) attempt to set-up a bridge

agreement for a month or two after October 1 and 2) establish principles for longer-term arrangements.
Sonya Baskerville
202.253.7352

#30

**Atterbury,Laura M - DK-7**

**From:** Harding, Stephenne (Tester) [Stephenne_Harding@tester.senate.gov]
**Sent:** Monday, August 24, 2009 2:42 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** Re: CFAC update

Thank you for the update!

----- Original Message -----
From: Baskerville,Sonya L - DKN-WASH <slbaskerville@bpa.gov>
To: Wilkins, Paul (Baucus); Harding, Stephenne (Tester)
Sent: Mon Aug 24 17:21:05 2009
Subject: RE: CFAC update

Paul, thanks for the email - it reminded me that I did have an update to send to you! I'm including Stephenne also.

BPA will be providing a draft bridge agreement to CFAC to provide CFAC with power, BPA with jobs, and allow both parties an additional month or two to engage in an appropriate public process on a longer-term solution. There will be meeting with CFAC this week to discuss longer-term alternatives. CFAC is supposed to send to BPA prior to that meeting a list of principles for a 4 year proposal.

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Sonya Baskerville
202.253.7352

#31

## Atterbury,Laura M - DK-7

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Tuesday, August 25, 2009 7:08 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'; 'Stephenne_Harding@tester.senate.gov'
**Subject:** Re: CFAC update

The draft bridge agreement is not final yet. I assume BPA will make it public at some point, so I'll share that with you. The bridge agreement, just a guess, would be some sort of extension of the short term agreement that expires soon but in place for a very short amount of time. Thanks.
Sonya Baskerville
202.253.7352

----- Original Message -----
From: Wilkins, Paul (Baucus) <Paul_Wilkins@baucus.senate.gov>
To: Baskerville,Sonya L - DKN-WASH; Harding, Stephenne (Tester) <Stephenne_Harding@tester.senate.gov>
Sent: Tue Aug 25 04:53:27 2009
Subject: RE: CFAC update

Good Morning Sonya,

That is good news. Thank you and everyone at BPA for staying at the table to continue to bring the issue to a positive resolution.

Is the bridge agreement final? If so, what are its terms? How long will it run? Will BPA be putting out an announcement? If so, when?

Thanks!

Paul

-----Original Message-----
From: Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
Sent: Monday, August 24, 2009 5:21 PM
To: Wilkins, Paul (Baucus); Harding, Stephenne (Tester)
Subject: RE: CFAC update

Paul, thanks for the email - it reminded me that I did have an update to send to you! I'm including Stephenne also.

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Manager, National Relations Office
Bonneville Power Administration
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Washington, DC 20585

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Sonya Baskerville
202.253.7352

## Atterbury,Laura M - DK-7

**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Tuesday, September 22, 2009 8:45 AM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: Long-term contract with Alcoa suspended

**Attachments:** 09PB-13268.pdf; letter-joint to PNW Del re ALCOA Contract V2.pdf

hPer FOIA request. This is the last one I have. - Liz

---

**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Friday, January 23, 2009 6:11 PM
**To:** Brian Kristjansson; Amanda Dotson; Celina Cunningham; Chris Endresen; Clark Mather; Darcy Nothnagle; Jill McKinnie; Linda Danforth; Mariana Parks; Mary McBride; Mike English; Page Phillips; Shawn Bills; Swenson, Sharmila; Theresa Wagner
**Subject:** Long-term contract with Alcoa suspended

BPA and Alcoa worked for several months on a new long-term contract for service to the company's Intalco plant near Ferndale, Wash. The parties, however, were unable to settle on terms of an agreement that would serve the long-term interests of both parties adequately.

In the meantime, BPA and Alcoa have agreed to an amendment of the current service contract for the remainder of Fiscal Year 2009 that responds to last month's ruling of the United States Court of Appeals for the Ninth Circuit. BPA will continue to discuss with Alcoa and the region the potential for future service for both the remainder of the current contract period as well as the longer-term, post 2011 Regional Dialogue timeframe.

A joint Alcoa/BPA letter explaining to the Northwest Delegation this current situation, as well as the last version of the Regional Dialogue contract offered to Alcoa, are posted on BPA's Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/. I've also attached copies below. Please call if you have questions.

| **Last version of contract** | **Joint letter** |
|---|---|
| 09PB-13268.pdf (229 KB) | letter-joint to JW Del re ALC |

Liz Klumpp
Bonneville Power Administration
Western Washington Liaison
ecklumpp@bpa.gov
360-943-0157

Contract No. 09PB-13268

# POWER SALES AGREEMENT

**executed by the**

**BONNEVILLE POWER ADMINISTRATION**

**and**

**ALCOA INC.**

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**Exhibit A** **Firm Power Entitlement**
**Exhibit B** **Billing**
**Exhibit C** **Price Caps (Table 1)**
**Exhibit D** **Special Provisions**
**Exhibit E** **Metering**
**Exhibit F** **Scheduling**
**Exhibit G** **Power Reserves**
**Exhibit H** **Form of Guarantee**

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

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.

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).

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.

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

TERMS

The Parties agree:

1. **TERM**

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2028, unless it is terminated earlier pursuant to the terms of the Agreement. Power deliveries by BPA to Alcoa's Intalco Plant are expected to commence on October 1, 2011; 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.

All liabilities incurred by each party hereunder will 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 "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.

2.4 "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.

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

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

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.

2.8 "Demand Entitlement" shall have the meaning described in section 1.2 of Exhibit B.

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

2.10 "Employment Expenditures" shall have the meaning described in section 9.1.

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

2.12 "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 specified in Exhibit A.

2.13 "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.

2.14 "Initial Curtailment Period" means the first 24 months, contiguous or non-contiguous, 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, contiguous or non-contiguous, that Alcoa curtails deliveries under section 10.4 and the Initial 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.

2.15 "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.

2.16 "Issue Date" shall have the meaning described in section 15.1.

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.

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

2.20 "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.

2.21 "Party" or "Parties" means BPA and/or Alcoa.

2.22 "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.

2.23 "Power Reserves" shall have the meaning described in Exhibit G.

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

2.25 "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.

2.27 "Primary Points of Receipt" shall have the meaning described in section 13.1.

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.

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

2.31 "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

Consistent with applicable law, BPA will propose an IP rate schedule each time it establishes power rates during the term of this Agreement. Alcoa will 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 FOR FY 2012 THROUGH FY 2028

As specified herein, for the period FY 2012 through FY 2028, BPA shall provide Firm Power in amounts specified below and Alcoa shall purchase such power unless: (a) such power has not been acquired by BPA at or below the applicable Price Caps identified in 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; (c) the Agreement has terminated; or (d) Alcoa has failed to operate the Intalco Plant at a level equal to or greater than 160 aMW for a least six months during the period January 1, 2009, through September 30, 2011.

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

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.

All such power acquisitions will be purchased as flat annual blocks of power.

## 5. PHASE 1 – SINGLE TEN-YEAR PERIOD PURCHASE AND SALE FOR FY 2012 THROUGH FY 2021

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.

BPA will initially endeavor to acquire 240 aMW, including in whole or in part through Contingent Acquisitions, as provided below.

5.1 **Ten-Year Acquisition by BPA for Phase 1**

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 and provide Alcoa two Business Days' prior written notice before it executes any acquisition under this section 5, including Contingent Acquisitions; 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.

5.2 **Notice of Completion of Ten-Year Acquisition**

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.

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.

## 7. PHASE 2 - PURCHASE AND SALE FOR FY 2022 THROUGH FY 2028

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.

### 7.1 Phase 2 Acquisition

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.

### 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.

## 8. ACQUISITION CONDITIONS

### 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

#### 8.2.1 Price Caps

The Price Caps specified in Table 1 of Exhibit C represent the maximum amount BPA will pay for average annual blocks of power to support sales to Alcoa (unless a lower maximum amount is specified in the body of this Agreement) including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs, 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.

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.

### 8.2.2 Other Limitations

8.2.2.1 BPA will not make a plant specific acquisition from a coal-fired resource.

8.2.2.2 BPA will not acquire power from a supplier that is unwilling to absorb any of the regulatory or environmental costs referred to in section 8.2.1 above, that are imposed on the supplier after the date the acquisition contract is entered into.

## 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.

## 9. EMPLOYMENT EXPENDITURES AND CAPITAL INVESTMENT

### 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 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 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 must meet 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.

## 10. CURTAILMENT

10.1 **BPA Curtailment if Unable to Acquire 160 aMW after FY 2016**
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.

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 section10.0 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 (i) BPA Reduced Liquidated Damages during the Initial Curtailment Period if Alcoa makes its minimum annual Employment Expenditures and (ii) Liquidated Damages after the Initial Curtailment Period. If Alcoa 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 such portion of 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 11.2.3 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.

## 12. SCHEDULING

### 12.1 Scheduling

Alcoa shall schedule power in accordance with Exhibit F.

## 13. DELIVERY

### 13.1 Definitions

13.1.1 "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.

13.1.2 "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.

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

## 13.2 Transmission Service

13.2.1 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.

13.2.2 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.

13.2.3 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 13.2.3.1 or 13.2.3.2 below, as applicable, have been met:

13.2.3.1 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:

13.2.3.1.1 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

13.2.3.1.2 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

13.2.3.1.3 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.

13.2.3.2 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:

13.2.3.2.1 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

13.2.3.2.2 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.

13.2.3.3 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.

13.3 **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 13.2.3. 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.

13.4 **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 E. Alcoa shall be responsible for any real power losses over non-federal transmission facilities.

## 14. 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.

## 15. BILLING AND PAYMENT

### 15.1 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.

### 15.2 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:

15.2.1 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

15.2.2 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.

### 15.3 Payment by BPA

BPA shall make any BPA Curtailment payments established in section 10.1 to Alcoa electronically. 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.

### 15.4 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.

### 15.5 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.

### 15.6 Disputed Bills

15.6.1 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 15.6.1 does not allow Alcoa to challenge the validity of any BPA rate.

15.6.2 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.

15.6.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 20, 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.

## 16. INFORMATION EXCHANGE AND CONFIDENTIALITY

### 16.1 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 16.1 shall be provided in a timely manner.

### 16.2 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 from BPA.

16.3 **Meter Data**
Alcoa consents to allow Power Services to receive Alcoa's meter data from Transmission Services or BPA's metering function.

16.4 **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 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.

## 17. CONSERVATION AND ENVIRONMENTAL ATTRIBUTES

17.1 **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.

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

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

17.2.2 "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.

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

17.2.4 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.

17.2.5 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.

## 18. 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: 503-230-3681
E Mail: memiller@bpa.gov

## 19. 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:

19.1 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;

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

19.3 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.

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

19.5 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 economics 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.

## 20. 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.

20.1 **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 20, 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 20, 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 20.

20.2 **Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 20.1 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 20.2 and sections 20.3 and 20.4 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 20.2 and sections 20.3 and 20.4 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 20.1 above and is not resolved via binding arbitration, unless Alcoa notifies BPA that it does not wish to proceed with nonbinding arbitration.

20.3 **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.

20.4 **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 20. 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.

20.5 **Finality**

20.5.1 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.

20.5.2 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.

20.6 **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.

## 21. STATUTORY PROVISIONS

21.1 **Prohibition on Resale of Firm Power**

Alcoa shall not resell Firm Power purchased from BPA under this Agreement, but may resell surplus power purchased from BPA under separate transactions as contemplated in sections 11.1 or 23.5.

### 21.2 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.

## 22. STANDARD PROVISIONS

### 22.1 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.

### 22.2 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.

### 22.3 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.

### 22.4 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.

### 22.5 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.

22.6 **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.

22.7 **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, unlike section 10.1 and section 11.2.3 each of which the Parties agree is severable, 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, other than as provided in section 11, associated with any term being severed from this Agreement.

22.8 **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 18, Notices and Contact Information.

22.9 **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.

22.10 **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.

## 23. TERMINATION

For ease of reference, this section 23 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.

### 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.

### 23.6 BPA's Right to Terminate

BPA may terminate this Agreement if:

(1) Alcoa fails to take and pay for Firm Power made available to it under this Agreement, unless such failure is not excused under section 10.4 or section 19.

(2) Alcoa fails to provide payment assurance satisfactory to BPA as required by section 22.8.

(3) Alcoa fails to make the minimum annual Employment Expenditures required by section 9.1.

(4) Alcoa fails to make the minimum capital investment required by section 9.2.3.

(5) Alcoa resells Firm Power.

(6) Alcoa fails to provide BPA with an initial or replacement letter of credit as provided by sections 5.5 or 6.2.5.

Such termination under any subpart of this section 23 is without prejudice to any other remedies available to BPA under law.

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.

**24. 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<br>Department of Energy<br>Bonneville Power Administration | |
|---|---|---|---|
| By | _____ | By | _____ |
| Name | John G. Thuestad<br>*(Print/Type)* | Name | Stephen J. Wright<br>*(Print/Type)* |
| Title | President,<br>US Primary Products | Title | Administrator and Chief<br>Executive Officer |
| Date | _____ | Date | _____ |

**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.

## Exhibit B
## 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 C**
**PRICE CAPS**

## 1. POWER PURCHASE PRICE CAPS

**TABLE 1**

| 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 | $ 96.00 |
| FY18 | $ 104.00 | $ 96.00 |
| FY19 | $ 107.00 | $ 96.00 |
| FY20 | $ 109.00 | $ 98.00 |
| FY21 | $ 111.00 | $ 99.00 |
| 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.

## Exhibit D
## 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 E
## 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 F
## 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 G
## POWER RESERVES

### 1. DEFINITIONS

(a) "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:

(1) 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;

(2) 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;

(3) 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;

(4) 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;

(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. 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.

(d) "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).

(e) "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.

(f) "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.

(g) "Restricted Energy" means energy not made available to Alcoa hereunder because of an Event.

## 2. 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.

## 3. 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.

## 4. 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:

(a) $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;

(b) <u>provided</u>, 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.

**5. 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.

**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:

   (a) 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 _____.**

2. 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.

3. 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.

4. REPRESENTATIONS AND WARRANTIES. The Guarantor represents and warrants that:

(a) 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;

(b) 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;

(c) 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;

(d) 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

(e) 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.

5. 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.

Bonneville Power Administration

January 22, 2009

The Honorable Patty Murray
United States Senate
Washington, DC 20515

Dear Senator Murray:

As you know, the Bonneville Power Administration (BPA) and Alcoa have worked for several months on a new long-term contract for service to the company's Intalco plant near Ferndale, Washington, pursuant to a non-binding Memorandum of Understanding (MOU) the parties executed last October. Under that MOU, both BPA and Alcoa attempted to establish a long-term Regional Dialogue contract for the years from 2012 to 2028.

While both BPA and Alcoa worked very hard to reach an agreement, the parties were unable, within the time allotted, to settle on terms that would serve the long-term interests of both parties adequately. The current economic recession, which has reduced worldwide demand for aluminum and cut the price of aluminum by more than half in the last several months, has caused Alcoa to reassess the risks of operating its facilities at less than optimal levels. Based on this analysis, Alcoa was unable to sign a contract based on the proposed framework but remains committed to working with BPA to secure a long-term contract.

In the meantime, BPA and Alcoa have agreed to an amendment of the current service contract for the remainder of Fiscal Year 2009 that responds to last month's ruling of the United States Court of Appeals for the Ninth Circuit.

While the MOU has now terminated, BPA will continue to discuss with Alcoa and the region the potential for future service for both the remainder of the current contract period, which continues through Fiscal Year 2011, as well as the longer-term, post 2011 Regional Dialogue timeframe.

Both Alcoa and BPA value their longstanding relationship and the regional economic significance of operations at the Intalco plant. The impact on Northwest jobs is a crucial consideration in BPA's deliberations regarding service to its Direct Service Industry customers. We will keep you informed about the progress of further discussions. Thank you for your continued interest in this important issue.

Sincerely,

*/s/ Stephen J. Wright*

Stephen J. Wright
Administrator and Chief Executive Officer
Bonneville Power Administration

*/s/ John Thuestad*

John Thuestad
President U.S. Primary Products
Alcoa

bcc:
Adm. Chron. File- A-7
C. Brannon- DK-7
S. Baskerville-DKN-WASH
K.Hunt-DKR-7
R. Roach-L-7
P. Norman –P-6
A. Burns –PT-5
Official file –DKR-7

D.Marker:trj:x3549:1-22-09:(W:RegRel/Congress/letters/09/NW Delegation/Joint letter to PNW Delegation re-Suspension of Negotiations for long term ALCOA contract.doc)

## Atterbury,Laura M - DK-7

**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Tuesday, September 22, 2009 8:44 AM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: BPA, Columbia Falls Aluminum Company, amend contract for FY 2009

**Attachments:** Cover Letter to Region on CFAC Amendment (with attachment).pdf

Per FOIA request.

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**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Tuesday, March 03, 2009 4:10 PM
**To:** Jill McKinnie (Jill.McKinnie@mail.house.gov); Mather, Clark; Sally Hintz (sally_hintz@cantwell.senate.gov); Shawn Bills (shawn_bills@murray.senate.gov); Brian Kristjansson
**Subject:** BPA, Columbia Falls Aluminum Company, amend contract for FY 2009

BPA and Montana-based Columbia Falls Aluminum Company negotiated an amendment to the 2007 Block Contract for the balance of FY 2009, and to recalculate payments for the months of December 2008, and January and February 2009, to be consistent with the United States Court of Appeals for the Ninth Circuit's December Opinion.

The amendment is substantially similar to the amendment entered into with Alcoa in January 2009, and provides for BPA to monetize a power sale to CFAC in a manner consistent with the December Opinion. Per the amendment, CFAC has agreed to operate ½ of a pot line through June and employ a minimum of 85 workers, or the amendment may be terminated by BPA. In the event CFAC meets the operating and employment level requirements through June, it will be eligible to receive payments from Bonneville under the amendment for operations through September.

BPA accepted comments on this amendment through Feb. 20. It was after careful consideration that BPA decided to proceed with the amendment to its 2007 Block Contract using the Industrial Firm (IP) power rate as the basis for the monetized arrangement directly between Bonneville and CFAC. A ***letter to the region*** explaining its decision is attached below and will be posted on BPA's Web site at: http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/.

The unsigned contract amendment, like the Alcoa amendments, is publicly available. If you would like a copy, please let me know. It should be posted to the link above soon, as the Alcoa amendment is posted there.

Cover Letter to Region on CFAC..

Liz Klumpp
Bonneville Power Administration
Western Washington Liaison
ecklumpp@bpa.gov
360-943-0157

**Department of Energy**

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

POWER SERVICES

March 3, 2009

In reply refer to: PT-5

To regional customers, stakeholders and other interested parties:

On February 13 the Bonneville Power Administration posted for public review and comment the draft amendment of its 2007 Block Power Sales Agreement (2007 Block Contract) with Montana-based Columbia Falls Aluminum Company and Flathead Electric Coop Inc.

We appreciate the time and effort invested by those who provided comments. I have provided BPA's responses to the comments as an attachment to this letter.

After careful consideration Bonneville has determined to proceed with the amendment to its 2007 Block Contract using the Industrial Firm (IP) power rate as the basis for a monetized arrangement directly between Bonneville and CFAC, which is virtually identical to the previous amendment agreed upon by BPA and Alcoa. We believe that both Amendments are structured in a manner that conforms with the December 17, 2008, decision by the United States Court of Appeals for the Ninth Circuit in Pacific Northwest Generating Cooperative, et al., v. Bonneville Power Administration (December Opinion). Given the existing circumstances, we also believe that monetizing the sales is appropriate and in accord with the December Opinion.

BPA will separately address the FY 2010-11 period under the 2007 Block Contract, and will engage with the public on the terms for any amendment or replacement agreement for the FY 2010-11 period. In addition, the Administrator has stated that BPA will address any look-back issues associated with payments made under the 2007 Block Contract during the FY 2007-08 period, and intends to engage the region at an appropriate time.

Sincerely,

/s/ Paul E. Norman

Paul E. Norman
Senior Vice President
Power Services

Attachment

**PSBPA'S RESPONSE TO COMMENTS:**
**CFAC AMENDMENT**
**(Effective through September 2009)**

## Background

The December 2008 Opinion of the United States Court of Appeals for the Ninth Circuit in *PNGC v. DOE* invalidated the Bonneville Power Administration's (BPA) monetization of its surplus power sales for direct service industrial (DSI) aluminum smelter service under contracts for the FY 2007-2011 period because the monetization was not based on the Industrial Firm Power (IP) rate. *Pacific Northwest Generating Cooperative v. DOE*, Case No. 05-75638, Slip Op. 16513 -16583 (*PNGC*). In response, BPA suspended monetization payments to Alcoa and CFAC. BPA then engaged the aluminum smelter DSIs in discussions on the possibility of amendments to conform continued smelter service to the *PNGC* opinion and possibly avoid any unnecessary interruption of smelter operations. BPA has now agreed to virtually identical amendments with both Alcoa and CFAC. Comments provided in each context are also virtually identical and so the decisions reflected in this document are equally applicable to both the Alcoa and CFAC Amendments.

## Public Process

Because of the need to act quickly to avoid further economic problems for the smelters, BPA could only provide a limited amount of time for public comment on the CFAC and Alcoa Amendments, which will cover slightly more than three quarters of the current fiscal year.[1] Some of the comments have suggested that the amount of time made available was inadequate for full consideration of the implications of the *PNGC* opinion and the terms of the amendments. ICNU argues the "BPA is once again refusing to allow the region adequate time to review its Proposed Amendment." CFA 090006 at 2. ICNU also states that BPA has "made any review of the contract more difficult by only providing the new provisions and not providing a complete copy of the new contract" and concluding that "BPA has simply provided an insufficient opportunity to review the Revised PSA." *Id.*

Contrary to these assertions, BPA believes that the processes provided for public consideration of BPA's proposals have been adequate. The public has had two opportunities within almost two months to comment, one for the Alcoa Amendment and then another for the CFAC Amendment. Presumably, the commenting parties could have used some part of the intervening period to consider the Amendment more fully, particularly the implications of the *PNGC* opinion. Indeed, certain parties were obviously sufficiently convinced of the meaning of *PNGC* that they filed petitions in the Ninth Circuit Court of Appeals challenging the Alcoa Amendment.

[1] BPA has committed to a more extensive public process for DSI service for FY2010 and beyond.

As to provision of the entire contract, as suggested by ICNU, BPA did provide the entire contract, specifically identifying the provisions that had been modified as a result of the amendments. Moreover, the retained terms were the subject of public processes in 2005 and 2006, and the subject of litigation for an additional three years. To suggest that they are not readily available to the public, or that BPA has provided insufficient information, is not accurate.

Some comments also argued that prior to entering into the amendments BPA should seek a remedy for any unlawfully paid benefits in FY 2007-2008. However, such a proposed sequencing would not be consistent with the need to act quickly with respect to the Amendments, since such a process, should it be initiated at this time, could be lengthy. Moreover, *PNGC* does not require any particular sequencing of events, instead remanding the issues to BPA to determine the appropriate course. *Id.* at 16582. At this time, petitions for rehearing have been filed in *PNGC*, and the Court's mandate has not issued. Consequently, the prudent approach is to address the current exigent need of DSI survivability with contract amendments that comply with the Court's opinion, and to then, if and once the Court's mandate has issued, address the issues of whether overpayments were made and, if so, what mechanism(s) may be available to recover such overpayments, such as through offset, rate adjustment, or otherwise.

**Consistency with PNGC Opinion**

Several parties have raised legal issues, largely in connection with the Ninth Circuit opinion issued on December 17, 2008, in *PNGC*. As discussed below, BPA believes the arguments are inconsistent with the opinion and would lead to results that would generally prevent the Administrator from implementing key elements of the opinion and other Ninth Circuit rulings, as well as require him to ignore explicit statutory rate directives.

**Requirement of Initial Offer at IP Rate**

Some of the commenting parties appear to believe that, even if BPA offers to sell power to DSIs at the IP rate, that rate must recover the full incremental costs of any resources obtained to support DSI contracts. PPC, for example, concludes that its legal analysis leads to the conclusion that BPA is not justified in entering into the CFAC Amendment because "BPA calculates that doing so will result in substantial costs to its preference customers" (*citing PNGC*, slip op. at 16570, which states that "BPA has voluntarily agreed to forego revenues by charging the DSI a rate below what is authorized by statute (*i.e.*, the IP rate) and below what is available on the open market . . . and renders BPA's decision to 'monetize' the DSI contracts in an amount reflective of those underlying rate decisions – albeit a capped amount – highly suspect." PPC, CFA090005 at 2 and FN 5. *See also*, NRU, CFA090001 at 2 (arguing that "DSIs have no right to continued BPA service" and a discretionary sale must be consistent with "establishing rates at the lowest possible cost consistent with sound business principles"); SUB, CFA090003; and Canby, CFA09002.

A central holding of the Court's opinion is that, if the Administrator exercises his discretion to offer to sell power to the DSIs, any initial offer must be at the IP rate. *See, e.g. PNGC*, Slip Op. at 16539 and 16550. In support of its conclusion that any initial offer of DSI service must be at the IP rate, the Court observes that the legislative history of the Northwest Power Act "contains extensive evidence that Congress intended the IP rate to be the default price for sales of power to the DSIs." *Id.* at 16559. In this connection, the Court notes that legislative history states that "Section 7(c) prescribes the rates applicable to direct service industrial customers" (H.R. Rep. No. 96-976, pt. 1, at 69) and is the rate which "applies to all 'Industrial Firm' sales to BPA's direct-service industries . . . [for] 1985-86 *and all future [sales]*." (S. Rep. No. 96-272 at 59) (emphasis added in Opinion). The Court adds that, to the extent BPA decides to exercise its discretion to offer power to the DSIs, the *Kaiser* case "supports . . . our understanding that BPA does have an obligation to offer the DSIs a cost-based rate—namely, the IP rate—before declaring energy as surplus under § 839c(f) and selling it to the DSIs at a market-based—or other—FPS rate." *Id.* at 16564 (emphasis added). The "cost-based rate" referred to is not one that, to paraphrase the PPC's comment, is the rate for power available on the open market, but is rather the IP rate. Thus, the Court recognized that the IP rate is a cost based rate, *i.e.*, based on BPA's total system costs, and not a rate targeted to recover the incremental costs of resources that might be needed to replace system capability in order to support all of BPA's contractual obligations.

In addition, the Court set out the applicable rate directive. *See, id.*, at 16556, *citing* 16 U.S.C. § 839e(c) (Section 7(c) of the NPA). The section 7(c) rate directive requires that the IP rate be "equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region." 16 U.S.C. § 839e(c)(1)(B). That determination of equitability is required to be based upon the rate BPA charges its preference customers, with certain adjustments. 16 U.S.C. § 839e(c)(2). It is difficult to understand, as PPC and other commenters apparently contend, how the IP rate established pursuant to section 7(c) could recover from the DSIs the incremental cost of any acquisitions required to replace system capacity in support of DSI service and still be "equitable" in relation to the rates of industrial customers of BPA's public customers, who purchase power to serve their industrial loads at the PF (preference) rates. In today's dire economy, utilities are seeking to retain industrial load, not drive it away. As the language of section 7(c) shows, it was not Congress's intent to have BPA charge the DSI customers rates that are inequitable as compared to the retail rates charged by preference customers to their industrial consumers. Rather, Congress intended to closely tie the IP rate to the PF rate.

Moreover, the criteria that Congress has required BPA to consider in developing the IP rate provide no basis for converting the IP rate to an incremental cost rate rather than a cost-based rate. Instead, the statute requires that the IP rate be based on the PF rate plus a small number of explicit adjustments, including an industrial margin less any applicable credit for the value of reserves provided by DSIs; provided that the IP rate "shall in no event be less than the rates in effect for the contract year ending on June 30, 1985." 16

U.S.C. 839c(c)(2).

This statutory rate directive specifically mandates the criteria by which the IP rate will be developed and there is no apparent legal basis to conclude that it must be set to recover the incremental cost of any acquisitions made by BPA to replace resources if needed to support DSI sales. The Court in *PNGC* understood the nature of the IP rate when it held that any initial offer of service must be at the IP rate. Slip Op. at 16539. Thus, if the comments are taken at face value, some commenting parties would require the Administrator to ignore the rate-setting directive, which would be contrary to law, or make an initial offer at a rate other than the IP rate, which is prohibited by the *PNGC* opinion. Accepting such an argument would be in direct contravention of the Court's holding in the very case being relied upon by the parties who are raising it.

The Court recognized further that BPA may make market purchases to support DSI sales: "Congress also vested BPA with the authority to acquire power, <u>including purchasing energy on the open market</u>, if needed to meet its contractual obligations . . . .[and] BPA has the statutory authority to sell power to DSIs at valid contract rates and to purchase at market rates the power to serve those contracts." Slip Op. at 16568. Additionally, in a separate Ninth Circuit opinion, the Court did not agree with the preference customers' assertion, now apparently recast in response to *PNGC*, that no costs associated with DSI service can be allocated to the preference rate:

> According to petitioners, "Entering contracts to sell power to the DSIs when BPA has none to sell them is unlawful.... The only way the post-2001 contracts with the DSIs can be lawfully performed is to require the DSIs to pay the full costs of service." In other words, petitioners asserted that BPA could not allocate to its preference customers any of the costs of purchasing power at market prices to serve the DSIs.

*Golden Northwest Aluminum, Inc. v. Bonneville Power Admin.*, 501 F.3d 1037, 1044 (9th Cir. 2007). The Court rejected petitioners' arguments. Instead, the Court in *GNA* concluded that BPA can "use any remaining FBS resources—including FBS replacement resources—to supply its DSI customers" and BPA "is entitled to charge preference customers a rate that reflects the total cost of all FBS resources, including resources acquired to replace losses in the generation capabilities of BPA's primary resources." *Id.*

The *PNGC* Court also recognized that the IP rate, as mandated by Congress, might itself provide some level of subsidy. The Court refers to the IP rate as the rate that BPA "is statutorily required to offer" and reflects "the primary benefit that the class of DSI customers receives under the NWPA . . ." PNGC at 16579. Further, the *PNGC* Court invalidated the monetized FPS surplus sale, at least in part, because BPA was "subsidizing the DSIs' smelter operations <u>beyond what it is obligated to do</u>," *i.e.*, beyond what is provided for by Congress through the IP rate directive. *Id.* at 16572 (emphasis

added). Thus, if proper application of the IP rate directives results in a benefit to the DSIs, that is simply a consequence of the NPA, and not an illegal subsidy. By the same token, if BPA acquires expensive resources to serve preference customer load growth, and those resource costs increase the PF rate, this in turn results in an increase in the IP rate due to the workings of section 7(c), which means essentially that the DSIs would share some of those expensive resource costs. That too is the way the NPA works and is not an illegal subsidy.

**BPA's Interest in Exercising Discretion to Serve DSIs**

Comments have suggested that BPA has not articulated a reason why its exercise of discretion to continue service to DSIs is "in accordance with BPA's duty to offer the lowest possible rates to its consumers, consistent with sound business principles." PPC, CFA090005 at 2. *See also* comments of ICNU, SUB, Canby, and NRU.

When section 9(b) of the Northwest Power Act instructs the Administrator to timely implement the Act in a sound and businesslike manner, it does so right after first charging that the Administrator "shall discharge the executive and administrative functions of his office in accordance with the policy established by the Bonneville Project Act of 1937, section 302(a)(2) and (3) of the Department of Energy Organization Act, and this Act." 16 U.S.C. § 839f(b). A great number of policies, some of them competing, can be discerned from examining those Acts, but one in particular warrants reciting here, and that is the purpose of the Northwest Power Act to "to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply; . . ." 16 U.S.C. § 839(2). The purpose is not simply to assure preference customers of those things, or some other customer class of those things, as if they were to be the only beneficiary of BPA's actions under the Act, but to assure "the Pacific Northwest" of those things. Achieving that goal calls for a balancing of interests.

A wide variety of benefits is provided by the Northwest Power Act, not just to customers, but also to fish and wildlife and, through the Act's preference for conservation and renewable resources, the environment. The Administrator does not act in accordance with sound business principles with the view to operating as a profit-making enterprise, but rather to act in accordance with sound business principles in carrying out his myriad of responsibilities under the law, many of which evince social policies that might be viewed as inimical to acting purely like a "business." So, in the context of providing DSIs, and others, an adequate, efficient, economical and reliable power supply, it is certainly not unwarranted that BPA considers the impact of its actions on the continued viability of its customers.

BPA has, in connection with its recently proposed 2010-11 rate increase, expressed concern about the impact of the increase on consumers, particularly given the current recession and the Administration's efforts to provide a stimulus to the economy and generate jobs. Preference and other customers have now, and certainly in the past, said BPA must be concerned about the impact of its actions on consumers. Suffice it to say,

the Northwest Power Act does not single out preference customers for such concern and protection, but evidences a policy of having the Administrator's actions support an economical power supply to the entire Pacific Northwest. That he is to do so consistent with sound business principles means he should support that objective consistent with sound business principles, not that sound business principles should somehow render all of these other objectives secondary or superfluous.

As noted earlier, *PNGC* affirmed that BPA has the authority, but not the obligation, to sell power to the DSIs and clarified the proper rate directives to follow in making an initial offer. BPA believes that the proposed service plan is a proper exercise of the Administrator's discretion. The decision to serve the DSI load is consistent with BPA's statutory responsibilities, including its responsibility to act in a manner consistent with sound business principles. The DSI load has provided enormous value to BPA in the past and it is reasonable to believe that it will do so again. While the aggregate DSI load has decreased substantially over the past decade due to adverse global aluminum market forces, Alcoa and CFAC have shown remarkable resilience in the face of huge challenges to remain competitive. There is ample reason to believe that they will continue to do so, if provided the opportunity to manage their costs.

DSI loads have historically benefitted BPA by taking power in relatively flat blocks that require little or no shaping; they have taken power from BPA at light load hours, when power has historically been difficult to market; and they have provided the Administrator with additional power reserves. Perhaps more importantly, BPA has in the past found it beneficial to retain the DSI load when its other loads were decreasing.

Most recently, in the 1990's, BPA was suffering significant load loss due to public customers having access to a fluid market for power that was routinely offering prices significantly less than the preference rate. Part of BPA's strategy to resolve this decreased demand was a successful effort to retain as much of the DSI load as possible in spite of the fact that BPA's cost-based rates were higher than rates for power that could be purchased on the open market. Retention of this load supported BPA's ability to meet its financial obligations in full and on time, including its Treasury repayment obligation. As the Administrator observed at the time:

> Faced with the sudden changes in the market and the resulting high likelihood that the DSIs would exercise their contractual right to remove their load from BPA on nine months notice, BPA acted to protect its overall revenues and ability to recover its costs by negotiating block sale contracts, committing the DSIs to place a substantial amount of load on BPA for five years.

Administrator's Record of Decision, 1996 Power and Transmission Rate Proposal, § 2.2 at 18; *see also, id.* § 8. Due to the many unanticipated changes that the electricity market has seen over the last two decades, it would be short-sighted and unwise to conclude that retention of DSI load could never provide significant value to BPA in the future. Due to

the current economic crisis, market prices have declined significantly while BPA has just announced a proposed rate increase. No one knows what the end result of these volatile market forces will be as the economy continues to decline, nor does anyone know with certainty what market conditions will be like when the economy begins to improve.

It should also be recognized that potential load loss is not solely a product of market prices. Poor economic conditions can cause a decrease in business activity that can lead, in turn, to relocation of business enterprises and consequent population drift. Unexpected natural disasters could also affect demand for power. Currently, adverse effects in the agricultural and forest industries are anticipated due to the severe winter storms and flooding that occurred this winter. Moreover, changing technologies in the aluminum and power industries may permit DSI smelters to provide value to BPA in ways that have not yet been imagined.

It would be unwise and imprudent, in such circumstances, to refuse to provide service to customers that may provide future value to BPA as they have done in the past. In essence, such a decision would require a blind faith belief in a static and largely predictable future. Events in the power industry over the past two decades and the current economic crisis amply illustrate the folly of taking such a course. Thus, BPA sees no compelling reason, at this time, not to offer service to this statutorily-defined customer class. This is particularly true when the DSIs currently have no viable alternative for its power needs and a decision not to sell power to DSIs would almost surely have the immediate consequence of the plants shutting down and perhaps never resuming production.

BPA is certainly aware that one of the implications of providing DSI service is the impact on other rates. For this reason, the proposed service package makes business sense only because the Amendment effectively caps BPA's cost of service, and, more importantly, in the opinion of the Administrator, will not put an unreasonable degree of upward pressure on other rates. BPA's customers have not experienced a rate increase during the last six years, and service to Alcoa and CFAC under the contract amendments will have a minimal impact on rates. BPA does not believe that the proposed amendment, which covers only a nine month period at a relatively modest cost, causes unreasonable upward pressure on other rates.

Some of the comments seem to suggest that the Court will review BPA's proposal under a "highly suspect" standard. PPC, for example states: "[T]he Court's findings apply equally to the proposed amendment, and . . . BPA is not justified in exercising its discretion to sell power (or provide a monetized transaction) to the DSIs . . . where BPA calculates that doing so will result in substantial costs to its preference customers." In support of this argument PPC cites PNGC, slip op. at 16570, which states:

> BPA has voluntarily agreed to forego revenues by charging the DSIs a rate below what is authorized by statute (*i.e.*, the IP rate and below what is available on the open market). These foregone revenues result

> in higher rates for all other customers. This outcome is in apparent and direct conflict with BPA's statutory mandate, and renders BPA's decision to "monetize" the DSI contracts in an amount reflective of those underlying rate decisions . . . highly suspect.

PPC at 2, FN 5 (emphasis added). The context of the Court's use of the term "highly suspect" is relevant. The Court's evaluation focused on an Agreement based on the FPS rate where the purchase price for power was less than the IP rate. Thus, the Court's use of the term "highly suspect" was in the context of a transaction where BPA had not provided a sufficient basis for not charging the rate specifically authorized by the NPA for sales of industrial firm power. That situation does not arise in the context of offering a sale at the IP rate, which the Court has mandated must be the basis for any initial offer of DSI service. Moreover, the Court explicitly recognized that the standard of review has not been changed by its opinion: "Applying appropriate deference, we uphold the agency's assessment of whether its actions 'further BPA's business interests consistent with its public mission, so long as the assessment is not unreasonable." *Id., Citing Ass'n of Pub. Agency Customers*, 126 F.3d at 1171.

Because BPA has articulated reasons for providing DSI service that are "not unreasonable," BPA does not believe the Court will view the proposal as "highly suspect." Moreover, for the same reason, the "lowest rates possible" argument posited in the comments falls by the wayside because that provision applies to all of BPA's consumers and is not targeted exclusively on the rates paid by preference customers. Thus, the provision provides equal protection to DSI load that is being lawfully served at the IP rate.

## Other Issues

### Market Price Derivation

Two parties commented that it was not clear how BPA determined the market price to be used for calculating benefits under the Amendment. ICNU at 2; Canby at 2. For both Alcoa and CFAC, the market prices used to recalculate benefits for December 2008, and to calculate benefits for the period January – September 2009, are the same and were derived using the same methodology.

The general approach was to determine what BPA would have done had it taken the course approved in *PNGC* and correctly monetized the sale based on the IP rate. Specifically, for the period January – September 2009 BPA determined a forecast market price of $48.05 per MWh. This forecast was established as of December 18, 2008 ("Forecast Date"), or one day following the Court's opinion in *PNGC*. BPA uses three proprietary data sources when establishing its internal mark-to-market forward curve for a flat Mid-Columbia trading hub product. BPA's mark-to-market price curve is updated

on a daily basis. BPA established the forecast market price by averaging a series of these daily mark-to-market price curves over the two and one-half month period prior to the Forecast Date during which BPA was in the market making actual purchases to meet its other supply obligations for the period January – September 2009. In other words, had BPA purchased additional energy from the market to support additional system load created by its contractual obligation to serve Alcoa or CFAC load, then BPA would have, on a forecasted basis, incurred that market price to meet those obligations as well.

As for the December 2008 recalculation, BPA used the same methodology described above to derive a market price, but since forward trading for December 2008 deliveries ended on November 28, 2008, the price curves for the two-month period prior to December cover a different number of trading days than those used for the period January – September 2009, yielding a different market price, equal to $57.48 per MWh, which BPA would have paid in the market if purchasing energy to serve the load. This method accurately reflects what it would have cost to monetize the sale based on the IP rate.

**Equivalent IP**

Some parties questioned BPA's use of the so-called "Equivalent IP" in calculating benefits under the Amendment, and the use of a 100 percent load factor in calculating the applicable IP rate. PPC at 3; ICNU at 2. Simply stated, the "Equivalent IP" used for calculating benefits under both Amendments for the period January – September 2009 is equal to the average IP rate over those months, as specified in BPA's 2007 Supplemental Wholesale Power Rate Schedules, using a flat (or 100 percent) load factor. This was done because (1) it is consistent with the 2007 Block Agreement in which BPA agreed that the benefits calculation would be based on the applicable average Equivalent PF rate at a 100 percent load factor, and (2) applying the individual monthly differentiated rates (for both the market price and the IP rate) is more complicated, raises the prospect of errors in administration, and will not change the total amount of benefits paid to the companies over the full Amendment period.[2] Finally, flattening out payments to the companies by using an average market price and IP rate simplifies BPA's projection of the companies' decisions regarding the level of operation as it relates to its power cost, since there is no monetary advantage or disadvantage to operating in any given month compared to any other.

In addition, with respect to using 100 percent load factor, the smelter loads have a very high load factor that in many months is nearly 100 percent, and that normally exceeds 95 percent on an annual basis. But even, for example, if BPA used a 96 percent load factor to calculate the demand portion of the IP rate for the Alcoa Amendment, the total cost of IP service for the period January – September 2009 would rise only $61,000 out of $21.5 million, or less than three-tenths of one percent.

[2] In addition, it is industry practice to book blocks of forward market purchases as an average of the prices paid for such blocks. Using that flat price for purposes of billing for sales of that same energy is consistent with that practice.

**Comparison of Benefit Levels**

One party asked for a comparison of the benefit level that will be provided to CFAC under its Amendment compared to the benefit level it would have received under the original 2007 Block Contract. Canby at 2. The answer is that the maximum amount of benefits that CFAC can receive under the Amendment equals $5.9 million, compared to a projected level of benefits under the original 2007 Block Agreement for the same 10-month period of $13.9 million. This reduction is primarily due to the fact that the number of megawatts for which CFAC can receive benefits is reduced from 170 aMW in the 2007 Block Agreement to approximately 91.5 aMW (the prior level of projected operation) for the months December 2008 – February 2009, and then further reduced to 37.5 aMW (a fixed amount) for the months March – September 2009. It is important to keep in mind when making comparisons between the level of benefits that may have been paid under the original 2007 Block Contract and the Amendment, that these comparisons are based on projections of the companies' level of operations.

While it was possible for CFAC to receive its maximum monetary benefit payment based on an monetary benefit rate of between $12 and $24 per MWh under the original 2007 Block Contract (depending on its level of operation), that rate is now fixed at $15.35 per MWh, or the difference between the Equivalent IP rate of $32.70 per MWh and the average market price under the Amendment of $48.05. However, payments to both CFAC and Alcoa remain subject to the $59 million cost cap originally adopted by BPA in the records of decision accompanying the 2007 Block Contract. By comparison, payment of the $16.7 million maximum monetary benefit to CFAC under the 2007 Block Contract would have been possible across a spectrum of operating levels, from as little as 85 aMW to as much as 170 aMW, whereas under the Amendment, there is not an operating level that could allow CFAC to attain a similar payment.[3]

In the case of Alcoa, BPA projects that Alcoa could receive a maximum monetary benefit of $31.9 million (if it operates at its demand entitlement), for the period December 2008 through September 2009, the same maximum monetary benefit amount as BPA projected Alcoa could receive under the original 2007 Block Contract for the same period. However, payment of the maximum monetary benefit under the 2007 Block Contract would have been possible across a spectrum of operating levels, from as little as 195 aMW to as much as 390 aMW, whereas under the Amendment Alcoa must operate at approximately 305 aMW – its demand entitlement – to receive its maximum monetary benefit. While the assumption regarding Alcoa's operating level remains the same, the formula for calculating the monthly payment amount under the original 2007 Block Agreement renders a monetary benefit rate that is close to that rendered by the equation under the Amendment.[4]

[3] Pursuant to their respective 2007 Block Contracts, CFAC and Alcoa each received a share of the 100 megawatts that were unused and forfeited by Golden Northwest Aluminum. This brought CFAC's allocation to 170 aMW, and Alcoa's to 390 aMW.

However, absent the cost cap, in the event Alcoa operates at its full demand entitlement under the Amendment for each hour during the period January – September 2009, the $48.05 market price would result in a maximum monetary benefit to Alcoa of $33.9 million, or approximately $2 million above its prorated share of the $59 million cost cap. Therefore, Alcoa's monetary benefit limit is specified in Exhibit F of the Amendment as $31.9 million. In other words, there could be a number of hours of operation during the Amendment period for which Alcoa would not receive benefits.

**Reserves**

Two parties commented that the Amendment needed to provide a portion of BPA's reserves for firm power loads in the region. IOUs at 1; PPC at 4. BPA's transmission business line is contractually entitled to call on stability reserves from the companies. Prior to BPA's administrative separation into distinct power and transmission functions, with the attendant unbundling of power and transmission products, stability reserves were available to BPA through the DSI power sales contracts. The mere fact that these reserves are now made available to BPA through a BPA transmission contract rather than the power sales contract should not matter.

In addition, as described in the records of decision accompanying the 2007 Block Agreements, beginning with the 2002 power rate case and related DSI contracts for the period FY 2002-2006, BPA ceased crediting the IP rate for the value of reserves, and did not procure reserves from the DSIs under those contracts. This is due primarily to changes in the wholesale power markets which allow BPA to procure needed reserves cheaper and more reliably from sources other than the few remaining DSIs. In lieu of a fixed credit to the IP rate, in both the 2002 and 2007 power rate cases BPA proposed and ultimately adopted the Supplemental Contingency Reserve Adjustment, which established a formula, with a cap, for calculating amounts it could pay a DSI in the event that it wished to procure reserves from a DSI through separate contract negotiations. This approach was proposed, adopted, and has been implemented by BPA without objection in the contracts spanning the period FY 2002 through FY 2011. Furthermore, to the extent BPA and CFAC elect to enter into a physically delivered transaction during the final two-years of the 2007 Block Contract (FYs 2010 and 2011), there is no reason that

[4] The formula for calculating the monthly monetary benefit payment under the 2007 Block Agreement was the lesser of the Maximum MB Monthly Payment or the amount determined by the following equation: MB Monthly Payment = ((Monthly Plant Load) x (number of hours in the month)) x (MB Rate); where the Maximum MB Monthly Payment = ((Maximum Allocation) x (number of hours in the month)) x (lesser of $12 / MWh x 0.92 or MB Rate); and where the MB Rate is determined by subtracting Equivalent PF from Forecast Market Price. By comparison, the formula for calculating the monthly monetary benefit payment under the Amendment is: MB Monthly Payment = ((Monthly Plant Load) x (number of hours in the month)) x (MB Rate); where the MB Rate is determined by subtracting Equivalent IP from Forecast Market Price. As a consequence of other Court decisions, BPA had to reduce its Priority Firm and IP rates for FY 2009 below FY 2007-2008 levels, to reflect reduced residential exchange payments to investor owned utilities, a fact that must be taken into account when comparing benefit levels.

BPA could not apply the cap and criteria in the Supplemental Contingency Reserves Adjustment provision to any cost-effective and necessary reserves it wishes to procure from CFAC. The mere fact that BPA is not receiving any reserves from CFAC during the Amendment period does not necessarily mean BPA will not procure any reserves from CFAC under the 2007 Block Contract.

Finally, BPA does not necessarily agree with the proposition that section 5(d)(1)(A) of the Northwest Power Act requires that each and every power sales contract BPA enters into with a DSI must provide reserves. The provision requires only that sales to DSI companies as a class provide a portion of BPA's reserves for regional firm power loads.[5] There is no apparent reason why this language could not be implemented in a way such that reserves are acquired from less than all DSI customers. Whether BPA will acquire reserves from CFAC, Alcoa, and/or Port Townsend during the final two years of the 2007 Block Contract has not been determined at this time although a value of reserves credit has been calculated for the initial proposal in BPA's FY 2010 power rate proceeding. In addition, as noted above, in determining the amount of reserves to be provided, BPA does so in a manner that assures the reserves are provided at least cost to BPA and its customers. Changes in the power markets since passage of the Northwest Power Act have enabled BPA to acquire reserves at a lower cost from providers other than the DSIs, and BPA believes that doing so is consistent with the intent of the Act to provide customers an economical power supply.

[5] In the 1996 rate proceeding, for example, individual DSIs were permitted to opt out of providing reserves by essentially forfeiting the value of reserves credit: "If a DSI chooses not to provide operating reserves, a billing adjustment will be made to remove the effect of the credit." 1996 General Rate Schedule Provisions at 142.

## Atterbury,Laura M - DK-7

**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Tuesday, September 22, 2009 8:42 AM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: Workshop on DSI (Alcoa) service & variable IP rate 4/9

**Attachments:** 2002 ROD VI section.doc

Per FOIA request.

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**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Thursday, April 02, 2009 2:43 PM
**To:** 'Endresen, Chris (Cantwell)'; Sally Hintz (sally_hintz@cantwell.senate.gov); Brian Kristjansson; Shawn Bills ( shawn_bills@murray.senate.gov); Mather, Clark; Jill McKinnie (Jill.McKinnie@mail.house.gov)
**Subject:** Workshop on DSI (Alcoa) service & variable IP rate 4/9

I get questions about the variable rate proposal that Alcoa's Intalco management has submitted to BPA as part of our 2010-2011 rate case. Due to ex parte rules it is difficult or impossible to answer some of the questions about this proposal as the response may get into the merit of the case. However, **BPA is holding a noticed public workshop on April 9th to discuss this variable rate proposal and service to the DSIs; questions are welcome in that public setting.** As a point of reference I have attached BPA's Record of Decision on the 2002 variable rate for the DSIs and a link to their current proposal. If you are interested in participating by phone, please call Dolena Fernandez at 503-230-4297 and she will connect you to the call.

https://secure.bpa.gov/RateCase/Documents.aspx?ID=17 If you click to page 18 you will find all of Alcoa's testimony and supporting documents there. I can send it as an attachment too, but it is a big file.

### Workshop for DSI service

BPA will be holding a workshop on Direct-Service Industries service. The purpose is to resume discussions on DSI service issues for FY10 and beyond. BPA also plans to discuss issues related to establishing an Industrial Power rate in the WP-10 Rate Proceeding and, in particular, Alcoa's proposal for a variable IP rate.
**This workshop will be held from 9 a.m. to noon, April 9, in the Rates Hearing Room at BPA's Portland Headquarters.**

Please note there has been a time change for the Integrated Program Review workshop on the same day. (This is a public meeting where BPA executives review with utility general managers and other stakeholders the costs that become a data input to our rate case.) The IPR-2 workshop will be from 1:30 to 4 p.m., in the Rates Hearing Room. To access the phone bridge for the IPR-2 workshop, please call (503) 230-3320.

A post card with this information will be sent to the BPA Journal mailing list and to all rate case parties.

2002 ROD VI
ction.doc (53 KB

Liz Klumpp

Bonneville Power Administration
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360-943-0157

## 10.10 Flexible Rate Options

### 10.10.2 Flexible Industrial Firm Power (IP) Rate Option

**Issue**

*Whether BPA should offer optional flexible demand and energy charges within the IP rate schedule.*

**Parties' Positions**

Parties did not address this issue in their initial briefs.

**BPA's Position**

BPA proposed to make the Flexible IP rate option available to its DSI customers to better meet customers' needs. Ebberts, WP-02-E-BPA-22, at 11-12.

**Evaluation of Positions**

BPA proposed to continue the Flexible rate option to its PF and New Resource rate customers, and the same option would also be made available to DSI customers. Ebberts, WP-02-E-BPA-22, at 11-12. While the Flexible rate option ensures that BPA receives the same revenues on a NPV basis that BPA would have received under the posted rates, the Flexible rates allow BPA to structure payments to better meet customers' needs. *Id.* BPA intends to offer this rate option only to DSI customers that make a purchase commitment to BPA under one of the IPTAC rates. *Id.* The Flexible rate option will allow a DSI customer to structure its seasonal and diurnal rates differently than allowed under the posted IPTAC rate schedules. *Id.* Before offering the rates to a customer, however, BPA will ensure that a revenue test has been satisfied. *Id.* The revenue test requires that the revenues for each specific agreement must be the same, on a NPV basis, that BPA would have received under a straight application of the IPTAC rate schedule. *Id.* This continues a fundamental principle of the revenue test contained in previous BPA Flexible rate offers. *Id.* Customers can receive a cost-based indexed rate with the IPTAC, but not through the Flexible rate option. *Id.* Specific parameters have been established elsewhere for the cost-based indexed IP rate. *See* Buskuhl *et al.*, WP-02-E-BPA-21, and ROD section 10.16.2.



**Decision**

*BPA will offer optional flexible demand and energy charges within the IP rate schedule.*

## Atterbury,Laura M - DK-7

**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Tuesday, September 22, 2009 8:41 AM
**To:** Baskerville,Sonya L - DKN-WASH; Atterbury,Laura M - DK-7
**Subject:** FW: BPA Continues Discussion of Service to DSIs

**Attachments:** DSI letter to the region - May 2009.pdf

Per FOIA request.

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**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Friday, May 29, 2009 3:44 PM
**To:** Amanda Dotson; Brian Willoughby ; Celina Cunningham; Chris Endresen; Clark Mather; Darcy Nothnagle; Jill McKinnie; Linda Danforth; Mary McBride; Mike English; Page Phillips; Shawn Bills; Sue Foy; Swenson, Sharmila; Theresa Wagner
**Subject:** BPA Continues Discussion of Service to DSIs

BPA is looking to the region for help as it seeks to find a balance between providing the aluminum direct service industries a chance to continue operating in the Pacific Northwest and minimizing impacts to BPA rates. Specifically, BPA is looking for input to help it decide if the amount of power previously negotiated between Alcoa and BPA under an unsigned, draft contract released in January 2009 should be changed, and what changes are needed for the term of future contracts. The end goal is to be able to develop a contract or contracts that provide power to DSIs as early as Oct. 1, 2009 and beyond.

BPA will hold a public meeting from **1-4 p.m., June 8, in the Rates Hearing Room,** to continue the discussion of determining appropriate levels of long-term service to the DSIs. The primary purpose of the meeting is to enable BPA to more fully understand the views and concerns of the parties and allow parties who have closely followed and participated in the previous development of the draft contract find common ground.

A letter to the region about this issue is attached and will be posted on BPA's external Web site at www.bpa.gov/power/pl/regionaldialogue/implementation/documents/. The draft contract mentioned above also is posted at this site.

Anyone interested is invited to review the draft contract and offer suggestions based on the questions raised in the letter. Written public comments should be submitted by close of business June 22, 2009, via BPA's public comment Web site at www.bpa.gov/applications/publiccomments/OpenCommentListing.aspx or by calling (800) 622-4519.

**Letter to the Region**

DSI letter to the region - May...

Liz Klumpp
Bonneville Power Administration
Western Washington Liaison
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360-943-0157

**Department of Energy**

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

EXECUTIVE OFFICE

May 29, 2009

In reply refer to: D-7

**To regional customers, stakeholders, and other interested parties:**

BPA is conducting a meeting to have an open public discussion for determining long-term service to the aluminum direct service industries (DSIs). The meeting is scheduled for 1-4 p.m., June 8, in the Rates Hearing Room, 911 N.E. 11th Avenue, Portland, Ore.

BPA is seeking to find a balance between providing the DSIs a chance to continue operating in the Pacific Northwest and minimizing impacts to BPA rates. BPA wants to hear from the region on this issue and would like to explain other processes that will move BPA forward in developing a DSI service strategy.

Included in this letter is clarification of the different processes that will be underway during the next several months regarding service to DSI customers.

**Long-Term DSI Service Process**

BPA is looking to the region to help it decide if the amount of power previously negotiated between Alcoa and BPA under the unsigned, draft contract released in January 2009 should be changed, and what changes are needed for the term of future contracts. The end goal is to be able to develop a contract or contracts that provide power to DSIs as early as Oct. 1, 2009 and beyond.

BPA and Alcoa Inc. worked several months last year and early this year to develop a long-term contract to provide service to the company's Intalco plant near Ferndale, Wash. While both BPA and Alcoa worked diligently to reach agreement, the parties were unable, given the sudden collapse of world aluminum prices, to settle on terms that serve the long-term interests of both parties. Since that time a couple of things have changed. The most significant development is that wholesale power prices are now considerably lower than they were last fall, including forward markets for future years. Also, while aluminum prices still have not rebounded significantly, they are no longer in a free fall and prices have remained fairly stable for the past several weeks. The draft contract was posted Jan. 23, 2009 on BPA's external Web site at www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/DSI/2009-01-23_09PB-13268.pdf.

*BPA is looking for specific feedback on changes to the draft contract:*

1. Increasing industrial firm power (IP) to an amount sufficient to operate two potlines at Alcoa's Ferndale smelter and the Columbia Falls Aluminum Company smelter located in Montana (460 aMW).
2. Should the contract term be shortened to 5 years, 7 years or maybe 10 years?

3. Should there be a short-term contract/amendment for FY2010 – FY2011 followed by a long-term contract with some type of off-ramp or a single contract extending beyond FY2011? If both a short-term and long-term contract are decided upon, what linkages should be put in place between the two?
4. If the contract term is shortened, can there now be less risk mitigation in the contract from that proposed in the Jan. 23 draft contract?

While this will be a meeting open to the public, it is not intended to be a forum to solicit broad public input and comment. The primary purpose is to enable a limited group of participants from the DSIs, BPA and other interested parties to engage in an in-depth discussion of these issues. The goal is to allow parties who have closely followed and participated in the previous development of the contract to find common ground and enable BPA to more fully understand the views and concerns of the parties. BPA will listen and consider any feedback received at the meeting, but written public comments should also be submitted by close of business June 22, 2009, via BPA's public comment Website at www.bpa.gov/applications/publiccomments/OpenCommentListing.aspx or by calling (800) 622-4519 to have them included as part of the administrative record. Additional opportunities for broad public participation will be provided later in the process.

**Different Processes Related to DSI Service**

Because there will be several processes simultaneously underway that regard past and future service to the aluminum DSIs we have listed these processes with a brief explanation. The three processes listed below are in addition to the WP-10 rate case in which a variable rate is being considered for the IP-10 Rate Schedule.

1. **Lookback Process**
   As a result of the United States Court of Appeals for the Ninth Circuit's December 17, 2008 opinion in *Pacific Northwest Generating Cooperation et al. v. Bonneville Power Administration*, 550 F.3d 846 (9th Cir. 2008) (PNGC), BPA is undertaking this process, to determine whether, and in what amount, BPA or a DSI is entitled to payments as a consequence of payments made by BPA to the aluminum DSIs from October 2006 through November 2008. BPA will issue a separate letter to announce the start of this process very soon.

2. **Long-Term DSI Service**
   BPA is undertaking this process to develop a contract(s) for the FY2010 through FY2011 period and the Regional Dialogue period that begins October 2011, or perhaps combine the two periods. This process will start with the June 8 public meeting announced earlier in this letter. BPA is interested in the region's thoughts about what changes that might be made to the draft contract that was shared with the region Jan. 23, particularly considering the fact wholesale market prices are lower than when the contract draft was initially negotiated.

3. **Long-Term Variable Rate Process**
   BPA may be undertaking this course to establish a long-term variable rate. This decision will be made as part of the WP-10 rate case. It is intended that this long-term variable rate take into consideration any over or under recovery of revenue from a variable IP-10 rate, if one is adopted. This process has not formally begun but would be an additional section 7(i) rate process that

begins when BPA issues the Initial Proposal for this process sometime prior to the end of September 2009. The final record of decision for this 7(i) process would plan to be completed during the spring of 2010.

If your group or organization wishes to have primary spokesperson who will participate in the limited group discussion please notify BPA by close of business June 4. If you have additional questions about this issue, please call BPA's Harry Clark at (503) 230-3662.

Sincerely,

*//s// Allen Burns, 5/29/09*

Allen Burns
Acting Deputy Administrator
Bonneville Power Administration

## Atterbury,Laura M - DK-7

**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Tuesday, September 22, 2009 8:40 AM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: BPA Moves Forward with One Term Sheet for Service to Aluminum DSIs

Per FOIA request.

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**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Tuesday, July 28, 2009 1:49 PM
**To:** Amanda Dotson; Brian Willoughby ; Celina Cunningham; Chris Endresen; Clark Mather; Darcy Nothnagle; Jill McKinnie; Linda Danforth; Mary McBride; Mike English; Page Phillips; Shawn Bills; Sue Foy; Swenson, Sharmila; Theresa Wagner
**Subject:** BPA Moves Forward with One Term Sheet for Service to Aluminum DSIs

BPA issued a letter July 17 regarding service to the aluminum direct-service industries (DSIs) commencing in FY 2010 that indicated BPA is proposing two separate options for the terms of the potential new service.

Columbia Falls Aluminum Company (CFAC) had expressed a desire for a shorter term option that, in return, could provide them a bit more flexibility. However, BPA and CFAC have not been able to agree on principles needed to release a term sheet for a shorter term.

BPA is now proposing only one seven-year option for a power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' load. The proposed power sales would begin Oct. 1, 2009, and extend through Sept. 30, 2016. The proposed seven-year term sheet is available for public review and comment on BPA's Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

BPA's "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept," which is BPA's update to the results of the "*2006 Regional Employment and Economic Study,*" is also available for public review on the Web site. The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

We look forward to any comments you may have, which should be provided via BPA's electronic comment system at www.bpa.gov/comment, by 5 p.m. Aug. 3, 2009. If you have additional questions about this issue, please call Mark Symonds at (503) 230-3662.

BPA serves one other DSI in Washington State, *Port Townsend Paper Company*. BPA released a draft contract with Port Townsend Paper on June 22, 2009 for a public review period, which closed July 10. BPA and Port Townsend Paper negotiated a proposed Block Contract for the balance of FY 2009, FY 2010, and FY2011 at the IP (industrial power) rate. You can view this proposed contract on BPA's Web site at: *www.bpa.gov/power/pl/regionaldialogue/implementation/documents/*. A letter to the region also has been posted to BPA's Web site.

Liz Klumpp
Bonneville Power Administration
Western Washington Liaison
360-943-0157

**Atterbury,Laura M - DK-7**

**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Tuesday, September 22, 2009 8:39 AM
**To:** Baskerville,Sonya L - DKN-WASH; Atterbury,Laura M - DK-7
**Subject:** FW: BPA releases draft seven-year DSI contract for review
**Attachments:** Letter_announcing_draft_contract-081909.pdf; letter_announcing_draft_contract_attachment-081909.pdf; Draft_Power_Sales_Agreement_ALCOA-081909.pdf

Per FOIA request.

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**From:** Klumpp,Elizabeth C - DKR-WSGL
**Sent:** Thursday, August 20, 2009 9:49 AM
**To:** Amanda Dotson; Brian Willoughby ; Celina Cunningham; Chris Endresen; Clark Mather; Darcy Nothnagle; Jill McKinnie; Linda Danforth; Mary McBride; Mike English; Page Phillips; Shawn Bills; Sue Foy; Swenson, Sharmila; Theresa Wagner
**Subject:** BPA releases draft seven-year DSI contract for review

BPA is releasing for public review and comment the draft contract template that describes terms of a seven-year agreement for power sales to Alcoa, Inc. between Oct. 1, 2010, and Sept. 30, 2016. The draft contract outlines proposed power sales to the aluminum DSIs that would provide the aluminum smelter a reasonable chance of operation. Though the draft contract was negotiated with Alcoa, Columbia Falls Aluminum Company could elect to take service under it, as well.

To find out more about the terms in the draft agreement, or to see how BPA responded to comments received on the draft term sheet, please visit:
www.bpa.gov/power/pl/regionaldialogue/implementation/Documents/#SDSI.

You may submit comments online at *www.bpa.gov/comment*. BPA will accept comments on the draft contract through Sept. 9, 2009.

The DSI website also provides a link to a June proposed agreement between BPA and Port Townsend Paper.

Please call if you have questions.

Liz Klumpp
Bonneville Power Administration
Western Washington Liaison
360-943-0157

**Department of Energy**

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

EXECUTIVE OFFICE

August 19, 2009

In reply refer to: A-7

To Regional Customers, Stakeholders, and Other Interested Parties:

In its May 29 letter to the region, the Bonneville Power Administration (BPA) initiated a public discussion with parties to help the agency decide the amount of power that it should offer to the direct-service industries (DSIs) and the terms of such offer. BPA published a term sheet July 17, 2009, outlining the principles for the negotiation of a long-term power sale contract with Alcoa. This term sheet was a step in the public discussion of service to the aluminum DSIs in FY 2010 and beyond. BPA and Alcoa have now finished the negotiation of a draft long-term power sales contract. This does not represent a decision to offer service to the DSIs, which would be made later in the process.

The DSI current contracts are monetized power sales which terminate Sept. 30, 2009.

BPA is proposing a power sale of up to 320 average megawatts at the Industrial Firm Power rate (IP rate) sufficient to meet a portion of Alcoa's load at its Intalco smelter. The proposed power sale would begin Oct. 1, 2009, and extend through Sept. 30, 2016, unless BPA determines it can not provide the service within the cost caps established in the agreement. While no cost cap applies to the sale of 285 average megawatts during the first two-years of the agreement, the costs of such service have been addressed in BPA's WP-10 rate proceeding. If Alcoa requests that BPA increase the power sale from 285 to 320 average megawatts, then the increase through Sept. 30, 2011, would be subject to an $82 million cost cap. Thereafter, BPA's 320 average megawatt power sale to Alcoa would be subject to a cost cap of up to $300 million ($60 million/year) with the potential to increase to $330 million ($66 million/year) if Alcoa increases its jobs commitment. This is a reduction from the $350 million cost cap included in the term sheet published on July 17.

Columbia Falls Aluminum Company (CFAC) had expressed a desire for a shorter term option that, in return, could provide them more flexibility. However, BPA and CFAC have not been able to agree on principles needed to release a term sheet for a shorter term. If BPA decides to move forward and offer a contract to Alcoa, CFAC will have the option to execute a contract under these same terms. However, CFAC has indicated that it does not intend to sign such an offer.

The proposed power sale contract with Alcoa will be available for public review and comment from Aug. 20, 2009, through Sept. 9, 2009, on BPA's Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

The attachment to this letter summarizes changes BPA has made to the draft contract in response to input received during the public comment process on the Term Sheet. In addition, BPA will be posting a revision to the "Revised Summary of BPA's Use of the Region Economic Study to Contemplate the Service Concept" to reflect changes made in the draft contract. This revision continues to demonstrate a small net gain in jobs from this proposed power sale to Alcoa compared to the proposal that was under consideration earlier in January 2009 and further demonstrates that net jobs remain at least neutral to slightly positive under the assumption that Alcoa were to curtail entirely for 18-months during the last five years of the proposed contract.

We look forward to any comments you may have, which should be provided via BPA's electronic comment system at www.bpa.gov/comment by 5 p.m. Sept. 9, 2009. If you have additional questions about this issue, please call Harry Clark at (503) 230-3662 or Heidi Helwig of the Public Affairs Office at (503) 230-3458.

Sincerely,

//s// Allen Burns, 8/19/09

Allen Burns
Acting Deputy Administrator
Bonneville Power Administrator

bcc:
S. Wright – A-7
A. Burns – D-7
C. Brannon – DK-7
CCIS Authentication – KSC-4
R. Roach – L-7
J. Wright LP-7
J. Heintz NWPP-B1
S. Cannady - PT-5
H. Clark – PTL-5
L. Kitchen – PTL-5
Official File – PTL-5

HClark:sgc:3662:8/19/2009 (W-PTL-5-W:\P\PT\PTL\DSI_recent_KEEP\Letter to region Letter announcing draft contract - 081909.doc)

**Attachment to August 19th Letter to the Region**
**Summary of Changes BPA has Made in the Draft Contract in Response to the Public Comment Process on the Alcoa Term Sheet**

BPA published a term sheet July 17, 2009, outlining the principles for the negotiation of a long-term power sale contract with Alcoa. This term sheet was a step in the public discussion of service to the aluminum direct service industries (DSIs) commencing in FY 2010 and beyond. This attachment to BPA's August 19th letter to the region releasing the draft long-term power sales contract with Alcoa summarizes changes BPA has made in the draft contract in response to input received during the public comment process on the Alcoa Term Sheet:

1) Lowered the Cost Cap: Special Condition 1 of the Term Sheet proposed a $350 million ($70 million/year or $64/MWh) cost cap for service in the FY2012 to FY2016 period and this has been reduced to $300 million ($60 million/year) in section 3 of Exhibit B to the draft contract. When combined with the lower IP rate, the unit cost cap is reduced to $58.51/MWh. There is potential to increase to $330 million ($66 million/year or $60.61/MWh) if Alcoa increases it jobs commitment commensurately.
2) Reduced Curtailment: The draft contract reduced the cumulative length of curtailment in the last 5-years of the contract term from 24-months to 18-months in section 8 and added the commitment by Alcoa in Exhibit G to provide at least 120 jobs over the duration of each curtailment. When combined with the lower cost cap, BPA's revised jobs assessment indicates that net jobs would at least remain neutral to slightly positive under the assumption that Alcoa were to curtail its maximum amount for 18-months during the last 5-years of the proposed contract.
3) Termination: There are four changes to clarify the intent of the termination rights in term sheet:
    a. First, section 21.1.5 clarifies that if Alcoa terminates then they are prohibited from operating the Intalco plant (e.g. by purchasing power from the market) for what would have been the remaining duration of the contract.
    b. Second, section 21.1.1 restricts Alcoa's right to provide notice of termination to no earlier than October 1, 2011 in the event that BPA has committed to serve the Intalco plant with 320 average megawatts from October 1, 2011 through Sept. 30, 2016 by not issuing a notice pursuant to section 6.2.
    c. Third, section 21.1.4 clarifies that Alcoa's right to terminate in the event that renewable energy requirements or carbon mitigation costs attributable to the Alcoa Load are imposed on BPA directly is conditioned on non-rate based payments to BPA by Alcoa for such costs exceeding $2 million. BPA has the right to direct charge Alcoa under this contract for these costs and Alcoa must pay such costs in addition to paying the IP rate to continue performance.

d. Fourth, the contract also makes it clear that Alcoa's employment commitment still applies – as prorated to their operating level – during the 12-months prior to date the contract terminates.

4) Lowered IP rate: The IP rate proposed in the term sheet to test the cost cap in the FY2012 to FY2016 period was $38 per MWh in 2012 escalating at 2.5% per year. Section 3 of Exhibit B to the draft contract reduces this IP rate by approximately $2/MWh by escalating the prevailing $34.60 per MWh IP rate for FY2010 by 2.5% per year.
5) Reserves: Exhibit F details that all sales under the IP rate must provide a reserve to respond to system contingencies equal to 10% of the net firm power under the agreement that is available at any time within 10-minutes notice from BPA for up to 105 minutes – consistent with the IP-10 rate and GRSPs.
6) No resale: Section 19.1 of the draft contract explicitly prohibits Alcoa from reselling IP power.
7) Damages Waiver: Section 20.11 of the draft contract waives Alcoa's right to damages under this agreement, consistent with the damages waiver in the Subscription contract.
8) Credit Assurance: The term sheet was silent on Alcoa's provision of credit assurance and the draft contract increases BPA right to credit assurance to $30 million, 50% more than was in the January contract and it is no longer contingent upon whether BPA has made purchases to support sales to Alcoa.

DRAFT
08/19/2009

Contract No. 09PB-«#####»

# 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 _____.

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<br>905 NE 11th Avenue<br>P.O. 3621<br>Portland, OR 97208-3621» |
| Attn: | Attn:<br>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<br>Department of Energy<br>Bonneville Power Administration | |
|---|---|---|---|
| By | _____ | By | _____ |
| Name | John G. Thuestad<br>*(Print/Type)* | Name | Stephen J. Wright<br>*(Print/Type)* |
| Title | President,<br>US Primary Products | Title | Administrator and Chief<br>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<br>*(effective date of request must be provided inclusive of contractual notice)* | 35 aMW | 35 aMW |
| C) Requested Firm Power<br>= A+ B | 320 aMW | 320 aMW |
| D) Maximum Contract Volume (MWh)<br>= (A * 8760 hours * 2 years) + (B * # hours from effective)<br>*(weighted for appropriate effective date of requested firm power)* | 5,530,800 | 5,530,800 |
| E) Losses percentage | 1.9% | 1.9% |
| F) Maximum Contract Volume (MWh, including losses)<br>= D * (1+E) | 5,635,885 | 5,635,885 |
| G) Weighted Average IP rate for FY10-11 ($ per MWh)<br>*(weighted for appropriate effective dates of requested firm power)* | $ 34.59 | $ 34.59 |
| H) Forecasted Cost ($)<br>*(see definition and example in section 4 of this Exhibit)* | $ 273,332,998 | $ 266,577,361 |
| I) Forecasted IP Revenue ($)<br>= D * G | $ 191,332,998 | $ 191,332,998 |
| J) Forecasted Net Cost<br>= H - I | $ 82,000,000 | $ 75,244,363 |
| K) Forecasted Cost ($ per MWh)<br>= H / F | $ 48.50 | $ 47.30 |
| L) Forecasted Net Cost ($ per FY in period)<br>= 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<br>= 320 aMW | 320 aMW | 320 aMW |
| D) Maximum Contract Volume (MWh)<br>= 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)<br>= 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 ($)<br>*(see definition and example in section 4 of this Exhibit)* | $ 835,624,476 | $ 756,105,174 |
| I) Forecasted IP Revenue ($)<br>= D * G | $ 535,624,476 | $ 535,624,476 |
| J) Forecasted Net Cost<br>= H - I | $ 300,000,000 | $ 220,480,698 |
| K) Forecasted Cost ($ per MWh)<br>= H / F | $ 58.51 | $ 52.94 |
| L) Forecasted Net Cost ($ per FY in period)<br>= 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 | $ - | $ - | $ - | |
| Acquisition Cost | $ - | $ - | $ - | |
| Acquisitions Made | | | | |
| Acquisitions to be Made | | | | |
| Inventory Cost | $ 125,118,091 | $ 146,972,976 | $ 272,891,068 | |
| Inventory Applied | $ 125,118,091 | $ 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 |
| $ | 48.87 | per MWh of 320 aMW Sale to Alcoa for the entire FY1011 period |
| | 5,516,080 | MWhSales to Alcoa during FY10-11 |
| | 616,240 | MWhof actual sales to thru effective date of increase |
| | 4,899,840 | MWhof 320 aMW sales to Alcoa subsequent to the effective date |
| | 730 | total days in period |

assumes 6-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.

## Table 1 continued

| Date | Cost to Date | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 31 Oct 09 | 30 Nov 09 | 31 Dec 09 | 31 Jan 10 | 28 Feb 10 | 31 Mar 10 | 30 Apr 10 | 31 May 10 | 30 Jun 10 | 31 Jul 10 | 31 Aug 10 | 30 Sep 10 | 31 Oct 10 | 30 Nov 10 | 31 Dec 10 | 31 Jan 11 | 28 Feb 11 | 31 Mar 11 | 30 Apr 11 | 31 May 11 | 30 Jun 11 | 31 Jul 11 | 31 Aug 11 | 30 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 | $ 10,981,284 | $ 11,347,401 | $ 13,981,335 | $ 11,347,401 | $ 11,347,401 | $ 10,981,335 | $ 11,347,401 | $ 10,981,335 | $ 11,347,401 | $ 12,899,204 | $ 11,620,164 | $ 11,620,164 | $ 12,450,200 | $ 12,985,206 | $ 12,450,200 | $ 12,985,206 | $ 12,985,206 | $ 12,450,200 |
| Inventory Cost | | | | | | | | | | | | | | | | | | | | | | | | |
| Inventory Applied | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Inventory to be Applied | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Credit Cost | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Environmental Regulatory Cost | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Total - by Month | $ 8,756,743 | $ 8,474,267 | $ 8,756,743 | $ 11,347,401 | $ 10,249,266 | $ 11,347,401 | $ 10,981,284 | $ 11,347,401 | $ 13,981,335 | $ 11,347,401 | $ 11,347,401 | $ 10,981,335 | $ 11,347,401 | $ 10,981,335 | $ 11,347,401 | $ 12,899,204 | $ 11,620,164 | $ 11,620,164 | $ 12,450,200 | $ 12,985,206 | $ 12,450,200 | $ 12,985,206 | $ 12,985,206 | $ 12,450,200 |

| Date | Volume Equivalent to Serve (Dekatherms Leased) | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 31 Oct 09 | 30 Nov 09 | 31 Dec 09 | 31 Jan 10 | 28 Feb 10 | 31 Mar 10 | 30 Apr 10 | 31 May 10 | 30 Jun 10 | 31 Jul 10 | 31 Aug 10 | 30 Sep 10 | 31 Oct 10 | 30 Nov 10 | 31 Dec 10 | 31 Jan 11 | 28 Feb 11 | 31 Mar 11 | 30 Apr 11 | 31 May 11 | 30 Jun 11 | 31 Jul 11 | 31 Aug 11 | 30 Sep 11 |
| Forecasted Cost | | | | | | | | | | | | | | | | | | | | | | | | |
| Acquisition Cost | | | | | | | | | | | | | | | | | | | | | | | | |
| Acquisitions made | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Acquisitions to be Made | 242,604 | 234,776 | 242,604 | 242,604 | 219,128 | 242,604 | 234,776 | 242,604 | 234,776 | 242,604 | 242,604 | 234,776 | 242,604 | 234,776 | 242,604 | 242,604 | 219,128 | 242,604 | 234,776 | 242,604 | 234,776 | 242,604 | 242,604 | 234,776 |
| Inventory Cost | | | | | | | | | | | | | | | | | | | | | | | | |
| Inventory Applied | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Inventory to be Applied | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Credit Cost | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Environmental Regulatory Cost | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Total Acquisition & Inventory - by Month | 242,604 | 234,776 | 242,604 | 242,604 | 219,128 | 242,604 | 234,776 | 242,604 | 234,776 | 242,604 | 242,604 | 234,776 | 242,604 | 234,776 | 242,604 | 242,604 | 219,128 | 242,604 | 234,776 | 242,604 | 234,776 | 242,604 | 242,604 | 234,776 |

**Credits applied (Inventory) E&R Costs may not be shown

| Date | Average cost (MMBtu, net incl leases) | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 31 Oct 09 | 30 Nov 09 | 31 Dec 09 | 31 Jan 10 | 28 Feb 10 | 31 Mar 10 | 30 Apr 10 | 31 May 10 | 30 Jun 10 | 31 Jul 10 | 31 Aug 10 | 30 Sep 10 | 31 Oct 10 | 30 Nov 10 | 31 Dec 10 | 31 Jan 11 | 28 Feb 11 | 31 Mar 11 | 30 Apr 11 | 31 May 11 | 30 Jun 11 | 31 Jul 11 | 31 Aug 11 | 30 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 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 |
| Total Acquisition & 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 |

**Credits applied (Inventory) E&R Costs may not be shown

| Date | Weighted average Unit Cost by Month | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 31 Oct 09 | 30 Nov 09 | 31 Dec 09 | 31 Jan 10 | 28 Feb 10 | 31 Mar 10 | 30 Apr 10 | 31 May 10 | 30 Jun 10 | 31 Jul 10 | 31 Aug 10 | 30 Sep 10 | 31 Oct 10 | 30 Nov 10 | 31 Dec 10 | 31 Jan 11 | 28 Feb 11 | 31 Mar 11 | 30 Apr 11 | 31 May 11 | 30 Jun 11 | 31 Jul 11 | 31 Aug 11 | 30 Sep 11 |
| Forecasted Cost | | | | | | | | | | | | | | | | | | | | | | | | |
| Acquisition Cost | | | | | | | | | | | | | | | | | | | | | | | | |
| Acquisitions made | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Acquisitions to be Made | $ 41.26 | $ 41.26 | $ 41.26 | $ 46.77 | $ 46.77 | $ 46.77 | $ 46.71 | $ 46.77 | $ 48.7 | $ 46.77 | $ 46.77 | $ 46.71 | $ 46.77 | $ 48.72 | $ 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 | $ 41.26 | $ 41.26 | $ 41.26 | $ 46.77 | $ 46.77 | $ 46.77 | $ 46.71 | $ 46.77 | $ 48.7 | $ 46.77 | $ 46.77 | $ 46.71 | $ 46.77 | $ 48.72 | $ 46.77 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 |
| Credit Cost | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Environmental Regulatory Cost | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Expected Acquisition | $ 41.26 | $ 41.26 | $ 41.26 | $ 46.77 | $ 46.77 | $ 46.77 | $ 46.71 | $ 46.77 | $ 48.7 | $ 46.77 | $ 46.77 | $ 46.71 | $ 46.77 | $ 48.72 | $ 46.77 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 | $ 53.03 |

**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.

## Atterbury,Laura M - DK-7

**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, September 15, 2009 1:40 PM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: Regional meeting on BPA service to aluminum DSIs

**Attachments:** DSI letter to the region - May 2009.pdf

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**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Monday, June 01, 2009 9:46 AM
**To:** 'hharper@mt.gov'; 'Virginia_Sloan@tester.senate.gov'; 'kirby_campbell-rierson@baucus.senate.gov'; 'maren.olsen@mail.house.gov'
**Subject:** Regional meeting on BPA service to aluminum DSIs

FYI -- The attached letter and public meeting announcement was posted on BPA's website last Friday afternoon concerning the next phase of regional discussion about long-term service to aluminum direct service industries.

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BPA is looking to the region for help as it seeks to find a balance between providing the aluminum direct service industries a chance to continue operating in the Pacific Northwest and minimizing impacts to BPA rates. Specifically, BPA is looking for input to help it decide if the amount of power previously negotiated between Alcoa and BPA under an unsigned, draft contract released in January 2009 should be changed, and what changes are needed for the term of future contracts. The end goal is to be able to develop a contract or contracts that provide power to DSIs as early as Oct. 1, 2009 and beyond.

BPA will hold a public meeting from **1-4 p.m., June 8, in the Rates Hearing Room**, to continue the discussion of determining appropriate levels of long-term service to the DSIs. The primary purpose of the meeting is to enable BPA to more fully understand the views and concerns of the parties and allow parties who have closely followed and participated in the previous development of the draft contract find common ground.

A letter to the region about this issue is attached and posted on BPA's external Web site at www.bpa.gov/power/pl/regionaldialogue/implementation/documents/. The draft contract mentioned above also is posted at this site.

Anyone interested is invited to review the draft contract and offer suggestions based on the questions raised in the letter. Written public comments should be submitted by close of business June 22, 2009, via BPA's public comment Web site at www.bpa.gov/applications/publiccomments/OpenCommentListing.aspx or by calling (800) 622-4519.

**Letter to the Region**

DSI letter to the region - May...

## Atterbury,Laura M - DK-7

**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, September 15, 2009 1:41 PM
**To:** Baskerville,Sonya L - DKN-WASH; Atterbury,Laura M - DK-7
**Subject:** FW: 6/8/09_DSI_workshop.pdf

**Attachments:** 2009-06-08_DSI_workshop.pdf

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**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Monday, June 08, 2009 1:31 PM
**To:** 'Harper, Hal'; 'Virginia_Sloan@tester.senate.gov'; 'kirby_campbell-nerson@baucus.senate.gov'
**Subject:** 6/8/09_DSI_workshop.pdf

2009-06-08_DSI_workshop.pdf (9...

Attached, FYI, is a 12-page PDF copy of a presentation being discussed this afternoon at a workshop in Portland about prospects and issues associated with long-term service to DSI aluminum industry customers of BPA. The first page is the agenda. I thought you would be interested to have this and to know that long term service remains an active topic of discussion. Please let me know if you have questions or would like a follow-up conversation on this.

# DSI Workshop

- Agenda

| | |
|---|---|
| – Introductions / Overview | 1:00 – 1:05pm |
| – Relationship to Other Processes | 1:05 – 1:20pm |
| – Updated Timeline | 1:20 – 1:30pm |
| – Recap of the Draft Contract | 1:30 – 1:45pm |
| – Why Smelters' needs have changed | 1:45 – 2:00pm |
| – Why BPA thinks objectives can still be met | 2:00 – 2:15pm |
| – Break | 2:15 – 2:30pm |
| – Facilitated Discussion | 2:30 – 3:50pm |
| – Recap / Next Steps | 3:50 – 4:00pm |
| – Adjourn | 4:00pm |

# DSI Workshop
# Relationship to Other Processes

- Processes planned to be underway simultaneously that regard past and future service to the DSIs:
  - WP-10 Rate Proceeding: To set the IP rate for FY10 & 11 and consider a variable rate for the IP-10 Rate Schedule.
  - DSI Lookback Process: To determine whether, and in what amount, BPA or a DSI is entitled to payments as a consequence of benefits provided by BPA to the DSIs beginning in October 2006.
  - Long-Term DSI Service Process: To develop a contract(s) and establish service level(s) for the FY2010 through FY2011 period and the Regional Dialogue period that begins October 2011, or perhaps combine the two periods.
  - Potential Long-Term Variable Rate Proceeding: To establish a long-term variable rate in an additional section 7(i) rate process that begins when BPA issues the Initial Proposal for this process sometime prior to the end of September 2009.
  - Port Townsend Contract(s) Process: To develop a contract(s) and establish service level(s) for the FY09 period and beyond.

# DSI Workshop
# Updated Timeline

| Month | WP-10 | Lookback | DSI Service | Long-term Variable Rate |
|---|---|---|---|---|
| June | •Oral Argument<br>•Draft ROD | Letter announcing lookback process | •Workshop<br>•Comments Due | |
| July | ▪Briefs on Exceptions<br>▪Final ROD/Studies | Draft ROD | | f WP-10 decision is yes, begin separate 7(i) process |
| August | | Comments Due | •Draft Contract<br>•Comments Due | |
| September | | Final ROD | ▪Final ROD<br>▪Contract Offer | Initial Proposal |
| October | | Second Phase begins (as necessary) | Power Deliveries Start | |
| Spring 2010 | | | | Final ROD |

# DSI Workshop
# Recap of Draft Contract

- While BPA and Alcoa were unable to settle on terms that would adequately serve the interests of both parties in January, BPA committed to continue discussing with the aluminum smelter DSIs and the region the potential for future service.
- What are the objectives of a draft contract?
  - Provide a balanced approach to DSI service
  - Offer Smelters reasonable chance of survival, but not a guarantee, while producing a small but positive net employment impact for the region
  - Limit BPA's financial exposure, thereby mitigating impacts on other power customers

# DSI Workshop
# Recap of Draft Contract

- The Major Terms of the January Draft Contract:
  - Seventeen year contract (FY2012 – FY2028) with Alcoa and commensurate benefits and costs for CFAC (mechanism to provide service benefits may differ)
    - Up to 345 aMW physical power sale at the IP rate for first 10-years & up to 230 aMW for an additional 7-years (240 and 160 aMW respectively for Alcoa). Down from 560 aMW-equivalent financial benefit now (390 aMW-equivalent for Alcoa).
  - BPA would purchase from the market to meet its need:
    - BPA would not be obligated to sell IP power if it could not purchase within predefined price caps.
    - If BPA does not make market purchases to serve Alcoa, BPA pays certain shutdown costs.
  - Price Caps limit BPA's purchase cost – averaging $93 million per year ($65 million for Alcoa):
    - $93 million annual cost in the first 10-years is equal to market purchase cost minus forecasted IP revenue.
    - $73 per MWh market purchase cap represents $65 million per year divided by MWh sold to Alcoa plus average of the forecasted IP rate for a 10-year deal.
  - Alcoa wil pay the IP rate set in each rate case
  - Alcoa Assumes Supplier Risk
  - Alcoa Assumes market price risk if it curtails through Liquidated Damages calculation

Note: The final version of the January draft contract reduced the price cap in the first 5-years from $73 to $72 per MWh. This price cap was established to limit BPA's purchase cost such that BPA's market purchase cost less forecasted IP revenue would be less than $100 million per year for the first 5-years.

# DSI Workshop
# Why Smelters' needs have changed

- Alcoa indicated in the January 23rd letter to the region that "the current economic recession, which has reduced worldwide demand for aluminum and cut the price of aluminum by more than half n the last several months, has caused them to reassess the risks of operating its facilities at less than optimum levels" – or less than 2- pot lines at Alcoa's Intalco smelter in Ferndale, WA.
- Alcoa's description of why its needs have changed.
- CFAC's description of why its needs have changed.

# DSI Workshop
# BPA still believes objectives can be met

- The combination of lower price caps and reduced market power prices may allow the sale of more power within the same net cost objective – even if we initiate deliveries two years earlier.
  - The price cap on BPA purchases of 345 aMW of power – enough to serve 1.5 pot lines at each of aluminum smelter DSIs – was $72 per MWh in the first 5-years and the price cap was equivalent to a net cost of $100 million per year.
  - The equivalent price cap for BPA purchases of up to 460 aMW of power to serve the aluminum smelter DSIs would be $64 per MWh in FY2012 through FY2016. This cap is also equivalent to a net cost of $100 million per year.
  - Current market quotes indicate prices for power are approximately $55 per MWh for the 5-year period, resulting in a average net cost of approximately $59 million per year in FY2012 through FY2016.

# DSI Workshop
# BPA still believes objectives can be met

- Reducing the term may allow for simpler solutions compared to the complexities associated with the 17-year term of the January draft contract:
  - BPA actually purchasing power? (e.g. contingent acquisitions to accommodate 6c & NEPA, different price caps in later years, Alcoa's put options in sections 5, 6, 7)
  - Alcoa actually taking and paying for power that BPA purchased? (e.g. Alcoa curtailments in sections 10.4, 10.5, 10.6)
  - Alcoa assuming Supplier risk? (ie. third party supplier credit and collateralization requirements in sections 8.4 and 11.3)
  - Alcoa assuming market price risk if it curtails through Liquidated Damages calculation? (ie. the liquidated damages calculations in sectons 11.1, 11.2)

# BREAK

# DSI Workshop
# Facilitated Discussion

- BPA is seeking to find a balance between providing the DSIs a chance to continue operating in the Pacific Northwest and minimizing impacts to BPA rates.
- BPA wants to hear from the region on this issue and the contributions of the other processes that will move BPA forward in developing a DSI service strategy.
- Please note that BPA is taking notes today, but not comments. Public comments for the record on this issue should be submitted via BPA's public comment Web site at:

  http://www.bpa.gov/applications/publiccomments/OpenCommentListing.aspx

  or by calling (800) 622-4519. BPA is accepting written comments through June 22, 2009.

# DSI Workshop
# Facilitated Discussion

- Today, BPA is looking for specific feedback on changes to the draft contract from the smaller group assembled here:
  - Should the amount industrial firm power (IP) offered increase from 345 aMW to 460 aMW – an amount sufficient to operate two potlines at Alcoa's Ferndale smelter and the Columbia Falls Aluminum Company smelter located in Montana?
  - Should the contract term be shortened from 17 years to 5 years, 7 years or maybe 10 years?
  - Should there be a short-term contract/amendment for FY2010 – FY2011 followed by a long-term contract with some type of off-ramp or a single contract extending beyond FY2011? If both a short-term and long-term contract are decided upon, what linkages should be put in place between the two?
  - If the contract term is shortened, can there now be less risk mitigation in the contract from that proposed in the Jan. 23 draft contract?

# DSI Workshop
# Recap / Next Steps

Thank you

## Atterbury,Laura M - DK-7

**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, September 15, 2009 1:44 PM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: BPA Releases Proposed Terms of Service to DSIs

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**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Monday, July 20, 2009 12:45 PM
**To:** 'Harper, Hal'; 'Sloan, Virginia (Tester)'; 'Stone-Manning, Tracy (Tester)'; 'Campbell-Rierson, Kirby (Baucus)'; 'maren.olsen@mail.house.gov'
**Subject:** FW: BPA Releases Proposed Terms of Service to DSIs

FYI -- as of this morning the Columbia Falls Aluminum term sheet for a proposed power sale from BPA beginning Oct. 1, 2009 and extending through Sept. 30, 2012, has not yet been posted, but the attached website link at the end of this announcement is where it will shortly be placed. Please let me know if you have questions. Also, please note that any long term contract offer to CFAC resulting from this term sheet will be made available for public review.

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BPA and the two aluminum direct service industries have finished negotiating terms for drafting a long-term service contract. BPA is releasing for public review and comment two separate options for the terms of potential new service to Alcoa, Inc., and Columbia Falls Aluminum Company. Both term sheets reflect a proposed power sale at the Industrial Firm Power rate that is sufficient to meet a portion of the smelters' loads. The proposed power sales would begin Oct. 1, 2009, and extend through either Sept. 30, 2013, or Sept. 30, 2016, depending on the option selected.

Any resulting long-term contract offers would be made available for additional public review likely in mid- to late-August.

CFAC has expressed a desire for a four-year option and Alcoa Inc., a preference for a seven-year option; the term sheets reflect these options respectively. Either DSI, however, can choose the terms of either option prior to the contracts being finalized. If BPA and the DSI move forward on either option, BPA hopes to have final selections made by September 2009.

The seven-year (Alcoa) proposed term sheet will be available for public review and comment at www.bpa.gov/comment from July 17, 2009, through Aug. 3, 2009. The four-year (CFAC) proposed term sheet also will be available for public review through Aug. 3; it will be ready for release the week of July 20.

When the CFAC term sheet is released, BPA also will release for review and comment a document titled "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept." This document is BPA's update to the results of the "*2006 Regional Employment and Economic Study.*" The update demonstrates there is a small net gain in jobs from offering the new service constructs to the DSIs compared to the proposal that was under consideration earlier in January 2009.

The term sheets and a letter to the region will be posted on BPA's Web site at:

http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

**Atterbury,Laura M - DK-7**

**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, September 15, 2009 1:46 PM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: DSI term sheet -- e-mail chain with Paul Wilkins

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**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Thursday, July 23, 2009 5:09 PM
**To:** 'Sloan, Virginia (Tester)'
**Subject:** FW: DSI term sheet

Virginia, I was unable to reach Sonya prior to forwarding this e-mail chain with Paul Wilkins, but this summarizes where we are and the dialogue along the way on the various points of discussion with CFAC.

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, July 23, 2009 6:31 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: DSI term sheet

My understanding is that BPA did finally hear back from CFAC, but CFAC did not agree to either the 2- or 4-year option. I can check in with my folks again, but I think they had just gotten off the phone with CFAC when they called me. I'm surprised CFAC did not call to inform you they were going to do that.

Let me check in again with my folks and I'll be back in touch very soon. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Thursday, July 23, 2009 6:26 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: DSI term sheet

Hi Sonya,

I'm a little shocked to hear this. It sounded to me as recently as this morning that there were three options under consideration from BPA's perspective. CFAC had indicated that the 4 year options with slight tweaks was their preference but the 2 year option as it stood might be workable as well. When

was the last time BPA contacted CFAC to discuss the status of the term sheet? Was CFAC notified before a decision was made to go forward with only the seven year option? I don't believe that our office was.

I would strongly urge BPA to reconsider this decision to only offer the term sheet offered to Alcoa and allow for at least another day for CFAC indicate a final preference.

Thanks,

Paul

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, July 23, 2009 6:14 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: DSI term sheet

BPA purchases forward. We are buying now for the winter requirements for example. Those purchases are typically about 6 months in advance to take advantage of market conditions but more importantly for our trading floor's planning needs as they assure they have the power necessary to serve our obligations. A 140 MW purchase is large, and the trading floor needs time to make the necessary power purchases to meet not only that large load requirement but any other future power obligations.

I just got off the phone with Mark Miller and Harry Clark who have been negotiating this contract with CFAC. They told me that we are now out of time at this point to work through the different term sheet. We still have our public process review requirements in place and we don't have time now for the appropriate amount of review time. My understanding now is that the 7-year option is the remaining option. It is currently out for comment through August 3. BPA plans to post a note to clarify what is happening now that we were unable to reach agreement with CFAC - the note is to clarify what we said in the July 17 letter that there could be separate options for Alcoa and CFAC.

My understanding is that CFAC will get a call when that note is posted. I'll let you know when that happens. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Wilkins, Paul (Baucus) [mailto:Paul_Wilkins@baucus.senate.gov]
**Sent:** Thursday, July 23, 2009 5:28 PM
**To:** Baskerville,Sonya L - DKN-WASH
**Subject:** RE: DSI term sheet

Sonya,

Thanks for getting back to me. In regards to the 4 year option, what is the rational for a 4 month notice requirement for the second potline as opposed to a two month requirement? Essentially, if the notification requirement for the first potline is 2 months what does it matter to BPA whether the notification requirement for the second potline is 2 months or 4 months?

Thanks!

Paul

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**From:** Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
**Sent:** Thursday, July 23, 2009 5:15 PM
**To:** Wilkins, Paul (Baucus)
**Subject:** RE: DSI term sheet

Hey, Paul. My understanding is that CFAC has a two year version that does not have take-or-pay as long as they give BPA as little as a 2 month notice on where they plan to operate, anywhere between 0 to 70 aMW (i.e. one potline). If they make the decision to ramp up to 140 MW in the second option/alternative which is a four year deal, then take-or-pay applies to only the fast 70 MW (or the second potline). Take-or-pay for the first 70 MW in this second option only comes into play if they fail to give us a 4 month notice. So, BPA folks believe there already is flexibility built into the take-or-pay character of the contract. Recall that the ALCOA's term sheet has a 12-month advance notice period and take or pay is in effect during that notice period. http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-07-17_DRAFT-TermSheet-Alcoa.pdf (Alcoa's term sheet)

Allen and others were waiting for CFAC to get back to them today, but as of now, I don't believe they have heard back. Looks like this might not come together today for a CFAC specific term sheet. I'll keep you posted as I hear more. If you hear anything from CFAC that you can share, let me know!

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW. 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, July 23, 2009 10:33 AM
**To:** 'Paul_Wilkins@baucus.senate.gov'
**Subject:** Re: DSI term sheet

Hi, Paul. Take or pay contracts are very standard power sales contracts, but I'm checking on your questions with Allen now. Thanks.
Sonya Baskerville
202.253.7352

202.253.7352

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**From:** Wilkins, Paul (Baucus)
**To:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thu Jul 23 07:18:01 2009
**Subject:** DSI term sheet
Hi Sonya,

I wanted to check in with you to get some clarity on the take or pay issue in the draft term sheet with CFAC. Specifically, it is my understanding that BPA's position is that if BPA purchases power for CFAC, and CFAC shuts down before the agreement expires, CFAC must reimburse BPA for the full value of the power, and BPA also keeps the power and could resell it on the market. Is this correct, and if so, what is BPA's rationale for this position? If the goal is to keep BPA whole should CFAC shut down, isn't it sufficient to simply require CFAC to cover the spread between the purchase price and resale price?

Any insights you can provide would be greatly appreciated! Thanks for all your work to try to find a mutually acceptable agreement with CFAC.

Thanks!

Paul

**Atterbury,Laura M - DK-7**

**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, September 15, 2009 1:49 PM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: BPA service to DSIs
**Attachments:** 2009-06-10_DSI_Lookback_Letter.pdf; 9th Circuit Opinion in PNGC.pdf

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**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Friday, July 24, 2009 11:26 AM
**To:** 'larry.anderson@mail.house.gov'
**Subject:** FW: BPA service to DSIs

Larry, sorry for the delay but it took a bit of time to locate the material that addresses your question on the background of the court case concerning BPA's DSI service. Attached is a copy of the 9th circuit Opinion on PNGC and BPA's initial letter to the region on the DSI Lookback (issues associated with any overpayment and cost recovery that may result from the Opinion).

Please let me know if you have questions.

Regards,
Gail

**Department of Energy**

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

EXECUTIVE OFFICE

June 10, 2009

In reply refer to: A-7

To Regional Customers, Stakeholders, and Other Interested Parties.

On December 17, 2008, the United States Court of Appeals for the Ninth Circuit (the court) issued its opinion in *Pacific Northwest Generating Cooperative, et al. v. Bonneville Power Administration*, 550 F.3d 846 (9th Cir. 2008) (*PNGC*), a case involving the challenge by certain parties to Bonneville Power Administration's (BPA's) FY 2007 – 2011 direct service industrial customer (DSI) service construct and contracts.

Among other holdings, the court granted the petitions challenging BPA's statutory authority to offer the DSIs energy at rates below both the Industrial Firm (IP) power rate and the market rate. *PNGC*, at 882. Since the *PNGC* decision was issued, BPA's preference utility customers have argued that as a consequence of this holding the DSIs received more benefits during the 25-month period preceding the court's opinion (Lookback Period) than BPA was authorized by statute to provide them, and that the excess must be recovered by BPA from the DSIs. For its part, BPA's DSI customer Alcoa, Inc. (Alcoa) has argued that if BPA had applied the IP rate as required by *PNGC*, then it would have received significantly more monetary benefits during the Lookback Period and, therefore, Alcoa is entitled to recoup those additional payments.

In addressing the contention by certain preference utility petitioners that the damages waiver provision in the contracts was void and that BPA must recover overpayments from the DSIs, the court held as follows:

> The question of contractual interpretation before us is whether, if the agreements are partially invalidated, BPA is permitted to seek restitution, not whether it is 'requir[ed]' to do so. Whether BPA intended to retain the flexibility to seek *or* forgo repayment, depending on (a) the DSIs' 'commitments with respect to operating their facilities,' and (b) BPA's interest in still making sales of physical power to them, is an issue the agency did not address in the Supplemental ROD.

*Id.* (emphasis in original). The court then remanded to BPA "to determine in the first instance the applicability and construction of the severability clause, the damage waiver, and the physical power sale option in light of our holdings here." *Id.*

Therefore, the threshold issues before BPA on remand are whether, as a matter of law and in view of the holdings in *PNGC*,

1) BPA is permitted under the applicable contracts to seek repayment from the aluminum company DSIs Alcoa and Columbia Falls Aluminum Company (CFAC) for any overpayments of monetary benefits during the Lookback Period;

2) Alcoa is permitted to seek additional payments from BPA for the Lookback Period; and

3) BPA is permitted to seek additional payments directly from Port Townsend Paper Company (or indirectly through the Public Utility District No. 1 of Clallam County) for any undercharges for power delivered to Clallam by BPA for the benefit of Port Townsend, both during the Lookback Period and subsequently.

BPA will commence a bifurcated process to address these issues. In the first part, in early July, BPA plans to issue a draft record of decision on the remanded contract issue outlined above, *i.e.*, "the applicability and construction of the severability clause, the damage waiver, and the physical power sale option." Written comments on the draft record of decision must then be filed with BPA in early August 2009. BPA plans to issue a final record of decision regarding the remanded contract issue in late September. In the event BPA's final decision with respect to the remanded contract issue is that, as a matter of law, payments to or from BPA (Lookback Amounts) are precluded, that finding will constitute the Administrator's final decision and no further proceedings will be necessary.

However, in the event BPA's decision in the final record of decision is that the payment to or from BPA of a Lookback Amount is not precluded, then BPA will commence the second part of the process to determine whether, and in what amount, BPA or a DSI is entitled to a Lookback Amount. This second part of the bifurcated process, if necessary, will commence with a workshop, the date and time of which will be announced, if necessary, following release of the final record of decision. The purpose of the workshop will be to discuss whether parties believe it would be necessary to undertake a formal hearing in order to create a record with respect to whether, and in what amount, BPA or a DSI is entitled to a Lookback Amount, or whether such a record could be adequately created through an informal process, including one or more workshops and/or the submission of written arguments and evidence to BPA and other parties.

All parties should keep in mind that litigation is ongoing in the Ninth Circuit that could result in orders that have a bearing on the outcome of this process. The court is still reviewing its original decision pursuant to the filing of petitions for rehearing filed by Port Townsend Paper and BPA. Thus, the mandate has not yet issued and the court is free to change its opinion until that time. Also, the court is reviewing challenges to the contract amendment providing service to Alcoa through FY09. It is possible, then, that the timing of events under this process might have to be adjusted to accommodate any decisions of the court relevant to the Lookback determination.

Most importantly, BPA will not issue its final determination on the applicability of the damage waiver, severability clause, and power sale option on the date specified above if the mandate in the original *PNGC* case has not issued prior to that date. In that event, BPA will issue a notice to the parties describing BPA's intentions with regard to the adjusted timing of events that may be necessary to complete this process.

/s/ Stephen J. Wright

Stephen J. Wright
Administrator and Chief Executive Officer

**Volume 1 of 2**

**FOR PUBLICATION**

# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

| | |
|---|---|
| PACIFIC NORTHWEST GENERATING COOPERATIVE; BLACHY-LANE COUNTY COOPERATIVE ELECTRIC ASSOCIATION; CENTRAL ELECTRIC COOPERATIVE INC.; CLEARWATER POWER CO.; CONSUMERS POWER, INC., COOS-CURRY ELECTRIC COOPERATIVE, INC.; DOUGLAS ELECTRIC COOPERATIVE; FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.; LANE ELECTRIC COOPERATIVE; LOST RIVER ELECTRIC COOPERATIVE, INC.; NORTHERN LIGHTS, INC.; OKANOGAN COUNTY ELECTRIC COOPERATIVE, INC.; RAFT RIVER RURAL ELECTRIC COOPERATIVE, INC.; SALMON RIVER ELECTRIC COOPERATIVE, INC.; UMATILLA ELECTRIC COOPERATIVE ASSOCIATION; AND WEST OREGON ELECTRIC COOPERATIVE, INC., *Petitioners,*<br>v.<br>DEPT. OF ENERGY; BONNEVILLE POWER ADMINISTRATION, *Respondents.* | No. 05-75638 |

16513

| | |
|---|---|
| ALCOA, INC., *Petitioner,*<br>PUBLIC POWER COUNCIL, *Intervenor,*<br>v.<br>BONNEVILLE POWER ADMINISTRATION, *Respondent.* | No. 05-75639 |
| ALCOA, INC., *Petitioner,*<br>COLUMBIA FALLS ALUMINUM COMPANY; INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES; PUBLIC POWER COUNCIL, *Intervenors,*<br>v.<br>BONNEVILLE POWER ADMINISTRATION; DEP'T OF ENERGY, *Respondents.* | No. 06-73756 |

PACIFIC NORTHWEST GENERATING COOPERATIVE; BLACHY-LANE COUNTY COOPERATIVE ELECTRIC ASSOCIATION; CENTRAL ELECTRIC COOPERATIVE INC.; CLEARWATER POWER COMPANY; CONSUMERS POWER INC.; COOS-CURRY ELECTRIC COOP., INC.; DOUGLAS ELECTRIC COOPERATIVE; FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.; LANE ELECTRIC COOPERATIVE INC.; LOST RIVER ELECTRIC COOPERATIVE, INC.; NORTHERN LIGHTS INC.; OKANOGAN COUNTY ELECTRIC COOPERATIVE INC.; RAFT RIVER RURAL ELECTRIC COOPERATIVE, INC.; SALMON RIVER ELECTRIC COOPERATIVE INC.; UMATILLA ELECTRIC; WEST OREGON ELECTRIC COOPERATIVE, INC.,

*Petitioners,*

v.

BONNEVILLE POWER ADMINISTRATION,

*Respondent.*

No. 06-74223

PACIFIC NORTHWEST GENERATING COOPERATIVE; BLACHY-LANE COUNTY COOPERATIVE ELECTRIC ASSOCIATION; CENTRAL ELECTRIC ASSOCIATION INC.; CLEARWATER POWER COMPANY; CONSUMERS POWER INC.; COOS-CURRY ELECTRIC COOP., INC.; DOUGLAS ELECTRIC COOPERATIVE; FALL RIVER RURAL ELECTRIC COOPERATIVE; LANE ELECTRIC COOPERATIVE INC.; LOST RIVER ELECTRIC COOPERATIVE, INC.; NORTHERN LIGHTS INC.; OKANOGAN COUNTY ELECTRIC COOPERATIVE INC.; RAFT RIVER RURAL ELECTRIC COOPERATIVE INC.; SALMON RIVER ELECTRIC COOPERATIVE INC.; UMATILLA ELECTRIC; WEST OREGON ELECTRIC COOPERATIVE, INC.,

*Petitioners,*

v.

BONNEVILLE POWER ADMINISTRATION,

*Respondent.*

No. 06-74237

ALCOA, INC.,

*Petitioner,*

v.

BONNEVILLE POWER ADMINISTRATION,

*Respondent.*

No. 06-74797

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| INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, *Petitioners,* v. BONNEVILLE POWER ADMINISTRATION, *Respondents.* | No. 06-75361 OPINION |

On Petition for Review of an Order of the Bonneville Power Administration

Argued and Submitted
November 7, 2007 Portland, Oregon

Filed December 17, 2008

Before: Raymond C. Fisher, Marsha S. Berzon, Circuit Judges, and Barry Ted Moskowitz,[1] District Judge.

Opinion by Judge Berzon

[1]Honorable Barry Ted Moskowitz, District Judge for the Southern District of California, sitting by designation.

## COUNSEL

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Leonard J. Feldman, Heller Ehrman LLP, Seattle, Washington, for intervenor Port Townsend Paper Company.

Mark R. Thompson, Portland, Oregon, for intervenor Public Power Council.

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## OPINION

BERZON, Circuit Judge:

### A. Introduction

At their origins during the New Deal, the Bonneville Project's hydroelectric operations in the Pacific Northwest, administered by the Bonneville Power Administration ("BPA"), were promoted as spreading the benefits of affordable federal power widely, to "the farmer and the factory, and

all of you and me."[2] At the same time, the Project gave a vital boost to the aluminum industry of the Pacific Northwest. Indeed, in the early days of the Project, what was good for BPA was good for the aluminum industry, and what was good for the aluminum industry was good for BPA. Aluminum manufacturers received low-cost federal hydroelectric power to operate energy-intensive smelting operations in the Pacific Northwest, and BPA gained a reliable market for a supply of electric power that otherwise greatly exceeded demand in a region where rural electrification was still a work in progress. *See* H.R. Rep. No. 96-976, pt. 2, at 27 (1980), *as reprinted in* 1980 U.S.C.C.A.N. 6023.

BPA's synergistic relations with the aluminum industry during this early period were widely seen as a public good. The aluminum manufacturers and the region's nascent aviation industry, which they supplied, not only brought many high-wage jobs to the Pacific Northwest, but also served as a vital strategic asset for the United States during World War II and the Cold War decades that followed.[3]

Times have changed. Public utilities and electrical cooperatives serve a larger regional population with greater needs for electrical power, *see id.*, to which they are statutorily guaranteed preferential access. *See* 16 U.S.C. § 832c(a).[4] Rising

[2]WOODY GUTHRIE, *Grand Coulee Dam*, *on* THE COLUMBIA RIVER COLLECTION (Smithsonian Folkways, 1988). Guthrie was commissioned by the federal Works Progress Administration in 1941 to write songs to promote the Bonneville Project.

[3]"Now in Washington and Oregon you can hear the factories hum, making chrome and making manganese and light aluminum. And there roars the Flying Fortress now to fight for Uncle Sam, spawned upon the King Columbia by the big Grand Coulee Dam." Guthrie, *supra* note 1. The aluminum-bodied B-17 "Flying Fortress" was the world's first mass-produced large aircraft, with wartime production levels in Boeing's Seattle plant reaching a never-again-equaled sixteen planes per *day*. *See* ROBERT J. SERLING, LEGEND & LEGACY: THE STORY OF BOEING AND ITS PEOPLE 55 (1992).

[4]Unless otherwise noted, all statutory citations are to Title Sixteen of the United States Code.

energy prices have made the relatively inexpensive federal power generated by BPA more attractive than ever, not only to BPA's regional " 'preference' customers," *Aluminum Co. of America v. Central Lincoln Peoples' Util. Dist.* ("*Alcoa*"), 467 U.S. 380, 384 (1984), but also to utilities outside the Pacific Northwest.[5]

At the same time, due to a variety of factors — among them higher energy costs — the region's aluminum industry has fallen on hard times. The smelting operations of the major aluminum manufacturers, which traditionally ran on electric power purchased directly from BPA, are generally being operated at reduced capacity, and in some cases, have shut down entirely. This case centers on how much BPA can or must do, under the authority and mandate conferred upon it by Congress, to aid its longtime, but now ailing, customers.

The assistance largely at issue here consists of three three-party contracts BPA executed in June 2006, each with a local public utility company and one of the aluminum companies that are "direct service industrial" customers ("DSIs") of BPA. In the contracts, BPA committed itself to make payments to the aluminum company DSIs ("aluminum DSIs") totaling a maximum of $59 million per year for five years in lieu of supplying them with actual electrical power, while retaining the option to sell them physical power instead in the final two years. In addition, in September 2006, BPA arranged for the sale of physical power to Port Townsend Paper Company ("Port Townsend"), the sole existing DSI that is not an aluminum manufacturer, via a contract between BPA and a local utility company, Public Utility District Number 1 of Clallam County ("Clallam"), for the sale of physical

[5]Numerous opinions of this Court "chronicle the history of BPA and describe the tangle of statutes that govern its operations." *Golden Nw. Aluminum, Inc. v. BPA*, 501 F.3d 1037, 1041 (9th Cir. 2007) (citing cases). Accordingly, we confine our discussion to the particular facts relevant to this appeal.

power, which Clallam would then supply to Port Townsend. Challenges to these four contracts by aluminum DSI Alcoa; the Pacific Northwest Generating Cooperative, an organization of electrical cooperatives that are preference customers of BPA (collectively, "Cooperative"); and Industrial Customers of Northwest Utilities, an organization of firms which purchase electricity from utility companies, rather than directly from BPA (collectively, "Industrial Customers"), form the basis of the seven petitions that have been consolidated in this case. Both Port Townsend and the Public Power Council, an association of consumer-owned utilities, have intervened as interested parties.

### B. The Statutory Context

To set out the complex statutory landscape against which we consider these challenges, we briefly review the enactments in which Congress over the past seven decades has established and regulated BPA's authority to sell the output of the Federal Columbia River Power System, as the regional energy generation operations which began with the Bonneville Project are known. *See Golden Nw. Aluminum*, 501 F.3d at 1041.

The Bonneville Project Act of 1937 ("Project Act"), 16 U.S.C. § 832-832j, created BPA as the authority responsible for the "sale and disposition" of the electric energy generated by the federal hydroelectric projects in the Pacific Northwest. *See* § 832a. The Project Act directed that "in disposing of electric energy generated at [the Bonneville] project, [BPA shall at all times] give preference and priority to public bodies and cooperatives." § 832c(a). At the same time, the Project Act also authorized BPA, subject to this preference and priority restriction, to enter into contracts for the "sale at wholesale of electric energy . . . to private agencies and persons." § 832d(a). Historically, there have been two types of private entities that purchase electric power directly from BPA: investor-owned utility companies ("IOUs") and DSIs. *See*

*Ass'n of Pub. Agency Customers, Inc. v. BPA*, 126 F.3d 1158, 1164 (9th Cir. 1997).

Over the following decades, Congress responded to increasing demand for BPA's low-cost federal power within and outside the Pacific Northwest with four additional pieces of legislation relevant to this case:

*First*, in 1964, Congress passed the Regional Preference Act, 16 U.S.C. §§ 837-837h ("RPA"), which provides that the sale of electric energy from "Federal hydroelectric plants in the Pacific Northwest" to customers outside the region must be limited to "surplus energy," § 837a, defined as "energy . . . which would otherwise be wasted because of the lack of a market therefor in the Pacific Northwest at any established rate." § 837(c).[6]

*Second*, the Transmission Act, 16 U.S.C. §§ 838-838h, enacted in 1974, established the basic principles that rates for BPA power must

> be fixed and established (1) with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles, (2) having regard to the recovery . . . of the cost of producing and transmitting such electric power, . . . and (3) at levels to produce such additional revenues as may be required, in the aggregate with all other revenues of the Administrator, to pay when due [expenses related to] . . . all bonds issued and outstanding pursuant to this chapter . . . .

§ 838g.

[6]The current definition of "surplus energy" reads "electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy." *See* § 839f(c).

*Third*, the Northwest Power Act, 16 U.S.C. §§ 839-839h ("NWPA"), signed into law in 1980, was triggered by Congress's recognition that demand within the Pacific Northwest for low-cost federal power threatened to outstrip supply, and that BPA's dams were having a significant impact on the region's fish and wildlife. *See Ass'n of Pub. Agency Customers*, 126 F.3d at 1165. The NWPA contains several provisions central to this litigation.

Initially, the NWPA directs that "[w]henever requested," by either a "public body and cooperative entitled to preference under the [Project Act]" or an "investor-owned utility," BPA "shall offer to sell . . . electric power to meet the [requesting entity's] firm power load."[7] § 839c(b)(1). In the same section of the Act, Congress also states that BPA is "authorized to sell in accordance with this subsection electric power to existing [DSI] customers." § 839c(d)(1)(A). The statute then instructs BPA to offer "an initial long term contract" for the sale of electric power to each of its existing DSI customers, § 839c(d)(1)(B), and, under a separate subsection, to its public utility and cooperative customers and IOUs. § 839c(g). The NWPA also authorizes BPA, in § 839c(f), to "sell, or otherwise dispose of, electric power, including power acquired pursuant to this and other Acts, that is surplus to [BPA's] obligations incurred pursuant to subsections (b), (c), and (d) of this section[,] in accordance with this and other Acts applicable to [BPA] . . . ."

In addition, the NWPA directs BPA to "establish, and periodically review and revise, rates for the sale and disposition of electric energy," § 839e(a)(1), which are subject to "confirmation and approval by the Federal Energy Regulatory Commission [("FERC")] upon a finding by the Commission" that,

[7]"Firm power" is power or power capacity that an electric utility promises to deliver to a customer on a non-interruptible basis. "Firm power load" is the total amount of "firm power" that a utility has committed to providing its customers.

among other things, "such rates . . . are based upon [BPA]'s total system costs." § 839e(a)(2)(B). Rates for preference customers are mandated, accordingly, to be sufficient to "recover the costs of that portion of the Federal base system resources needed to supply such loads," § 839e(b)(1), with "Federal base system resources" defined as

> (A) the Federal Columbia River Power System hydroelectric projects;
>
> (B) resources acquired by [BPA] in longterm contracts . . . ; and
>
> (C) resources acquired by [BPA] in an amount necessary to replace reductions in capability of the resources referred to in subparagraphs (A) and (B) of this paragraph.

§ 839a(10). Congress also instructed that "rates applicable to direct service industrial customers shall be established," § 839e(c)(1), at a level that is "based upon [BPA's] applicable wholesale rates to [preference] customers and the typical margins included by such [preference] customers in their retail industrial rates [plus other considerations] . . . ." § 839e(c)(2).

### C. The Present Litigation

The events that immediately gave rise to this litigation began in June 2005, when BPA initiated the process that resulted in the execution of the contracts challenged here. On June 30, 2005, BPA issued a Record of Decision on Service to Direct Service Industrial (DSI) Customers for Fiscal Years 2007-2011 ("DSI Service ROD"), in which it announced its intention to enter into the three-way contracts with the aluminum DSIs and the local utility companies. The proposed contracts would provide "service benefits," with the default form of delivery of the benefits being "financial payment[s]" by BPA to the DSIs. BPA retained a one-way option, however,

in the fourth and fifth years of each of the contracts to discontinue a portion of the payments to a particular DSI and supply that DSI with physical power instead, although the DSI could then elect to refuse service and terminate the agreement. BPA specified that before exercising that option, the agency would conduct a "public process" to consider and explain its decision.

The amount of the payments to the DSIs was determined according to a formula based on the difference between the market price of power and BPA's standard rate for power sold to its preference customers ("PF rate"). Under the default mode, monetary payments to each DSI would be made in an amount equal to this price differential multiplied by the amount of physical power the DSI purchased from the local utility partner, thus tying the value of the benefit to the DSI's electricity use and, therefore, to its level of operations and employment.[8]

Crucially, BPA placed three limitations on the amount of the payments it would make to the DSIs each year. First, BPA obligated itself to make the payments only on the first 560 average megawatts ("aMW")[9] of capacity consumed by the DSIs each year.[10] Second, BPA capped the price differential it was willing to pay the DSIs for the power they purchased on the open market at no more than $24/MWh. Third, BPA

[8]Under the alternative mode, BPA would supply physical power to the local utility for sale to the DSI at a price to be determined by BPA, but no lower than the PF rate.

[9]aMW is a measure of capacity. Power is typically priced by megawatt hours (MWh), a measure of usage, where 1 MWh = 1 hour of use × 1 aMW. Thus, 560 aMW, if used continuously for a year, will equate to 4,905,600 MWh of power usage (560 aMW × 24 hours/day × 365 days/year).

[10]Of the 560 aMW, BPA allocated 100 aMW to GNA, 320 aMW to Alcoa, and 140 aMW to CFAC. Alcoa had requested an allocation of 438 aMW.

limited the total annual benefit the DSIs could receive to $59 million.[11]

BPA acknowledged in the DSI Service ROD that "service to the DSIs will come at the expense of higher rates paid by . . . preference customers." While BPA stated that it would "not revisit[ ] its . . . decision to serve some amount of DSI load at a known and capped cost," it also indicated — in apparent contradiction — that both the decision to contract with the DSIs and the level of service benefits that it would provide were possibly subject to change. Alcoa and the Cooperative both filed in this Court timely petitions for review of the DSI Service ROD.

On May 31, 2006, BPA issued a Supplement to the DSI

[11]The following three simplified hypotheticals illustrate the general contours of the monetary benefit plan and the effect of each of the limitations.

*Hypothetical 1*: Assume the DSIs use 700aMW of power continuously for a year, the average market price for power is $32/MWh in that year, and the rate charged to preference customers ("PF rate") is $30/MWh. If no limitations were in place, the DSIs would be entitled to a monetary payment of $12.3 million (700aMW × 24 hours/day × 365 days/year × ($32/MWh [Market rate] − $30/MWh [PF rate])). However, because the benefit extends only to the first 560aMW used by the DSIs, the actual monetary benefit would total only $9.8 million (560aMW × 24 hours/day × 365 days/year × ($32/MWh − $30/MWh)).

*Hypothetical 2*: Assume that the DSIs use only 200aMW of capacity continuously for a year, but the market price of power for that year is $60/MWh, rather than $32/MWh. Without BPA's limitations, the monetary benefit paid to the DSIs would be $52.6 million (200aMW × 24 hours/day × 365 days/year × ($60/MWh − 30/MWh)). The $24/MWh limitation, however, reduces that benefit to $42.0 million (200aMW × 24 hours/day × 365 days/year × $24/MWh [benefit cap]).

*Hypothetical 3*: Assume the DSIs use only 560aMW of capacity continuously for a year, and the market price of power for that year is $50/MWh. Without BPA's limitations, the monetary benefit owed to the DSIs would be $98.1 million (560 aMW × 24 hours/day × 365 days/year × ($50/Mwh [Market rate] − $30/MWh [PF rate])). The $59 million total annual cap applies, however, and limits the total payment to that amount.

Service ROD ("Supplemental ROD"), which announced certain revisions in the agency's plan to contract with the DSIs. In particular, BPA decided to provide "slightly more operating flexibility" to the aluminum DSIs by reducing the minimum level of energy usage required for eligibility to receive the monetary benefit payments.[12] The plan's main provisions, including the service benefit levels and the method of delivery, remained unchanged. Alcoa and the Cooperative again both filed in this Court timely petitions, this time for review of the Supplemental ROD.

In June 2006, less than a month after the issuance of the Supplemental ROD, BPA executed contracts with the three aluminum DSIs — Alcoa, Columbia Falls Aluminum Co. and Golden Northwest Aluminum Holding Co. — under the terms described in the Supplemental ROD. Alcoa and the Cooperative petitioned this Court for review of those contracts as well.

In the DSI Service ROD and the Supplemental ROD, BPA also announced that it would provide Port Townsend with its full requirements for power, seventeen aMW, to be supplied through Clallam. Under the final proposal, the rate for power sold by BPA to Clallam would be set at a level equal to the agency's rate for power sold to local utilities (the PF rate) plus the margin typically charged by the latter to their industrial customers. BPA, Clallam, and Port Townsend then executed contracts providing for power service to Port Townsend through Clallam. Industrial Customers timely filed a petition for review of the contracts.

### D. BPA's Rate Schedules

Because a central dispute among the parties in this case concerns which of BPA's various power rate schedules should

[12]Under BPA's initial plan, a DSI had to utilize at least 50% of its allocated capacity to be eligible for the monetary benefit. The revised proposal lowered this requirement to 25%.

apply to the contracts at issue, a brief overview of the possible rate categories is in order.

BPA is required by its governing statutes to "establish" a number of energy rate schedules for the sale of power to different customer groups. *See* § 839e(a)(1). BPA calculates these rate schedules according to detailed statutory guidelines, *see* § 839e(a)-(h), and promulgates them through a formal ratemaking procedure that includes publication of proposed rates in the Federal Register, public hearings, and FERC approval. *See* § 839e(1). Four of BPA's rate schedules are at issue in this case: the PF rate, the Industrial Firm Power ("IP") rate, the New Resources ("NR") rate, and the Firm Power Products and Services ("FPS") rate.

(a) PF rate

The PF rate is a cost-based rate at which BPA sells firm power to its preference customers, whose requirements for firm power the agency is required to fulfill. *See* §§ 839c(b), 839e(b). It is calculated pursuant to guidelines specified in § 839(e)(b), and is BPA's lowest published rate. For the year ending September 30, 2007, the average PF rate was $27.33/MWh.

(b) IP rate

The IP rate is "applicable to [firm power sales] made to direct service industrial customers" and is "established" pursuant to the requirements of § 839(e)(c). Like the PF rate, it is a cost-based rate. *See* § 839(e)(c). For the year ending September 30, 2007, the average IP rate was $45.08/MWh.

(c) NR rate

The NR rate applies to power sales to utilities that are used by those utilities to serve "new large single load[s]." *See* § 839a(13); the NR rate is intended to penalize DSI customers

who attempt to lower their energy costs by purchasing power at lower rates from one of the public utilities that BPA serves instead of purchasing the power directly from BPA at the IP rate. *See* H.R. Rep. No. 96-976, pt. 1, at 25, 51 (describing purpose of NR rate as a deterrent). For the fiscal year ending September 30, 2007, the average NR rate was $77.03/MWh.

(d) FPS rate

The FPS rate is perhaps the most confounding of BPA's rate schedules, but, because all four of the contracts at issue utilize it, also the most important for this case.

As it does for the PF, IP, and NR rates, BPA establishes an FPS rate schedule pursuant to the ratemaking requirements of § 839e(i), which it then publishes. *See* BONNEVILLE POWER ADMINISTRATION, 2007 WHOLESALE POWER RATE SCHEDULES 55-59 (November 2006) (hereinafter "Wholesale Power Rate Schedule"), *available at* http://www.bpa.gov/power/PFR/rates/2007-09_Power_Rates.pdf. Unlike the other rate schedules, however, the FPS rate schedule includes a provision, entitled "Flexible Rate," which states that energy rates "may be specified at a higher or lower average rate [than the published rate] as mutually agreed by BPA and the Purchaser." *See id.* at 57. In other words, although BPA publishes an FPS rate schedule, BPA and the contracting customer are free to deviate from this published rate by mutual agreement. *See* Supplemental ROD ("Power is sold under the FPS schedules at rates mutually agreed to by BPA and the purchaser."). Thus, a sale made pursuant to the FPS rate schedule could, in theory, be made at any price. As such, the FPS rate schedule is, in effect, no rate schedule at all.[13]

[13]No party challenges BPA's statutory authority to sell power at mutually agreed upon rates that have not been previously approved by FERC. This Court therefore assumes, without deciding, that BPA has such authority.

## II. Jurisdiction

The NWPA gives this Court, as the "court of appeals for the region," jurisdiction to hear any suit challenging "final actions and decisions taken pursuant to this chapter [of the NWPA] by [BPA]" or to "the implementation of such final actions, whether brought pursuant to this chapter, the [Project] Act, the [Regional Preference Act], or the [Transmission] Act." § 839f(e)(5). The NWPA lists certain BPA actions as representing "final actions subject to judicial review" under the Administrative Procedure Act, 5 U.S.C. §§ 701-06. *See* § 839f(e)(1)(A)-(H).[14] Among the listed actions are "sales . . . of electric power under section 839c of this title." § 839f(e)(1)(B).

All four of the contracts at issue either involve sales of electric power made pursuant to BPA's authority under § 839c or are, at least, "other final" agency actions under § 839f(e)(3), and so are reviewable by this court.[15] Thus, we have jurisdiction to review the validity of the contracts, including (1) whether BPA is authorized and/or obligated to

[14]The NWPA's jurisdictional grant also contains a "catch-all" provision which makes clear that our jurisdiction to review the agency's action is not confined to the listed actions. *See* § 839f(e)(3) ("Nothing in this section shall be construed to preclude judicial review of other final actions and decisions by the . . . Administrator.").

[15]The aluminum DSI contracts do not, under the monetary benefit option, involve the physical delivery of power. They may nonetheless qualify as "sales of electric power" as they are designed to effectuate the delivery of power to the DSIs at a rate agreed upon by the DSIs and BPA, by subsidizing the sale of power actually acquired elsewhere. In any event, the parties do not dispute the characterization of these contracts as "sales of electric power" for jurisdictional purposes. Moreover, the contractual provisions regarding monetary benefits would qualify as "final actions" within the catch-all provision even if not considered to be "sales of electric power under § 839c." As we therefore do not need to sort out whether the monetary benefits provisions are reviewable as "sales of electric power" or under the catch-all for "other final actions and decisions by the . . . Administrator," we do not do so.

sell power to the DSIs under § 839c; (2) whether BPA is permitted to offer the DSIs monetary benefits in lieu of delivering physical power; (3) whether BPA may offer contract terms to Port Townsend that differ from those offered to the aluminum DSIs; and (4) whether BPA must treat Port Townsend as a "new large single load" for the purposes of its contract with Clallam.[16]

Alcoa and the Cooperative also challenge the actual rates incorporated by BPA into the aluminum DSI contracts. Alcoa argues that it is entitled to purchase power from BPA at a cost-based rate, and that, under the monetary benefit provisions of its contract with BPA — which utilize a mutually agreed upon FPS rate as a baseline — it is, as a practical matter, subject to a market-based rate.[17] The Cooperative, on the

[16]The Cooperative argues that the DSI Service ROD and the Supplemental ROD are also final agency actions subject to our review. We find it unnecessary to decide this issue. The four DSI contracts — which, as we have already concluded, are final agency actions subject to our review — incorporate the final decisions made by BPA in the DSI Service ROD and/or the Supplemental ROD. Thus, there is no reason for this Court independently to review the RODs, whether or not they are final agency actions. Any issue that arises from the RODs and is ripe for review also arises from the contracts and is likewise ripe for review. Similarly, any issue unripe for adjudication is unripe under both the RODs and the contracts.

[17]Determining the "rate" that applies to purchases of power by Alcoa is complicated because BPA opted to deliver a monetary benefit rather than physical power. As noted, BPA agreed to pay Alcoa the difference between the rate that Alcoa must pay to purchase physical power (i.e., the market rate) and the PF rate for the first 320 aMW of power Alcoa consumes each year. BPA, however, capped the price differential it is willing to pay at $24/MWh (or less if Alcoa uses more than one-half of its allotted capacity). Thus, if the market price of power exceeds the PF rate by more than $24/MWh (or the applicable cap), Alcoa must pay more than the PF rate for its power purchases, although still less than the market rate. In addition, Alcoa receives no payment — and therefore must pay the full market price — for purchases of power in excess of the 320 aMW limit imposed by BPA. In sum, BPA's contract with Alcoa requires Alcoa to pay a market-*based* rate — although less than the market rate — for the first 320 aMW Alcoa purchases each year, and the full market rate for any purchases above 320 aMW.

other hand, argues that the rate assumptions that determine the monetary benefit BPA pays to the aluminum DSIs are impermissibly low and thereby result in an unlawful subsidy.

This issue is ripe for review. While this Court ordinarily is not permitted to review rate-making decisions until those decisions are final and have been approved by FERC, *see Ass'n of Public Agency Customers*, 126 F.3d at 1177, 1179, BPA affirmatively stated in the Supplemental ROD that "[a] formal rate proceeding is not legally required for BPA to negotiate a rate within [the FPS] rate schedule . . . and[,] in this case in particular, would add little or nothing to the record already developed . . . ." BPA, in other words, has indicated that it does not plan to seek approval from FERC of the rate assumptions underlying the monetary payments or use the formal rate-making procedures outlined in § 839e(i) with respect to those payments. Because the parties do not challenge BPA's assertion that no formal rate-making procedure, including FERC approval, is required here, we assume, without deciding, that BPA is correct. As BPA plans to take no further action with respect to the amount of monetary benefits specified in the DSI contracts or the method by which they are calculated, the benefit mechanism represents the "consummation of the agency's decisionmaking process" by which BPA's "obligations . . . [were] determined," *see Bennett v. Spear*, 520 U.S. 154, 178 (1997) (internal quotation marks and citations omitted), and thus qualifies as a final agency action subject to our review under the catch-all review category.

For similar reasons, Industrial Customers' challenge to the rate applicable to the sale of power to Clallam is also ripe for review. Industrial Customers argues that the BPA/Clallam contract rate is impermissibly low because it is "not the DSI rate, the NR rate for new large single loads, or the market price of electricity." Like the rate used to calculate the level of the aluminum DSIs' monetary benefit, the BPA/Clallam contract rate is a negotiated rate made pursuant to the FPS

rate schedule. As noted, BPA asserts that it is not legally required to seek FERC approval of a rate negotiated under the FPS rate schedule.[18] Because the agency provides no indication that it nonetheless plans to seek FERC approval of the Clallam contract rates,[19] we can only assume that it does not plan to do so. A review of BPA's notice of proposed 2007 wholesale power rates, which describes the scope of BPA's 2007 wholesale rate-making process, confirms this assumption. *See* 70 Fed. Reg. 67,685 (Nov. 8, 2005). In the ratemaking notice, BPA states:

> The DSI Service decisions [embodied in the RODs] *finalized* and *established* the manner and method by which BPA would provide service and benefits to its DSI customers[, including Port Townsend]. The decisions in that ROD resolved the method and level of service to be provided DSIs in the FY 2007-2011 period. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit the appropriateness or reasonableness of BPA's decisions made in the DSI ROD.

*Id.* at 67,689 (emphasis added). Because no parties contest BPA's claim that the Clallam contract rates have been "finalized" and "established," we hold that ICNU's challenge to that rate is ripe for review.

In its final challenge, the Cooperative asserts that BPA

[18]Again, because the parties do not challenge this assertion, we assume, without deciding, that BPA is not legally obligated to conduct a ratemaking proceeding either before or after it negotiates a rate under the FPS rate schedule.

[19]In fact, BPA concedes that this Court has jurisdiction to review ICNU's petition.

lacks statutory authority to allocate the costs it will incur under the contracts with the DSIs into the rates the agency charges its preference customers. We lack jurisdiction to review this challenge, because it is not, at present, ripe for adjudication. *See, e.g.*, *DBSI/TRI IV Ltd. P'ship v. United States*, 465 F.3d 1031, 1038 (9th Cir. 2006).

It has long been established in this circuit that petitions seeking review of BPA's rate-making decisions — including both the allocation to rates of the costs of acquiring additional power, and language in power sales contracts affecting rate-making — are not reviewable until FERC has approved the rates in question. *See Ass'n of Pub. Agency Customers*, 126 F.3d at 1177, 1179; *Pub. Utils. Comm'n of Cal. v. FERC*, 814 F.2d 560, 561 (9th Cir. 1987); *Pub. Utils. Comm'r of Oregon v. BPA*, 767 F.2d 622, 629 (9th Cir. 1985) ("If FERC fails to correct any defects in the methodology [which affected rate-setting], redress is available in the court of appeals," where "any . . . cognizable challenges will be fully reviewable . . . ."). [20] Until then, we lack jurisdiction to review PNGC's challenge to BPA's allocation of the costs of the DSI contracts to its members' rates.

[20] Although ripeness concerns preclude our consideration of PNGC's challenges to BPA's *allocation* of the costs of contracting with the DSIs, no such concerns limit our jurisdiction to review BPA's authority to contract with the DSIs, and more specifically, to provide monetary benefits in lieu of physical power or to supply power at a rate that has been finalized. In considering the ripeness of petitions challenging BPA contracts, we have distinguished between challenges to contractual provisions on the grounds that those provisions will affect future rate-making and cost allocation decisions, and challenges premised on the contention that the agency lacks statutory authority to agree to specific contractual terms, even though the *injury* asserted is those terms' effect on customers' rates. *See Cal. Energy Res. Conservation & Dev. Comm'n v. Johnson*, 807 F.2d 1456, 1458-59, 1461 (9th Cir. 1986) (dismissing as unripe claims that contractual provisions unlawfully impair BPA's future rate-making and cost allocation procedures, while reviewing claim that contract violates NWPA requirements governing resource acquisition in § 839d(b)).

## III. Merits

### A. Standard of Review

Petitioners here challenge decisions made by BPA in the DSI Service ROD and Supplemental ROD and embodied in the DSI contracts. We affirm BPA's actions unless they are "arbitrary, capricious, an abuse of discretion, or in excess of statutory authority." *Aluminum Co. of Am. v. BPA*, 903 F.2d 585, 590 (9th Cir. 1990). The basis for each of the challenges brought here is a contention that BPA has exceeded its authority under its governing statutes — the Project Act, the Transmission Act, the NWPA and the RPA — or that its decisions are arbitrary and capricious.

When reviewing a challenge to an agency's statutory authority, "[o]ur inquiry must begin . . . by examining the statutory language." *Ass'n of Pub. Agency Customers*, 126 F.3d at 1169. If "Congress has spoken directly to the issue," so that there is a "clearly expressed intent," *id.* (citing *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-43 (1984)), we "reject administrative constructions of a statute that are inconsistent with the statutory mandate or that frustrate the policy Congress sought to implement." *Aluminum Co. of Am.*, 891 F.2d at 752. "When relevant statutes are silent on the salient question, we assume that Congress has implicitly left a void for [the] agency to fill," and, therefore, we "defer to the agency's construction of its governing statutes, unless that construction is unreasonable." *Ass'n of Pub. Agency Customers*, 126 F.3d at 1169; *see also Golden Nw. Aluminum*, 501 F.3d at 1045.

This Court "has been particularly deferential to BPA," *Portland Gen. Elec. Co. v. BPA*, 501 F.3d 1009, 1023 (9th Cir. 2007), "for three reasons: First, the enabling legislation is highly technical and complex. Second, the Agency was intimately involved in the drafting and . . . [third,] Congress has, for nearly half a century, monitored BPA performance in elec-

tricity regulation and allocation." *Pub. Util. Dist. No. 1 v. BPA*, 947 F.2d 386, 390 (9th Cir. 1991) (internal quotation marks omitted). In particular, we have identified the question of "how best to further BPA's business interests consistent with its public mission" as a statutory "gap" that Congress left to BPA to fill. *Ass'n of Pub. Agency Customers*, 126 F.3d at 1171 (internal quotation marks omitted). Applying appropriate deference, we uphold the agency's assessment of whether its actions "further BPA's business interests consistent with its public mission," so long as the assessment is not unreasonable. *Id.*

### B. BPA's Obligation To Supply the DSIs' Requirements for Physical Power at a Cost-Based Rate

Alcoa, the Cooperative, and BPA each offers a different interpretation of BPA's statutory authority to sell power to the DSIs. Alcoa asserts that § 839c(d) obligates the agency to sell DSIs power at a cost-based rate. By contrast, the Cooperative contends that § 839c(d) is no longer operative, and that BPA therefore has no authority to sell power to DSIs thereunder, but instead must price its sales to DSIs at market rates. BPA argues for a middle ground: it maintains that § 839c(d) authorizes but does not obligate it to sell power to the DSIs. The agency does not stop there, however. It further contends that, because it is not obligated to sell power to the DSIs, it may use its § 839c(f) authority to sell the DSIs power at an FPS rate without first offering them power at the cost-based IP rate.

For the reasons discussed in detail below, we conclude that none of these positions is entirely correct. We agree with BPA that § 839c(d) authorizes but does not obligate the agency to sell power to the DSIs. However, we also hold that, if the agency chooses to offer firm power to the DSIs, whether pursuant to its § 839c(d) or § 839c(f) authority, it must first offer them the IP rate.

### 1. Obligation To Sell Power to the DSIs

Alcoa argues that BPA's decision to guarantee only a capped, monetary benefit to the aluminum DSIs in the contracts violated the NWPA, because the NWPA creates a perpetual obligation for BPA to satisfy the DSIs' full energy requirements through sales of power at a cost-based rate. The Cooperative claims, on the other hand, that since the expiration in 2001 of the initial long term contracts mandated by § 839c(d)(1)(B), BPA no longer has authority to sell power to the DSIs under § 839c(d)(1), and, therefore, any such sale must be authorized by § 839c(f)'s provisions for the agency's sale of surplus power at a market rate. *Compare* 16 U.S.C. § 839c(d)(1)(A) ("[BPA] is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers.") *with* § 839c(f) ("[BPA] is authorized to sell, or otherwise dispose of, electric power, including power acquired pursuant to this and other Acts, that is surplus to [its] obligations incurred pursuant to subsections (b), (c), and (d) of this section, in accordance with this and other Acts applicable to [BPA] . . . ."). Because, as we explain, Congress has not "clearly expressed [its] intent" in § 839c(d), we defer to BPA's reasonable construction of the statutory text. *Ass'n of Pub. Agency Customers*, 126 F.3d at 1169. Doing so, we hold here — as we have previously assumed, but not decided[21] —that neither petitioner is entirely correct, and that

[21] *Compare M-S-R Pub. Power Agency v. BPA*, 297 F.3d 833, 838 (9th Cir. 2002) (stating in a case involving a challenge to BPA's calculation of the amount of power that the agency could sell to non-DSI customers *outside* the Pacific Northwest under § 832m, that "after October 2001 . . . § 839c(d) authorized but did not obligate BPA to sell the DSIs any power") *with Golden Nw. Aluminum Co.*, 501 F.3d at 1045 (holding that an earlier, unpublished decision, which had dismissed as untimely a challenge to BPA's contracts to sell power to the DSIs after the expiration of the initial long-term contracts, was *res judicata* with regard to BPA's authority to sell power to the DSIs under those contracts, but "express[ing] no independent view as to whether . . . § 839c(d) [ ] permits BPA to contract with its DSI customers").

"§ 839c(d) authorize[s] but d[oes] not obligate BPA to sell the DSIs any power." *M-S-R Pub. Power Agency v. BPA*, 297 F.3d 833, 838 (9th Cir. 2002).[22]

Section 839c(d)(1) reads:

> (A) The Administrator is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers. Such sales shall provide a portion of the Administrator's reserves for firm power loads within the region.
>
> (B) After [the effective date of this Act, BPA] shall offer in accordance with subsection (g) of this section to each existing direct service industrial customer an initial long term contract that provides such customer an amount of power equivalent to that to which such customer is entitled under its contract dated January or April 1975 providing for the sale of "industrial firm power."

Alcoa maintains that the use in § 839c(d)(1)(B) of the term "initial" in describing the initial long term contracts indicates Congress's intent that BPA is required to enter into successor agreements. Alcoa suggests that any interpretation to the contrary would render Congress's use of the word "initial"[23] superfluous, in contravention of basic principles of statutory construction. *Boise Cascade Corp. v. EPA*, 942 F.2d 1427, 1432 (9th Cir. 1991). The Cooperative argues, to the contrary, that the phrase "in accordance with this subsection,"

[22]Although the Supreme Court noted in *Alcoa* that, under the NWPA, the "preference rules [for regional customers] will apply to any subsequent contracts made with DSIs [following the initial long-term agreements]," it expressed no view regarding whether such "subsequent contracts" would or could include agreements for sales of firm power under § 839c(d). 467 U.S. at 395 n.10.

[23]"Initial" means "related to, or occurring at the beginning." AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000).

§ 839c(d)(1)(A), means that BPA's authority to sell power to the DSIs extends *only* to the "initial long term contracts" specified in § 839c(d)(1)(B), particularly because § 839c (d)(3) states that the agency "shall not sell amounts of electric power, including reserves, to [the] existing [DSIs] in excess of the amount permitted under [§ 839c(d)](1)," unless specific requirements, not present here, are met.

The statutory text is far from clear, but, for several reasons, does not compel the conclusion that successor sales agreements with the DSIs under § 839c(d) are prohibited.

*First*, § 839c(d)(3) specifies neither what is meant by the "the amount permitted under [§ 839c(d)](1)," nor, therefore, what additional sales are prohibited. It is true that the provision could be read to ban *any* sales of industrial firm power subsequent to those made under the initial long term contracts. On the other hand, it also could be understood as prohibiting only *concurrent* sales — that is, while the original long-term contracts were still in effect — "in excess of the amount permitted under [§ 839c(d)](1)," but not affecting *subsequent* sales of power — that is, after the initial agreements expired.

[1] BPA has adopted the latter interpretation. Its position is that it now can make new sales of power to the DSIs under § 839c(d)(1)(A), even though it previously had asserted in *Kaiser Aluminum & Chem. Corp. v. BPA*, 261 F.3d 844 (9th Cir. 2001), that it could not make such sales during the term of the initial agreements. *See id.* at 849-850 (discussing BPA's position that during the term of the initial long term contracts, the agency could not sell power under § 839c(d) in addition to that provided under the initial long-term agreements mandated in § 839c(d)(1)(B)). BPA's understanding of § 839c(d)(3) is a reasonable construction of ambiguous language and is therefore entitled to *Chevron* deference. The agency's construction of the subsection does not contradict BPA's position at the time of *Kaiser*, because *Kaiser* involved

sales during, rather than after, the term of the initial agreements. *See* 261 F.3d at 849-850.

*Second*, the use of the phrase "initial contract" gives rise to a reasonable inference that contracts following the initial long term agreements are not precluded; "initial" suggests that others may follow. The statutory context lends considerable support to this interpretation, as it provides for "initial long-term contracts" for BPA's preference customers and the IOUs as well as for the DSIs, *see* § 839c(g)(1), and definitively contemplated follow-on contracts, after the term of the initial agreements, for those groups of customers. *See* § 839c(b)(1), (b)(3), (c)(1); *see also Ass'n of Pub. Agency Customers*, 126 F.3d at 1166 (noting that "[t]he DSIs' 1981 Contracts with BPA required any DSI wanting to continue purchasing BPA power after the 20-year term to request a replacement contract by June 30, 1993," thereby assuming the authority, but not the obligation, to enter into such contracts).

*Third*, the inclusion of § 839c(d)(1)(A) in the Act as a separate, general grant of authority to BPA to sell power to the DSIs also suggests that the agency's authority to do so is not limited to the specific mandate to offer initial long-term contracts set forth in § 839c(d)(1)(B). Subsection 839c(d)(1)(A) states what BPA "is authorized" to do — sell power — without specifying any time limitation; subsection (d)(1)(B) provides what BPA "shall" do with respect to a limited time period. BPA's authorized but not obligated interpretation thus has the advantage of giving full effect to the statutory text. *See Cent. Montana Elec. Power Coop., Inc. v. Adm'r of the BPA*, 840 F.2d 1472, 1478 (9th Cir. 1988). In contrast, under the Cooperative's interpretation, the general authorization contained in subsection (A) is superfluous; subsection (B) would suffice if all that was intended was an obligation to enter into one set of contracts.

*Finally*, BPA's authorized-but-not-obligated understanding of the interrelationship of subsections (A) and (B) is also con-

sistent with the Act's legislative history. The House Interior Committee's report on S. 885 states that "[s]ection 5(d)(1) authorizes [BPA] to sell power to its existing direct-service industrial customers *and* requires [the agency] to offer to such customers initial long-term power sale contracts." H.R. Rep. No. 96-976, pt. 2, at 34 (1980) (emphasis added). Similarly, the House Commerce Committee Report on S. 885 — the bill that became the NWPA, *see Cal. Energy*, 807 F.2d at 1464 — states that "[s]ection 5(d) authorizes the Administrator to sell power to existing direct service industrial customers." H.R. Rep. No. 96-976, pt. 1, at 61 (1980). The report goes on to explain that, in addition to mandating that "[i]nitial long-term 20-year contracts are to be offered by BPA" to the DSIs, "[s]ubsequent contracts . . . are authorized but not mandated." H. Rep. No. 96-976, pt.1, at 61 (1980).

**[2]** We conclude that BPA is authorized to sell the DSIs non-surplus power under § 839c(d)(1)(A).

At the same time, we do not adopt Alcoa's suggested interpretation — that BPA is *obligated*, rather than merely authorized, to sell power to the DSIs. Contrary to Alcoa's suggestion, the phrase "initial long-term contract" does not necessarily indicate that successor agreements are required rather than permitted. That an object is at the "beginning" of a process in no way dictates that the process will continue in perpetuity. Certainly, every time Alcoa signs an "initial contract" with one of *its* customers, the company does not believe it is entering into a lifelong commitment.

Alcoa nonetheless contends that if Congress had meant to obligate BPA to enter into only one long-term contract with the DSIs, it would have simply referred to a "long-term contract," not an "initial long-term contract." But "initial" could have been meant just as a reference back to subsection (A), confirming that there may be later contracts as well.

The interpretation Alcoa suggests is not one that we, BPA, or, for that matter, Alcoa itself, previously has taken from the

text of § 839c(d)(1)(B). *See M-S-R*, 297 F.3d at 838. Nor is Alcoa's perpetual obligation position consistent with the meaning that members of Congress involved in the NWPA's enactment ascribed to the section. *See* H.R. Rep. No. 96-976, pt. 1, at 61 (stating that after the "[i]nitial long-term 20-year contracts[,] . . . . [s]ubsequent contracts . . . are authorized but not mandated.").

Alcoa sees evidence to the contrary in the legislative history of the NWPA and in BPA's own understanding of the Act at the time of its passage. The company points to a statement in the House Interior Committee Report on S. 885 that § 839c(b) "mandates continued BPA power sales to existing [DSIs]," H.R. Rep. No. 96-976 Pt. 2 at 48, and a statement by BPA's administrator that the NWPA "contemplates in [§ 839c(d)] additional, future contracts with each existing [DSI]" following the initial agreements. Alcoa reads too much into these statements.

Nothing in the above-quoted sentence from the Committee Report or its surrounding text indicates that "continued . . . power sales" is for sales *after* the initial agreements, as opposed to the initial agreements themselves (which are, of course, "mandate[s]"). Indeed, additional language in the Committee Report supports the latter interpretation: "Existing DSIs will receive the amount of power to which they are entitled under present 'Industrial Firm' power sales agreements." H.R. Rep. No. 96-976, pt. 2, at 48. Moreover, BPA's administrator's statement that subsequent contracts are "contemplated" under § 839c(d) — a far from imperative term — is completely consistent with the view that the Act "authorized but did not obligate BPA to sell the DSIs any power." *M-S-R*, 297 F.3d at 838.

[3] Alcoa further argues that because "[u]nder accepted canons of statutory interpretation, we must interpret statutes as a whole," *Boise Cascade*, 942 F.2d at 1432, Congress's mention of sales to the DSIs in various sections of the NWPA

shows that it intended BPA to have an ongoing obligation to sell power to them. The strongest support for this contention is the requirement in § 839c(d)(1)(A) that "sales [to the DSIs] shall provide a portion of the [BPA]'s reserves for firm power loads." Alcoa maintains that this language requires ongoing sales by BPA to the DSIs, so as to provide these reserves.

[4] Again, the plain text of the statute permits but does not command the interpretation Alcoa suggests. The language in question *could* be read to recognize such a requirement. But it also reasonably can be read to mean that *if* BPA elects to sell power to the DSIs under § 839c(d), a portion of this power must be available to BPA as reserves. BPA adopted the latter interpretation as more consistent with the NWPA as a whole, which, according to BPA, indicates that Congress was focused on assuring that BPA has some reserves to protect its operations, rather than on the particular source of these reserves. *See, e.g.*, § 839a(17) (defining "[r]eserves" as "electric power needed to avert particular planning or operating shortages . . . [that are] available to [BPA] (A) from resources *or* (B) from rights to interrupt . . . portions of the electric power supplied to customers.") (emphasis added). BPA's interpretation of the ambiguous "reserves" language is reasonable, and so entitled to *Chevron* deference.

Nor do the other sections of the NWPA which discuss sales to the DSIs compel us to reach the conclusion Alcoa proposes. Contrary to Alcoa's assertion, the fact that § 839e(b)(2)(A)(I) requires BPA to take into account the costs of "[DSI] customer loads *which are* . . . served by [BPA]" (emphasis added), in its rate ceiling does not prove that DSI loads *must* be served by BPA. Again, it is just as reasonable to read the provision to require that *if* BPA chooses to serve DSI loads, it must take the costs of such service into account.

Along these same lines, the fact that we have construed § 839b(d)(2), which provides that BPA must act in accor-

dance with a regional power plan,[24] to require that BPA's regional plan reflect loads for which the DSIs have *requested* service, *see M-S-R*, 297 F.3d at 844, does not mean that BPA is obligated to satisfy that request. Instead, our stated assumption when announcing this holding was that BPA is "authorized but . . . not obligate[d]" to serve the DSIs. *Id.* at 838.

Alcoa's position that the NWPA must be understood to mandate perpetual sales to the DSIs is further undermined by another consideration: When Congress did want to impose an obligation to supply a class of customers with their requirements for power, it did so quite explicitly. With regard to preference customers and the IOUs, the NWPA provides that, "*[w]henever requested*, [BPA] *shall* offer to sell to each requesting public body and cooperative entitled to preference and priority . . . and to each requesting [IOU] electric power to meet the firm power load of such [customer] . . . ." § 839c(b)(1) (emphasis added). The DSIs are not mentioned as customers to whom this language applies, and the NWPA does not contain any other equivalent provision concerning BPA's sales to them. While Congress specifically directed BPA to provide "initial long-term contracts" to *all* of its traditional classes of customers, *see* § 839c(g)(1)(A)-(D), it only mandated that the agency provide power "whenever requested," § 839c(b)(1), to only *some* of them — and not to the DSIs. We must infer, therefore, that Congress intended to exclude service to the aluminum DSIs from this general mandate. *See White v. Lambert*, 370 F.3d 1002, 1011 (9th Cir. 2004) ("It is axiomatic that when Congress uses different text in 'adjacent' statutes it intends that the different terms carry a different meaning."); *see also, e.g., Barnhart v. Peabody*

[24]Section 839b(d)(2) states: "Following adoption of the [regional conservation and electric power] plan and any amendment thereto, all actions of the Administrator pursuant to section 839d of this title [— which concerns the acquisition of resources to meet BPA's contractual obligations —] shall be consistent with the plan and any amendment thereto, except as otherwise specifically provided in this chapter."

*Coal Co.*, 537 U.S. 149, 168 (2003) (applying the canon of *expressio unius est exclusio alterius*).[25]

[5] We conclude, in sum, that BPA's interpretation of the NWPA as authorizing but not obligating the agency to sell nonsurplus firm power to the DSIs is a reasonable one. We therefore reject both the Cooperative's contention that such sales are prohibited and Alcoa's contention that BPA has an ongoing obligation to sell power to the DSIs under § 839c(d)(1).

### 2. Obligation to Offer Power at a Cost-Based Rate

As explained in note 17, *supra*, under the monetary benefit provisions in the aluminum DSI contracts, the rate the DSIs ultimately pay for the physical delivery of power once the BPA monetary payments are taken into account, while below the market rate, is nonetheless subject to market fluctuations and increases when market rates rise above a certain point. Unhappy with this exposure to market volatility, Alcoa argues

[25]The difference in treatment between sales to preference customers and IOUs on the one hand and sales to DSIs on the other is reflected in the legislative history of the NWPA. Concerning sales of power to preference customers and the IOUs, the House Interior Committee Report states,

> [S]ection 5(b)(1) requires the Administrator, if requested, to enter into long-term power sale contracts with both preference and investor-owned utilities in the region to supply them with the firm power they need to meet their firm loads . . . .

H. Rep. No. 96-976, pt. 2, at 33 (1980). "The practical effect of this mandate," the report observes, is that "preference utilities . . . will continue to have all their firm power needs in the region met by BPA . . . ." *Id.* No such consequences are noted in regard to sales to the DSIs. *See id.* at 34 ("Section 5(d)(1) . . . *authorizes* the Administrator to sell power to its existing direct-service industrial customers and requires him to offer to such customers *initial* long-term power sale contracts. . . .") (emphasis added). Thus, the committee report suggests that Congress was creating an *ongoing* requirement that BPA provide "long-term power sale contracts" to preference customers and the IOUs, but was only requiring "*initial* long-term power sale contracts" for the DSIs. *Id.* (emphasis added).

that BPA must sell it power at a purely cost-based rate that does not vary with market rates. By contrast, BPA asserts that its governing statutes do not obligate it even to offer the DSIs a cost-based rate, let alone supply power (or its monetary equivalent) at such a rate. Rather, BPA contends that it may offer power to the DSIs as "surplus" power under § 839c(f) at the FPS rate schedule — which, as discussed, we are assuming permits BPA to offer power at any mutually-agreed upon rate, including market-based rates — without first offering that power to the DSIs at one of its FERC-approved, cost-based rates.

Alcoa does not clearly indicate which of BPA's three published cost-based rates — the PF rate, the IP rate, and the NR rate — it believes it is statutorily entitled to. Because the IP rate, which § 839c(c) describes as "the rate . . . applicable to direct service industrial customers," is the most obvious contender, we consider that rate first.

### a. The IP rate

According to BPA's interpretation of the NWPA, the IP rate applies only to sales that BPA makes to DSIs pursuant to § 839c(d). *Id.* BPA then notes, as we have also concluded, that § 839c(d) authorizes, but does not obligate, the agency to sell power to the DSIs. The agency concludes from this circumstance that any power in excess of that (1) which is requested by its preference customers or IOUs under § 839c(b) and (c), or (2) which the agency itself elects to sell the DSIs under § 839c(d), qualifies as "[s]urplus power" that BPA is authorized "to sell, or otherwise dispose of" under § 839c(f). BPA sells such "surplus power" pursuant to the FPS rate schedule at a negotiated FPS rate. Thus, by refusing to sell to the DSIs pursuant to its authority under section 839c(d), BPA believes, it can effectively create "surplus power" that it can then offer to sell to the DSIs (or any other in-region customers) at any rate it chooses.

BPA's interpretation of § 839e(c) and its relationship with § 839c(d) is unreasonable on two grounds. First, it ignores the plain language of the statute and, in so doing, renders the IP rate superfluous. Second, it runs counter to the NWPA's legislative history, which evinces Congress's intent that BPA offer power to the DSIs, if at all, at the IP rate, not at some other rate of its choosing. For these reasons, we hold that BPA, when entering into contracts for the sale of firm power to a DSI, must initially offer the IP rate.[28] Only after the DSIs have refused to purchase power at the IP rate may BPA offer them power under the FPS rate schedule.

[28]This holding pertains to sales, like the contracts at issue, of "firm power" to DSI customers. *See* Wholesale Power Rate Schedule at 130 (defining "firm power" as "electric power (capacity and energy) that BPA will make continuously available under contracts executed pursuant to Section 5 of the Northwest Power Act"). We are not deciding whether BPA must offer the IP rate to DSIs when selling "nonfirm" power.

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### i. Statutory Analysis

[6] The language of § 839e(c), which is entitled "Rates applicable to direct service industrial customers," does not support BPA's contention that the IP rate applies only to sales made pursuant to § 839c(d). Section 839e(c) states, in relevant part,

> (1) The rate or rates applicable to direct service industrial customers shall be established — . . .
>
> (B) for the period beginning July 1, 1985, at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region.
>
> (2) The determination under paragraph (1)(B) of this subsection shall be based upon the Administrator's applicable wholesale rates to such public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail industrial rates but shall take into account —
>
> (A) the comparative size and character of the loads served,
>
> (B) the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions, and
>
> (C) direct and indirect overhead costs, all as related to the delivery of power to industrial customers, except that the Administrator's rates during such period shall in no event be less than the rates in effect for the contract year ending on June 30, 1985.

The statutory text does not reference section 839c(d) or otherwise suggest the limitation BPA reads into it. Rather, it straightforwardly — and generally — states "the rate or rates applicable *to direct service industrial customers* shall be established" pursuant to certain standards. § 839e(c) (emphasis added).

Second, and more importantly, BPA's position would render the IP rate a nullity. If this Court were to adopt BPA's interpretation of §§ 839e(c) and 839c(d), BPA would retain complete discretion over the decision whether to offer DSIs power at the purely cost-based IP rate or at an FPS rate of BPA's choosing, including a market-based rate higher than the IP rate. Basic economics establishes that a rational seller of a commodity product, if provided a choice between the market rate and a cost-based rate, will either choose to offer the market rate (if the market rate exceeds the cost-based rate) or be forced to accept the market rate (if the market rate is below the cost-based rate). Thus, BPA, if acting rationally and in accordance with its "mandate to operate with a business-oriented philosophy," *see Ass'n of Pub. Agency Customers*, 126 F.3d at 1171, would *never* sell power to the DSIs at the IP rate.[27] Why would Congress have required BPA to "establish" a rate, specified the formula it would be "based upon," and stated that "*the* rate or rates" are "applicable to [DSI] customers," § 839e(c) (emphasis added), if that rate could not possibly apply to any sale?

In its initial ROD, BPA states that it chose not to use the IP rate as the baseline for calculating the monetary benefits payable to the DSIs because it believed the DSIs could not afford the rate and would therefore reject any contract that provided power (or its monetary equivalent) at that rate. Whether or not this assertion is correct, it does not excuse BPA's failure to at least offer the rate, because the DSIs will not always prefer an FPS rate.

[7] In *Kaiser*, for example, the DSIs sought to purchase power at the IP rate once that rate became more economical than a market-based FPS rate. *See Kaiser*, 261 F.3d at 848. Were we to agree that BPA has complete discretion to select between the IP rate and an FPS rate, BPA would, as noted,

[27]Except, of course, in the extremely unlikely event that the IP rate and the market rate were identical.

always choose an FPS rate, and the DSIs would never receive the option to purchase power at the IP rate. Our conclusion is supported by BPA's actions in *Kaiser*, where, when presented with the opportunity to charge an FPS rate rather than the IP rate, BPA did so. *See id.* Because Congress must have intended the IP rate to apply to at least *some* contracts, we conclude that BPA must at least offer the IP rate, established pursuant to section 839e(c), to the DSIs before entering into a contract with the DSIs at a rate authorized under the FPS rate schedule.[28]

### ii. Legislative History

Our conclusion that BPA's interpretation of its governing statutes is unreasonable is further underscored by the fact that it contradicts the legislative history of the Act. That history contains extensive evidence that Congress intended the IP rate to be the default price for sales of power to the DSIs, and

[28]At oral argument, as in its opening brief, Alcoa alleged that the rate BPA agreed to charge Clallam — a rate "equal to [the PF rate] . . . plus the typical industrial margin used to establish the [IP rate]"— "mirror[s] the statutory standard for [the IP] rate[ ] found at" § 839e(c). *See* § 839e(c)(1)-(2) (stating that the IP rate shall be established at a rate "equitable in relation to . . . [the PF rate plus] the typical margins included by [public utilities and cooperatives] in their retail industrial rates [plus other factors]"). Counsel for Alcoa then asserted that, because the Clallam contract rate is equivalent to the IP rate, the company is entitled to the Clallam contract rate. This argument is without merit for two reasons. First, although the language BPA used to describe the Clallam contract rate is similar to the language that describes the method by which the IP rate is calculated, the Clallam contract expressly indicates that the rate is an agreed-upon FPS rate, not the IP rate. Second, the rate which appears in the Clallam contract could not possibly be the equivalent of the rate that BPA is required to establish under § 839e(c), because the agreed-upon rate of approximately $28/MWh is $17/MWh less than the published IP rate for the year ending September 30, 2007. In short, although the Clallam contract rate appears, at first glance, to be the same thing as the IP rate, it is *not* the IP rate to which the DSIs are entitled. The IP rate that BPA must offer the DSIs is the one it establishes pursuant to § 839e(c) and (i).

gives little indication that Congress intended BPA to have discretion to offer them power at a self-created FPS rate instead.

First, relevant Committee Reports make clear that "rates applicable to direct service industrial customers" are those set under Section 7(c) of the Act, i.e., § 839e(c). H.R. Rep. No. 96-976, pt. 1, at 69 ("Section 7(c) prescribes the rates applicable to direct service industrial customers."); S. Rep. No. 96-272 at 59 ("This rate applies to all 'Industrial Firm' sales to BPA's direct-service industries . . . [for] 1985-86 *and all future [sales].*") (emphasis added).

By contrast, there is no indication that Congress intended BPA to offer power to the DSIs at rates set under § 839c(f), when it can do so at a rate set under § 839e(c). The House Commerce Committee Report describes Section 7(f) of the Act, which became 16 U.S.C. § 839e(f), as providing the authority for "establish[ing] the rate or rates for sales to investor-owned utilities other than sales pursuant to the [residential] exchange [program], preference customers for power needed to meet the requirements of new large single 'loads' and all other miscellaneous sales." H.R. Rep. No. 96-976, pt. 1, at 69. Noticeably absent from this list are direct sales to DSIs. Similarly, sales made under § 7(f) are described in the Senate Report as exclusive of sales to the DSIs under §7(c) (§ 839e(c)). *Compare* S. Rep. 96-272 at 56 (discussing § 7(c) and stating that "after June 1985 the rate applicable to BPA direct service industrial customers will be based upon the retail rates applicable to industry served by BPA preference utility customers.") *with id.* at 60 ("[S]ubsection 7(f) of the proposed legislation[:] . . . [t]his rate applies to *all other* firm sales including but not limited to (1) Investor-owned utility total load growth . . . (2) New Large Industrial loads served by preference customers; (3) Amounts of additional power needed by Regional Rate loads . . . once such loads exceed the

capability of the Federal Base System resources and the IOU Exchange Power . . . .") (emphasis added).[29]

### iii. *Kaiser Aluminum*

BPA's capstone argument on this point is that its decision not to sell power to the DSIs at the IP rate cannot be unreasonable as it is consistent with the decision in *Kaiser Aluminum & Chem. Corp. v. BPA*, 261 F.3d 843 (9th Cir. 2001). In *Kaiser Aluminum*,

> Petitioners argue[d] that the only rate established for the sale of the Surplus Firm Power is the IP-96 rate, and BPA abused its authority when it refused to sell the Surplus Firm Power at that rate. Petitioners further contend[ed] that because BPA refused to sell Petitioners the Surplus Firm Power at the IP-96 rate and evidence indicates that BPA sold power at the FPS-96 rate outside the Pacific Northwest, Petitioners were not granted their regional preference under the Preference Act.

[29]Contrary to BPA's assertions, the legislative history of 16 U.S.C. § 832m, the later-enacted provision which establishes "excess Federal power," *id.*, as a "subspecies of surplus power," *M-S-R-*, 297 F.3d at 837, does not support the agency's contentions regarding the rate at which BPA must offer power that is *not* "excess federal power" to regional customers before selling it outside the region. Congress's expectation that BPA "would offer excess power first to regional customers under the same essential rate . . . as for the proposed out-of-region sale[s]," H.R. Rep. No. 104-293, at 91 (1995) is not a basis for inferring that the same would be true of sales that do not involve excess power.

As the passage in the conference report that BPA cites in support of its argument makes clear, the only energy that can be sold as excess power is "power abandoned by regional customers and . . . power generated or purchased for the benefit of fish and wildlife." *Id.* A key reason for creating the "excess federal power" category was to remove otherwise applicable regional preference restrictions in the case of sales of power that has been "abandoned by regional customers." *Id.* The passage BPA cites does not speak to the "applicable rate schedule" for sales to regional customers of power that they have not "abandoned." *Id.*

261 F.3d at 848. The IP-96 rate was, at that time, the rate "applicable to [DSI] customers" under § 839e(c), while the FPS rate was a rate schedule for sales of "all other . . . power," under § 839e(f). *See Kaiser*, 261 F.3d at 850. Our holding in *Kaiser* was that "BPA acted reasonably and in conformity with governing statutes when it offered to sell [the DSIs] Surplus Firm Power at the FPS-96 rate, and rejected Petitioners' offers to purchase such power from BPA at the IP-96 rate." *Id.* at 851. Despite a superficial similarity to the circumstances of this case, for reasons we now explain *Kaiser* does not negate but, instead, underscores the unreasonableness of BPA's interpretation of its governing statutes as applied here.

Most importantly, BPA glosses over key distinctions between the statutory and factual context in *Kaiser* and the one we face here. In *Kaiser*, the DSIs sought to purchase power from BPA in 1999, prior to the 2001 expiration date of the initial longterm contracts mandated by the NWPA. *See id.* at 846, 848. The DSIs had, however, terminated or waived portions of their purchase rights under the initial longterm contracts, so the power the DSIs wanted to buy was "surplus to BPA's long term obligations" to them under the contracts. *Id.* at 846-47, 851.[30]

[30]As we recounted in *Kaiser*, the reason the DSIs relinquished these rights was that in the mid-1990s the market price for electric energy, and, thus, the FPS rate, was, for a time, actually *lower* than the IP rate for power sold to the DSIs under the initial longterm contracts. *Id.* at 846. As a result, "the market prevent[ed] BPA from selling any additional power to the DSIs under their [initial] power sales contract[s]." *Id.* at 850 (quoting BPA 1996 Rate ROD). When the DSIs terminated or waived the portions of their power allotments, the power they could have purchased under the initial contracts thus became surplus firm power. *Id.* at 850 ("[O]ne of the reasons BPA has available surplus power is because [DSI] Petitioners reduced their obligation to purchase power under their previous long term power sales contracts."). When energy prices rose again in the late 1990s, making the IP rate attractive once again, these DSIs tried to obtain new agreements from BPA to purchase power at that rate. *See id.* at 848.

The agency's position in *Kaiser*, therefore, was not simply that it had no *obligation* to make the new sales under the § 839e(c) rates that the DSIs wanted, but that it also lacked statutory *authority* to do so under § 839c(d). BPA's contention, which we accepted, was that the requested transactions would constitute a sale under § 839c(d) of power "in excess"[31] of the initial longterm contracts, which was prohibited by § 839c(d)(3).[32] *Kaiser*, 261 F.3d at 850. BPA, we concluded, could not sell power to the DSIs at the IP-96 rate because this rate was established only for industrial firm power, which, at that time, could be sold only under the original longterm agreements. *See id.* at 850 ("[A]dditional power sales to DSIs are not covered by Section [839e](c), under which the IP-96 rate was authorized, because that section requires the establishment of rates for DSIs under Section [839c](d), the section which provides for the sale of Industrial Firm Power by means of long term contracts with the DSIs.").

In sum, the power the DSIs sought to purchase from BPA in *Kaiser* was energy that was not required by the agency's preference customers or the IOUs, but that also could not be sold to the DSIs at the IP-96 rate. *See id* at 848-50. We did not face in *Kaiser*, as we do here, a situation in which the agency has failed to offer the DSIs contracts for industrial firm power at the IP rate even though it is authorized to do so.

[31]Section 839c(d)(3) states: "The Administrator shall not sell amounts of electric power, including reserves, to existing direct service industrial customers in excess of the amount permitted under [§ 839c(d)(1)] unless [certain specific conditions are met]."

[32]The position BPA articulated in *Kaiser* was that: (1) "the IP-96 rate" was "applicable [only] to the sale of Industrial Firm Power" (2) "Industrial Firm Power" is limited to power that "that BPA will make continuously available to a direct-service industrial (DSI) purchaser subject to the terms of the Purchaser's power sales contract with BPA"; and (3) as a result, the DSIs "are entitled to purchase under the IP-96 rate only that amount of power each has agreed to purchase under the 1981 power sales contracts or the 1996 Block Sales Contracts." *Kaiser*, 261 F.3d at 849.

Indeed, BPA does not assert here, as it did in *Kaiser*, that its governing statutes *preclude* it from offering power to the DSIs at the IP rate. *See id.* at 849. In fact, BPA makes the opposite assertion: It argues that it *is* statutorily authorized to sell firm power to the DSIs at the IP rate, but is simply choosing not to do so. Thus, BPA's and this Court's justification in *Kaiser* for allowing BPA to sell power at the FPS rate rather than the IP rate — namely, that BPA was precluded by statute from offering the IP rate due to its prior contractual obligation — is wholly absent here. *See Kaiser*, 261 F.3d at 850.

Our interpretation of the governing statutes as requiring that BPA first offer the DSIs power at the IP rate is not only faithful to the statutes' text, it is also more consistent with BPA's own understanding at the time of *Kaiser* and before of the requirements of §§ 839c and 839e. The key claim raised by the DSIs in *Kaiser* was that BPA's decision to offer energy only at the FPS-96 rate schedule was inconsistent with the agency's position in its 1996 Rate ROD concerning the applicability of the FPS-96 and IP-96 rates. *See Kaiser*, 261 F.3d at 849. The position adopted by BPA in the 1996 Rate ROD was, in essence, the opposite of the one that the agency argues here. In the 1996 Rate ROD, BPA stated that

> BPA will not sell power to the DSIs under the FPS rate schedule if it is able to make the sale at the IP rate . . . . Any DSI load that BPA obtains under the FPS schedule rate is load it otherwise would have lost to the competition; BPA will make sales to the DSIs under the FPS rate schedule only when the alternative is the loss of the load. The FPS rate schedule is not an alternative to the IP-96 rate.

*Kaiser*, 261 F.3d at 849 (quoting 1996 Rate ROD). In other words, BPA's position was that it would only sell power to the DSIs at an FPS rate if it was *not* "able to make the sale at the IP rate." *Id.* We relied upon this position of BPA's in *Kaiser*, noting that

> [t]he fact that BPA indicated the IP and FPS rates are not interchangeable, and it will not make sales under the FPS rate when it can make sales at the IP rate, does not answer the question of when BPA is permitted to make sales under the IP rate. If BPA is not permitted to make sales of Surplus Firm Power under the IP rate, then it is not impermissibly substituting the FPS rate for the IP rate.

*Id.* at 850. Following the expiration of BPA's pre-2001 contracts, the "question of when BPA is permitted to make sales under the IP rate," *id.*, now has a different answer, *see* Part III.B.1, *supra*. The interpretation of the NWPA that BPA adopted in the 1996 Rate ROD, and that we upheld as reasonable in *Kaiser*, therefore leads to a different outcome in this case.

As we recently noted, "[a]n agency is entitled to change its course when its view of what is in the public's interest changes[,]" but "an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored . . . ." *Nw. Envtl. Def. Ctr. v. BPA*, 477 F.3d 668, 687-688 (9th Cir. 2007) (internal quotation marks and citation omitted). Here, BPA does not simply ignore the interpretation of the NWPA that it relied upon in *Kaiser*. Instead, the agency argues that our holdings in that case now support a view of its authority quite contrary to its prior position. In other words, BPA asks us to accept that a change in course is no change at all. An agency that does not admit to have changed its position does not "supply a reasoned analysis" for having done so. *Id.* at 687.

We conclude that *Kaiser* supports, rather than conflicts with, our understanding that BPA does have an obligation to offer the DSIs a cost-based rate — namely, the IP rate — before declaring energy as surplus under § 839c(f) and selling it to the DSIs at a market-based — or other — FPS rate.

### iv. The Regional Preference Act

Alcoa goes on to argue at length that the Regional Preference Act precludes BPA from offering power outside of the Pacific Northwest unless it first offers that power to in-region customers at a cost-based rate. As BPA correctly points out, the contracts at issue involve sales of power to customers (the DSIs) who are *in-region* customers; BPA is not, in other words, attempting in the challenged contracts to sell surplus power outside the Pacific Northwest. Moreover, BPA states in footnote 20 of its brief that it

> makes . . . offers [to sell surplus power outside the Pacific Northwest] by postings on its website. If such sales takes place and if, at that time, Alcoa believes BPA has not complied with its obligations under the Regional Preference Act, then Alcoa can challenge such sale(s) by filing a timely petition for review. At this juncture, however, there is no credible issue that arises under the Regional Preference Act.

Resp. Br. at 84 n.20. In light of BPA's assurances that Alcoa can challenge out-of-region power sale contracts and the fact that it has not done so in this action, we hold that Alcoa's RPA-based arguments are not ripe for adjudication at this time.[33]

### v. Conclusion

**[8]** We conclude that BPA's interpretation of its governing statutes as providing authority to sell surplus power to the DSIs under § 839c(f) at an FPS rate without first offering to sell that amount of power under either § 839c(d) or § 839c(f) at a rate set under § 839e(c) is not reasonable. The statutory

[33]Should Alcoa later challenge an out-of-region sale in the manner BPA describes, the agency, of course, will be bound by its representation in this case that such a challenge is procedurally proper.

text of the NWPA, the agency's own prior interpretation of the Act, and the NWPA's legislative history, are all to the contrary. We therefore hold that BPA improperly refused to offer the aluminum DSIs energy at a rate set under § 839e(c) before selling them power at an FPS rate.

### b. The PF rate

[9] Having concluded that BPA must first offer DSIs the IP rate — and in light of Alcoa's failure to identify which cost-based rate it thinks it deserves — we next consider whether the DSIs are also entitled to an offer at the PF rate. We hold that they are not. Section 839e(b), which provides for the establishment of the PF rate, expressly states the customer groups to which that rate applies: "public body, cooperative, and Federal agency customers within the Pacific Northwest and . . . [investor-owned] electric utilities [who participate in the residential exchange program]." § 839e(b). The DSIs are none of these. *See Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) ("[W]hen the items expressed are members of an associated group . . . the inference [is] that items not mentioned were excluded by deliberate choice . . .") (internal quotation marks omitted). In addition, the fact that Congress, in the very next subsection, defined a distinct rate applicable specifically — and solely — to "direct service industrial customers" demonstrates that it intended to treat the DSIs separately from those customer groups defined in § 839e(b). *See* § 839e(c). In sum, the plain language of § 839e(b) & (c) permits only one conclusion: that the DSIs are not entitled to the PF rate.

## C. Monetization of Energy Contracts

Both Alcoa and the Cooperative challenge BPA's authority to offer the DSIs a monetary benefit in lieu of delivering physical power. Alcoa argues that the text, structure, and legislative history of the NWPA require BPA to physically deliver power. The Cooperative contends, likewise, that BPA

lacks statutory authority for the payments to the DSIs, which the Cooperative claims are "subsidies" and barred by the governing statutes. BPA's counter to both of these challenges is that its ability to monetize the DSI contracts is consistent with (1) its statutory mandate to sell power "with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles," *see* § 838g, and (2) its general authority to enter into contracts, *see* §§ 832a(f), 839f(a). We conclude that BPA's interpretation of its governing statutes is reasonable and that, under appropriate circumstances, BPA may lawfully monetize its energy contracts. Such circumstances, however, do not exist here. We therefore also hold that BPA's decision to monetize the aluminum DSI contracts amounts to an impermissible subsidy of those companies' operations. Because, by its own admission, BPA is not obligated to sell power to the DSIs, its decision to sell power voluntarily at a rate below what it is statutorily required to offer (i.e., the IP rate) and below what it could receive on the open market violates its statutory mandate to act in accordance with "sound business principles." *See* § 838g.

### 1. Authority to Monetize Generally

**[10]** Other than a provision related to the sale of energy to IOUs, *see* § 839c(c), there is no explicit statutory language in the NWPA that either allows or prohibits BPA from monetizing energy contracts. To the extent that "the relevant statutes are silent on the salient issue," we "defer to [BPA]'s [statutory] construction . . . unless that construction is unreasonable." *Ass'n of Pub. Agency Customers,* 126 F.3d at 1169.

**[11]** BPA's explanation of its purported authority to "monetize" the sale of power — that is, to provide the DSIs with money in lieu of physical power — begins with the observation that the agency has broad authority under its governing statutes to enter into contracts. *See* §§ 832a(f) ("Subject only to the provisions of this chapter [of the Project Act], [BPA]

is authorized to enter into such contracts, agreements, and arrangements . . . upon such terms and conditions and in such manner as [it] may deem necessary."), 839f(a) ("Subject to the provisions of this chapter [of the NWPA], the [BPA] is authorized to contract in accordance with [§ 832a(f)]"). Congress also vested BPA with the authority to acquire power, including purchasing energy on the open market, if needed to meet its contractual obligations. *See* § 839d(a)(2)(A) ("[T]he Administrator shall acquire . . . sufficient resources — (A) to meet his contractual obligations . . . ."); *see also Alcoa*, 467 U.S. at 386 & n.5 (noting that the NWPA, for the first time, provided BPA with the "authority to own, construct, or *purchase* the output or capability of electricity generating plants") (emphasis added). And, as already discussed, BPA is authorized by statute to contract with the DSIs for the sale of power, and must offer to do so at the IP rate. *See* Part III.B, *supra*. Because BPA has the statutory authority to sell power to the DSIs at valid contract rates and to purchase at market rates the power needed to service those contracts, it is reasonable for BPA to conclude that it has the authority to simply pay the difference between the valid contract rates and a higher market rate, if any. If BPA places no cap on the amount of its monetary payments to the customer, the customer should be largely indifferent between the payment and the delivery of physical power. Moreover, as BPA asserts, monetization reduces its financial costs because it circumvents the risk that a customer will default on payment after power is physically delivered. When BPA lowers its costs, all customers, including preferential customers, benefit. Thus, monetization, if utilized under appropriate circumstances, is also consistent with BPA's mandate to maintain "the lowest possible rates to consumers consistent with sound business principles." § 838g.

Further, as BPA represents, monetization of energy contracts appears to be a common industry practice, confirming that the practice is not inherently inconsistent with "sound business practices." BPA states that "[l]ong-term power sales

and exchange contracts frequently include provisions that specifically provide the option to cash out an energy delivery under specific circumstances." As evidence of this practice, BPA cites its decision to buy back energy obligations from customers, including DSI customers, during the west coast energy crisis of 2001. Neither Alcoa nor the Cooperative challenges the existence of this general industry practice.

[12] For the above reasons, we hold that BPA can monetize its energy contracts with the DSIs, so long as the decision to monetize is otherwise consistent with BPA's statutory obligations. *See Portland Gen.*, 501 F.3d at 1036-37 (holding that BPA's statutory authority to enter into settlement agreements pursuant to section 2(f) of the Project Act is cabined by the agency's other statutory obligations).

### 2. Monetization of Aluminum DSI Contracts

[13] Despite our conclusion that BPA has, in some circumstances, the statutory authority to monetize its contracts, we hold that monetization of the aluminum DSI contracts was improper. The decision to monetize embodied in the agreements violated other statutory obligations, namely, BPA's mandate to provide "the lowest possible rates to consumers consistent with sound business principles." § 838g. When it committed itself to the particular monetary benefit provisions in the DSI contracts, BPA, in effect, agreed to supply some power to the DSIs — although not as much as they wanted — at a rate that is below both the market rate *and* the IP rate and could be as low as the PF rate.[34] *See* DSI Service ROD

[34]The monetization provisions do not, of course, involve the actual sale of physical power by BPA to the DSIs. Those provisions, however, commit BPA to paying the DSIs the difference between the rate they pay for power on the open market and a rate denominated an FPS rate but essentially equivalent in amount to the PF rate, subject to the limitations discussed at pp. 16528-29, *supra*. Assuming that power is readily available for purchase on the open market by the DSIs, the monetization provisions will therefore achieve a result functionally equivalent to the sale of power by BPA to the DSIs at the baseline rate used to calculate the monetary benefit.

(acknowledging that the rates embodied in the monetization provisions would permit the DSIs to purchase power at a rate below the market *and* below the IP rate). BPA also concedes that its decision to sell power to the aluminum DSIs at below-market and below-IP rates will increase rates for its non-DSI customers. DSI Service ROD ("BPA is mindful that service to the DSIs will come at the expense of higher rates paid by its public preference customers . . . ."). Finally, by its own admission, BPA was not obligated to sell power to the DSIs, and was not obligated to offer a rate below the IP rate if it did sell them power. In essence, BPA has voluntarily agreed to forgo revenues by charging the DSIs a rate below what is authorized by statute (i.e., the IP rate) and below what is available on the open market. These foregone revenues result in higher rates for all other customers. This outcome is in apparent and direct conflict with BPA's statutory mandate, *see* § 838g, and renders BPA's decision to "monetize" the DSI contracts in an amount reflective of those underlying rate decisions — albeit a capped amount — highly suspect.

BPA offers three rationales in an attempt to justify its decision to utilize a below-market and below-IP rate as a base rate for calculating the DSIs' monetary benefit. First, it asserts that offering the DSIs a subsidized rate furthers the agency's mandate to "encourage the widest possible diversified use of electric power." *See* § 839g. Second, BPA suggests that the rate assumptions are consistent with its authority to market power, because the agency already sells power at below cost rates to IOUs under the "residential exchange program" mandated by the NWPA. *See* § 839c(c). Finally, BPA argues that its decision was reasonable because providing aid to long-term customers is in its business interests. Each of these justification is flawed and therefore incapable of supporting BPA's decision to offer DSIs capped monetized power at a rate below both the IP rate and the market rate. We therefore hold that that decision was unreasonable.[26]

[26]There are situations in which BPA's decision to monetize its energy contracts with the DSIs would likely qualify as reasonable. For example,

BPA's first argument — that helping the DSIs furthers its mandate to "encourage the widest diversified use of electric power" — does not justify a sale of power at below market *or* statutorily mandated rates. *See* § 838g. This explanation is undercut, first of all, by the fact that the subsidized rates are supplied to just three firms, all of which use electric power for the same industrial purpose — smelting aluminum. Thus, the payments do not encourage "diversified" use of electric power, but targeted use. Morever, because, as BPA acknowledges, its rates are "based upon the [BPA]'s total system costs," § 839e(a)(2), a side-effect of the payments to the aluminum DSIs will be an *increase* in the rates paid by a much larger set of customers — the businesses, industries, farms, and residences served by public utilities, electrical cooperatives, and investor-owned utilities with BPA power.

Common sense suggests that increasing these rates will cause consumers, overall, to employ electric power for *narrower* and *less diverse* uses. When the price of a particular source of energy goes up, uses of that energy that were affordable or profitable at the old price tend to be less so at the new one. An increase in rates will lead at least *some* consumers to either restrict their usage or substitute another source of power.

Furthermore, BPA's conclusory claim that the contracts will facilitate the diversified use of power could justify almost

if BPA entered into a contract with a DSI at the IP rate (which it is statutorily authorized to do) in order to free up power to sell outside the Pacific Northwest, and the market rate for power exceeded the IP rate, the decision to monetize would probably conform to "sound business principles." In such a case, monetization would reduce the risk of a default by the DSI and would thereby lower BPA's financial costs. Similarly, if BPA entered into a contract with a DSI at a valid contract rate (whether the market rate or the IP rate) and BPA's costs to acquire power rose unexpectedly during the performance of the contract, exercising the option to monetize the now money-losing contract would likely be valid. This situation appears to have occurred during the west coast energy crisis, when BPA chose to monetize several contracts.

any sale of power, including an agreement to give power away. Absent a specific explanation as to why sales to the DSIs on more favorable terms than required by statute *or* by market circumstances is necessary to diversify the use of power in the region, the agency's argument is unpersuasive.

BPA's next contention, that the IOU residential exchange program supports its decision to offer the DSI below-cost rates, is likewise untenable. In fact, the program's existence not only fails to support BPA's position, it actually undermines that position. Under the "residential exchange program," BPA exchanges high-priced power generated by the IOUs for low-cost federal energy to be supplied to their residential customers. *See* § 839c(c); *Alcoa*, 467 U.S. at 399. Rather than actually trade power with the IOUs, BPA simply pays the cost differential to the IOUs. *See, e.g., Cent. Elec. Coop., Inc. v. BPA*, 835 F.2d 199, 200-01 (9th Cir. 1987).

But the exchange program is a specific exception that proves a general rule — and the rule is that Congress intended BPA to operate as a business selling power for profit, not as a charitable institution distributing "benefits." *See, e.g., Ass'n of Pub. Agency Customers*, 126 F.3d at 1171 (citing BPA's "mandate to operate with a business-oriented philosophy"). As the Supreme Court has observed, "[b]ecause th[e] exchange program essentially requires BPA to trade its cheap power for more expensive power, it is obviously a money-losing program for BPA." *Alcoa*, 467 U.S. at 399. In the case of the exchange program, Congress specifically directed BPA to conduct its operations in a manner that does not conform with the "sound business principles" that the agency is generally required to follow. No such exception to § 838g's statutory mandate applies here. By subsidizing the DSIs' smelter operations beyond what it is obligated to do, BPA is simply giving away money.[38]

[38]At oral argument, counsel for BPA conceded that "[i]t's not Bonneville's responsibility to ensure that [the DSIs] exist."

There is another provision in the NWPA that authorizes BPA to make monetary payments to specific parties. *See, e.g.*, 16 U.S.C. § 839e(m) (authorizing "annual impact aid payments to the appropriate local governments within the region" affected by BPA power generation or transmission projects). But the DSIs are not among the entities to which any of these payments are authorized. *See id.* Again, the fact that Congress explicitly gave permission to BPA to provide subsidies to these other entities weighs against BPA's claim that Congress implicitly authorized it to provide such subsidies as it chooses to the DSIs. *Cf. Yang v. Reno*, 77 F.3d 1194, 1197 (9th Cir. 1996).[37]

The NWPA also specifies certain circumstances in which BPA can sell power to the DSIs at a discounted rate. *See* 16 U.S.C. § 839e(d) (authorizing a "special rate" for power sold to any DSI "using raw materials indigenous to the region as its primary resource"). But § 839e(d) makes clear that such discounts are only available in specific circumstances not present here.[38]

Finally, BPA maintains that the decision to give the DSIs favorable rates of BPA's choosing is authorized because

[37]The inclusion of a provision for subsidies in the NWPA also counsels somewhat against our deferring to the agency's interpretation of the statute, as it suggests that the question of BPA's authority to make such payments is not one where "Congress has . . . left a void for [the] agency to fill." *Ass'n of Pub. Agency Customers*, 126 F.3d at 1169.

[38]There is no indication that the aluminum DSIs that are to receive the payments "us[e] raw material indigenous to the region as [their] primary resource." § 839e(d)(1). The primary raw material used in aluminum smelting is bauxite, which is imported. *Cf. In re Kaiser Aluminum & Chem. Co.*, 214 F.3d 586, 590 (5th Cir. 2000) (discussing use of imported bauxite in domestic aluminum production). And the legislative history of the subsection confirms that it was not the aluminum DSIs Congress had in mind when it adopted this provision. *See* H.R. Rep. No. 96-976, pt. 2, at 52-53 (1980) ("The Committee is aware of only one [DSI], the Hanna Nickel and Mining and Smelting Company[,] . . . which would meet the criteria of this paragraph.").

doing so "further[s] BPA's business interests consistent with its public mission." *Ass'n of Pub. Agency Customers*, 126 F.3d at 1171. This Court "defers to the [BPA]'s actions in furthering its business interests." *Id.* at 1171. Still, BPA fails to explain how the payments are consistent with its "mandate to operate with a business-oriented philosophy," *id.*, as it has identified no business interests forwarded by its actions. The agency cites its "historic relationship with the DSIs, the important role the DSIs played in the development of the [federal power systems], and the importance to local economies of DSI jobs" as reasons for the payments. These justifications for simply giving a few of its customers nearly $300 million, however laudable, are simply not reflective of a "business-oriented philosophy," nor do they "further [BPA's] business interests." *Id.*

As we made clear recently in another context, BPA's governing statutes restrain BPA's activities even when, on a pure policy basis, those policies have much to recommend them. *See Portland Gen.*, 501 F.3d at 1036-37. Applying this very basic principle, *Portland General* held that BPA's general statutory authority to enter into settlement agreements under § 832a(f) of the NWPA does not allow BPA to avoid the requirements governing power sales to the IOUs simply by labeling such sales as "settlements." 501 F.3d at 1030. Here, similarly, BPA's authority to *sell* power to the DSIs does not mean that BPA may simply *give* money to the DSIs by calling the agreement a "power sale" with "monetized service benefits." In *Portland General*, BPA's actions violated the specific requirements of the REP; here they violate the agency's general statutory mandate to operate like a business. In both cases, however, the lesson is the same: an agency cannot expand its mandate solely through creative use of nomenclature.

**[14]** In sum, BPA has not advanced a "reasonable interpretation[ ] of its governing statutes" that supports its actions. *Golden Nw. Aluminum Co.*, 501 F.3d at 1045. Nor has the

agency shown how offering the DSIs rates below the market rate and below what it is statutorily authorized to offer "further[s] BPA's business interests consistent with its public mission." *Ass'n of Pub. Agency Customers,* 126 F.3d at 1171. We conclude that BPA's decision to offer the subsidized rates to the DSIs and then monetize those rates is inconsistent with BPA's statutory authority under the NWPA, and therefore hold that the monetization provisions of the aluminum contracts are invalid.

### D. BPA's Contract with Clallam to Supply Port Townsend

Industrial Customers challenge BPA's decision to supply Port Townsend with power on two related grounds. First, Industrial Customers argues that the rate applicable to the sale is impermissibly low because it is "not the DSI rate, . . . or the market price of electricity" and is instead "designed to closely mimic the low PF rate only available to preference customers." Second, Industrial Customers contends that Port Townsend is a "new large single load" to which the agency's New Resources (NR) rate, a rate higher than both the PF rate, the IP rate, and BPA's forecasted market rate, applies. We agree with Industrial Customers that the Clallam/Port Townsend contract rate is invalid because it commits BPA to sell power to Port Townsend (through Clallam) at a rate below both the market rate and the IP rate. As a result of this holding, we need not reach Industrial Customers' additional argument that the Port Townsend energy contract should be priced at BPA's "New Resources" rate for "new large single loads," rather than at the rate set in the contract.[30]

[30]Although we do not decide the "new large single load" question, we note that BPA's contract with Clallam to supply Port Townsend, as currently structured, would likely not qualify as a "new large single load," and BPA would therefore not be obligated to charge Clallam or Port Townsend the NR rate. Section 839a(13) defines a "new large single load" as one that increases the "power requirements" of a public utility such as

[15] BPA's contract with Clallam/Port Townsend suffers from the same central deficiency as BPA's contracts with the aluminum DSIs. Namely, BPA, although under no obligation to supply Port Townsend with power, has nonetheless agreed to sell power to the paper company at a rate below both the market rate and the IP rate.[40] The agency provides no unique

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Clallam, but does not supply a definition for the term "power requirements." BPA attempts to fill this gap by arguing that "power requirements" refers to sales it is required to make to public utilities pursuant to § 839c(b). In light of § 839a(13)'s legislative history, we conclude that the agency's interpretation is reasonable, and therefore entitled to deference.

Congress's intent in passing § 839a(13) was to deter DSI customers from cancelling their direct service contracts with BPA that were priced at the IP rate and, instead, purchasing their power at a lower rate from local public utilities served by BPA. *See* H.R. Rep. No. 96-976, pt. 2, at 51. The fear was that, because BPA must serve the firm power requirements of its public utility customers under § 839c(b) at the low PF rate, a sudden increase in those requirements due to strategic behavior by the DSIs could place financial and operating burdens on the agency. *See id.* In other words, the obligation imposed on BPA by § 839c(b) was the driving force behind the "new large single load" provision. BPA's interpretation of "power requirements" as referring to its § 839c(b) obligation is therefore reasonable.

In this case, BPA and Clallam structured their contract as a "surplus firm power" sale under § 839c(f), not as a firm power sale under § 839c(b). Clallam was not exercising its statutory entitlement to firm power at the PF rate, and BPA was under no obligation to enter into the contract. As a result, the BPA/Clallam contract does not appear to be the type of contract to which the preventative NR rate was intended to apply.

[40]The Port Townsend sale is structured somewhat differently than the aluminum DSIs sales in that it involves two separate contracts, rather than a single contract. The first of the two contracts is an agreement between BPA and Clallam, the utility that serves Port Townsend, and provides for the sale of 17 annual aMW of power by BPA to Clallam at the PF rate plus a "typical industrial margin" of $0.57/MWh, for a total cost of approximately $28/MWh. (For a discussion of why this rate, although calculated in a manner which appears to mimic the methodology BPA must follow when determining the IP rate, *see* § 839e(c), is not in fact equivalent to the IP rate, *see* note 28, *supra*.). Under the second contract, Clallam agreed to

reasons to explain why supplying Port Townsend with subsidized energy is consistent with "sound business principles." *See* § 838g. Therefore, for the reasons discussed *supra*, Part III.C.2, BPA's decision to subsidize Port Townsend's energy rates is unreasonable because it is contrary to BPA's statutory mandate.[41] We therefore hold that the Clallam/Port Townsend contract is also invalid.[42]

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sell that power to Port Townsend at the BPA/Clallam rate plus "Other Costs" of approximately $0.94/MWh. Through the combined contracts, therefore, BPA has agreed to supply Port Townsend with 17 aMW of power at a rate approximately equal to $29/MWh. This rate is below both BPA's forecasted market rate for 2007-2009 of $42/MWh, *see* DSI Service ROD, and the average IP rate for the year ending September 30, 2007 of $45/MWh.

[41]Even if we considered only the BPA/Clallam contract, our conclusion that the contract rates are invalid would not change. BPA concedes that the "sale of 17 aMW of . . . power to Clallam for service to Port Townsend" is a "discretionary sale," and not one BPA is obligated to make to the public utility under § 839c(b). Because BPA admits it is not required to sell the power to Clallam — and no party argues that Clallam is entitled to the PF or any other cost-based rate under the circumstances involved here — the decision to sell power to Clallam at a below-market rate under the FPS rate schedule violates BPA's mandate to operate according to "sound business principles" for the same reasons that a decision to offer the aluminum DSIs and Port Townsend a subsidized rate does. *See* Part III.C.2, *supra*.

[42]BPA's contract with Clallam/Port Townsend may also run afoul of BPA's statutory requirement to first offer power to a DSI at the IP rate before selling it to the DSI under the FPS rate schedule. *See* Part III.B.2, *supra*. The record is somewhat ambiguous as to whether BPA offered Port Townsend the IP rate. In the DSI Service ROD, BPA indicated it would offer power to Port Townsend "under its market based rate schedule (*or the IP rate if viable*)." Yet, BPA ultimately applied an FPS rate to the Clallam/Port Townsend contract. It can therefore be presumed that BPA did not offer Port Townsend the IP rate. Should BPA decide to enter a future contract with Port Townsend at an FPS rate, it must first offer the company the IP rate.

### E. Alcoa's Discrimination Claim

[16] Alcoa also challenges BPA's contract with Clallam to supply power to Port Townsend on the ground that it discriminates against other DSIs with regard to both price and method of service. This argument is without merit for at least two reasons. First, BPA's governing statutes do not contain an anti-discrimination requirement that applies to the challenged contracts. Second, even if such a requirement existed, BPA's decision to offer Port Townsend contract terms different from those it offered the aluminum DSIs was justified by Port Townsend's unique characteristics, most notably its small size. We therefore deny this aspect of BPA's petition.

BPA's primary argument is that § 832d(a), which requires BPA's contracts with "any utility engaged in the sale of electric energy to the general public" to "contain such terms and conditions . . . necessary . . . to insure that resale by such utility to the ultimate consumer shall be at rates which are reasonable and nondiscriminatory," precludes BPA from treating Port Townsend differently from the aluminum DSIs. A plain reading of § 832d(a)'s statutory text — which we have not previously construed — indicates that its purpose is to prevent discrimination by a utility among *its* customers, not discrimination by BPA between utilities and the DSIs, or even among DSIs. Although § 832d(a) may well forbid BPA from entering into a contract with Clallam that permits Clallam to discriminate against the aluminum DSIs, the aluminum DSIs are not seeking service from Clallam. In short, the provision is inapplicable here.[43]

[43]Similarly off-base is Alcoa's claim that BPA's contract with Clallam is governed by the transmission line requirement contained in 16 U.S.C. § 825s (authorizing the Secretary of Energy "to construct or acquire . . . only such transmission lines and related facilities as may be necessary" to "make the power and energy generated at [federal] projects available in wholesale quantities for sale on fair and reasonable terms"). As we have noted previously, "that phrase refers to the acquisition and construction of

Alcoa's second argument — that the NWPA defines DSIs as a single class of customers and therefore requires BPA to treat them all identically — is also unavailing. The NWPA does define and treat the DSIs as a common class for the purposes of allocating power and setting rates for power sales. *See* §§ 839a(8) (defining DSI); 839c(d)(4)(A) (defining "existing" DSI); 839c(e)(1) (reallocating power which a customer does not require among others in same class); 839e(c)(1)(B) (establishing rates for sale of power to DSIs). And, as already discussed, the NWPA requires BPA to offer its DSI customers firm power at the IP rate before it offers those customers an FPS rate. But once a DSI refuses to buy power at the rate to which it is statutorily entitled (i.e., the IP rate), it has surrendered the primary benefit that the class of DSI customers receives under the NWPA and becomes subject to the same treatment as any other in-region customer seeking to purchase surplus firm power. Perhaps more to the point, nothing in the NWPA suggests that BPA must treat members *within* the same customer class identically. The NWPA authorizes, but does not obligate, BPA to sell power to a DSI. *See* Part III.B.1. *supra*. BPA could therefore refuse to serve some of its DSIs altogether, while supplying the full power requirements of others.

Lastly, even if there were some applicable nondiscrimination requirement in BPA's governing statutes — which, as we have explained, there is not — BPA's different means for supplying the aluminum DSIs and Port Townsend would not be discriminatory. As BPA points out, the considerations associated with serving Port Townsend with 17 aMW of physical power are different from the considerations associ-

*transmission* facilities," *S. Cal. Edison Co. v. Jura*, 909 F.2d 339, 343 n.6 (9th Cir. 1990), but does not constrain BPA's setting of rates for the power it sells once these facilities have been acquired or built. *See id.* at 344 (holding that 16 U.S.C. § 825s does not impose a "substantive nondiscrimination standard for BPA ratemaking").

ated with serving the DSIs with 560 aMW. The latter would expose the agency to much greater risk from fluctuation in energy prices and default by the DSIs.

For all of these reasons, we deny this portion of Alcoa's petition.

### F. Damages Waiver in Aluminum DSI Contracts

The final issue the Cooperative raises is the enforceability of a damages waiver provision that appears in each of the aluminum DSI contracts. *See, e.g.*, Alcoa Contract ("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 void or otherwise unenforceable, no Party shall be entitled to any damages or restitution of any nature.").[44] The Cooperative argues that the contracts are void *ab initio*, thereby invalidating the waiver provisions. Unless BPA is able to recoup the payments already made to the DSIs, the Cooperative asserts, the Cooperative's members will be stuck with the bill, as the agency will have to recover these costs through higher rates. *See* 16 U.S.C. § 839(g).

BPA's contracts with the DSIs, however, each contain a severability clause, which states that "[i]f any term of this Agreement is found to be invalid by a court of competent jurisdiction then . . . . [a]ll other terms shall remain in force unless that term is determined not to be severable from all other provisions of this Agreement . . . ." The contracts provide for an alternative mode of performance by BPA, delivery of physical power, beginning in FY 2010. The validity of this aspect of the contract is not ripe for review at this time because BPA has not yet exercised its option to deliver physical power, nor has it defined the terms that would govern a physical power sale. So the monetized service benefit provi-

[44]The corresponding waiver provision in the Clallam contract bars only Clallam, not BPA, from recovering damages.

sions of the agreements are, at least potentially, severable from the agreement as a whole, leaving a possibly valid option, the sale of physical power at an as-yet unspecified rate.

In addition, the record does not reveal how BPA believes the damages waiver provision should be construed and, in particular, what effect it is to have if a contract is only partially invalidated. In the Supplemental ROD, BPA rejected as "unreasonable under the circumstances" a proposal by the Cooperative that the contracts with the aluminum DSIs include a provision "*requiring* the [DSIs] to refund payments in the event the Ninth Circuit holds that the contracts are void." (emphasis added). The Agency's reasoning was that even if "the contracts are held void (so that no contract ever existed as a matter of law) and the payments are 'illegal.' " it would be inequitable to require restitution, because

> the companies will have little realistic prospect of operating their smelters . . . [y]et they may, at their own risk and expense, have made commitments with respect to operating their facilities, including making market power purchases, in anticipation of benefits being available.

The actual contract language and factual circumstances here are significantly different from the proposal BPA rejected in the Supplemental ROD. First, invalidating the payments does not necessarily foreclose the DSIs' "prospect[s] of operating their smelters." We do not hold that the contracts are void "as if no[ne] . . . ever existed." Instead, we *affirm* the authority of BPA to sell physical power to the DSIs, § 839c(d), at a valid rate.

**[17]** Second, the question of contractual interpretation before us is whether, if the agreements are partially invalidated, BPA is *permitted* to seek restitution, not whether it is "requir[ed]" to do so. Whether BPA intended to retain the

flexibility to seek *or* forgo repayment, depending on (a) the DSIs' "commitments with respect to operating their facilities," and (b) BPA's interest in still making sales of physical power to them, is an issue the agency did not address in the Supplemental ROD. Because, "[f]rom the record before us, we cannot determine BPA's likely course of action," we remand to BPA to determine in the first instance the applicability and construction of the severability clause, the damage waiver, and the physical power sale option in light of our holdings here. *Pub. Util. Dist. No. 1 v. BPA*, 506 F.3d 1145, 1154 (9th Cir. 2007).

**[18]** Finally, the Cooperative's allegation that the waiver provision, if valid, will result in higher rates for non-DSI customers is not ripe for adjudication at this time. Until FERC approves the relevant PF rate schedule, this court lacks jurisdiction to review the Cooperative's claim. *See Ass'n of Pub. Agency Customers*, 126 F.3d at 1179; *Pub. Utils. Comm'n of the State of Cal.*, 814 F.2d at 561; *Pub. Utils. Comm'r of Oregon*, 767 F.2d at 629 ("If FERC fails to correct any defects in the methodology [which affected rate-setting], redress is available in the court of appeals," where "any . . . cognizable challenges will be fully reviewable . . . .").

## IV. Conclusions

We GRANT the Cooperative's and Industrial Customers' petitions as to the challenges they bring regarding BPA's statutory authority to offer the aluminum DSIs and Port Townsend (through Clallam) energy at rates below both the IP rate and the market rate, and REMAND to the agency for determination of the applicability of the agreements' severability and damage waiver provisions in light of our holdings.

We GRANT Alcoa's petition as to its challenge to BPA's refusal to offer the aluminum DSIs the amount of physical power requested at a rate established under § 839e(c) prior to

offering them a market-based rate or selling the power outside the region.

We DISMISS the Cooperative and Industrial Customers' petitions as to their challenges to BPA's allocation of costs incurred under the aluminum DSI and Port Townsend contracts to the agency's power rates, as both premature and moot in light of our invalidation of those contracts in pertinent part.

We otherwise DENY the petitions of Alcoa, the Cooperative, and Industrial Customers.

PETITIONS GRANTED IN PART, DENIED IN PART, AND DISMISSED IN PART.

## Atterbury,Laura M - DK-7

**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, September 15, 2009 1:50 PM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: BPA service to DSIs

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**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Friday, July 24, 2009 1:30 PM
**To:** 'Anderson, Larry'
**Subject:** RE: BPA service to DSIs

Larry, BPA has not yet posted anything further on our website with respect to DSI service. I'll be here through the afternoon and will let you know as soon as I have confirmation on where we are. Thanks. Gail

---

**From:** Anderson, Larry [mailto:Larry.Anderson@mail.house.gov]
**Sent:** Friday, July 24, 2009 1:10 PM
**To:** Kuntz,Gail K - DKR-MSGL
**Subject:** RE: BPA service to DSIs

I take it that CFAC did not respond by your deadline so they will be proceeding with plans to close?

---

**From:** Kuntz,Gail K - DKR-MSGL [mailto:gkkuntz@bpa.gov]
**Sent:** Friday, July 24, 2009 11:26 AM
**To:** Anderson, Larry
**Subject:** FW: BPA service to DSIs

Larry, sorry for the delay but it took a bit of time to locate the material that addresses your question on the background of the court case concerning BPA's DSI service. Attached is a copy of the 9th circuit Opinion on PNGC and BPA's initial letter to the region on the DSI Lookback (issues associated with any overpayment and cost recovery that may result from the Opinion).

Please let me know if you have questions.

Regards,
Gail

## Atterbury,Laura M - DK-7

**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, September 15, 2009 1:50 PM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: DSI service -- CFAC -- latest posting on BPA website

-----Original Message-----
From: Kuntz,Gail K - DKR-MSGL
Sent: Friday, July 24, 2009 3:31 PM
To: 'cbarrett@mt.gov'; 'Sloan, Virginia (Tester)'; 'Campbell-Rierson, Kirby (Baucus)'; 'Anderson, Larry'; 'Kaiserski, Tom'
Subject: DSI service -- CFAC -- latest posting on BPA website

http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

This link is to the BPA website where a statement was posted this afternoon concerning the status of our discussions with CFAC and indicating that we have been unable to reach agreement on a different set of terms than the 7-year service option BPA initially posted on 7/17. You may also be interested in the results of BPA's recent analysis (also posted at this link) revisiting a 2006 study on the regional economic effects of service to the DSIs. This analysis indicates a small net gain in jobs from continued DSI service under the constructs we have been discussing with Alcoa and CFAC.

Please let me know if you have questions or would like further discussion about DSI service.

## Atterbury,Laura M - DK-7

**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, September 15, 2009 1:51 PM
**To:** Baskerville,Sonya L - DKN-WASH; Atterbury,Laura M - DK-7
**Subject:** FW: more Congressional DSI e-mail

-----Original Message-----
From: Kuntz,Gail K - DKR-MSGL
Sent: Tuesday, July 28, 2009 11:02 AM
To: 'ebarrett@mt.gov'; 'Kaiserski, Tom'; 'Harper, Hal'; 'mvolesky@mt.gov'; 'Sloan, Virginia (Tester)'; 'Campbell-Bierson, Kirby (Baucus)'; 'Anderson, Larry'; 'marcia.olson@mail.house.gov'; 'Toole, Ken'
Subject:

http://internal.bpa.gov/sites/pa-team/PAD/Misc%20Docs/2009-07-24_DSI_Lookback_delayed Letter.pdf

Above, FYI, is a link to a July 24, 2009 letter BPA has written to the region announcing a delay in issuing a draft Record of Decision on "lookback" issues associated with BPA's contracts with direct-service industrial customers pending resolution of certain legal challenges.

In June 2009, BPA wrote a letter to the region indicating it would begin a process to address lookback issues that arose as part of the Ninth Circuit's remand in Pacific Northwest Generating Cooperative, et al. v. Bonneville Power Administration, 550 F.3d 846 (9th Cir. 2008) (PNGC). The suit challenges the validity of BPA's FY 2007 – 2011 direct-service industrial customer (DSI) service construct and contracts. At the time the letter was written, BPA expected to issue a draft record of decision in July, pursuant to the Court's instructions, on "the applicability and construction of the severability clause, the damage waiver, and the physical power sale option."

BPA has now decided to delay issuing its draft record of decision until at least 30 days after the mandate issues in PNGC or Dec. 1, 2009.

In the meantime, BPA will continue to evaluate pertinent issues and await the Court's final determination in the hope that the Court will provide some degree of finality in the near future.

Please let me know if you have questions or would like to have a follow-up discussion.

**Department of Energy**

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

EXECUTIVE OFFICE

July 24, 2009

In reply refer to: A-7

To Regional Customers, Stakeholders, and Other Interested Parties:

On June 10, 2009, the Bonneville Power Administration (BPA) issued a letter indicating it would commence a bifurcated process to address Lookback issues that arose as part of the Ninth Circuit's remand in *Pacific Northwest Generating Cooperative, et al. v. Bonneville Power Administration*, 550 F.3d 846 (9th Cir. 2008) (*PNGC*). The suit challenges the validity of BPA's FY 2007 – 2011 direct-service industrial customer (DSI) service construct and contracts. The June 10 announcement indicated that, in early July, BPA planned to issue a draft record of decision, pursuant to the Court's instructions, on "the applicability and construction of the severability clause, the damage waiver, and the physical power sale option."

BPA's original announcement reflects BPA's view, as well as the view of a number of interested parties, that BPA should act as promptly as reasonably possible in resolving issues related to the Lookback. However, BPA also acknowledged that the timing of events under this process might have to be adjusted to accommodate any decisions of the court relevant to the Lookback determination.

In this light, BPA has reconsidered its earlier announcement. The court is still reviewing its original decision pursuant to the filing of petitions for rehearing filed by the Port Townsend Paper Company and BPA. Also, oral arguments were recently completed on an expedited basis in the court's review of challenges to the contract amendment providing service to Alcoa through FY09. Thus, the case is still within the Court's original and continuing jurisdiction, no mandate has been issued, and the court is free to change its opinion until it issues a mandate. It would be unfortunate indeed if BPA were to issue a draft ROD on the DSI Lookback only to have the Court issue an opinion, or opinions, shortly thereafter that have a material effect on BPA's consideration of the salient issues.

Due to this uncertainty, BPA has determined that it would be prudent to delay issuing the draft record of decision until no earlier than 30 days after the mandate issues in *PNGC* or December 1, 2009. In the meantime, BPA will continue to evaluate pertinent issues and await the Court's final determination in the hope that the Court will provide some degree of finality in the near future.

If you have additional questions about this issue, please call Mark Symonds at (503) 230-3027 or Heidi Helwig of the Public Affairs Office at (503) 230-3458.

Sincerely,

//s// Allen Burns

Allen Burns
Acting Deputy Administrator

bcc:

S. Wright – A-7
A. Burns – D-7
C. Brannon – DK-7
CCIS Authentication - KSC-4
R. Roach – L-7
J. Wright – LP-7
S. Cannady – PT-5
H. Clark – PTL-5
L. Kitchen – PTL-5
Official File – PTL-5

HClark:sgc:3662:7/23/2009 (W-PTL-5-W:\P\PT\PTL\DSI_recent_KEEP\Letter to region - delay in DSI Lookback - 072009.doc)

## Atterbury,Laura M - DK-7

**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, September 15, 2009 1:52 PM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: Resending: 2009-07-24_DSI_Lookback_delayed_Letter.pdf

**Attachments:** 2009-07-24_DSI_Lookback_delayed_Letter.pdf

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**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, July 28, 2009 1:55 PM
**To:** 'ebarrett@mt.gov'; 'Kalserski, Tom'; 'Harper, Hal'; 'mvolesky@mt.gov'; 'Sloan, Virginia (Tester)'; 'Campbell-Rierson, Kirby (Baucus)'; 'Anderson, Larry'; 'maren.olsen@mail.house.gov'; 'Toole, Ken'
**Subject:** Resending: 2009-07-24_DSI_Lookback_delayed_Letter.pdf

2009-07-24_DSI_Lo
okback_delaye...

I've been alerted that the e-mail I sent to you late this morning about BPA delaying issuance of our draft ROD on the DSI "lookback" issue contains a website link that doesn't work. I am re-sending BPA's letter to the region as a PDF file. Please advise if you have any difficult opening this. I regret the problem with the link

**Department of Energy**

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

EXECUTIVE OFFICE

July 24, 2009

In reply refer to: A-7

To Regional Customers, Stakeholders, and Other Interested Parties:

On June 10, 2009, the Bonneville Power Administration (BPA) issued a letter indicating it would commence a bifurcated process to address Lookback issues that arose as part of the Ninth Circuit's remand in *Pacific Northwest Generating Cooperative, et al. v. Bonneville Power Administration*, 550 F.3d 846 (9th Cir. 2008) (*PNGC*). The suit challenges the validity of BPA's FY 2007 – 2011 direct-service industrial customer (DSI) service construct and contracts. The June 10 announcement indicated that, in early July, BPA planned to issue a draft record of decision, pursuant to the Court's instructions, on "the applicability and construction of the severability clause, the damage waiver, and the physical power sale option."

BPA's original announcement reflects BPA's view, as well as the view of a number of interested parties, that BPA should act as promptly as reasonably possible in resolving issues related to the Lookback. However, BPA also acknowledged that the timing of events under this process might have to be adjusted to accommodate any decisions of the court relevant to the Lookback determination.

In this light, BPA has reconsidered its earlier announcement. The court is still reviewing its original decision pursuant to the filing of petitions for rehearing filed by the Port Townsend Paper Company and BPA. Also, oral arguments were recently completed on an expedited basis in the court's review of challenges to the contract amendment providing service to Alcoa through FY09. Thus, the case is still within the Court's original and continuing jurisdiction, no mandate has been issued, and the court is free to change its opinion until it issues a mandate. It would be unfortunate indeed if BPA were to issue a draft ROD on the DSI Lookback only to have the Court issue an opinion, or opinions, shortly thereafter that have a material effect on BPA's consideration of the salient issues.

Due to this uncertainty, BPA has determined that it would be prudent to delay issuing the draft record of decision until no earlier than 30 days after the mandate issues in *PNGC* or December 1, 2009. In the meantime, BPA will continue to evaluate pertinent issues and await the Court's final determination in the hope that the Court will provide some degree of finality in the near future.

If you have additional questions about this issue, please call Mark Symonds at (503) 230-3027 or Heidi Helwig of the Public Affairs Office at (503) 230-3458.

Sincerely,

//s// Allen Burns

Allen Burns
Acting Deputy Administrator

bcc:

S. Wright - A-7
A. Burns – D-7
C. Brannon – DK-7
CCIS Authentication – KSC-4
R. Roach – L-7
J. Wright – LP-7
S. Cannady - PT-5
H. Clark – PTL-5
L. Kitchen – PTL-5
Official File – PTL-5

HClark:sgc:3662:7/23/2009 (W-PTL-5-W:\P\PT\PTL\DSI_recent_KEEP\Letter to region - delay in DSI Lookback - 072009.doc)

## Atterbury,Laura M - DK-7

**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Tuesday, September 15, 2009 1:54 PM
**To:** Atterbury,Laura M - DK-7; Baskerville,Sonya L - DKN-WASH
**Subject:** FW: Congressional staff Briefings next week on the Wind Integration Team Work Plan and DSI term sheet

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**From:** Kuntz,Gail K - DKR-MSGL
**Sent:** Friday, July 31, 2009 2:00 PM
**To:** 'Sloan, Virginia (Tester)'; 'Stone-Manning, Tracy (Tester)'; 'Campbell-Rierson, Kirby (Baucus)'; 'Anderson, Larry'; 'maren.olsen@mail.house.gov'
**Subject:** FW: Congressional staff Briefings next week on the Wind Integration Team Work Plan and DSI term sheet

FYI -- I just received this attached e-mail and am forwarding it to invite your participation in either or both of two conference calls set up, respectively, for August 3 and 4 that are briefings for Congressional staff on BPA's wind integration rate and associated action plan, and also the term sheet for service to DSI customers that BPA posted last week. The information on how to call into the conference phone bridge is attached. Both of these calls are at noon MDT (2:00 p.m. EDT). I note that your respective DC offices have all been sent this notice from BPA's national relations office.

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**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Friday, July 31, 2009 3:37 PM
**To:** Amit Ronen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Carrie Desmond; Catharine Ransom; Colby Marshall; Corey McDaniel; Courtney Thompson; Dave Berick; Devin Nagy; Ethan Pittleman; Hillary Barbour; Jaime Shimek; James Bradbury; Janine Benner; Jason Bohrer; Jayme White; Jeremiah Baumann; Joel Merkel; Jon DeVaney; Kelsey E. Knowles; Ken Flanz; Kim Betz; Luke Tomanelli; Malisah Smail; Mark Middaugh; Mary Heller; Michele Miranda; Nathan Rea; Nils Tillstrom; Paul Wilkins; Pete Modaff; Ryan Shauers; Stephen Marx; Stephenne Harding; Susan Jane Brown
**Cc:** 'Ameila Jenkins'; 'Doug Clapp'; 'Kelly Donnelly'; 'Kiel Weaver'; 'Nick Strader'; 'Todd Ungerecht'; 'Todd Young'; 'Tyler Kruzich'
**Subject:** RE: REMINDER: Briefings next week on the Wind Integration Team Work Plan and DSI term sheet

I just want to remind you of two briefings BPA is hosting next week.

Wind Integration Team Work Plan: **Monday, August 3 at 2:00p eastern/11:00a pacific**; passcode for your bridge is **9582738#** To dial into the bridge, all participants must dial **218-339-7777**

DSI term sheet: **Tuesday, August 4, at 2:00p eastern**; passcode for your bridge is **9582738#** To dial into the bridge, all participants must dial **218-339-7777**

Mute/Unmute - press *6 once to mute, press *6 again to unmute

Hope you all can attend. Thanks.

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, BC 061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

---

**From:** BPA National Relations
**Sent:** Tuesday, July 28, 2009 1:42 PM

**To:** Amit Ronen; Andrew Dohrmann; Auke Mahar-Piersma; Beth Nelson; Beth Osborne; Carrie Desmond; Catharine Ransom; Colby Marshall; Corey McDaniel; Courtney Thompson; Dave Berick; Devin Nagy; Ethan Pittleman; Hillary Barbour; Jaime Shimek; James Bradbury; Janine Benner; Jason Bohrer; Jayme White; Jeremiah Baumann; Joel Merkel; Jon DeVaney; Kelsey E. Knowles; Ken Flanz; Kim Bela; Luke Tomanelli; Malicah Small; Mark Middaugh; Mary Heller; Michele Miranda; Nathan Ono; Nils Tillstrom; Paul Wilkins; Pete Modaff; Ryan Shauers; Stephen Marx; Stephenne Harding; Susan Jane Brown
**Cc:** 'Ameila Jenkins'; 'Doug Clapp'; 'Kelly Donnelly'; 'Kiel Weaver'; 'Nick Strader'; 'Todd Ungerecht'; 'Todd Young'; 'Tyler Kruzich'; Baskerville,Sonya L - DKN-WASH
**Subject:** Briefing on the Wind Integration Team Work Plan
**Importance:** High

I mentioned to some of you that I intended to set-up a conference briefing on the Wind Integration Team's work plan. That briefing has been set for August 3 at 2:00p eastern/11:00a pacific. Elliot Mainzer, BPA's Vice-President for Corporate Strategy, will lead the discussion. Here is a link to the work plan: http://www.bpa.gov/corporate/WindPower/docs/WIT_Work_Plan_-_June_16.pdf.

I've also attached AWEA's statement regarding the final decision on the wind balancing rate. In their statement, they recognize the improvements that will be continue through implementation of the work plan. Our goals are to reduce the costs associated with wind integration, implement operational changes that assure reliable integration of wind generation, and allow wind generators the choice to have their necessary ancillary services provided by other suppliers.

<< File: 090723--Statement on BPA rate decision.doc >>
Here is the call-in information.
The passcode for your bridge is 9582738# To dial into the bridge, all participants must dial 218-339-7777. Mute/Unmute - press *6 once to mute, press *6 again to unmute

I will send a reminder about the call at the end of the week. Thanks!

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

---

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Monday, July 13, 2009 5:56 PM
**To:** 'Berick, Dave (Wyden)'; 'Osborne, Beth'; 'Bradbury, James'; 'jeremiah_baumann@merkley.senate.gov'; 'Mahar-Piersma, Auke'; 'stephen.marx@mail.house.gov'; 'nils.tillstrom@mail.house.gov'; 'Huckleberry, Chris'; 'james.atkin@mail.house.gov'; 'janine.benner@mail.house.gov'; 'hillary.barbour@mail.house.gov'
**Subject:** FW: BPA's Response to Members' Letter re: BPA's Wind Integration Rate
**Importance:** High

Hello, all. You may have received by now BPA's response to your boss' letter to regarding BPA's proposed rate for wind integration. I believe it was sent out to offices on Friday.

Here is a .pdf of the response with its attachment. I would like to set-up a conference call for you and other Congressional staff on our final Record of Decision (ROD) and the Wind Integration Team work plan effort that also should help to reduce even more wind integration costs. The final ROD is to be published at the end of this month, so we could schedule the call during that first week of August which I believe is prior to the start of your summer recess. Also, if that timing doesn't work for you, please let me know, and we can work on a specially scheduled briefing for you. Thanks.

<< File: BPA Response to Wyden et al re Overall Wind Strategy.pdf >>

Here's Attachment:

<< File: BPA Draft ROD re Wind Generation Capacity.pdf >>

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Wednesday, July 01, 2009 4:36 PM
**To:** 'ken_flanz@crapo.senate.gov'; 'jason_borher@risch.senate.gov'; 'devin.nagy@mail.house.gov'; 'malisah.small@mail.house.gov'; 'paul_wilkins@baucus.senate.gov'; 'catharine_ransom@baucus.senate.gov'; 'matt_jennings@tester.senate.gov'; 'Heller, Mary'; 'jeremiah_baumann@merkley.senate.gov'; 'Dave_Berick@wyden.senate.gov'; 'janine.benner@mail.house.gov'; 'hillary.barbour@mail.house.gov'; 'Mahar Pierema, Auke'; 'susanjane.brown@mail.house.gov'; 'james.atkin@mail.house.gov'; 'huck@mail.house.gov'; 'Colby Marshall'; 'nathan.rea@mail.house.gov'; 'stephen.marx@mail.house.gov'; 'nils.tillstrom@mail.house.gov'; 'Merkel, Joel (Cantwell)'; 'Shimek, Jaime (Murray)'; 'Andrew Dohrmann'; 'Modaff, Pete'; 'ryan.shauers@mail.house.gov'; 'george.behan@mail.house.gov'; 'jon.devaney@mail.house.gov'; 'Osborne, Beth'; 'Bradbury, James'; 'Middaugh, Mark'; 'jayme.white@mail.house.gov'; 'chrissy.poe@mail.house.gov'; 'beth.nelson@mail.house.gov'; 'kelsey.knowles@mail.house.gov'
**Subject:** RE: BPA's Draft Record of Decision for FYs 2010-2011 Rates

Since last week when I sent to you the information below about the release of the Draft Record of Decision, BPA has released more specific information about the wind integration rate. As you all know, questions have arisen recently about what BPA is trying to accomplish with the wind integration rate. I've attached for your convenience the preface to the draft ROD that describes from the Administrator's perspective the variety of issues surrounding the explosion of wind on the BPA system and how BPA is taking action so it will not be in the position of needing to limit wind power interconnections on BPA's system in order to avoid reliability problems.

It is also important to note that the rate proposed in the draft ROD is substantially reduced from the initial proposal in large part due to actions wind operators have taken to reduce the costs to BPA of providing integration services (BPA's initial proposal set the rate at $2.72 cents per KW month - that is reduced to $1.58 KW/month in the draft ROD). The draft ROD also poses a question regarding the quality of service wind operators wish to receive versus the rate they will pay and solicits all parties comments on the matter. Depending upon the reaction it is possible the rate could be further reduced.

Thanks and enjoy your recess.

<< File: Preface.doc >>

Sonya Baskerville
Manager, National Relations Office
Bonneville Power Administration
1000 Independence Ave., SW, 8G-061
Washington, DC 20585
202-586-5640 (o)
202-253-7352 (c)

**From:** Baskerville,Sonya L - DKN-WASH
**Sent:** Thursday, June 25, 2009 5:25 PM
**To:** 'ken_flanz@crapo.senate.gov'; 'jason_borher@risch.senate.gov'; 'devin.nagy@mail.house.gov'; 'malisah.small@mail.house.gov'; paul_wilkins@baucus.senate.gov; catharine_ransom@baucus.senate.gov; matt_jennings@tester.senate.gov; Heller, Mary; 'jeremiah_baumann@merkley.senate.gov'; Dave_Berick@wyden.senate.gov; 'janine.benner@mail.house.gov';

'hillary.barbour@mail.house.gov'; 'Mahar-Piersma, Auke'; 'susanjane.brown@mail.house.gov'; 'james.atkin@mail.house.gov'; huck@mail.house.gov; Colby Marshall; nathan.rea@mail.house.gov; 'stephen.marx@mail.house.gov'; 'nils.tillstrom@mail.house.gov'; Merkel, Joel (Cantwell); Shimek, Jaime (Murray); Andrew Dohrmann; Modaff, Pete; 'ryan.shouers@mail.house.gov'; 'george.behan@mail.house.gov'; 'jon.devenney@mail.house.gov'; Osborne, Beth; Bradbury, James; 'Middaugh, Mark'; 'jayme.white@mail.house.gov'; 'chrissy.poe@mail.house.gov'; 'beth.nelson@mail.house.gov'; 'kelsey.knowles@mail.house.gov'

**Subject:** BPA's Draft Record of Decision for FYs 2010-2011 Rates

Hello, everyone. I want to let you know that BPA has released its draft Record of Decision for the FY 2010-2011 rates. The draft ROD does not include the rates levels, but addresses, preliminarily, the decisions that underlie those rates. The final Record of Decision is expected to be published at the end of July after which the rate case record will be filed with the Federal Energy Regulatory Commission for approval of the rates.

Here is a link to the draft Record of Decision: http://www.bpa.gov/corporate/ratecase/2008/2010 BPA Rate Case/docs/Final Draft ROD Rev062409.pdf. Let me know if you have trouble opening the document with the link. I can send to you a .pdf of the document - it's 8 MB, so I didn't want send that very large attachment to everyone.

A quick guide to a couple of the issues that have made their way back to DC:

**Wind integration**: the discussion starts on page 389. The draft decisions result in a significantly lower wind integration rate than the initial proposal rate. The draft decisions reflect a reduced need for reserves based on improvements in scheduling by wind generators – assuming 45 minute scheduling accuracy versus the two-hour assumption in the initial proposal. The forecast amount of installed wind generation on BPA's system has also decreased. In addition, the unit cost of reserve capacity is reduced given the draft decision to allocate costs over an increased amount of capacity uses. Certain operational costs attributed to the use of INC reserves are also reduced.

BPA's draft decision is to offer a wind integration rate design that provides partial credit to generators that self supply one or more of the three types of capacity reserves that BPA provides as within-hour balancing service. The rate schedule will have a separate rate for regulating reserve, following reserve and imbalance reserve each.

In addition, BPA will consider a rate under which the Administrator could exercise discretion to adjust the amount of reserves being held and the level of the rate in the event that experience with DSO (dispatcher standing order) 216 causes the industry to request BPA to hold additional reserves to avoid future operational limitations.

Note, the Administrator is specifically seeking feedback from rate case parties on the explicit tradeoff between the level of the wind integration rate and the amount of operational limitations (curtailments and feathering) on wind generation. The draft decision is to assume an amount of reserves based on a 45-minute scheduling accuracy. If BPA sets aside lower amounts of reserves that would be associated with 30-minute scheduling accuracy, the result will be a lower wind integration rate but more operational limitations. If BPA sets aside higher amounts of reserves, there will be a higher wind integration rate but fewer operational limitations.

BPA will share its updated analysis on forecast operational limitations at a July 29 rate case meeting to ensure that rate case parties have BPA's most current analysis of expected operational limitations and wind rate levels.

Small wind generators (20 MW or less) will be exempt from the wind within-hour balancing rate for the first year of this two-year rate period.

**DSI benefits**: the discussion starts on page 173. The draft decision is to assume 385 aMW of service to the aluminum smelters and 17 aMW for Port Townsend Paper to be sold at the IP rates established

**Department of Energy**

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

EXECUTIVE OFFICE

MAR 20 2009

The Honorable Max Baucus
United States Senate
Washington, D.C. 20510

The Honorable Jon Tester
United States Senate
Washington, D.C. 20510

Dear Senators:

Thank you for your letter expressing your support for a resolution of a short-term agreement between the Bonneville Power Administration (BPA) and the Columbia Falls Aluminum Company (CFAC) in the wake of the December 17, 2008, ruling by the United States Court of Appeals for the Ninth Circuit. The Court ruled that, while BPA has the authority to offer service to Direct Service Industry (DSI) customers, it must offer to serve a DSI based on BPA's Industrial Firm (IP) power rate. BPA reached out to CFAC's management immediately after the Court's ruling to develop a proposal for an amendment to the current contract that would be consistent with the Court's ruling.

I am pleased that BPA has reached an agreement with CFAC that will allow us to provide service to CFAC through 2009. We are amending the current CFAC contract to use the IP rate as the basis for the monetized arrangement with the smelter for the balance of Fiscal Year 2009. During that time, we will make payments consistent with the Court opinion. Due to CFAC's lower operating levels, payments to CFAC under this proposed amendment are expected to be less than half of the amount previously planned for this time frame.

As you know, BPA suspended payments to CFAC after the December Court decision. The amended contract would recalculate payments for the months of December 2008, and January and February 2009, to be consistent with the decision. CFAC has agreed to operate one-half a pot line and employ a minimum of 85 workers or the amended contract may be terminated by BPA. In the event that CFAC meets the operating and employment requirements through June, it will be eligible to receive payments through September.

We will continue to evaluate what additional actions BPA will take with respect to the current contracts in light of the Court opinion. That means looking ahead at FY 2010-2011 as well as taking into consideration the amount of payments made to CFAC in FY 2007-2008.

It has been a difficult process to reach an agreement in tough economic times when global aluminum prices continue steep declines. I appreciate your support and encouragement for these discussions and will continue to keep you informed about our long-term efforts. Please contact me if you have additional questions or concerns.

Sincerely,

Stephen J. Wright
Administrator and Chief Executive Officer

Bonneville Power Administration

January 22, 2009

The Honorable Max Baucus
United States Senate
Washington, DC 20510

Dear Senator Baucus:

As you know, the Bonneville Power Administration (BPA) and Alcoa have worked for several months on a new long-term contract for service to the company's Intalco plant near Ferndale, Washington, pursuant to a non-binding Memorandum of Understanding (MOU) the parties executed last October. Under that MOU, both BPA and Alcoa attempted to establish a long-term Regional Dialogue contract for the years from 2012 to 2028.

While both BPA and Alcoa worked very hard to reach an agreement, the parties were unable, within the time allotted, to settle on terms that would serve the long-term interests of both parties adequately. The current economic recession, which has reduced worldwide demand for aluminum and cut the price of aluminum by more than half in the last several months, has caused Alcoa to reassess the risks of operating its facilities at less than optimal levels. Based on this analysis, Alcoa was unable to sign a contract based on the proposed framework but remains committed to working with BPA to secure a long-term contract.

In the meantime, BPA and Alcoa have agreed to an amendment of the current service contract for the remainder of Fiscal Year 2009 that responds to last month's ruling of the United States Court of Appeals for the Ninth Circuit.

While the MOU has now terminated, BPA will continue to discuss with Alcoa and the region the potential for future service for both the remainder of the current contract period, which continues through Fiscal Year 2011, as well as the longer-term, post 2011 Regional Dialogue timeframe.

Both Alcoa and BPA value their longstanding relationship and the regional economic significance of operations at the Intalco plant. The impact on Northwest jobs is a crucial consideration in BPA's deliberations regarding service to its Direct Service Industry customers. We will keep you informed about the progress of further discussions. Thank you for your continued interest in this important issue.

Sincerely,

Stephen J. Wright
Administrator and Chief Executive Officer
Bonneville Power Administration

John Thuestad
President U.S. Primary Products
Alcoa