Department of Energy

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

PUBLIC AFFAIRS

December 15, 2009

In reply refer to: DK-7

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

FOIA # BPA-2010-00337-F

Re: A copy of all communications since August 27, 2009, between BPA and members of Congress (or their staff) regarding BPA's existing or proposed contracts with Alcoa and Columbia Falls Aluminum Co. ("CFAC").

Dear Mr. Seligman:

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

Response:
BPA has provided you with 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,

Christina J. Brannon

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

Enclosures: Responsive Documents

From: Kuntz,Gail K - DKR-MSGL
Sent: Tuesday, September 22, 2009 2:15 PM
To: 'Anderson, Larry'
Subject: FW: BPA letter to the region regarding scheduled payments to Alcoa

Larry, I left a phone message for you this afternoon and also wanted you to have this link to a letter BPA issued last week concerning suspension of remaining payments under our current contract with Alcoa Aluminum for August and September due to the court ruling referenced in the letter that was issued on August 28. I'll be in further contact with you as additional information becomes available.

The information below was issued in a letter posted on the BPA Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-09-17_Letter-to-Region-DigSigned.pdf.

"BPA has reviewed the decision by the United States Court of Appeals for the Ninth Circuit in Pacific Northwest Generating Cooperative, et al., v. Bonneville Power Administration, issued Aug. 28, 2009. BPA believes the opinion does not support the agency making remaining payments to Alcoa, Inc., under the 2006 Block Power Sales Agreement, as amended. Therefore, BPA will not make the scheduled payments for August and September. These payments would have been made Sept. 11 and Oct. 13, 2009.

BPA is still evaluating the opinion and potential implications regarding longer term DSI service."

From: Kuntz,Gail K - DKR-MSGL
Sent: Wednesday, October 14, 2009 5:13 PM
To: 'Virginia_Sloan@tester.senate.gov'; 'kirby_campbell-rierson@baucus.senate.gov'; 'Anderson, Larry'; 'Harper, Hal'; 'ebarrett@mt.gov'
Subject: FW: BPA's Analysis of Port Townsend Draft Contract is Now Posted

Attachments: BPA analysis summarizing PT block contract.pdf

No decisions have been reached concerning BPA service to aluminum smelters at this time, but I thought you would be interested in having this new information regarding a proposed power sale to Port Townsend Paper Co.

BPA has released for public review and comment a draft contract template that describes terms of a 14-month agreement for power sales to Port Townsend Paper Company between November 1, 2009, and December 31, 2010. The draft contract outlines proposed power sales to the paper company that would provide an opportunity for continuous operation through 2010.

BPA is proposing to offer a Block Power Sales Agreement (Block Contract) to Port Townsend Paper Company at the Industrial Power (IP) rate. Port Townsend currently receives service as a direct-service industry (DSI) through a one month FPS sale from BPA priced at the equivalent of the IP-10 rate for October 2009. A similar contract was proposed in June 2009. BPA believes that modifications to that draft contract are consistent with sound business principles as described in a recent court decision, as the forecasted market value of the energy is below the value of an IP sale.

Therefore, the projected revenues BPA would recover from the IP sale to Port Townsend would exceed the forecasted revenues that BPA would otherwise obtain from the market.

The modifications that BPA and Port Townsend have negotiated reduce the term of the Block Contract from 2 years to 14 months (Nov. 1, 2009 through Dec. 31, 2010).

Today BPA has also released and posted an analysis of the block contract that is also available for public review and comment through Monday, October 19, 2009. A PDF copy of this analysis is attached below along with the link to BPA's website where all of the Port Townsend documents are located. When this website page is opened, scroll down to the heading entitled: Proposed Agreement with Port Townsend Paper Company.

Please let me know if you have questions or would like to discuss any of this information.

BPA analysis summarizing PT bl...

http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/.

Summary of BPA's Analysis of the Block Contract for Port Townsend

This document summarizes the Bonneville Power Administration's (BPA) analysis of the proposed Block Power Sales Agreement (Block Contract) to Port Townsend Paper Company at the Industrial Power (IP) rate and how it comports with the opinion of the Ninth Circuit issued in Pacific Northwest Generating Cooperative v. BPA, Slip Op. 09-70228 (August 28, 2009) ("PNGC II"). BPA believes that with modifications to the draft contract for Port Townsend proposed June 22, 2009, service to Port Townsend is consistent with sound business principles, as described in PNGC II, since the forecasted market value of the energy is below the value of an IP sale.

As indicated in its October 8th letter to the region, the modifications that BPA and Port Townsend have negotiated reduce the term of the Block Contract from 2-years to 14-months (November 1, 2009 through December 31, 2010). This analysis demonstrates how the projected revenues BPA recovers from the 14-month IP sale to Port Townsend exceed the forecasted revenues that BPA would otherwise obtain from the market.

This analysis assumes that Port Townsend operates. BPA believes their decision to operate will be made based primarily on the prices for their output which are independent of power prices. Therefore, curtailments allowed under the Block Contract are not forecast to have an advantageous or disadvantageous effect on this analysis.

BPA's Projected Revenues

In the Block Contract, BPA sells 20 aMW of firm power every hour to Port Townsend under the IP-10 rate schedule. As a result, BPA's projected monthly revenues are determined by multiplying the heavy load hour (HLH) and light load hour (LLH) energy entitlements and demand entitlement by their respective IP rates for each month. The energy entitlements are the projected amounts of megawatt-hours to be sold by diurnal period each month. The demand entitlement is the megawatt amount consumed during the hour of BPA's system peak. Since the Block Contract sells 20 megawatts in every hour, the demand entitlement is 20 megawatts. BPA's projected monthly revenues are then accumulated and the result is illustrated in Tables 1 and 2:

TABLE 1 - Usage and Rates

	Port Townsend Usage			IP-10 Rates		
Month	Demand (kW)	HLH (MWh)	LLH (MWh)	Demand ($ / kW)	HLH ($ / MWh)	LLH ($ / MWh)
Nov-09	20,000	7,680	6,740	$2.19	$33.33	$29.58
Dec-09	20,000	8,320	6,560	$2.30	$35.24	$31.13
Jan-10	20,000	8,000	6,880	$1.96	$38.46	$32.24
Feb-10	20,000	7,680	5,760	$1.99	$37.72	$31.73
Mar-10	20,000	8,640	6,220	$1.85	$35.94	$30.08
Apr-10	20,000	8,320	6,080	$1.74	$32.23	$26.95
May-10	20,000	8,000	6,880	$1.44	$31.69	$22.29
Jun-10	20,000	8,320	6,080	$1.32	$31.18	$23.29
Jul-10	20,000	8,320	6,560	$1.61	$33.33	$28.66
Aug-10	20,000	8,320	6,560	$1.89	$37.31	$31.40
Sep-10	20,000	8,000	6,400	$1.96	$36.49	$32.26
Oct-10	20,000	8,320	6,560	$2.05	$31.92	$27.01
Nov-10	20,000	8,000	6,420	$2.19	$33.33	$29.58
Dec-10	20,000	8,320	6,560	$2.30	$35.24	$31.13
Jan-11	20,000	8,000	6,880	$1.96	$38.46	$32.24

TABLE 2 - BPA's Projected Revenue

	Revenues by Rate Determinant			Projected IP Revenue	
Month	Demand ($)	HLH ($)	LLH ($)	Month ($)	Cumulative ($)
Nov-09	$43,800	$255,974	$199,369	$499,144	$499,144
Dec-09	$46,000	$293,197	$204,213	$543,410	$1,042,553
Jan-10	$39,200	$307,680	$221,811	$568,691	$1,611,244
Feb-10	$39,800	$289,690	$182,765	$512,254	$2,123,499
Mar-10	$37,000	$310,522	$187,098	$534,619	$2,658,118
Apr-10	$34,800	$268,154	$163,856	$466,810	$3,124,928
May-10	$28,800	$253,520	$153,355	$435,675	$3,560,603
Jun-10	$26,400	$259,418	$141,603	$427,421	$3,988,024
Jul-10	$32,200	$277,306	$188,010	$497,515	$4,485,539
Aug-10	$37,800	$310,419	$205,984	$554,203	$5,039,742
Sep-10	$39,200	$291,920	$206,464	$537,584	$5,577,326
Oct-10	$41,000	$265,574	$177,186	$483,760	$6,061,086
Nov-10	$43,800	$266,640	$189,904	$500,344	$6,561,430
Dec-10	$46,000	$293,197	$204,213	$543,410	$7,104,839
Jan-11	$39,200	$307,680	$221,811	$568,691	$7,673,530

Forecasted Revenues Obtained from the Market

BPA routinely shapes its inventory to meet the need of its portfolio of contracts and sells its surplus inventory by purchasing and selling in the Pacific Northwest power market as described in BPA's WP-10 rate proceeding.[1] BPA established its forecast of Mid-C

[1] Refer to section 2.4 of the *Risk Analysis and Mitigation Study* in the WP-10 rate proceeding for a more complete description of the operating risk factors BPA faces in the course of doing business – in particular "the variation in hydro generation due to the variation in the volume of water supply from one year to the next…" which significantly impacts market prices, our need for shaping purchases and our ability to make surplus sales. (see WP-10-FS-BPA-04 beginning on page 21)

electricity prices in the WP-10 rate proceeding to value these purchases and sales.[2] For the period covered by the Block Contract BPA has updated its natural gas forecast from that used in BPA's WP-10 rate proceeding to forecast electricity prices to reflect a more contemporary understanding of natural gas fundamentals and to be consistent with the natural gas forecast used in BPA's draft Resource Program released September 30th.[3]

In the absence of the Block Contract selling 20 aMW of firm power to Port Townsend every hour, BPA would have one less requirement sale in our aggregated portfolio load shape to purchase for and 20 aMW more surplus energy to sell in the market. As illustrated in Table 3, BPA has forecasted the revenues it would otherwise obtain from the market using the same forecasting methodology applied in the WP-10 rate proceeding to incorporate our updated forecast of natural gas prices in the development of our electricity price forecast used in this analysis of the Block Contract for Port Townsend.

TABLE 3 - BPA's Forecasted Revenues Obtained from the Market

	Forecasted Market		Forecasted Revenues Obtained from the Market			
Month	HLH Price ($ / MWh)	LLH Price ($ / MWh)	HLH ($)	LLH ($)	Month ($) (HLH + LLH)	Cumulative ($)
Nov-09	$28.75	$26.38	$220,772	$177,776	$398,548	$398,548
Dec-09	$30.61	$27.41	$254,686	$179,826	$434,512	$833,060
Jan-10	$34.13	$29.51	$273,032	$203,019	$476,051	$1,309,110
Feb-10	$34.46	$29.77	$264,654	$171,473	$436,127	$1,745,238
Mar-10	$33.92	$29.16	$293,105	$181,373	$474,478	$2,219,716
Apr-10	$32.95	$28.05	$274,139	$170,563	$444,702	$2,664,418
May-10	$33.93	$24.45	$271,455	$168,220	$439,675	$3,104,094
Jun-10	$34.33	$26.33	$285,619	$160,085	$445,704	$3,549,798
Jul-10	$37.33	$32.18	$310,572	$211,074	$521,646	$4,071,444
Aug-10	$42.48	$35.63	$353,413	$233,703	$587,116	$4,658,559
Sep-10	$42.86	$38.00	$342,871	$243,178	$586,049	$5,244,608
Oct-10	$43.31	$36.85	$360,342	$241,727	$602,070	$5,846,678
Nov-10	$45.36	$40.59	$362,894	$260,574	$623,467	$6,470,145
Dec-10	$48.81	$43.42	$406,097	$284,854	$690,951	$7,161,096
Jan-11	$50.70	$42.13	$405,610	$289,834	$695,445	$7,856,541

[2] BPA employs the its electricity price forecast for multiple purposes in the WP-10 rate proceeding as outlined in the *Market Price Forecast Study*. The study also details how BPA established its forecast of Mid-C electricity prices in the WP-10 rate proceeding. (see WP-10-FS-BPA-03, beginning on page 1)

[3] BPA's natural gas forecast used in the WP-10 rate proceeding is outlined in section 3.3 of the Market Price Forecast Study. (see WP-10-FS-BPA-03, beginning on page 11) BPA's more contemporary understanding of natural gas market fundamentals caused a lowering of our natural gas price forecast in 2010 and an increase in 2011. The primary reasons for our recent reductions became apparent in the progression of time since the natural gas price forecast for the WP-10 rate proceeding was constructed; these are: a) continued strength of natural gas production despite steep reductions in rig counts, b) continued slow recovery of natural gas demand – particularly on the industrial side, c) record amount of natural gas in storage, d) reduced risk of hurricane impact on supply now that the 2009 hurricane season is nearly over. (See also Short-term Energy Outlooks from the EIA for September and October that have reduced their forecasted Henry Hub Spot Price average for 2010 to $4.78 and $5.02 per Mcf respectively [or $4.64 and $4.87 per MMbtu using EIA's conversion of 1 Mcf = 1.031 MMbtu], *Short-term Energy Outlook*, DOE EIA, September 9, 2009, page 1; *Short-Term Energy and Winter Fuels Outlook*, DOE EIA, October 6, 2009, p. 3.)

The following is a summary of the additional steps BPA employed to forecast the revenues we would otherwise obtain from the market:

- Net benefit is equal to the projected IP revenue minus the forecasted revenues obtained from the market
- Adjust for the value of reserves

Net Benefit (IP – Market)

BPA determined its net benefit of serving Port Townsend at the IP rate for each month by subtracting the opportunity cost forecast to be obtained in the market detailed in Table 3 from the projected IP revenues described in Table 2. BPA's net benefit before adjustments is illustrated in Table 4:

TABLE 4 - BPA's Net Benefit before Adjustment

	Net Revenue or (Cost)	
Month	Month ($)	Cumulative ($)
Nov-09	$100,596	$100,596
Dec-09	$108,898	$209,494
Jan-10	$92,640	$302,134
Feb-10	$76,127	$378,261
Mar-10	$60,141	$438,402
Apr-10	$22,107	$460,509
May-10	($4,000)	$456,509
Jun-10	($18,283)	$438,226
Jul-10	($24,130)	$414,095
Aug-10	($32,913)	$381,183
Sep-10	($48,465)	$332,718
Oct-10	($118,310)	$214,408
Nov-10	($123,124)	$91,284
Dec-10	($147,541)	($56,257)
Jan-11	($126,753)	($183,011)

Value of Reserves

In addition, BPA takes into account the value to BPA of the reserves Port Townsend is required to make available to BPA under the Block Contract. Sales at the IP rate reflect the value of a right for BPA to obtain operating reserves. Specifically, the energy rate tables in the IP-10 rate schedule include an $0.80 per MWh credit for the value of these reserves. Therefore, BPA's net benefit above compares a firm surplus sale to a sale at the IP rate with reserves. We have adjusted for this by adding back a value of reserves that provides an equal and opposite offset to the $0.80 per MWh credit for the value of reserves in the IP-10 rate schedule. As illustrated by Table 5, this is done for every megawatt hour of the 20 aMW not sold to Port Townsend:

TABLE 5 - BPA's Net Benefit after Adjustments

Month	Value of Reserves Month ($)	Value of Reserves Cumulative ($)	BPA's Adjusted Net Revenue Month ($)	BPA's Adjusted Net Revenue Cumulative ($)
Nov-09	$11,520	$11,520	$112,116	$112,116
Dec-09	$11,904	$23,424	$120,802	$232,918
Jan-10	$11,904	$35,328	$104,544	$337,462
Feb-10	$10,752	$46,080	$86,879	$424,341
Mar-10	$11,904	$57,984	$72,045	$496,386
Apr-10	$11,520	$69,504	$33,627	$530,013
May-10	$11,904	$81,408	$7,904	$537,917
Jun-10	$11,520	$92,928	($6,763)	$531,154
Jul-10	$11,904	$104,832	($12,226)	$518,927
Aug-10	$11,904	$116,736	($21,009)	$497,919
Sep-10	$11,520	$128,256	($36,945)	$460,974
Oct-10	$11,904	$140,160	($106,406)	$354,568
Nov-10	$11,520	$151,680	($111,604)	$242,964
Dec-10	$11,904	$163,584	($135,637)	$107,327
Jan-11	$11,904	$175,488	($114,849)	($7,523)

As a result, this analysis demonstrates how the projected revenues BPA recovers from the 14-month IP sale to Port Townsend (from November 1, 2009 through December 31, 2010) exceed by $107,327 the forecasted revenues that BPA would otherwise obtain from the market. There are other benefits to BPA's operations that may contribute to other similar demonstrations in the future, including: a) avoided transmission costs for a portion of surplus sales;[4] and b) a forecasted increase in the market price of electricity for BPA's other surplus sales as a result of direct-service industry (DSI) load operating.[5] Adjustments for these benefits to BPA are not included here because they are not of sufficient magnitude to affect the outcome for this 20 aMW sale.

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[4] When BPA makes a requirements sale, its customers – including Port Townsend – cover the cost of transmission through their own transmission contract. Market prices assume power is delivered by the seller to Mid-C. BPA Power Services must pay those transmission costs to move the power to the Mid-C delivery point in order to realize the full market value for its surplus sales. BPA PS maintains an inventory of transmission to move the surplus power it intends to sell. However, this inventory is not sufficient to move all of the surplus power BPA would sell under all water conditions. As a result, there is a subset of water conditions under which BPA would incur an incremental transmission cost to sell the incremental surplus energy if it did not sign contracts to serve the DSI loads – including the Block Contract with Port Townsend. These incremental transmission costs are avoided when BPA makes an IP sale(s) to the DSIs.

BPA would determine the value of these avoided transmission costs using the same methodology it used in the WP-10 rate proceeding to establish the costs and risks associated with its transmission inventory. Specifically, we would identify the subset of water conditions. Then we would apply the tariff costs established by BPA TS to the incremental transmission need under each water condition. The mean value of the 3,500 games for which this was done represents the forecasted cost of the incremental transmission avoided when BPA makes an IP sale(s) to the DSIs – including the Block Contract with Port Townsend.

[5] When BPA serves the DSI loads – including Port Townsend – and they operate – as opposed to not operating if BPA does not sell to them – BPA's surplus sales realize increased revenues because the mean value of prices for electricity for 3,500 games in Western power markets are higher than they would otherwise be had the DSI loads not consumed electricity from Western power markets.

From: Kuntz,Gail K - DKR-MSGL
Sent: Monday, November 02, 2009 12:13 PM
To: 'Harper, Hal'; Evan Barrett; 'Virginia_Sloan@tester.senate.gov'; 'kirby_campbell-rierson@baucus.senate.gov'; 'Anderson, Larry'
Subject: Draft contract posted for DSI (CFAC) service

http://www.bpa.gov/power/pl/regionaldialogue/implementation/Documents/#SDSI

On Oct. 30, BPA posted a letter to the region on draft contracts for the direct-service industries, including Columbia Falls Aluminum, at the above link. Also posted is a modified draft contract for CFAC and equivalent benefits analysis. BPA is seeking public review and comment until Nov. 9 on these revisions to proposed power sales contracts for both Alcoa and CFAC that BPA initially offered in August of this year. Please let me know if you have questions or would like to discuss. I am travelling out of the office this week, but please leave a message at 406-439-6311 and I'll return the call as soon as I can.

Atterbury,Laura M - DK-7

From: Wilkins, Paul (Baucus) [Paul_Wilkins@baucus.senate.gov]
Sent: Monday, August 31, 2009 2:27 PM
To: Baskerville,Sonya L - DKN-WASH
Subject: RE: ALCOA and CFAC

Thanks, Sonya.

-----Original Message-----
From: Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
Sent: Monday, August 31, 2009 5:24 PM
To: Wilkins, Paul (Baucus)
Subject: RE: ALCOA and CFAC

Not yet. I've heard that BPA's General Counsel will be meeting with Steve Wright and Allen Burns tomorrow or the next day. I'll know more after they meet. 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 31, 2009 4:53 PM
To: Baskerville,Sonya L - DKN-WASH
Subject: RE: ALCOA and CFAC

Hi Sonya,

Any more information from your general counsel's office as to what this means for the DSI's?

Thanks!

Paul

-----Original Message-----
From: Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
Sent: Friday, August 28, 2009 3:36 PM
To: 'mark.middaugh@mail.house.gov'; Shimek, Jaime (Murray); Merkel, Joel (Cantwell); Wilkins, Paul (Baucus); Harding, Stephenne (Tester)
Subject: RE: ALCOA and CFAC

I've talked with a couple of you already. Here is the decision that was issued today.

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)

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH
Sent: Wednesday, September 16, 2009 4:53 PM
To: 'Jaime_Shimek@murray.senate.gov'
Subject: Re: Port Townsend Paper

Sure. Even though they were not a subject of this lawsuit, only ALCOA was, the legal holding of the Court has to be considered for anything we would do for Port Townsend and CFAC. Now, it's likely that nobody cares enough to challenge us on benefits to Port Townsend and we may be able to segregate them from the others to establish a separate legal justification. But, that sort of idea is still be discussed.

Hopefully tomorrow I'll have more for you on what we are considering as next steps on this issue. Steve needed to do some due diligence with his boss this evening. So after that occurs, I should be able to say more. Thanks.
Sonya Baskerville
202.253.7352

----- Original Message -----
From: Shimek, Jaime (Murray) <Jaime_Shimek@murray.senate.gov>
To: Baskerville,Sonya L - DKN-WASH
Sent: Wed Sep 16 16:41:45 2009
Subject: Port Townsend Paper

Hey Sonya,

Starting to hear about Port Townsend Paper and how it might be affected by the court ruling that affects the DSIs. Can you have your smart people tell me how this all ties in?

-js

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH
Sent: Thursday, September 17, 2009 4:32 PM
To: 'Joel_Merkel@cantwell.senate.gov'; 'Jaime_Shimek@murray.senate.gov'; 'mark.middaugh@mail.house.gov'; 'Pete.Modaff@mail.house.gov'
Subject: Fw: BPA letter to the region regarding scheduled payments to Alcoa

This was just sent to customers.
Sonya Baskerville
202.253.7352

----- Original Message -----
From: Burbank,Nita M - PFP-6
To: Ackerman,Sue <susan.k.ackerman@comcast.net>; Adams,Dick <dick@pnucc.org>; Adams,Doug <douga@okpud.org>; Andersen,Steve <andersen@eesconsulting.com>; Andrea,Michael <Michael.Andrea@avistacorp.com>; Andrus,Stephanie <stephanie.andrus@doj.state.or.us>; Aspaas,Lynn <laspaas@clarkpud.com>; Baker,Loren <lorenabaker@comcast.net>; Baker,Nancy <nbaker@ppcpdx.org>; Beatty,Theodore <tbeatty@energy-northwest.com>; Beaudry,Haley <hbeaudry@bresnan.net>; Beaulieu,Christine <cbeaulieu@ppcpdx.org>; Beck,Barbara <bjbeck53@comcast.net>; Bedbury,Dan <dan.bedbury@eweb.eugene.or.us>; Beyer,Lee <lee.beyer@state.or.us>; Bickford,Dan <bickford@bentonpud.org>; Bleakney,Leann <lbleakney@nwcouncil.org>; Boomer,Linda <lboomer@franklinpud.com>; BPA Average System Cost; Brattebo,Scott <scott.brattebo@comcast.net>; Brawley,Doug <dbrawley@pngc.com>; Brost,Ed <ebrost@franklinpud.com>; Brown,Stefan <stefan.brown@pgn.com>; Byers,Dick <dick@wutc.wa.gov>; Caldwell,Carol <ccaldwell@mbllp.com>; Calica,Direlle <direlle@scdprofessionals.com>; Carr,Geoff <ghcarr@pacifier.com>; Castille,Tim <castille@landsenergy.com>; Chevis,Cheryl <cheryl.chevis@pgn.com>; Christensen,Eric <elchristensen@snopud.com>; Conger,Kurt <kconger@nrgxs.com>; Corum,Ken <kcorum@nwcouncil.org>; Corwin,Scott <scorwin@ppcpdx.org>; Cross,Robin <robin.cross@seattle.gov>; Deen,Michael <mdeen@ppcpdx.org>; Deren,Jeffrey <jdderen@snopud.com>; Dolan,Jim <jim@pacificpud.org>; Dotten,Michael <mcdotten@msn.com>; Dragoon,Ken <ken@rnp.org>; Drummond,Bill <wmgt@montana.com>; Drury,Chris <chris.drury@navy.mil>; Edmonds,Sarah <sarah.edmonds@pacificorp.com>; Elg,Jo <jelg@ifpower.org>; Elliot,Doug <delliott@kec.com>; Emtman,Trevor <emtman.t@portseattle.org>; Engel,Lee <Engel.Lee@Seattle.Gov>; Enright,Diana <diana.enright@state.or.us>; Essex,Bob <bessex@cowlitzpud.org>; Falcon,Anna <falcon@eesconsulting.com>; Falkenburg,Humaira <falkenberg@saw.net>; Finnen,Ray <rffinnen@snopud.com>; Fisher,Ann <EnerGlaw@aol.com>; Flynn,Ryan <ryan.flynn@pacificorp.com>; Ford,Brad <bford@cityofcentralia.com>; Gadeburg,Ron <rong@okpud.org>; Gall,James <james@lcpud.org>; Gray,Catherine <Catherine.GRAY@eweb.eugene.or.us>; Gregg,Randy <rgregg@teainc.org>; Hannaford,William <whannaford@nwcouncil.org>; Hiaasen,Eric <eric.hiaasen@eweb.org>; Howell,Don <don.howell@puc.idaho.gov>; Sarah Dennison-Leonard <sdleonard@earthlink.net>; Hardy,Randy <rhardy@hardyenergy.com>; Harris,Deb Bone <dbharris@franklinpud.com>; Haymaker,Tom <tom.haymaker@pngc.com>; Hellman,Marc <marc.hellman@state.or.us>; Herring,Morgan <Morgan.Herring@PacifiCorp.com>; Hewitt,Pam <pam.hewitt@epud.org>; Hill,Chris <chill@cowlitzpud.org>; Hill,Michael <mhill@ghpud.org>; Himlie,Jay <jayh@masonpud3.org>; Hocken,Natalie <Natalie.Hocken@PacifiCorp.com>; Huber,Bob

<Bob.Huber@alcoa.com>; Huhta,Gary <Ghuhta@cowlitzpud.org>; Hunt,Sandy <shunt@popud.org>; Hunter,Ian <IRHunter@SNOPUD.com>; James,Dan <djames@pngcpower.com>; Jenks,Bob <bob@oregoncub.org>; Johnson,Chris <johnsonc@bentonpud.org>; Johnson,Erick <erick.johnson@pngc.com>; Johnson,Jim <jimj@nwasco.com>; Johnson,Sara <sara.johnson@pse.com>; Jourabchi,Massoud <mjourabchi@nwcouncil.org>; Kallstrom,Jeff <jkallstrom@snopud.com>; Kandra,Lindsay <lkandra@cablehuston.com>; Kari,Don <dkari@perkinscoie.com>; Kester,Greg <gregk@hcc.net>; Kindley,Ray <rkindley@cablehuston.com>; Knipschield,Debbie <debbiek@hcc.net>; Knitter,Keith <kknitte@gcpud.org>; Krekel,Randall <Randall_N_Krekel@rl.gov>; Labolle,Larry <larry.labolle@avistacorp.com>; Langer,Dwight <dwight@nwasco.com>; Lawrence,Rhett <rhett@wildsalmon.org>; Leach,Randi <rleach@cityofcentralia.com>; Lewis,Steven <slewis@landsenergy.com>; Lindstrom,Shirley <slindstrom@nwcouncil.org>; Litchfield,Jim <litchlcg@gmail.com>; Lobdell,Jim <jim.lobdell@pgn.com>; Lovely,Rick <rlovely@ghpud.org>; Mayer,Zach <zach.mayer@glencore-us.com>; Mayson,Jack <jack.mayson@seattle.gov>; Mayson,Jack <mayson.jack@yahoo.com>; McGary,Pat <pmcgary@clarkpud.com>; McKinsey,Tom <tmac@tgi.net>; Melcalfe,Travis <tmetcalfe@ci.tacoma.wa.us>; Mendonca,Greg <gmendonca@pngc.com>; Metcalfe,Dennis <demetcalf@comcast.net>; Mey,Ken <kmey@ci.richland.wa.us>; Miles,Anna <ajmiles@snopud.com>; Miller,Doug <doug@pacificpud.org>; Mitchell,Fred <fredm@clallampud.net>; Morlan,Terry <tmorlan@nwcouncil.org>; Mount,Ed <emount@teainc.org>; Muller,Dave <Davem@lcpud.org>; Mundorf,Terry <terrym@millcreeklaw.com>; Munz,Paul <pgmunz@snopud.com>; Murphy,Paul <pmurphy@mbllp.com>; Murray,Mike <mmurray@CI.RICHLAND.WA.US>; Nichols,Patty <pnichols@idahopower.com>; Nelson,Jeff <jeffn@subutil.com>; Nieborsky,Garry <GNieborsky@kec.com>; Nordstrom,Lisa <lisa.nordstrom@pacificorp.com>; Nutley,Busse <bussen@cityofmccleary.com>; Obenchain,Phil <Phil.Obenchain@PacifiCorp.com>; O'Connor,Tom <toconnor@teleport.com>; O'Meara,Kevin <kpom@well.com>; Opatrny,CC <ccopat@e-z.net>; Pace,Charles <zboy53@custertel.net>; Palmer,Steve <spalmer@franklinpud.com>; Paulson,Colleen <colleen.paulson@pse.com>; Peters,Lon <lpeters@pacifier.com>; Piliaris,Jon <jon@efstrategies.com>; Plotz,David <davidp@lcpud.org>; Pollock,Walt <waltnweeze@msn.com>; Porter,John <jporter@bentonrea.org>; Price,Neil <neil.price@puc.idaho.gov>; Radcliffe,Sania <sania.radcliffe@pgn.com>; Rettenmund,Fred <fredr@inlandpower.com>; Richardson,Peter <peter@richardsonandoleary.com>; Rodol,Ali <ali.rodol@seattle.gov>; Roehm,Jenny <jroehm@paragonconsultingservices.com>; Roman,Edward <eroman@smud.org>; Rozanski,Rick <rrr@mc-power.com>; Russell,Jim <jrussell@cityoftacoma.org>; Samuelson,Matt <matts@masonpud3.org>; Sanders,Jim <jlsanders@clarkpud.com>; Sanger,Irion <mail@dvclaw.com>; Sargent,Rich <rsargent@franklinpud.com>; Saven,John <jsaven@pacifier.com>; Schaff,Margie <mschaffpc@att.net>; Scheel,Jim <jscheel@iomet.com>; Schneider,Russ <data1@fec.cc>; Schoenbeck,Don <dws@r-c-s-inc.com>; Schwartz,Howard <howards@cted.wa.gov>; Schwendiman,Celeste <cschwendiman@idahopower.com>; Scott,Aleka <aleka@pngc.com>; Seifert,Caryn <caryn.seifert@navy.mil>; Sheets,Ed <ed@edsheets.com>; Shimshank,Rachel <rachel@rnp.org>; Shurts,John <jshurts@nwcouncil.org>; Sirois,Brenda <brenda.sirois@eweb.eugene.or.us>; Sirvaitis,Rob <rsirvaitis@prmllp.com>; Skeahan,Brian <bskeahan@cowlitzpud.org>; Skidmore,Lara <lara.skidmore@troutmansanders.com>; Smith,Doug <dsmith@ghpud.org>; Spear,Kayce <kcspear@ppcpdx.org>; Speer,Jack <jack.speer@alcoa.com>; Staker,Doug <doug@denetworks.com>; Stauffer,Mark <mark.stauffer@northwestern.com>; Stratman,Megan <mstratman@pacifier.com>; Strong,R. Blair <r.blair.strong@painehamblen.com>; Tarp,Kelly <tarp@eesconsulting.com>; Taylor,Ardyce <ardycet@cityofmccleary.com>; Taylor,Steven <sntaylor@hctc.com>; Thompson,Mark <mthompson@ppcpdx.org>; Tilghman,Henry

<henry.tilghman@pacificorp.com>; Tinker,Don <Don.Tinker@Seattle.Gov>; Titus,Paul <pault@nwasco.com>; Toulson,Dana <datoulson@snopud.com>; Towner,Zaybn <ztowner@pngcpower.com>; Trotter,Don <dtrotter@utc.wa.gov>; Tsui,Jonah <jtsui@teainc.org>; Vaughn,Greg <vaughngm@bowater.com>; Ward,Bill <lamar2 @charter.net>; Weems,Ryan <ryan.weems@pacificorp.com>; Weiss,Steve <steve@nwenergy.org>; Westerfield,Louann <louann.westerfield@puc.idaho.gov>; Wheeler,Brenna <BWheeler@clarkpud.com>; Williams,Ed <EWilliams@cityofcentralia.com>; Wilson,Mike <mwilson@cencoast.com>; Wissler,Jon <jwissler@pngcpower.com>; Wittenburg,Bob <bwittenberg@skamaniapud.com>; Wolverton,Linc <lwolv@tds.net>; Wood,Wyla <wylaw@masonpud3.org>; Wright,Cindy <cindy.wright@seattle.gov>; Wrigley,Paul <paul.wrigley@pacificorp.com>; Yarkowski,Cameron <cameron@rnp.org>; Young,Robert <robert@economists.com>; Zell,Troy <utilityadjustorstz@msn.com>; Zwick,Sharon <szwick@ppcpdx.org>
Sent: Thu Sep 17 16:29:31 2009
Subject: BPA letter to the region regarding scheduled payments to Alcoa

The information below was issued in a letter today posted on the BPA Web site at http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-09-17_Letter-to-Region-DigSigned.pdf.

"BPA has reviewed the decision by the United States Court of Appeals for the Ninth Circuit in Pacific Northwest Generating Cooperative, et al., v. Bonneville Power Administration, issued Aug. 28, 2009. BPA believes the opinion does not support the agency making remaining payments to Alcoa, Inc., under the 2006 Block Power Sales Agreement, as amended. Therefore, BPA will not make the scheduled payments for August and September. These payments would have been made Sept. 11 and Oct. 13, 2009.

BPA is still evaluating the opinion and potential implications regarding longer term DSI service."

Thank you,
Nita Burbank
Public Utilities Specialist
Bonneville Power Administration
(503) 230-3935
nmburbank@bpa.gov

Atterbury,Laura M - DK-7

From: Berick, Dave (Wyden) [Dave_Berick@wyden.senate.gov]
Sent: Tuesday, September 29, 2009 12:02 PM
To: Baskerville,Sonya L - DKN-WASH
Subject: FW: PDF of BPA letter on DSI's
Attachments: BPA DSI Letter.pdf

Pls let me know you received this.

Congress of the United States

Washington, DC 20510

September 29, 2009

Mr. Steve Wright
Administrator
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

Dear Mr. Wright,

We urge the Bonneville Power Administration (BPA) not to proceed with its proposed seven year power sales contracts with two aluminum companies in the Northwest known as Direct Service Industry (DSI) contracts. Although BPA has historically provided service to these plants, there are now significant legal and physical limits on future service which the pending proposals do not resolve.

First, BPA has not met the test required by recent U.S. Ninth Circuit Court of Appeals decisions that the contracts represent sound business practices and benefit BPA and its preference customers. For the second time in eight months, the Court again concluded that BPA must have a business justification for these contracts and it invalidated the latest contract (*Pac. Northwest Generating Coop. v. Bonneville Power Admin.*, Case Nos. 09-70228, 09-70236, 09-70988 (9th Cir. Aug. 28, 2009)), finding that "BPA has once again failed to advance a reasonable interpretation of its governing statutes that supports its actions" with regard to existing contracts with these companies. The Court's finding is not surprising since BPA loses money in these arrangements, receives no discernible benefit from them, and must raise rates to its preference utility customers in order to purchase power for an individual company. BPA's analysis of its current proposal is no different and shows that over time they cause job loss to consumers of BPA preference customers. Even under BPA's most recent optimistic assessment, the net expected gain in regional jobs comes at a staggering cost of nearly $180,000 per job per year – a cost borne by BPA and its customers.

Second, while service to DSI's historically provided benefits to Bonneville and its customers from the sale of surplus power, BPA no longer has excess power to sell to the DSIs. The Regional Dialogue process leading to the renegotiation of long-term contracts to preference customers indicated that federal power will essentially be fully allocated. Ongoing proceedings concerning the Biological Opinion for the Federal Power System and recent BPA economic and budget forecasts suggest that power reserves will likely to continue to be constrained. Implementation of the proposed DSI contracts will therefore require BPA to enter into power purchase agreements with outside suppliers placing BPA and its customers at risk for changes in market conditions and/or for termination by the DSI's. Rather than providing system benefits, the proposed contracts will result in increased system costs and financial risks.

In light of the Ninth Circuit's invalidation of BPA's current arrangements for the aluminum companies, and the lack of a reasoned analysis regarding the impacts of BPA intentionally

incurring up to $600 million in additional costs to support these two companies over the next seven years, we question the agency's intent to move forward with new contracts. It would seem necessary at a minimum that BPA conduct added review of the risks, costs, and benefits of the proposed new seven-year deals.

We question whether the agency can justify new contracts with the aluminum companies under the requirements laid out by the Court. Pushing forward with the existing proposal and its analysis, which shows a loss to the agency and marginal trade-off of jobs across the region does not seem responsible.

On the heels of the Court's decision, and out of concern of the broader economic impacts to the region, we urge that you withhold further action on the proposed contracts.

Sincerely,

Ron Wyden
U.S. Senator

Mike Crapo
U.S. Senator

Jeff Merkley
U.S. Senator

James E. Risch
U.S. Senator

Peter DeFazio
U.S. Representative

Michael K. Simpson
U.S. Representative

David Wu
U.S. Representative

Cc: Daniel Poneman, Deputy Secretary of Energy
Scott Blake Harris, General Counsel

Atterbury,Laura M - DK-7

From:	Baskerville,Sonya L - DKN-WASH
Sent:	Thursday, October 08, 2009 6:52 PM
To:	'Pete.Modaff@mail.house.gov'; 'Clark.Mather@mail.house.gov'; 'Beth.Osborne@mail.house.gov'; 'Jaime_Shimek@murray.senate.gov'; 'Joel_Merkel@cantwell.senate.gov'; 'mark.middaugh@mail.house.gov'
Cc:	'Paul_Wilkins@baucus.senate.gov'; 'stephenne_harding@tester.senate.gov'
Subject:	Port Townsend Paper
Importance:	High

Hey all. The decision to post this proposed contract was made very late today and the notice below was just posted. Apologies for not being able to give you a heads-up earlier. Please note that this does not indicate that a decision has been made to proceed with this agreement. The view was that we needed to get a proposal for PTP posted for public comment quickly in order to proceed as soon as possible after their current one-month sale expires (assuming we can proceed). There will not be a public meeting on this agreement.

The publics also were notified tonight.

I'll try to catch up with you tomorrow to chat. Thanks!

http://www.bpa.gov/power/pl/regionaldialogue/implementation/Documents/#TPC

Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621
POWER SERVICES
October 8, 2009
In reply refer to: PT-5
To regional customers, stakeholders and other interested parties:
The Bonneville Power Administration (BPA) is proposing to offer a Block Power Sales Agreement (Block Contract) to Port Townsend Paper Company at the Industrial Power (IP) rate. Port Townsend currently receives service as a direct-service industry (DSI) through a one month FPS sale from BPA priced at the equivalent of the IP-10 rate for October 2009.
On August 28, 2009, the Ninth Circuit issued its opinion in Pacific Northwest Generating Cooperative v. BPA, Slip Op. 09-70228 (August 28, 2009) ("PNGC II"). BPA believes that with modifications to the draft contract for Port Townsend proposed June 22, 2009, service to Port Townsend is consistent with sound business principles, as described in PNGC II, since the forecasted market value of the energy is below the value of an IP sale. Therefore, the projected revenues BPA recovers from the IP sale Port Townsend exceed the forecasted revenues that BPA would otherwise obtain from the market.
The modifications that BPA and Port Townsend have negotiated reduce the term of the Block Contract from 2-years to 14-months (November 1, 2009 through December 31, 2010).
BPA's analysis of the Block Contract, which will be posted by Tuesday October 13th, and this proposed contract will be available for public review and comment until Monday, October 19, 2009, on BPA's Web site at:
www.bpa.gov/power/pl/regionaldialogue/implementation/documents/
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. October 19, 2009. If you

have additional questions about this issue, please call Mark Miller at (503) 230-4003 or Heidi Helwig of the Public Affairs Office at (503) 230-3458.
Sincerely,
/s/ Mark E. Miller
Mark E. Miller
Trading Floor Manager

Sonya Baskerville
202.253.7352

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH

Sent: Friday, October 30, 2009 3:40 PM

To: 'mark.middaugh@mail.house.gov'; 'Joel_Merkel@cantwell.senate.gov'; 'Jaime_Shimek@murray.senate.gov'; 'Pete.Modaff@mail.house.gov'; 'george.behan@mail.house.gov'

Subject: Fw: It's already in the Bellingham Herald

Fyi.
Sonya Baskerville
202.253.7352

From: Pruder Scruggs,Kathryn M - DKP-7
To: Baskerville,Sonya L - DKN-WASH; Helwig,Heidi Y - DKE-7; Hansen,Michael S - DKE-7
Sent: Fri Oct 30 15:37:59 2009
Subject: It's already in the Bellingham Herald

http://www.bellinghamherald.com/latestheadlines/story/1137656.html

Katie Pruder-Scruggs
Public Affairs
Bonneville Power Administration
905 NE 11th Avenue, Portland, OR 97232
(503) 230-3111
(503) 413-9323 (cell)

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH
Sent: Friday, October 30, 2009 8:31 PM
To: 'mark.middaugh@mail.house.gov'; 'Joel_Merkel@cantwell.senate.gov'; 'Jaime_Shimek@murray.senate.gov'; 'Pete.Modaff@mail.house.gov'; 'george.behan@mail.house.gov'
Subject: Re: UPDATE Alcoa: Letter and Agreement Posted
Importance: High

Here is the link (scroll down the webpage to "Service to Direct Service Industries."

http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Here's the text of the final letter:
Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621
POWER SERVICES
October 30, 2009
In reply refer to: A-7
To: Regional Customers, Stakeholders, and Other Interested Parties
Re: DSI Service
In an August 19 letter to the region, the Bonneville Power Administration (BPA) issued for public comment a draft long-term power sales contract with Alcoa, Inc. (Alcoa). BPA also proposed an identical draft contract for Columbia Falls Aluminum Company (CFAC).
Today, BPA is seeking public review and comment on revisions to the proposed power sale contracts with Alcoa and CFAC that were the subject of the August 19 letter. Service under those contracts was proposed to start October 1, 2009, but BPA did not make a decision because it needed time to evaluate and respond to an August 28, 2009, Ninth Circuit Court opinion, Pacific Northwest Generating Cooperative, et al, v. BPA, Slip OP. 09-70228 (August 28, 2009) ("PNGC II"). As seen in the public comments on BPA's proposed contract with Port Townsend Paper Corporation, views differ on what PNGC II requires to satisfy the sound business principle test, with the most conservative view being that benefits must equal or exceed costs.
BPA now believes that with modifications to the draft contract proposed August 19, 2009, the contract for service to Alcoa is consistent with sound business principles, as that standard may be described in PNGC II. This is due to the incorporation of an "Equivalent Benefits" test that requires that benefits that are forecast to accrue to BPA as a result of providing firm power service to Alcoa equal or exceed the forecast cost of providing such service at the Industrial Firm Power (IP) rate. While BPA believes the equivalent benefits test should not be required under the law, it is following its view of what PNGC II seems to require. In the event that view is mistaken or PNGC II itself is changed, the contract is written to be adaptable, without need for another contract.

BPA's goal has been, and remains, to craft a set of contracts that will strike a balance between minimizing impacts to BPA rates and providing the direct service industries (DSI) a chance to continue operating in the Pacific Northwest and, in doing so, to retain family wage jobs in these trying economic times such that there are "net" employment benefits for the region. The purpose of the Northwest Power Act is to afford the Pacific Northwest an adequate, efficient, economical and reliable power supply, and service to the DSI is consistent with that purpose.
Under the present court interpretation, we believe we are able to offer the DSI smelters a contract with an Initial Period of 19 months that meets the "Equivalent Benefits" test. The modified power sale contracts also provide for a contingent follow-on Second Period if BPA determines it is consistent with the Court's opinions and other rulings with respect to service to DSI customers.

The modifications to the contract reduce the Initial Period of the Block Contract to 19 months from December 1, 2009, through June 30, 2011. BPA will make the same contract offer to CFAC for a one and two potline operation at their smelter located in Montana.
The modified Alcoa and CFAC contract, plus a redline draft of the modifications to the August 19 draft, and a

summary of Equivalent Benefits analyses for both Alcoa and CFAC are available for public review and comment until November 9, 2009, on BPA's Website at:
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/
BPA staff is available to meet and discuss the BPA proposal with interested parties who need further clarification prior to finalizing their comment from November 2 through November 6.

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., November 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
Allen L. Burns
Acting Deputy Administrator

Sonya Baskerville
202.253.7352

From: Baskerville,Sonya L - DKN-WASH
To: 'mark.middaugh@mail.house.gov' ; 'Joel_Merkel@cantwell.senate.gov' ; 'Jaime_Shimek@murray.senate.gov' ; 'Pete.Modaff@mail.house.gov' ; 'george.behan@mail.house.gov'
Sent: Fri Oct 30 15:32:01 2009
Subject: Re: UPDATE ALcoa: Letter to Region4.doc

No posting yet, but all of the customer contacts and state and district Congressional offices have been contacted. The comment period will run through November 9.

I'll be back in touch!
Sonya Baskerville
202.253.7352

From: Baskerville,Sonya L - DKN-WASH
To: 'mark.middaugh@mail.house.gov' ; 'Joel_Merkel@cantwell.senate.gov' ; 'Jaime_Shimek@murray.senate.gov'
Sent: Fri Oct 30 14:48:11 2009
Subject: Fw: ALcoa: Letter to Region4.doc

Here is the draft letter to the region on the proposed agreement. Nothing has been posted yet. I know you need something for press, so this should be good for talking points.

As soon as I hear the posting is done, I'll call and/or email!
Sonya Baskerville
202.253.7352

From: Burns,Allen L - D-7
To: Gendron,Mark O - P-6
Cc: Baskerville,Sonya L - DKN-WASH
Sent: Fri Oct 30 12:43:39 2009
Subject: ALcoa: Letter to Region4.doc

We have the green light from DOE to proceed with this after 1 pm today. I'll be calling Corwin,Saven, Prescott, and Drummond between 1 and 2 pm today to give them a heads-up and just relaying the key pts from the attached **near** final letter.

From: Clark,Harry W - PTL-5

Sent: Friday, October 30, 2009 12:14 PM
To: Crawford,Sharon G - PT-5; Runzler,Kurt W - LP-7; Wright,Jon D - LP-7
Cc: Burns,Allen L - D-7
Subject: Letter to Region4.doc

Sharon
Please review and prepare for Allen's signature.

Kurt/Jon
I have incorporated Randy's comments let me know if you spot any heartburn.

<<Letter to Region4.doc>>

Harry

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH
Sent: Friday, October 30, 2009 9:05 PM
To: 'stephenne_harding@tester.senate.gov'; 'Paul_Wilkins@baucus.senate.gov'; 'mary.heller@mail.house.gov'
Subject: Update related to CFAC

Importance: High

BPA posted late tonight for comment a negotiated agreement with Alcoa. The agreement also will be offered to CFAC. Here is the link to the letter to the region and the proposed agreement along with supporting documentation (scroll down the webpage to "Service to Direct Service Industries").

http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Here's the text of the letter:
Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621
POWER SERVICES
October 30, 2009
In reply refer to: A-7
To: Regional Customers, Stakeholders, and Other Interested Parties
Re: DSI Service
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Today, BPA is seeking public review and comment on revisions to the proposed power sale contracts with Alcoa and CFAC that were the subject of the August 19 letter. Service under those contracts was proposed to start October 1, 2009, but BPA did not make a decision because it needed time to evaluate and respond to an August 28, 2009, Ninth Circuit Court opinion, Pacific Northwest Generating Cooperative, et al, v. BPA, Slip OP. 09-70228 (August 28, 2009) ("PNGC II"). As seen in the public comments on BPA's proposed contract with Port Townsend Paper Corporation, views differ on what PNGC II requires to satisfy the sound business principle test, with the most conservative view being that benefits must equal or exceed costs.
BPA now believes that with modifications to the draft contract proposed August 19, 2009, the contract for service to Alcoa is consistent with sound business principles, as that standard may be described in PNGC II. This is due to the incorporation of an "Equivalent Benefits" test that requires that benefits that are forecast to accrue to BPA as a result of providing firm power service to Alcoa equal or exceed the forecast cost of providing such service at the Industrial Firm Power (IP) rate. While BPA believes the equivalent benefits test should not be required under the law, it is following its view of what PNGC II seems to require. In the event that view is mistaken or PNGC II itself is changed, the contract is written to be adaptable, without need for another contract.

BPA's goal has been, and remains, to craft a set of contracts that will strike a balance between minimizing impacts to BPA rates and providing the direct service industries (DSI) a chance to continue operating in the Pacific Northwest and, in doing so, to retain family wage

jobs in these trying economic times such that there are "net" employment benefits for the region. The purpose of the Northwest Power Act is to afford the Pacific Northwest an adequate, efficient, economical and reliable power supply, and service to the DSI is consistent with that purpose.
Under the present court interpretation, we believe we are able to offer the DSI smelters a contract with an Initial Period of 19 months that meets the "Equivalent Benefits" test. The modified power sale contracts also provide for a contingent follow-on Second Period if BPA determines it is consistent with the Court's opinions and other rulings with respect to service to DSI customers.

The modifications to the contract reduce the Initial Period of the Block Contract to 19 months from December 1, 2009, through June 30, 2011. BPA will make the same contract offer to CFAC for a one and two potline operation at their smelter located in Montana.
The modified Alcoa and CFAC contract, plus a redline draft of the modifications to the August 19 draft, and a summary of Equivalent Benefits analyses for both Alcoa and CFAC are available for public review and comment until November 9, 2009, on BPA's Website at:
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/
BPA staff is available to meet and discuss the BPA proposal with interested parties who need further clarification prior to finalizing their comment from November 2 through November 6.

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., November 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
Allen L. Burns
Acting Deputy Administrator

Sonya Baskerville
202.253.7352

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH
Sent: Friday, October 30, 2009 9:23 PM
To: 'stephenne_harding@tester.senate.gov'
Subject: Fw: Update related to CFAC

Importance: High

Stephenne, related to your questions regarding the IP rate and the comparison to what BPA otherwise may have earned by a market sale, see the "Equivalent Benefits Analysis," one of the supporting documents at the link below. Thanks.
Sonya Baskerville
202.253.7352

----- Original Message -----
From: Baskerville,Sonya L - DKN-WASH
To: 'stephenne_harding@tester.senate.gov' <stephenne_harding@tester.senate.gov>; 'Paul_Wilkins@baucus.senate.gov' <Paul_Wilkins@baucus.senate.gov>; 'mary.heller@mail.house.gov' <mary.heller@mail.house.gov>
Sent: Fri Oct 30 21:05:12 2009
Subject: Update related to CFAC

BPA posted late tonight for comment a negotiated agreement with Alcoa. The agreement also will be offered to CFAC. Here is the link to the letter to the region and the proposed agreement along with supporting documentation (scroll down the webpage to "Service to Direct Service Industries").

http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/

Here's the text of the letter:
Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621
POWER SERVICES
October 30, 2009
In reply refer to: A-7
To: Regional Customers, Stakeholders, and Other Interested Parties
Re: DSI Service
In an August 19 letter to the region, the Bonneville Power Administration (BPA) issued for public comment a draft long-term power sales contract with Alcoa, Inc. (Alcoa). BPA also proposed an identical draft contract for Columbia Falls Aluminum Company (CFAC). Today, BPA is seeking public review and comment on revisions to the proposed power sale contracts with Alcoa and CFAC that were the subject of the August 19 letter. Service under those contracts was proposed to start October 1, 2009, but BPA did not make a decision because it needed time to evaluate and respond to an August 28, 2009, Ninth Circuit Court opinion, Pacific Northwest Generating Cooperative, et al, v. BPA, Slip OP. 09-70228 (August 28, 2009) ("PNGC II"). As seen in the public comments on BPA's proposed contract with Port Townsend Paper Corporation, views differ on what PNGC II requires to satisfy the sound business principle test, with the most conservative view being that benefits must equal or

exceed costs.
BPA now believes that with modifications to the draft contract proposed August 19, 2009, the contract for service to Alcoa is consistent with sound business principles, as that standard may be described in PNGC II. This is due to the incorporation of an "Equivalent Benefits" test that requires that benefits that are forecast to accrue to BPA as a result of providing firm power service to Alcoa equal or exceed the forecast cost of providing such service at the Industrial Firm Power (IP) rate. While BPA believes the equivalent benefits test should not be required under the law, it is following its view of what PNGC II seems to require. In the event that view is mistaken or PNGC II itself is changed, the contract is written to be adaptable, without need for another contract.

BPA's goal has been, and remains, to craft a set of contracts that will strike a balance between minimizing impacts to BPA rates and providing the direct service industries (DSI) a chance to continue operating in the Pacific Northwest and, in doing so, to retain family wage jobs in these trying economic times such that there are "net" employment benefits for the region. The purpose of the Northwest Power Act is to afford the Pacific Northwest an adequate, efficient, economical and reliable power supply, and service to the DSI is consistent with that purpose.
Under the present court interpretation, we believe we are able to offer the DSI smelters a contract with an Initial Period of 19 months that meets the "Equivalent Benefits" test. The modified power sale contracts also provide for a contingent follow-on Second Period if BPA determines it is consistent with the Court's opinions and other rulings with respect to service to DSI customers.

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http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/
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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., November 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
Allen L. Burns
Acting Deputy Administrator

Sonya Baskerville
202.253.7352

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH
Sent: Saturday, October 31, 2009 11:13 AM
To: Wright,Stephen J - A-7; Burns,Allen L - D-7; Clark,Harry W - PTL-5; Kuntz,Gail K - DKR-MSGL
Subject: FW: CFAC

FYI.

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: Harding, Stephenne (Tester) [mailto:Stephenne_Harding@tester.senate.gov]
Sent: Friday, October 30, 2009 5:29 PM
To: Baskerville,Sonya L - DKN-WASH
Subject: FW: CFAC

Though you should see this.

From: Sloan, Virginia (Tester)
Sent: Friday, October 30, 2009 5:22 PM
To: Harding, Stephenne (Tester)
Cc: Lombardi, Bill (Tester); Swanson, Dayna (Tester); Schriock, Stephanie (Tester); Croover, Amy (Tester)
Subject: CFAC

BPA did call the Glencore folks but there was nothing of substance to report.

In the meantime. All the employees are gone from CFAC except for maintenance folks making sure the shutdown is complete. Even Haley is off the payroll, however , he will continue to work on this project.

It's a sad day in Columbia Falls.

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH
Sent: Thursday, November 05, 2009 9:26 AM
To: 'stephenne_harding@tester.senate.gov'; 'Paul_Wilkins@baucus.senate.gov'
Subject: Fw: CFAC info

Fyi: Stephenne, a response to your question. Thanks.
Sonya Baskerville
202.253.7352

----- Original Message -----
From: Burns,Allen L - D-7
To: Baskerville,Sonya L - DKN-WASH; Wright,Stephen J - A-7; Symonds,Mark C - PTL-5; Clark,Harry W - PTL-5
Sent: Thu Nov 05 09:04:28 2009
Subject: RE:

There was a provision in the old contracts for 2007-2011 (i.e. the contracts that got overturned by the courts). The new proposed seven year contracts do not have this exact type of use or lose provision. However, they only allow a party to curtail operations for 24 months out of the seven year timeframe before they would have to terminate operation and not restart the plant during the remainder of the contract. This is because we will need to make longer term purchases to support the sale and don't want to have them then walk away because they can get a better deal than IP. So, they do need to plan to run a signficant amount of the time under this arrangement. The seven year deal also does have a provision that required a party to have run for at least 12 months out of the last three years to be eligible for the deal. We felt this was necessary to make sure Goldendale would not try to assert an ability to restart and ask for a contract.

The 14 month draft contract we offerred does not have any provision of this type because we aren't making a long term commitment on our end.

Neither of the contracts say anything about losing rights to a follow on contract at the end of the term of the contract if they fail to run a certain amount of time or terminate. However, that is a policy decision we will have to make at the time and a clear option would be to not offer a contract to a DSI who had not been operating much if at all over the previous few years which is the general type of policy we have been following to avoid having terminated plants trying to restart and get power.

-----Original Message-----
From: Baskerville,Sonya L - DKN-WASH
Sent: Thursday, November 05, 2009 1:45 AM
To: Burns,Allen L - D-7; Wright,Stephen J - A-7; Symonds,Mark C - PTL-5; Clark,Harry W - PTL-5
Subject:

Is there a reason that the "11-months with no operation means no more power benefits rule" still applies to CFAC or Alcoa? Wasn't that a condition of the invalidated contracts? I got a call from Stephenne (Tester) who said she had heard somewhere that CFAC would lose its DSI status at some period of time. I think she was really talking about the 11-month

restart rule. Thanks.
Sonya Baskerville
202.253.7352

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH
Sent: Tuesday, November 10, 2009 2:20 PM
To: 'Berick, Dave (Wyden)'
Subject: FW: Wyden DSI letter

Attachments: Wyden DSI Letter.pdf

Dave, at long last, here is the response to Senator Wyden's letter regarding DSI contracts. 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: Jones,Sheron M - DKN-WASH
Sent: Tuesday, November 10, 2009 3:04 PM
To: Baskerville,Sonya L - DKN-WASH
Subject: Wyden DSI letter

Sonya - Per your request attached is the signed copy of the Wyden DSI letter.

Wyden DSI
tter.pdf (78 K

Thank you

Sheron M. Jones
Bonneville Power Administration
Telephone: (202) 586-5640
Fax: (202) 586-6762 or 6763

Department of Energy

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

EXECUTIVE OFFICE

OCT 30 2009

In reply refer to: DKR-7

The Honorable Ron Wyden
United States Senate
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for letter of September 29 expressing your opposition to proposed power sale contracts with two aluminum smelters, known as Direct Service Industries (DSIs), in the Pacific Northwest. I recognize that the issue of whether the Bonneville Power Administration (BPA) continues to provide long-term service to these plants, and thereby preserves the jobs at them, has generated a difficult and divisive debate for our region. We are continuing to consider the public comment we have received regarding continued service to the DSIs and I appreciate having your input.

BPA continues to discuss with these two plants and with the Port Townsend Paper Company how it may, and if it should, offer new, long-term power sale contracts that are consistent with the recent decisions of the United States Court of Appeals for the Ninth Circuit. The Court's decisions require that BPA clearly demonstrate the benefits to BPA of serving the DSIs. We have reached conclusion that it may be appropriate to continue long-term service to the DSIs, and have submitted our proposal to public review and comment to ensure we make a fully informed decision.

I do want to respond to your statement that BPA should not serve these customers because it no longer has excess power to sell as surplus. Section 5(d)(1)(A) of the Northwest Power Act provides that the "Administrator is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers." 16 U.S.C. § 839c(d)(1)(A). This authority is not linked to, or otherwise limited by, the existence of surplus BPA power. The Court's earlier decision of December 17, 2008, confirmed this authority. The question, and it is one we are reviewing, is whether the benefits of DSI service justify the costs of such service.

As we continue to consider this issue, we will continue to do so from a regional perspective. We are mindful that any contracts must contain appropriate safeguards for all of BPA's customers while serving the overall economic health of the region. I will keep you informed of the progress of our discussions.

Sincerely,

Stephen J. Wright
Administrator and Chief Executive Officer

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH
Sent: Tuesday, October 13, 2009 12:43 PM
To: 'Berick, Dave (Wyden)'
Subject: RE: DSI letter

I saw a draft. I think it's expected out later this week.

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, October 13, 2009 3:00 PM
To: Baskerville,Sonya L - DKN-WASH
Subject: DSI letter

Are we going to get an answer?

Atterbury,Laura M - DK-7

From: Baskerville,Sonya L - DKN-WASH
Sent: Thursday, November 05, 2009 11:24 AM
To: 'Dave_Berick@wyden.senate.gov'
Subject: Re: DSI letter

I just heard that the draft is back on Steve's desk after undergoing a bit of restructuring within DOE. The concurrences are all done now, so it shouldn't be long, although that's what I thought last time!

I will touch base with Nicki this afternoon to see if it has left Steve's office. Thanks.
Sonya Baskerville
202.253.7352

From: Berick, Dave (Wyden)
To: Berick, Dave (Wyden) ; Baskerville,Sonya L - DKN-WASH
Sent: Thu Nov 05 11:00:33 2009
Subject: RE: DSI letter

And we would be getting this some time soon?

From: Berick, Dave (Wyden)
Sent: Tuesday, October 13, 2009 4:41 PM
To: 'Baskerville,Sonya L - DKN-WASH'
Subject: RE: DSI letter

Thanks.

From: Baskerville,Sonya L - DKN-WASH [mailto:slbaskerville@bpa.gov]
Sent: Tuesday, October 13, 2009 3:43 PM
To: Berick, Dave (Wyden)
Subject: RE: DSI letter

I saw a draft. I think it's expected out later this week.

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, October 13, 2009 3:00 PM
To: Baskerville,Sonya L - DKN-WASH
Subject: DSI letter

Are we going to get an answer?

Atterbury,Laura M - DK-7

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Monday, January 12, 2009 5:24 PM
To: 'Brian Kristjansson'; 'shawn_bills@murray.senate.gov'; 'Theresa Wagner (theresa_wagner@murray.senate.gov)'
Subject: short-term agreement with Alcoa

I just tried to call the Seattle office, but missed the 5 pm cut-off. I wanted to share that BPA and Alcoa have both signed a short term amendment that makes the existing contract consistent with the December court decision and assures payments to the Ferndale smelter through the end of September 2009. The contract still makes payments to Alcoa, but the payments are based on the following as directed by the court's ruling.

(Forecast of market prices) – (BPA's industrial firm power rate) = $/MWH x Alcoa's power consumption.

A draft of the amended contract was available for public review through Jan. 6, 2009. A letter about the short-term amendment will be going out to customers within the next day or two. You will receive a copy of that when it has been signed.

BPA continues to have conversations with Columbia Falls Aluminum Company about a potential interim agreement.

I'm in the office this week. Please call if you have any questions.

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

Atterbury,Laura M - DK-7

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Monday, January 12, 2009 5:31 PM
To: 'Chris_Endresen@cantwell.senate.gov'; 'sally_hintz@cantwell.senate.gov'
Subject: short-term agreement with Alcoa

I just tried to call the Seattle/Everett offices, but missed the 5 pm cut-off. I wanted to share that BPA and Alcoa have both signed a short term amendment that makes the existing contract consistent with the December court decision and assures payments to the Ferndale smelter through the end of September 2009. The contract still makes payments to Alcoa, but now the payments are based on the following as directed by the court's ruling.

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BPA continues to have conversations with Columbia Falls Aluminum Company about a potential interim agreement.

I'm in the office this week. Please call if you have any questions.

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

Atterbury,Laura M - DK-7

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Monday, July 20, 2009 3:50 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 releases proposed terms of service to DSIs: taking comments through 8/3/09

7/17/2009

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/.

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

Atterbury,Laura M - DK-7

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Tuesday, September 08, 2009 4:57 PM
To: 'Mather, Clark'
Subject: Article on court's decision on DSIs

Hi Clark,

Thanks for sharing with Judith in your Port Townsend office. The article below is from this week's Clearing Up. This is a NW electricity weekly news journal. I do not vouch for the accuracy of their coverage, but it is likely the most in-depth coverage of the recent court decision. Language in blue below refers to Port Townsend Paper. But, as you read, you can see that the public utilities' concerns about our contracts with DSIs do include our contract with Port Townsend.

I have left a voice mail with one of our power negotiators for an update, but when I asked him last Friday, they said there was no news to share until the attorneys complete their analysis. I'll let you know what I learn.

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

BPA seems 'bound and determined to plunge ahead.'

Publics Demand DSI 'Lookback' ROD Ahead of Contracts

BPA's preference customers want the agency to get on with a much-delayed, court-ordered assessment of potential refunds of unlawful benefits provided to DSI customers. They say a new ruling nixing an amendment to the previously invalidated Alcoa contract underscores the need for the agency to refocus on "Lookback" issues related to refunds. In July, BPA postponed a final decision on the matter until as late as December. Customers want "Lookback" issues resolved before any new DSI deals are signed.

BPA's public-preference customers have demanded the agency get on with resolving issues over potential refunds from direct-service industry customers. The question was remanded to BPA in December, when the 9th U.S. Circuit Court of Appeals invalidated provisions of the five-year DSI contracts that took effect in 2006.

The customers also say the court's Aug. 28, 2009 decision, which invalidated the nine-month amendment BPA subsequently adopted for Alcoa, supports their demand that so-called "Lookback" issues be resolved

before BPA signs any new DSI contracts.

BPA is set to issue a record of decision by month's end on service commencing Oct. 1, 2009 "to each of its DSI customers," likely including a new seven-year deal with Alcoa and a two-year deal with Port Townsend Paper. The agency confirmed the date in an Aug. 27 ROD announcing a transitional month-long surplus firm sale with Port Townsend.

Throughout last week, BPA said it was "still reviewing" the new court ruling at the publics' request. It said it would try to provide a "subject matter expert"

to comment on its plans for the remand, the ruling's impact on new DSI deals, the prospect for appeals and other details. But by deadline it had not done so. Alcoa's spokeswoman did not return a call seeking comment.
However, a source did say BPA will skip two final payments to Alcoa under the amendment worth about $6 million.
In their Sept. 1 letter to Allen Burns, BPA's acting deputy administrator, the publics complain that since Oct. 1, 2006, their rates have included "the costs of BPA's unlawful cash payments" to Alcoa and Columbia Falls Aluminum Co., as well as a below-market sale to Port Townsend.

"BPA must not agree to incur additional costs that will be borne by preference customers to benefit the DSIs before determining how it will recover from the DSIs the subsidies already found unlawful by the court." The letter was signed by representatives of the Public Power Council, PNGC and Industrial Customers of Northwest Utilities, as well as ten other preference groups representing PUDs, municipals and co-ops. PNGC and ICNU's petitions led to the ruling that invalidated the terms of the DSI contracts, known as PNGC 1 (05-75638), while they and PPC filed the petitions that led to the second, PNGC 2 (09-70228), invalidating the Alcoa amendment. BPA also signed an amendment with CFAC.

"At a minimum," any new DSI contract must include a provision requiring DSIs to repay in full and with interest "all Lookback amounts immediately upon a final decision regarding Lookback issues," preference customers said in the letter.
PNGC says the publics believe they were overcharged $142 million for unlawful payments to CFAC and Alcoa--$110 million under invalidated contracts and $32 million under the Alcoa amendment. For its part, Alcoa during the recent rate case argued that under PNGC 1, it ends up paying too much because it had to pre-purchase more expensive, non-BPA power. Even after adjusting for the monetary benefits, Alcoa said its overpayment over the five-year term totals $195 million, though the company said it was willing to settle for $147 million.

In June, BPA said under the PNGC 1 remand, it would have to determine if it is allowed, under the DSI contracts' severability and damages provisions, to recover overpayments for monetary benefits paid to Alcoa and CFAC, as well as undercharges to Port Townsend, which takes physical power deliveries. It also must determine if the contract allows Alcoa to seek additional payments from BPA.

Customers are particularly worried about the new Alcoa deal. John Prescott, PNGC president and CEO, said BPA hasn't demonstrated it is consistent with "sound business principles," the very basis on which the court rejected the Alcoa amendment, which it described as an "unusual transaction" amounting to "no more than a $32-million gift to Alcoa."

BPA seems "bound and determined to plunge ahead" to sign with Alcoa "regardless of the fact it can't be justified from a business sense," added Scott Corwin, PPC executive director.

In a separate letter urging the Department of Energy's general counsel to conduct "an independent legal review" of the proposed Alcoa contract, the Canby Utility Board pointed to a provision that would prevent BPA from recovering any damages or restitution even if the Ninth Circuit were to invalidate the new agreement or any of its provisions.

"In the absence of an independent review, BPA will likely sign the Alcoa contract later this month, despite [the] two recent adverse decisions" from the 9th Circuit, wrote general manager Dirk Borges. "We no longer have confidence that BPA's Office of General Counsel will protect the legal interests of the federal government."

The publics say BPA has had ample time to develop its response to the PNGC 1 remand. "BPA should promptly initiate the Lookback process because there is no justification for further delay," the letter states. On June 10, BPA said it would deal with "Lookback" issues in a two-part process starting in July. But on July 24, it said that since the court had not yet issued the final mandate in PNGC 1, and since oral argument had just taken place in PNGC 2, it would "be prudent to delay" issuing a final decision on Lookback issues "until no earlier than 30 days after the mandate issues in PNGC 1 or Dec. 1."

The main reason the mandate took so long is because BPA and Port Townsend wanted to file for rehearing. BPA sought and received three extensions to the rehearing deadline. Meantime, the court ordered the parties to discuss the prospect for a settlement. None was reached, whereupon briefing on rehearing ensued.

Last month, the court denied rehearing and was set to issue the mandate on Aug. 12. Port Townsend and

BPA asked it to stay the mandate 90 days as BPA had yet to issue an ROD on a new Port Townsend contract. The court approved a 30-day extension Aug. 14; two weeks later BPA signed the month-long surplus deal with Port Townsend "pending a final decision by BPA regarding the longer-term transaction"

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

Atterbury,Laura M - DK-7

From: Klumpp,Elizabeth C - DKR-WSGL

Sent: Wednesday, September 30, 2009 11:27 AM

To: Klumpp,Elizabeth C - DKR-WSGL; 'Brian Kristjansson'; 'Sally Hintz (sally_hintz@cantwell.senate.gov)'; 'Shawn Bills (shawn_bills@murray.senate.gov)'; 'Mather, Clark'; 'Jill McKinnie (Jill.McKinnie@mail.house.gov)'

Subject: RE: DSI update: Port Townsend Paper and Alcoa - clarification

Clarification: **We need to find a longer term solution by November 2009.** (Not 2011 as typed below.)

Thanks. - Liz

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Wednesday, September 30, 2009 11:25 AM
To: Brian Kristjansson; Sally Hintz (sally_hintz@cantwell.senate.gov); Shawn Bills (shawn_bills@murray.senate.gov); Mather, Clark; Jill McKinnie (Jill.McKinnie@mail.house.gov)
Subject: DSI update: Port Townsend Paper and Alcoa

BPA and Port Townsend Paper signed a power sale agreement for the month of October. Because market power prices for the month of October are quite low, BPA can sign this agreement and still comport with the 9th Circuit Court's ruling that instructed the agency to balance costs and benefits in serving the DSIs (direct service industries).

Alcoa has had a market power purchase agreement in place for several years that extends through 2011. (This agreement is not with BPA.) Again, given the current low price of market power, it is our understanding that Alcoa expects to continue its operations through the month of October with its existing power purchase agreement.

However, we believe that both companies still need a longer-term solution beginning in November 2011. Because we are still in on-going negotiations with representatives from these DSIs we still expect to hold a public meeting in the coming weeks to take comments on possible contract terms. I will forward you a date as soon as we have one.

The attached letter is from the Senators and some Representatives from Oregon and Idaho opposing BPA's proposed 7-year contract with Alcoa and highlighting the 9th Circuit Court's decision.

Please call if I can be of assistance.

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