



Department of Energy

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

PUBLIC AFFAIRS

December 17, 2009

In reply refer to: DK-7

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

FOIA # BPA-2010-00339-F

Dear Mr. Seligman:

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

Your requested the following:

A copy of all communications since January 1, 2009, between BPA and Washington Governor Gregoire (or her staff) or between BPA and the state Energy Policy Division (Department of Commerce) regarding BPA's existing or proposed contracts with Alcoa.

Response:

BPA has completed a reasonable search for responsive documents and is providing them 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,

A handwritten signature in cursive script that reads "Christina J. Brannon".

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

Enclosure(s): Responsive Documents

Miller,Lori E - DKR-7

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Thursday, April 23, 2009 11:12 AM
To: 'Bob Nichols (Bob.Nichols@gov.wa.gov)'
Subject: FW: BPA Staff testimony in response to Alcoa's request for variable rate

Bob,

This is the link to our rebuttal testimony. http://www.bpa.gov/corporate/ratecase/2008/2010_BPA_Rate_Case/docs/WP-10-E-BPA-45.pdf. Section 6, page 46 includes a 2-page summary of BPA's proposal. This is a useful summary. However, at the bottom of this email #2 - #4 I highlight the key financial difference between Alcoa's proposal and BPA's proposal. Alcoa's variable rate swings much lower as well as much higher than BPA's proposed variable rate. That is, if the IP rate is \$35/MWH for 2010-2011, then Alcoa's testimony proposes a \$15/MWH swing up or down from that rate correlated to the price of aluminum; BPA's testimony proposes an \$8/MWH swing up or down from that rate.

A challenge, as described in the testimony, is that this is only a two-year rate case during which large swings in aluminum prices are less likely to occur than if it was a longer rate case period and there were many years for the possible price swings to occur.

Alcoa representatives visited headquarters this week and restated the comments they made in the public workshop: they are looking for certainty soon if they are going to avoid issuing 60-day layoff notices and start plans to shutdown operations. We reiterated that they and other parties will have an opportunity to respond to our rebuttal testimony proposal (again, it's a staff proposal, not an Administrator decision) via an extra round of surrebuttal that is due May 1.

BPA will issue a draft Record of Decision (ROD) on 6/23/09 with a final ROD coming towards the end of July.

I'm on phone calls or in meetings much of today, but should be available in my office between 1:30 – 3:00 pm if you would like me to clarify anything. I'm also available tomorrow between 10:30 – 2 pm.

Liz Klumpp
943-0157

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Friday, April 17, 2009 8:38 PM
To: 'Nichols, Bob (GOV)'
Subject: BPA Staff testimony in response to Alcoa's request for variable rate

Bob,

BPA staff has written testimony in response to Alcoa's request for a variable Industrial Power (IP) rate. This testimony does not reflect a final agency decision, but rather is staff's testimony in the on-going rate case for 2010-2011 power rates. This staff testimony is posted by date - 4/17 - at www.bpa.gov/corporate/ratecase/2008/2010_BPA_Rate_Case/wp-10.cfm. Because we are in the midst of the 2010-2011 rate case, ex parte rules apply. Below is a description of some of the BPA staff testimony and I can answer further questions to describe the testimony. However, we cannot discuss the merits of Alcoa's proposal or our staff's rebuttal testimony except in a noticed public meeting such as a rate case hearing. Along these lines we held a noticed public workshop last week where we did hold a public discussion of variable rate proposals.

The administrator will make his decision at the end of the 2010-2011 rate case based on the complete administrative record.

Liz Klumpp
Bonneville Power Administration

In its direct testimony in the WP-10 rate case, Alcoa proposed a variable Industrial Power rate.

In its rebuttal testimony in the WP-10 rate proceeding, BPA staff is proposing an interim variable Industrial Power rate for FY 2010 (effective 10/1/09) that would offer the aluminum smelters a chance to operate in FY 2010 but would reduce the financial risk to BPA and its customers from that in Alcoa's proposal. It is highly unlikely that world aluminum prices will recover in the two-year period covered in the rate case. If prices do not recover, BPA could seriously under recover its costs. This would, all things being equal, likely lead to a rate increase for ratepayers. The BPA staff testimony also proposes that BPA undertake the development of a long-term variable rate in a separate proceeding that would meet a set of goals outlined in the testimony.

1. What goals would guide development of the long-term variable IP rate?

The overarching principle or goal proposed for a variable IP rate is that forecast revenues over the term of the variable IP rate must be greater than under the standard IP rate, providing a benefit to other power rates and customers. The variable IP rate would only be available to the aluminum smelters and would be subject to the same rate adjustments as the PF rate. Other design features of the variable IP rate are listed below.

- 1) The rate must include a mechanism to true-up any differences between the long-term variable rate and the interim variable rate such that revenues collected over the FY 2010-2011 time frame will be the same as if the long-term rate had been in place for the entire two years.
- 2) The rate must ensure recovery of any revenue shortfall relative to standard IP rate revenues if the DSI terminates service early.
- 3) Any revenue shortfall relative to standard IP rate revenues must be covered by a letter of credit acceptable to BPA that allows BPA to draw on to repay such revenue shortfall if the DSI terminates service early, the contract is terminated, or the DSI switches service to the standard IP rate.
- 4) The rate will include a mid-point review and revision mechanism to allow for changes, including the option for BPA to terminate, if BPA determines the variable IP rate is no longer forecast to provide revenues that are at least equal to the standard IP rate over the term of the variable IP rate.
- 5) The rate will limit service to no more than one potline during periods the variable rate is lower than the plateau.

2. What are the basics of the interim variable IP rate staff proposed?

In general, the actual rate paid by the companies would be lower when aluminum prices are low, as is occurring now, but higher when aluminum prices rebound. Staff's goal is to assure, over time, compliance with the law that requires the aluminum companies to pay rates determined by the standards in the Northwest Power Act.

The basis would be the IP-10 rate. The IP-10 rate would be in effect until, on the downward side, aluminum fell to \$2,000 per metric tonne. At that point the rate would decline in tandem with the London Metals Exchange until the price reached \$1,300 per metric tonne. The bottom limit would be \$8 per megawatt-hour less than the IP-10. On the upward side, the IP rate would hold until aluminum reached \$2,300 per metric tonne at which point the IP rate would increase with the metals exchange until it reached a limit of \$8/MWh over the IP rate at \$2,700 per metric tonne.

3. What would this interim variable IP rate cost other customers?

Staff expects that the cost to other power rates would be approximately equal to the cost of service of 385 megawatts of aluminum smelter load at the IP rate as forecast in the initial proposal. This is based on an estimated aluminum price of \$1,500 per ton. Given the decline in wholesale market prices, this cost is now forecast to be about \$35 million per year compared to the \$59 million per year in the initial proposal.

4. How does the staff proposal differ from the Alcoa proposal?

Both the upward and downward limits in the staff proposal are at \$8/MWh rather than \$15 (that Alcoa proposed in its testimony). The lower points would remain the same. On the upward side, the point at which the rate increases along with the London Metals Exchange in the staff proposal is \$2,300 per metric tonne rather than \$2,500 per metric tonne and the maximum is reached at \$2,700 per metric tonne rather than at \$3,300 per metric tonne.

Service would be limited to one potline during any period the interim variable rate is at its low maximum.

Miller,Lori E - DKR-7

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Monday, July 20, 2009 3:47 PM
To: 'Phillips, Keith (GOV)'; 'Schwartz Howard (CTED) (howards@cted.wa.gov)'; 'Usibelli, Tony (CTED)'; 'Dick Byers'
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

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Wednesday, September 09, 2009 8:01 PM
To: 'Phillips, Keith (GOV)'
Subject: Article on court's decision on DSIs

Keith,

I was in Vancouver today and didn't check messages after I left for home about 3 pm or I would have seen your note to call you after 5 pm.

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 DSI court decision.

I'll call in the morning to share what I've learned.

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

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
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360-943-0157

Miller,Lori E - DKR-7

From: Klumpp,Elizabeth C - DKR-WGL
Sent: Thursday, September 10, 2009 2:54 PM
To: 'Keith Phillips'
Subject: Alcoa

Our rationale for monetizing is contained in Bonneville Power Administration's Service to Direct Service Industrial (DSI) Customers for Fiscal Years 2007-2011 - Administrator's record of Decision issued June 30, 2005, which can be found on our website:

http://www.bpa.gov/power/pl/regionaldialogue/06-2005_dsi_rod.pdf

Please refer to Issue 3 - Delivery Mechanism which can be found beginning on page 18 of 29. Specifically, I excerpted some lanaguage below:

"In sum, BPA recognizes there are implementation advantages and challenges associated with each delivery mechanism. However, because of the financial risks inherent in providing a physically delivered power sale and in order to meet the known and capped cost prerequisite, BPA's default delivery mechanism will be to monetize the value of the below-market power sales contract, providing the service benefits through cash payments. However, in light of the strong support by many parties for a physically delivered power sale, BPA will retain an option to provide physically delivered power in-lieu of monetizing the transaction. Whether the physical delivery option is exercised will be based on BPA's evaluation of whether any credit risks of a physically delivered power sale to a company have been adequately mitigated, and whether BPA can supply the DSI load, including locking down any necessary market power purchases, on a fully hedged basis at a cost at or below the cost cap. BPA will have this option under each power sales contract, exercisable by BPA under terms to be determined in the development of the contracts. Absent BPA exercising this option, each power sales contract will be monetized."

BPA reaffirmed its decision on the delivery mechanism in its SUPPLEMENT TO ADMINISTRATOR'S RECORD OF DECISION ON BONNEVILLE POWER ADMINISTRATION'S SERVICE TO DIRECT SERVICE INDUSTRIAL (DSI) CUSTOMERS FOR FISCAL YEARS 2007-2011 - ADMINISTRATOR'S RECORD OF DECISION issued May 31, 2006.

Miller,Lori E - DKR-7

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Thursday, September 10, 2009 5:23 PM
To: 'Phillips, Keith (GOV)'
Subject: Alcoa contract - 10/06

Yes, we started monetizing in Oct 2006 when the subscription contract (Fy07-Fy11) started. Once that we entered into that contract we always monetized the payment until the courts decision in 12/08. At that time we re-calculated our monetized payment based on the courts guidance, which included using our published IP (industrial power) rate as the point of reference.

Here is the Alcoa contract:

http://www.bpa.gov/power/pl/regionaldialogue/alcoa_contract_06pb-11744.pdf

Call me on my cell if you have any questions.

Liz
c. 485-2392

Miller,Lori E - DKR-7

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Thursday, September 17, 2009 5:01 PM
To: 'Keith Phillips'
Subject: BPA will not make scheduled payments to Alcoa; is evaluating options for long-term service

Keith,

BPA has posted the following letter to the following website
http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/2009/2009-09-17_Letter-to-Region-DigSigned.pdf. I've provided more clarification below for your reference. I am not circulating this additional clarifying language below until we know more in the next few days. However, I think it provides helpful background for you and your colleagues. I have a few more specifics that I can share over the phone.

I also left you a voice mail asking if you think that we, Allen Burns and I, might join one of the Governor's staff in a meeting or meetings with union leaders to provide some background on these developments. If that seems unlikely, perhaps you can let me know before you depart and I'll proceed with contacting union leaders.

I am in meetings away from the office until about 11 a.m. tomorrow.

Thanks.

Liz
943-0157

September 17, 2009

In reply refer to: A-7

To Regional Customers and other Stakeholders:

The Bonneville Power Administration (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, (No. 09-70228) (Opinion) issued August 28, 2009. BPA believes the Opinion does not support the agency making the remaining payments to Alcoa Inc. under the 2006 Block Power Sales Agreement, as amended (Contract No.06PB-11744).

Therefore, BPA will not make the scheduled payments for August and September. These payments would have been made September 11 and October 13, 2009.

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

Sincerely,

//s// Allen L. Burns
Allen L. Burns,
Acting Deputy Administrator

Overview

On August 28, the U.S. Court of Appeals for the Ninth Circuit issued an opinion, Pacific Northwest Generating Cooperative, et al, v. Bonneville Power Administration, that the amended contract under which BPA has been

providing benefits to Alcoa's Ferndale smelter since January 2009 is invalid. The term of the amended contract was for the balance of FY 2009.

The court's opinion upheld BPA's discretion to serve the DSIs but said that, if it did serve the DSIs, the agency must show benefits to it that make sound business sense relative to the cost of that service. In a number of places, the court appeared to indicate that benefits must approximate or exceed costs. In addition, the court stated that BPA's goal of protecting "DSI jobs" while "laudable" was "simply not reflective of a business-oriented philosophy."

Under the contract, BPA monetizes the difference between what BPA would pay to purchase power in the market and the Industrial Firm Power (IP) rate Alcoa would pay BPA for power. The court determined that this difference provided Alcoa with nearly \$32 million as a cash benefit and yet the record before the court did not indicate that BPA had received value in exchange for the payment. The court found that, in light of those circumstances, the amendment did not comport with sound business principles.

Previously, in December 2008, the same court found an earlier Alcoa contract invalid. At the time the amendment was executed, BPA believed that it was both consistent with the court's earlier decision and necessary to avoid a plant shutdown. The December 2008 decision affirmed BPA's ability to sell to the direct-service industries at the IP rate and to monetize the sale. The court's primary objection to the earlier contract appeared to be that the contract was not based on the IP rate.

In the longer term, BPA will evaluate whether to seek a review of the decision. If BPA does seek review, the most likely course of action would be to request en banc review, which means the decision of the original three-judge panel would be reviewed by a larger panel that would consist of 11 judges from the court.

The court did not address either of BPA's contracts with Port Townsend Paper or CFAC.

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 DSIs a chance to continue operating in the Pacific Northwest and, in doing so, to retain family wage jobs in these trying economic times.

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

Miller,Lori E - DKR-7

From: Klumpp,Elizabeth C - DKR-WSGL
Sent: Tuesday, November 10, 2009 11:07 AM
To: 'Keith Phillips'
Subject: BPA Response Letter to NW Delegation regarding DSIs
Attachments: 2009-015189_09-0105 Response Letter.pdf

Keith,

Here is a copy of our response to the NW congressional members who submitted comments opposing our contracts with the DSIs.



2009-015189_09-0
105 Response L...

Liz
943-0157