

AUTHENTICATED

Contract No. 95MS-94741
03/15/95

**WAIVER AND RELEASE OF CONTRACT CLAIMS
AND CONTRACT PROVISIONS**

executed by the

UNITED STATES OF AMERICA

acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

ELF ATOCHEM NORTH AMERICA

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This Agreement, executed as of April 5, 1995, by the UNITED STATES OF AMERICA (Government), Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (Bonneville), and ELF ATOCHEM NORTH AMERICA (hereinafter called "Industry" and collectively with other direct-service industrial customers having similar agreements called "Industries")

W I T N E S S E T H :

WHEREAS Bonneville and Industry are parties to a power sales contract, Contract No. DE-MS79-81BP90355 ("81 PSC");

WHEREAS Bonneville is obligated under the 81 PSC to use certain operating techniques to "achieve the highest possible availability of Industrial Firm Power" service to Industry's First Quartile;

WHEREAS Bonneville is obligated under § 8(a)(4)(G) of the 81 PSC to consult with Industry as to any amendments to the 81 PSC that may be possible to preserve the expected average availability of First Quartile Service prior to Bonneville taking any action that would reduce the expected average availability of Industrial Firm Power under the 81 PSC;

WHEREAS Bonneville is further obligated under § 8(a)(4)(G), in the event of such action, to "use its best efforts to continue to provide Industry with Industrial Firm Power in the average amounts expected to be available" under the 81 PSC;

WHEREAS § 4 (a) of the 81 PSC provides that, subject to other terms of the 81 PSC, Bonneville shall sell to Industrial Purchaser, and Industry shall purchase from Bonneville, Industrial Firm Power in an amount up to and including Industry's Contract Demand, as specified by Industry's Operating Demand, Curtailed Demand or Restricted Demand;

WHEREAS under § 9 of the 81 PSC, Industry, at its option, may curtail its First Quartile;

WHEREAS Industry contends that Bonneville has breached its 81 PSC by (i) failing to provide the expected average availability of service for its First Quartile, and (ii) failing to use best efforts to provide the expected average availability of service for its First Quartile; and

WHEREAS Bonneville contends that, when Bonneville determines power is available, Bonneville has the exclusive right to serve Industry's First Quartile,

NOW, THEREFORE, Bonneville and Industry agree as follows:

1. DEFINITIONS

Unless defined herein, capitalized terms shall have the meaning given to them in the 81 PSC.

- (a) "Federal Purchases Available for Displacement" shall mean an amount equal to the Industry's monthly Operating Level less three-quarters (3/4) of its Operating Demand.
- (b) "First-Year Allowable Displaced Purchases" shall mean an amount equal to the Industry's displacement entitlement during the year October 1, 1995, through September 30, 1996. This amount is further described in § 3(a).
- (c) "Second-Period Allowable Displaced Purchases" shall mean an amount equal to the Industry's displacement entitlement for the period October 1, 1996, through the remaining term of the Industry's 81 PSC. This amount is further described in § 3(b).

2. INDUSTRY'S WAIVER AND RELEASE OF CLAIMS

Industry hereby waives and releases Bonneville from all breach of contract claims arising under Bonneville's service obligation to the Industry's First Quartile under the 81 PSC from events prior to the date of this Waiver and Release.

3. BONNEVILLE'S RELEASE

Notwithstanding any provision of the 81 PSC, Bonneville agrees that:

- (a) From October 1, 1995, through September 30, 1996, Industry, at its option, may displace purchases under its 81 PSC by an amount not to exceed one half of its Federal Purchases Available for Displacement ("First-Year Allowable Displaced Purchases"); provided, that the sum of the First-Year Allowable Displaced Purchases and any Surplus Power purchased from Bonneville by Industry under a contract executed before the date of this Waiver and Release, shall not exceed the Federal Purchases Available for Displacement to Industry; provided, further, that the total First-Year Allowable Displaced Purchases, for all Industries which have signed the Waiver and Release, shall not exceed 250 MW;
- (b) From October 1, 1996, through June 30, 2001, Industry, at its option, may displace purchases under its 81 PSC by an amount not to exceed its Federal Purchases Available for Displacement ("Second-Period Allowable Displaced Purchases") provided, that any Surplus Power purchased from Bonneville by Industry under a contract executed before the date of this Waiver and Release, shall reduce the Second-Period Allowable Displaced Purchases available to Industry during the term of such Surplus Power purchases.
- (c) From October 1, 1995, through January 30, 2001, if Bonneville restricts deliveries of Federal power to Industry under its 81 PSC for more than