

AUTHENTICATED

Contract No. 97PB-10054
12/17/96

JOINT SERVICE AGREEMENT
executed by the
UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
acting by and through the
BONNEVILLE POWER ADMINISTRATION
and
ELF ATOCHEM NORTH AMERICA, INC.
and
PORTLAND GENERAL ELECTRIC COMPANY

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This JOINT SERVICE AGREEMENT (Agreement) is executed as of
December 30, 19 96, by the UNITED STATES OF AMERICA (Government),
Department of Energy, acting by and through the BONNEVILLE POWER
ADMINISTRATION (BPA); ELF ATOCHEM NORTH AMERICA, INC. (Atochem), a

corporation of the State of Pennsylvania; and PORTLAND GENERAL ELECTRIC COMPANY (PGE), a corporation of the State of Oregon. BPA, Atochem and PGE are hereinafter sometimes referred to individually as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS BPA is authorized pursuant to law to dispose of electric capacity and energy generated at various Federal hydroelectric projects in the Pacific Northwest, or acquired from other resources, to construct and operate transmission facilities, to provide transmission and other services, and to enter into agreements to carry out such authority; and

WHEREAS on August 31, 1981, BPA and Atochem entered into a power sales contract that has since terminated, Contract No. DE-MS79-81BP90355 (Prior Power Sales Contract); and

WHEREAS on May 28, 1993, PGE and Atochem entered into a power sales contract (PGE-Atochem Contract); and

WHEREAS on September 24, 1993, BPA, Atochem and PGE entered into a joint service agreement, Contract No. DE-MS79-93BP94171 (Prior Joint Service Agreement); and

WHEREAS on December 18, 1995, BPA and Atochem entered into new power sales agreements, Contract Nos. 95MS-94856 and 96MS-95113, to replace the Prior Power Sales Contract (Power Sales Agreements); and

WHEREAS BPA, Atochem, and PGE have agreed to replace the Prior Joint Service Agreement with this Agreement;

NOW, THEREFORE, the Parties agree as follows:

1. EFFECTIVE DATE AND TERM

This Agreement, when executed by the Parties, shall become effective at 2400 hours on December 31, 1996 (Effective Date), and shall terminate on the earlier of (a) 2400 hours on September 30, 2001, or (b) at 2400 hours on the date of termination of the PGE-Atochem Contract. All liabilities incurred hereunder shall be preserved until satisfied.

2. DEFINITIONS

The following terms, when used in this Agreement with initial capitalization, whether singular or plural, shall have the meanings specified:

- (a) "Actual Operating Level" or "AOL" means, for each hour, Atochem's actual hourly load in kilowatts, as metered for Atochem's Portland, Oregon plant.
- (b) "Contract Demand" means, for the purposes of this Agreement, 84 megawatts.
- (c) "Planned Operating Level" or "POL" means, for each hour, Atochem's planned hourly operating load, in kilowatts, as specified by Atochem.

3. SCOPE OF AGREEMENT

This Agreement specifies the manner in which the power (both demand and energy) delivered to and used by Atochem at its Portland plant will be allocated between sales to Atochem by BPA under the Power Sales Agreements and sales to Atochem by PGE under the PGE-Atochem Contract. Except as herein provided, this Agreement does not amend and shall not be construed to amend the Power Sales Agreements or the PGE-Atochem Contract.

4. SUBMITTALS OF POL BY ATOCHEM

Atochem shall, no later than 3 business days prior to the beginning of each calendar month, submit to BPA and PGE in writing its POL for the subsequent month. The POL submitted by Atochem need not be at the same level throughout the month.

Atochem may submit its POL in any form that accurately conveys the applicable POL for each hour of the entire month. Atochem may revise its POL to a lower level for any period by giving notice to BPA and PGE by 1000 hours 2 business days prior to the calendar week affected by the revision. Atochem may, if approved by PGE pursuant to the PGE-Atochem Contract, revise its POL to a higher level by giving notice to BPA and PGE by 1000 hours 1 business day prior to the first day affected by the revision. If practicable, Atochem will reflect planned maintenance in its POL.

5. BPA SERVICE TO ATOCHEM

BPA shall deliver to Atochem, during each hour, firm power to meet Atochem's AOL. Such deliveries shall be allocated between BPA service to Atochem and PGE service to Atochem as provided in sections 6 and 8 below. No payment shall be made to BPA under this Agreement. Power service deemed to be provided by BPA under this Agreement shall be purchased by Atochem under the Power Sales Agreements.

6. SERVICE ALLOCATED TO BPA

(a) **BPA Demand Service**

That portion of the AOL that is less than or equal to the Contract Demand plus that portion of the AOL that exceeds the POL during each hour, shall be deemed demand service provided by BPA.

(b) **BPA Energy Service**

All energy associated with the hourly rates of delivery described in section 6(a) shall be deemed energy service provided by BPA.

(c) Notwithstanding the foregoing, if BPA alters or amends its methods for determining "Unauthorized Deviations" or "Unauthorized Increase Charges" under its Power Sales Agreements or otherwise with respect to its service to Atochem's load, then the Parties shall promptly renegotiate the provisions of this section 6 to assure that the share of the power delivered to Atochem which is allocated to PGE is not decreased.

7. PGE SERVICE TO ATOCHEM

PGE shall serve that portion of Atochem's load above Contract Demand in accordance with section 8 and in amounts not to exceed the amounts provided for in the PGE-Atochem Contract and delivery of such service shall be provided by BPA pursuant to section 5 of this Agreement. PGE shall serve its allocated share of the firm power delivered by BPA to Atochem by scheduling deliveries of energy to BPA equal to PGE's share of Atochem's load in accordance with section 11. No payment shall be made to PGE under this Agreement. Power deemed to be provided by PGE under this Agreement shall be purchased by Atochem under the PGE-Atochem Contract.

8. SERVICE ALLOCATED TO PGE

(a) PGE Demand Service

That portion of the AOL that exceeds the Contract Demand and is less than or equal to the POL, during each hour, shall be deemed demand service provided by PGE.

(b) PGE Energy Service

All energy associated with the hourly rates of delivery described in section 8(a) shall be deemed energy service provided by PGE.

9. PAYMENTS IN EVENT OF POWER ALLOCATION DISPUTES

In the event that any Party disputes the proposed allocation of delivered power between sales by BPA and sales by PGE, Atochem shall pay under the applicable agreements for the undisputed portion of the delivered power at the applicable rates. In addition, Atochem shall pay into an interest-bearing escrow account an amount sufficient to pay for the disputed portion of the delivered power at the higher of the BPA applicable rate or the PGE applicable rate. Upon resolution of the dispute, the funds in escrow, including accrued interest, shall be disbursed to the appropriate power supplier, with the excess, if any, refunded to Atochem. In the event that

funds are disbursed to more than one Party, the accrued interest shall be disbursed in the same proportion as the funds are disbursed.

10. BPA-PGE SCHEDULING PROVISIONS

- (a) No later than 1700 hours, on the second and last working day of each calendar week, BPA shall send to PGE, by facsimile or such other expedited means as may be agreed to by BPA and PGE, the hourly metered load data for the 96-hour period ending the previous day. Such data shall be sent to PGE as follows:

PGE Preschedule Office
121 SW. Salmon Street
3 World Trade Center 0305
Portland, OR 97204-2995
Phone: 503-464-7241
FAX: 503-464-7375

If PGE desires to contact BPA regarding this data, PGE may call BPA's DSI Contract Representative at 360-418-2871.

- (b) PGE shall submit schedules to BPA that incorporate PGE's share of the Atochem load that was metered 168 hours earlier.
- (c) Subject to section 10(b), PGE shall submit to BPA hourly schedules for all deliveries by 0930 hours on the workday observed by both BPA and PGE immediately preceding the day or days on which deliveries are to be made, unless otherwise agreed by BPA and PGE.
- (d) PGE shall continue to schedule deliveries of energy for 168 hours following the termination of this Agreement.

11. FORCE MAJEURE

(a) **Definition of Force Majeure**

“Force Majeure” means an event beyond the reasonable control and without the fault or negligence of the Party claiming Force Majeure. Force Majeure includes but is not limited to:

- (1) strikes or work stoppages, including threats of strikes or imminent strikes, the settlement of which shall be at the sole discretion of the Party subject to the strike;
- (2) events reasonably beyond the control of the Parties (including those events creating actual or imminent safety problems) and which the Party could not, by exercise of reasonable diligence and foresight, have been expected to avoid;
- (3) floods or other natural disasters; or
- (4) order or injunction entered by any court having competent subject matter jurisdiction or any order of an administrative officer, other than an officer of BPA or the Department of Energy, which cannot be stayed, suspended, or set aside pending review of such order.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered a Force Majeure. The economic hardship of any Party shall not constitute a Force Majeure.

(b) **Force Majeure Affecting BPA**

To the extent that BPA is prevented, for the duration of the Force Majeure, from meeting its obligations to Atochem under this Agreement by a Force Majeure, both BPA and Atochem shall be excused from their respective obligations without liability to the other for the period reasonably required to

restore the Parties' operations to conditions existing prior to occurrences of the Force Majeure. Neither PGE nor BPA shall have any liability for a failure of delivery to Atochem resulting from a Force Majeure affecting BPA.

(c) **Force Majeure Affecting PGE**

PGE's performance of its obligations under this Agreement shall be excused to the extent and for the period that such performance is prevented by a Force Majeure. Notwithstanding the foregoing, in the event of a Force Majeure which affects PGE's ability to provide energy to BPA in accordance with this Agreement, PGE shall, during the 168-hour period commencing at the end of such Force Majeure on like hours (or such other period as BPA and PGE may mutually agree), deliver energy to BPA equal to the PGE share of Atochem's load supplied by BPA for PGE because of the Force Majeure.

(d) **Force Majeure Affecting Atochem**

Force Majeure affecting Atochem's ability to use power shall be governed by the Force Majeure provisions in its agreements with BPA and PGE, respectively.

(e) **Notification**

A Party that experiences a Force Majeure shall notify any Party directly affected by the delivery as soon as possible of any Force Majeure which may, in any way, affect delivery under this Agreement.

12. DISPUTE RESOLUTION

Any contract dispute or contract issue arising out of the scope of this Agreement which the Parties are unable to resolve through negotiation or mediation will be subject to binding arbitration. The arbitration shall be conducted pursuant to the arbitration procedures for commercial arbitration of the CPR Institute for Dispute Resolution (Non-Administered Arbitration Rules). The arbitrator(s) shall apply Federal law to resolve the contract dispute or contract issue. The payment of monies shall be the exclusive remedy available in any binding arbitration

proceeding under this provision. The arbitrator(s) shall issue a written opinion explaining the final arbitration award. The arbitrator(s)' award shall be final and binding on all Parties; **provided, however,** that any Party may seek judicial review of the final arbitrator(s)' award for fraud, misconduct, or misrepresentation. Issues arising under the U.S. Constitution are preserved for judicial resolution.

The foregoing provision with respect to dispute resolution is (a) expressly limited to disputes arising solely under and within the scope of this Agreement, and (b) is not applicable to disputes arising under the Power Sales Agreements or the PGE-Atochem Contract or to disputes which arise under or which may be deemed to be covered by both this Agreement and either the PGE-Atochem Contract or the Power Sales Agreements.

13. NOTICES

Unless this Agreement requires otherwise, any notice, demand, or request provided for in this Agreement, or served, given, or made in connection with it, shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by telegraph, or by acknowledged delivery, or sent by registered or certified mail, postage prepaid, to the persons specified below:

To BPA: United States Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621
Attn: Sydney D. Berwager - PSB/Ditt2
Senior Account Executive

To Atochem: Elf Atochem North America, Inc.
6400 NW. Front Avenue
Portland, OR 97210
Attn: Gene Spina

with a copy to: Elf Atochem North America, Inc.
2000 Market Street
Philadelphia, PA 19103-3222
Attn: General Counsel

To PGE:

Portland General Electric Company
121 SW. Salmon Street
Portland, OR 97204
Attn: Manager of Power and
Transmission Contracts

Any Party may, be written notice to the other Parties, change the designation or address of the person so specified as the one to receive notices pursuant to this Agreement.

14. GOVERNING LAW

This Agreement shall be subject to and governed by Federal law.

15. SIGNATURE CLAUSE

The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By /S/ SYDNEY D. BERWAGER
Senior Account Executive

Name Sydney D. Berwager
(Print/Type)

Date December 18, 1996

ELF ATOCHEM NORTH AMERICA, INC.

PORTLAND GENERAL ELECTRIC COMPANY

By /S/ F. H. LAUCHERT, JR.

By /S/ S. SCOTT

Name F. H. Lauchert, Jr.
(Print/Type)

Name Steve Scott
(Print/Type)

Title Group President - Indus. Chemicals

Director, Industrial Commercial Acccts,
Title Assistant to the President, Special Projects

Date December 20, 1996

Date December 30, 1996

(PBLLAN-PSC-WAPSC\PM\CT10054.DOC)