

-- Draft is the same as the 8/19/2009 Alcoa draft except for name change and items related to two potline operation of 140 aMW --

DRAFT
09/03/2009

Contract No. 09PB-«#####»

POWER SALES AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
COLUMBIA FALLS ALUMINUM COMPANY

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- Exhibit A Billing**
- Exhibit B Cost Caps**
- Exhibit C Special Provisions**
- Exhibit D Metering**
- Exhibit E Scheduling**
- Exhibit F Power Reserves**
- Exhibit G Employment Levels**

This POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and Columbia Falls Aluminum Company (CFAC), hereinafter individually referred to as "Party" and collectively referred to as the "Parties." CFAC is a corporation organized under the laws of the State of Delaware, and registered therein as entity number _____, taxpayer identification number _____.

RECITALS

BPA is authorized to sell power to CFAC, a direct service industrial customer, pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839 et seq.

In *Pacific Northwest Generating Cooperative v. Department of Energy*, 550 F.3d 846 (2008) the Ninth Circuit Court of Appeals invalidated monetary benefits provisions of power sales contracts between BPA and its aluminum company direct service industrial customers (DSIs), but held that BPA may make sales to DSIs at the Industrial Firm Power Rate (IP rate). This Agreement addresses the 2-year period remaining under those power sales contracts and potentially a subsequent 5-year period. Under both time periods power sales will be made to CFAC at the IP rate.

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

BPA has functionally separated its organization in order to separate the administration and decision-making activities of BPA's power and transmission functions. References in this Agreement to Power Services or Transmission Services are solely for the purpose of clarifying which BPA function is responsible for administrative activities that are jointly performed.

The Parties agree:

1. **TERM**

This Agreement takes effect on the date signed by the Parties and expires on September 30, 2016, unless it is terminated earlier pursuant to the terms of this Agreement. Firm Power made available by PS for delivery to the CFAC Plant shall commence on October 1, 2009.

All liabilities incurred by each Party hereunder shall be preserved until satisfied, notwithstanding the expiration or termination of this Agreement.

2. **DEFINITIONS**

Capitalized terms below shall have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used or, if not so defined, shall have the meaning stated in BPA's applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions

("GRSPs"). If a term is not defined in any of the named sources, then the term shall be given its normal and customary meaning, with due regard to generally accepted business practices, including the status of the undefined term as a generally recognized term of art.

- 2.1 "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.
- 2.2 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.
- 2.3 "Business Days" means every Monday through Friday except for Federal holidays.
- 2.4 "CFAC Load" means that CFAC hourly load at the CFAC Plant served under this Agreement.
- 2.5 "CFAC Plant" means the CFAC aluminum smelting facilities served from BPA's Conkelly Substation, where the 13.8 or 230 kilovolt facilities of BPA and CFAC are connected.
- 2.6 "Cost Cap" means shall have the meaning as defined in Exhibit B.
- 2.7 "Demand Entitlement" shall have the meaning as defined in section 1.2 of Exhibit A.
- 2.8 "Diurnal" means the division of hours within a month between Heavy Load Hours (HLH) and Light Load Hours (LLH).
- 2.9 "Firm Power" means the amount(s) of electric power that PS will make available at the Industrial Firm power rate to CFAC under this Agreement in equal hourly amounts for every hour of the Fiscal Year.
- 2.10 "Fiscal Year" or "FY" means the period that begins each October 1 and which ends the following September 30.
- 2.11 "Forecasted Net Cost" shall have the meaning as defined in Exhibit B.
- 2.12 "Issue Date" shall have the meaning described in section 13.1.
- 2.13 "Net Firm Power" shall have the meaning described in Exhibit F.
- 2.14 "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 et seq., Public Law No. 96-501, as amended.

- 2.15 “Points of Metering” means the interconnection points between BPA, CFAC and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.
- 2.16 “Power Reserves” shall have the meaning described in Exhibit F.
- 2.17 “Power Services” or “PS” means the organization, or its successor organization, within BPA that is responsible for the management and sale of Federal power.
- 2.18 “Primary Points of Receipt” shall have the meaning described in section 11.1.
- 2.19 “Prior Agreement” means Contract No. 06PB-11745 between BPA and CFAC, as amended.
- 2.20 “Region” or “Regional” means the Pacific Northwest as defined in the Northwest Power Act, 16 U.S.C. § 839a(14).
- 2.21 “Transmission Services” or “TS” means the organization or its successor organization, within BPA that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).
- 2.22 “Wheel Turning Load” shall have the meaning described in 2010 GRSP and equal 6 aMW.

3. APPLICABLE RATES

Sales by BPA to CFAC under this Agreement shall be made at the Industrial Firm Power rate (the “IP rate”) in effect at the time of such sales, and are subject to all applicable GRSPs.

3.1 Industrial Firm Power Rate

CFAC shall purchase Firm Power provided by BPA under this Agreement at the applicable IP rate for the rate period, as established through the procedures specified in section 7(i) of the Northwest Power Act (16 U.S.C § 839e(i)), or its successor, including all adjustments and charges developed in accordance with all applicable statutory ratemaking directives.

CFAC acknowledges that BPA has not agreed to propose that the IP rate be established at any particular level for any rate period included within the term of this Agreement, and that, while it reserves all rights with respect to challenging rates proposed or established by BPA, CFAC bears any risks associated with the IP rate level established each rate period by BPA pursuant the above referenced rate setting procedures.

3.2 Additional Charges

CFAC is subject to any applicable additional charges, including penalty charges (e.g., the Unauthorized Increase Charge), established in BPA's Wholesale Power Rate Schedules and associated GRSPs.

4. PURCHASE AND SALE OF FIRM POWER

During the period FY 2010 through FY 2016, BPA shall make available Firm Power in amounts specified herein and CFAC shall purchase such Firm Power unless:

(a) BPA has determined pursuant to Exhibit B that the cost to serve the CFAC Load with Firm Power for the FY 2012 through FY 2016 period will exceed the Cost Caps identified in Exhibit B; (b) this Agreement has terminated; or (c) CFAC has failed to operate the CFAC Plant at a level equal to or greater than 70 aMW for a least one complete Fiscal Year during the period October 1, 2006, through September 30, 2009.

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

5. PURCHASE AND SALE OF FIRM POWER FROM FY 2010 THROUGH FY 2011

5.1 Firm Power Sale by BPA from FY 2010 through FY 2011

During the period that begins on October 1, 2009, and continues through September 30, 2011, BPA shall sell and CFAC shall purchase 70 aMW of Firm Power, as such amount may be increased pursuant to section 5.2 below.

5.2 Increase from 70 aMW to 140 aMW

CFAC may, upon written notice to BPA, request that the amount of Firm Power be increased from 70 aMW to 140 aMW for the balance of FY 2010 through FY 2011 period. CFAC's notice shall include a schedule, by month, of CFAC's proposed operating levels to achieve such Firm Power increase. If BPA determines, pursuant to Exhibit B, that the cost to serve the CFAC Load with 140 aMW of Firm Power for the balance of the FY 2010 through FY 2011 period does not exceed the applicable Cost Caps specified in Exhibit B, then BPA shall accept such request; if not, BPA shall reject such request. BPA's determination shall be conclusive. BPA shall provide CFAC with written notice of its determination, including the basis for such determination, within 5 Business Days following the receipt of such notice. Such increase, if accepted by BPA, shall occur no earlier than 90 days following the receipt of such notice by BPA, on the first day of a calendar month.

6. PURCHASE AND SALE OF FIRM POWER FROM FY 2012 THROUGH FY 2016

6.1 Firm Power Sale by BPA for FY 2012 through FY 2016

During the period that begins on October 1, 2011, and continues through September 30, 2016, BPA shall sell and CFAC shall purchase 140 aMW of Firm Power, subject to the provisions in section 6.2 below.

6.2 Termination

If BPA determines, pursuant to Exhibit B, that the cost to serve the CFAC Load with 140 aMW of Firm Power for the entire FY 2012 through FY 2016 period will exceed the Cost Cap specified in Exhibit B, then on or before March 31, 2010, BPA shall provide CFAC with written notice that this Agreement shall terminate at 2400 hours on September 30, 2011. Such notice shall include the basis for such determination, and such determination shall be conclusive.

7. COST CAPS AND OTHER LIMITATIONS

7.1 Cost Caps

The Cost Caps specified in Exhibit B of this Agreement represent the maximum cost BPA will incur to support sales to CFAC, including any costs of carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs allocated by BPA, pursuant to Exhibit B.

7.2 Other Limitations

CFAC understands and agrees that BPA will not make a plant specific acquisition from a coal-fired resource, and that BPA will not acquire power from a supplier that is unwilling to absorb all of the regulatory or environmental costs referred to in section 7.1 above, that are imposed on the supplier after the date the acquisition contract is entered into.

8. EMPLOYMENT LEVELS

Except during any termination period in which CFAC is not operating, CFAC shall employ at least the number of full time equivalent (FTE) employees specified in Exhibit G. "FTE" shall mean full time annual equivalent employment (including part-time and partial year) for regular employees of CFAC at the CFAC Plant and contractor employees working within Flathead County, Montana during a calendar month.

CFAC shall notify BPA in writing in the event that, during any calendar month, Average FTE, as defined in Exhibit G, levels are reduced by more than one percent below the applicable level specified in Exhibit G. Such notice shall be provided within five Business Days following such reduction. Such notice shall specify the date by which CFAC anticipates Average FTE levels will equal or exceed the applicable level specified in Exhibit G; *provided, however*, that this Agreement will be subject to termination by BPA in the event CFAC fails to provide BPA with a written plan and to comply with such plan for meeting the applicable Average FTE levels specified in Exhibit G. Such plan shall demonstrate that CFAC shall meet Average FTE requirements within 90 days following the end of the month during which such Average FTE levels fell below the 1 percent threshold. In order to permit BPA to determine whether CFAC is meeting its plan to meet FTE obligations, CFAC shall provide monthly reports to BPA demonstrating its FTE by month and whether its Average FTE levels meet the requirements of this section 8 within 15 days following the end of the month for which it is reporting. In the event that CFAC fails to comply with its plan for reaching Average FTE levels, BPA may provide notice of termination within 30 days following the monthly notice provided

in this section 8 and the effective date of termination shall be 90 days following the date such notice is received by CFAC.

9. CURTAILMENT

9.1 Notice of Curtailment

CFAC may, upon written notice to BPA, curtail all or a portion of the CFAC Load, subject to the limitations specified in section 9.2 below. Any such notice shall specify the amount of CFAC Load to be curtailed, the duration of such curtailment, and the effective date that such curtailment shall commence; *provided however*, that such effective date shall be no earlier than 90 days following the date that BPA receives such notice. The period of curtailment shall be for consecutive months. Any such notice, once received, shall not be changed by CFAC without BPA's written consent.

9.2 Number of Curtailments Allowed and Cumulative Duration of Curtailments

CFAC shall not provide BPA with more than two written notices to curtail during the term of this Agreement, and the cumulative duration of any such curtailment(s) shall not exceed 24 months; *provided, however*, the cumulative duration of such curtailment(s) during FY 2012 through FY 2016 period shall not exceed 18 months. CFAC shall maintain the applicable employment level specified in Exhibit G during any curtailment, and will maintain at least the pre-curtailment ratio between its salaried and non-salaried FTEs.

9.3 No Compensation to Either Party During Curtailment

During any period of curtailment, CFAC shall not incur any take-or-pay obligation for the amount curtailed, and BPA shall have no obligation to compensate CFAC in any manner for the amount curtailed.

9.4 No Purchases from Third Parties During Curtailment

During any period of curtailment, CFAC shall not make any market purchases from third party suppliers to replace all or any portion of the amount curtailed.

9.5 No Curtailment Following Notice of Termination

CFAC shall not curtail pursuant to this section 9 following a notice of termination pursuant to section 21.1.1 below.

10. SCHEDULING

10.1 Scheduling

CFAC shall schedule power in accordance with Exhibit E.

11. DELIVERY

11.1 Definitions

- 11.1.1 “Primary Points of Receipt” means the points on the Pacific Northwest transmission system where Firm Power is forecasted to be made available by Power Services to CFAC for purposes of obtaining a long-term firm transmission contract.
- 11.1.2 “Scheduling Points of Receipt” means the points on the Pacific Northwest transmission system where Firm Power is made available by Power Services to CFAC for purposes of transmission scheduling.
- 11.1.3 “Point of Delivery” means the point described in Exhibit D where Firm Power is delivered to Alcoa by TS.

11.2 Transmission Service

- 11.2.1 CFAC is responsible for making arrangement for, and payment of, delivery of power from the Scheduling Points of Receipt, including all transmission and ancillary service costs.
- 11.2.2 CFAC shall obtain prior BPA approval for, and shall provide at least 60 days’ notice to Power Services prior to changing Balancing Authority Areas.
- 11.2.3 At CFAC’s request, Power Services shall provide CFAC with Primary Points of Receipt and other information needed to enable CFAC to obtain long-term firm transmission for delivery of power sold under this Agreement. If required by Transmission Services for purposes of transmission scheduling, then Power Services shall provide CFAC with Scheduling Points of Receipt. Power Services has the right to provide power to CFAC at Scheduling Points of Receipt that are different than the Primary Points of Receipt. If BPA does provide power to CFAC at Scheduling Points of Receipt that are different than the Primary Points of Receipt, then BPA shall reimburse CFAC for any incremental, direct, non-administrative costs incurred by CFAC to comply with delivering Firm Power from such a Scheduling Point of Receipt to the CFAC Plant if the following conditions, as outlined in 11.2.3.1 or 11.2.3.2 below, as applicable, have been met:
 - 11.2.3.1 If CFAC has long-term Point to Point (PTP) transmission service (as defined in BPA’s Open Access Transmission Tariff) for delivery of Firm Power to its load:
 - 11.2.3.1.1 CFAC has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.1.2 CFAC has submitted a request to redirect its long-term firm PTP transmission service to deliver Firm Power from the Scheduling Point of Receipt on a firm basis, but that request was not granted; and

11.2.3.1.3 CFAC's transmission schedule was curtailed due to non-firm status under PTP transmission service or CFAC can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.2 If CFAC has long-term Network Integration Transmission Service (as defined in BPA's Open Access Transmission Tariff) for delivery of Firm Power to its load:

11.2.3.2.1 CFAC has requested long-term firm transmission service to deliver its Firm Power using the Primary Points of Receipt and other information provided by Power Services; and

11.2.3.2.2 CFAC's transmission schedule was curtailed due to non-firm status under its secondary service status and CFAC can provide proof of the reimbursable costs incurred to replace the curtailed schedule.

11.2.3.3 In the event power cannot be scheduled from a BPA Scheduling Point of Receipt (other than a Primary Point of Receipt) then CFAC may request and, consistent with BPA's standard practices to achieve efficient system operation and reliability, BPA will move the Scheduling Point of Receipt to a point on the FCRTS where energy can be made available and scheduled to CFAC's load ("Alternative Scheduling Point of Receipt"), if such a point is available and providing the power from that Alternative Scheduling Point of Receipt would not cause BPA to violate any type of non-power constraint.

11.3 **Liability for Delivery**

CFAC waives any claims against BPA arising under this Agreement for non-delivery of power to any points beyond the applicable Scheduling Points of Receipt, except for reimbursement of costs as described in section 11.2.3. BPA shall not be liable under this Agreement for any third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or

abnormal electrical condition occurring in or on any electric system, regardless of ownership.

11.4 **Real Power Losses**

BPA is responsible for the real power losses necessary to deliver Firm Power across the Federal Columbia River Transmission System to CFAC's POD(s) listed in Exhibit D.

12. **METERING**

CFAC's purchase obligations in sections 5 and 6 are not dependant on amounts scheduled and do not require retail load meters for billing and payment.

13. **BILLING AND PAYMENT**

13.1 **Billing**

BPA shall bill CFAC monthly for all products and services provided during the preceding month(s). BPA may send CFAC an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to CFAC. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

13.2 **Payment**

CFAC shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the Issue Date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

If CFAC has made payment on an estimated bill then:

13.2.1 if the amount of the final bill exceeds the amount of the estimated bill, then CFAC shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or

13.2.2 if the amount of the final bill is less than the amount of the estimated bill, BPA shall pay CFAC the difference between the estimated bill and final bill by the 20th day after the final bill's Issue Date. If the 20th day is a Saturday, Sunday, or federal holiday, BPA shall pay the difference by the next Business Day.

13.3 **Late Payments**

After the Due Date, a late payment charge, equal to the higher of:

- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365;

shall be applied each day to any unpaid balance.

13.4 **Termination**

If CFAC has not paid its bill in full by the Due Date, it shall have 45 days to cure its nonpayment by making payment in full. If CFAC does not provide payment within three Business Days after receipt of an additional written notice from BPA, and BPA determines in its sole discretion that CFAC is unable to make the payments owed, then BPA may terminate this Agreement. Written notices sent under this section must comply with section 16 Notices and Contact Information.

13.5 **Disputed Bills**

13.5.1 If CFAC disputes any portion of a charge or credit on CFAC's estimated or final bills, CFAC shall provide written notice to BPA with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, CFAC shall pay the entire bill by the Due Date. This section 13.5.1 does not allow CFAC to challenge the validity of any BPA rate.

13.5.2 Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.

13.5.3 If the Parties agree, or if after a final determination of a dispute pursuant to section 18, CFAC is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

14. **INFORMATION EXCHANGE AND CONFIDENTIALITY**

14.1 **General Requirements**

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement, and to forecast CFAC Load, forecast BPA system load, comply with NERC reliability standards, prepare bills, resolve billing disputes, and otherwise implement this Agreement. For example, this obligation includes transmission and power scheduling information and load and resource metering information (such as one-line diagrams, metering diagrams, loss factors, etc.). Information requested under this section 14.1 shall be provided in a timely manner.

14.2 **Reports**

CFAC shall notify BPA of public sources from which CFAC's annual financial reports and any statements by its authorized officers are readily available and BPA will secure such reports and statements for its use. In the event CFAC's annual financial reports and statements by its authorized officers become unavailable from public sources CFAC shall provide such reports upon request by BPA.

14.3 **Meter and Billing Data**

CFAC consents to allow Power Services to receive CFAC's meter data and invoices from Transmission Services, BPA's metering function, or BPA's billing function.

14.4 **Confidentiality**

Before CFAC provides information to BPA that CFAC deems to be confidential commercial or financial information, CFAC shall clearly designate such information as confidential. BPA shall notify CFAC as soon as practicable, but in any case no later than as provided by applicable law or regulation, of any request received under the Freedom of Information Act (FOIA) (5 U.S.C. §§ 552 *et seq.*), or under any other federal law or court or administrative order, for any information designated as confidential by CFAC. BPA shall only release such confidential information consistent with FOIA, or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of such confidential information within BPA to employees who need it for purposes of administering this Agreement.

15. **CONSERVATION AND ENVIRONMENTAL ATTRIBUTES**

15.1 **Conservation**

CFAC shall verify and report all cost-effective (as defined by section 3(4) of the Northwest Power Act) non-BPA-funded conservation measures and projects savings achieved by CFAC through the Regional Technical Forum's Planning, Tracking and Reporting System or its successor tool. Verification protocols of conservation measures and projects, reporting timelines and documentation requirements shall comply with BPA's Energy Efficiency Implementation Manual or its successor.

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

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

15.2.2 "Environmental Attributes" means the current or future credits, benefits, emission reductions, offsets and allowances attributable to the generation of energy from a resource. Environmental Attributes do not include the tax credits associated with such resource. One megawatt-hour of energy generation from a resource is associated with one megawatt-hour of Environmental Attributes.

15.2.3 “Renewable Energy Certificates” or “RECs” means the certificates, documentation, or other evidence that demonstrates the ownership of Environmental Attributes.

15.2.4 BPA shall not be obligated to provide Environmental Attributes, Carbon Credits, or RECs, or the value of any or all of them, to CFAC under this Agreement, absent a statutory obligation, or final court decision or order, requiring it to do so.

15.2.5 BPA reserves any ratemaking authority it otherwise possesses to determine and factor in a share of the value and/or cost of any or all of the RECs and Carbon Credits for the purpose of determining applicable wholesale rates pursuant to section 7(c)(2) of the Northwest Power Act. BPA further reserves its ratemaking authority to recover any costs resulting from such ratemaking actions through rates, including rates applicable to CFAC.

16. NOTICES AND CONTACT INFORMATION

Any notice required under this Agreement that requires such notice to be provided under the terms of this section shall be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically, if both Parties have means to verify the electronic notice’s origin, date, time of transmittal and receipt; or
- (5) by another method agreed to by the Parties.

References in this Agreement to the “BPA representative” and the “CFAC representative” are to the persons listed below. Notices are effective when received. Either Party may change the name or address for delivery of notice by providing notice of such change or other mutually agreed method. The Parties shall deliver notices to the following person and address:

If to CFAC:

Columbia Falls Aluminum Company

Attn:

Phone:

FAX:

E-Mail:

If to BPA:

Bonneville Power Administration
905 NE 11th Avenue
P.O. 3621
Portland, OR 97208-3621»

Attn:

Account Executive

Phone:

FAX:

E-Mail:

17. UNCONTROLLABLE FORCES

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which by exercise of that Party's reasonable care, diligence and foresight such Party was unable to avoid. Uncontrollable Forces include but are not limited to:

- 17.1 any unplanned curtailment or interruption of firm transmission service used to deliver Firm Power under this Agreement to CFAC whether such curtailment or interruption occurs on BPA's or a third party's transmission system;
- 17.2 any failure of CFAC's production, distribution or transmission facilities that prevents CFAC from taking Firm Power delivered to the Point of Receipt;
- 17.3 strikes or work stoppage, including the threat of imminent strikes or work stoppages; *provided, however*, that nothing contained in this provision shall be construed to require any party to settle any strike or labor dispute in which it may be involved.
- 17.4 floods, earthquakes, or other natural disasters; terrorist acts; and
- 17.5 final orders or injunctions issued by a court or regulatory body having competent jurisdiction which the party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

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

If an Uncontrollable Force prevents a party from performing any of its obligations under this Agreement, such party shall: (1) immediately notify

the other party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with section 16, Notices and Contact Information.

18. **GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement shall be interpreted consistent with and governed by federal law. CFAC and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 20, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

18.1 **Judicial Resolution**

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of CFAC or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 18, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this section 18, then CFAC may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 18.

18.2 **Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 18.1 above, shall be subject to arbitration, as set forth below.

CFAC may request that BPA engage in binding arbitration to resolve any dispute. If CFAC requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this

section 18.2 and sections 18.3 and 18.4 are met. BPA may request that CFAC engage in binding arbitration to resolve any dispute. In response to BPA's request, CFAC may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 18.2 and sections 18.3 and 18.4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 18.1 above and is not resolved via binding arbitration, unless CFAC notifies BPA that it does not wish to proceed with nonbinding arbitration.

18.3 Arbitration Procedure

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

18.4 Arbitration Remedies

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 18. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

18.5 Finality

18.5.1 In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

18.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

18.6 Arbitration Costs

Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

19. STATUTORY PROVISIONS

19.1 Prohibition on Resale of Firm Power

CFAC shall not resell Firm Power purchased from BPA under this Agreement.

19.2 BPA Appropriations Refinancing Act

The text of the BPA Refinancing section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, is incorporated as shown in Exhibit C, Special Provisions.

20. STANDARD PROVISIONS

20.1 Amendments

Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

20.2 Entire Agreement and Order of Precedence

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

20.3 Assignment

CFAC may assign this Agreement upon 90 days written notice, but only to a successor-in-interest that has acquired ownership, through purchase or merger, of the CFAC Plant, and then only if such assignee expressly agrees in writing to be bound by the terms of this Agreement. Such assignment will be subject to any reasonable requirement by BPA that the assignee provide credit security, in a form acceptable to BPA, to secure performance of assignee's obligations under this Agreement. It shall not be deemed unreasonable for BPA to require credit security from an assignee with a Moody's credit rating below "A", or the equivalent if rated by another credit rating agency. No other assignment of this Agreement by CFAC is permitted.

20.4 No Third-Party Beneficiaries

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

20.5 Waivers

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

20.6 BPA Policies

Any reference in this Agreement to BPA policies, including any revisions thereto, does not constitute agreement of CFAC to such policy by execution of this Agreement, nor shall it be construed to be a waiver of any right of CFAC to seek judicial review of any such policy.

20.7 Severability

If any term of this Agreement is found or rendered invalid or unenforceable by a court of competent jurisdiction, then unless that term is not severable from all other provisions of this Agreement, such invalidity or unenforceability shall not otherwise affect any remaining lawful obligations under this Agreement. Neither Party shall be liable to the other Party for any damages associated with any term being severed from this Agreement.

20.8 Credit Assurance

20.8.1 Notwithstanding anything in this Agreement to the contrary, BPA may require that CFAC provide BPA with an irrevocable standby letter of credit in the amount of \$13,000,000, issued in a form and by a bank acceptable to BPA. Such letter of credit shall have an expiration date 1 year from its date of issuance, and BPA may require replacement letters of credit in the amount of \$13,000,000 so that a letter of credit in the amount of \$13,000,000 is in place on a continuous basis for the term of this Agreement.

If CFAC fails to provide any letter of credit requested by BPA pursuant to this section 20.8.1, then BPA may terminate this Agreement.

20.8.2 Notwithstanding anything in section 20.8.1, should CFAC's financial responsibility or performance viability become unsatisfactory to BPA in BPA's reasonably exercised discretion, then BPA may seek performance assurance from CFAC consistent with law.

20.8.3 In the event that BPA requests a letter of credit pursuant to section 20.8, CFAC and BPA shall confer concerning the necessity for, and terms concerning, such letter of credit for no more than the Business Days immediately following the date of such request. Following such

discussions, CFAC shall arrange for any letter of credit requested by BPA to be issued to BPA no later than 3 Business Days following such discussions.

20.9 Drafting of Agreement

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation or other event of negotiation, drafting or execution hereof.

20.10 Execution by Counterparts

This Agreement may be executed in counterparts, and upon execution by each Party, each executed counterpart shall have the same force and effect as an original instrument and as if each Party had signed the same instrument.

20.11 Waiver of Damages

In the event the Ninth Circuit Court of Appeals or other court of competent jurisdiction issues a final order that declares or renders this Agreement, or any part thereof, void or otherwise unenforceable, neither Party shall be entitled to any damages or restitution of any nature, in law or equity, from the other Party, and each Party hereby expressly waives any right to seek such damages or restitution. For the avoidance of doubt, the Parties agree this provision shall survive the termination of this Agreement, including any termination effected through any order described herein.

21. TERMINATION

For ease of reference, this section 21 is intended to collect into one section termination events specified in various sections of this Agreement, plus describe certain additional termination events not described elsewhere.

21.1 CFAC Right to Terminate

21.1.1 CFAC Right to Terminate for Any Reason

CFAC may provide written notice to terminate this Agreement anytime after October 1, 2011. Such notice shall include an effective date of termination (Termination Effective Date) that is no earlier than 12 months following the date that BPA receives such notice. Such notice shall also specify, for each month during such 12-month period prior to the Termination Effective Date, the amount of Firm Power, if any, that CFAC shall take and pay for during the 12-month period prior to the Termination Effective Date, CFAC shall be obligated to pay the IP rate for the monthly amounts of Firm Power not taken, which shall equal to 140 aMW less the monthly amounts, if any, that CFAC has agreed to take and pay for.

The employment provisions of sections 8 and Exhibit G shall apply to amounts of Firm Power, if any, CFAC elects to take and pay for during the 12-month period prior to the Termination Effective Date.

Following the receipt by BPA of a notice to terminate pursuant to this section 21.1.1, CFAC agrees that it shall not, during the period that begins on the date of receipt of such notice by BPA and continues through 2400 hours on September 30, 2016, request a power sales agreement from BPA pursuant to section 5(d) of the Northwest Power Act.

21.1.2 CFAC Termination Following BPA Notice on or before March 31, 2010

If, pursuant to section 6.2 above, BPA has provided notice that this Agreement shall terminate at 2400 hours on September 30, 2011, CFAC may provide written notice to terminate this Agreement anytime. For avoidance of doubt, the effective date of termination may be less than 12-months following the date that BPA receives such notice, and CFAC shall not be obligated to pay the IP rate for Firm Power not taken from the date of notice through the effective date of termination. In addition BPA agrees to waive section 21.1.5.

21.1.3 CFAC Termination During a Period of Curtailment

If, pursuant to section 21.1.1 above, CFAC provides BPA with a written notice to terminate during a period of curtailment, then such curtailment shall end as of the date BPA receives such notice, and during the subsequent 12-month period the options described in section 21.1.1 above shall apply.

21.1.4 CFAC Right to Terminate if Certain Taxes or Charges are Imposed on CFAC by BPA

If costs directly attributable to the CFAC Load associated with either (1) renewable energy portfolio standard obligations, or (2) costs for carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory charges (“Environmental Costs”), are imposed on BPA directly (as opposed to being indirectly imposed on the cost of third party power acquisitions by BPA) and all such Environmental Costs have not been allocated to, and recovered by BPA through, the IP rate schedule, then BPA shall bill CFAC for such Environmental Costs, and CFAC shall be obligated to pay such Environmental Costs and continue performance under this Agreement; *provided, however*, that in the event all Environmental Costs paid by CFAC to BPA equal or exceed \$875,000, then in the event CFAC is billed any additional Environmental Costs by BPA, CFAC shall have the option to terminate pursuant to section 21.1.1 above, but CFAC shall not be obligated to pay the IP rate for Firm Power not taken during the 12-month period prior to such termination.

21.1.5 No Operation Following Termination

Except as provided for in section 21.1.2 above, CFAC agrees that in the event it exercises its right to terminate under this section 21, that

the earliest it will restart operations at the CFAC Plant is October 1, 2016.

21.2 BPA's Right to Terminate

BPA may terminate this Agreement if:

21.2.1 CFAC fails to take and pay for Firm Power made available to it under this Agreement, unless such failure is excused under section 9 or section 17.

21.2.2 CFAC fails to provide payment assurance satisfactory to BPA as required by section 20.8.

21.2.3 CFAC fails to maintain Employment Levels as required by section 8.

21.2.4 CFAC resells Firm Power.

21.2.5 CFAC fails to provide BPA with any irrevocable standby letter of credit required by section 20.8.1.

Termination by BPA under this section 21.2 is without prejudice to any other remedies available to BPA under law.

22. TERMINATION OF PRIOR AGREEMENT

The Prior Agreement, as amended, shall terminate at 2400 hours on September 30, 2009.

23. FEASIBILITY OF ENTERING INTO SUBSEQUENT AGREEMENT BEGINNING OCTOBER 1, 2016

If requested by CFAC, BPA shall conduct a public process during the FY 2013 through FY 2014 time period to examine the feasibility of entering into a subsequent power sales agreement with CFAC that would begin on October 1, 2016. In addition to examining the terms of service for any such subsequent agreement, the public process will include a study analyzing the impacts on the regional economy associated with such a subsequent agreement. This section 23 is not intended and shall not be construed as requiring BPA to offer any such subsequent agreement, irrespective of the conclusions or findings following the completion of any public process undertaken.

24. CFAC COVENANT NOT TO CHALLENGE VALIDITY OF THIS AGREEMENT

CFAC agrees that it shall not challenge the validity of this Agreement, or any part thereof, in any proceeding before the United States Circuit Court of Appeals for the Ninth Circuit (Ninth Circuit), but CFAC reserves the right to intervene in any proceeding in the Ninth Circuit in which a challenge to the validity of this Agreement, or any part thereof, has been filed.

25. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign.

Columbia Falls Aluminum Company

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name _____
(Print/Type)

Name Stephen J. Wright
(Print/Type)

Title _____

Title Administrator and Chief
Executive Officer

Date _____

Date _____

DHanlon:srh:7606:7/27/2009 (M_WG (W)-PPS-W:\PSC\PM\CT\CFAC PSA.doc)

-- Draft is the same as the 8/19/2009 Alcoa draft except for name change and items related to two potline operation of 140 aMW --

**Exhibit A
BILLING**

1. INDUSTRIAL FIRM POWER ENTITLEMENTS

1.1 The MW made available by BPA under this Agreement multiplied by: (1) the number of HLH; and (2) the number of LLH in the applicable month establishes CFAC's HLH and LLH Energy Entitlements.

1.2 The MW amount made available by BPA under this Agreement establishes CFAC's Demand Entitlement.

2. UNAUTHORIZED INCREASE CHARGE

Hourly Firm Power scheduled by CFAC in excess of amounts specified in Exhibit A shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PS.

3. REVISIONS

If this exhibit is inconsistent with BPA's Industrial Firm Power Rate Schedule, or its successor, as finally approved by FERC, the Parties shall make a good faith effort to amend this exhibit so that it is consistent.

– Draft is the same as the 8/19/2009 Alcoa draft except for name change and items related to two potline operation of 140 aMW –

**Exhibit B
COST CAPS**

1. DEFINITIONS

- 1.1 “Acquisition Cost for FY2011 through FY2012” means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, by BPA multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to CFAC, for the purpose of computing Forecasted Cost under this Agreement.
- 1.2 “Acquisition Cost for FY2012 through FY2016” means the weighted average of the monthly unit cost of BPA system resource purchases made, or the weighted average of the forecasted monthly unit cost of BPA system resource purchases to be made, assigned to the Composite Cost Pool under the Tiered Rates Methodology, including DSI loads multiplied by the volume in MWh of such purchases as applied each month to make available Requested Firm Power to CFAC, for the purpose of computing Forecasted Cost under this Agreement.
- 1.3 “Cost Cap” shall have the meaning described in section 2.1 and section 3.1 of this Exhibit.
- 1.4 “Credit Cost” means the actual cost or forecasted cost to BPA of a credit default swap or other credit risk hedging instrument purchased by BPA.
- 1.5 “Environment or Regulatory Cost” means costs incurred, or to be incurred, by BPA that are associated with carbon taxes or charges, greenhouse gas mitigation costs, or other similar environmental or regulatory costs
- 1.6 “Forecasted Cost” shall have the meaning described in section 4 of this Exhibit.
- 1.7 “Forecasted Net Cost” means the result on line J of the calculation in section 2.1 or section 3.1 of this Exhibit for the applicable period. Subject to section 2.2 of this Exhibit, \$36 million is net cost cap for the period FY2010 through FY2011 and \$129 million is the net cost cap for the period FY2012 through FY2016.
- 1.8 “Inventory Cost” means the weighted average of the monthly actual unit cost of, or opportunity cost of, BPA’s surplus inventory, as valued by BPA with reference to then current market prices, forward curves, and BPA market price forecasts, multiplied by the volume in MWh of BPA’s surplus inventory as applied each month to make available the Requested Firm Power to CFAC, for the purposes of computing Forecasted Cost under this Agreement.

1.9 “Requested Firm Power” means the total amount of Firm Power requested by CFAC in the notice provided to BPA pursuant to section 5.2 of the body of this Agreement.

2. COST CAP IN FY2010 THROUGH FY2011

2.1 Cost Cap

The Forecasted Net Cost for the FY2010 through FY2011 period is determined by subtracting (1) the forecasted IP Revenues to be received from CFAC from (2) the Forecasted Cost as illustrated on line J of Table 1 below:

Table 1 - Example Calculation of the Forecasted Net Cost in FY2010 through FY 2011	Maximum Value	Example Value
A) Firm Power	70 aMW	70 aMW
B) Requested Increase in Firm Power <i>[effective date of request must be provided inclusive of contractual notice]</i>	70 aMW	70 aMW
C) Requested Firm Power = A+B	140 aMW	140 aMW
D) Maximum Contract Volume (MWh) = A * 8760 hours * 2 years) + (B * # hours from effective) <i>[weighted for appropriate effective dates of requested firm power]</i>	2,301,600	2,301,600
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses)	2,345,330	2,345,330
G) Weighted Average IP rate for FY10-11 (\$ per MWh) <i>[weighted for appropriate effective dates of requested firm power]</i>	\$ 34.59	\$ 34.59
H) Forecasted Cost (\$) <i>[see definition and example in section 4 of this Exhibit]</i>	\$ 161,621,759	\$ 110,934,129
I) Forecasted IP Revenue (\$) = D * G	\$ 79,621,759	\$ 79,621,759
J) Forecasted Net Cost = H - I	\$ 36,000,000	\$ 31,312,350
K) Forecasted Cost (\$per MWh) = H / F	\$ 48.50	\$ 47.30
L) Forecasted Net Cost (\$ per FY in period) = J / (2 fiscal years)	\$ 18,000,000	\$ 15,656,175

The Forecasted Net Cost represents a forecast of BPA’s cost (net of IP revenues) to serve the CFAC Load with 140 aMW of Firm Power for the FY2010 through FY2011 period and must be forecast to be less than or equal to \$36 million (the “Cost Cap”); provided however such Cost Cap may be increased pursuant to section 2.2 of this Exhibit B.

2.2 Effect of DSI Curtailment on Cost Cap

To the extent any other aluminum smelter DSI notifies BPA of a curtailment under its BPA power sales agreement during the FY2010 through FY2011 period, then during the duration of such curtailment, the \$36 million Cost Cap applicable to CFAC under this Agreement for the FY2010 through FY2011 period will be increased by an amount equal to the amount of the Cost Cap forgone by such other aluminum smelter DSI, and the \$48 per MWh cost cap will be increased accordingly.

3. COST CAP IN FY2012 THROUGH FY2016

3.1 Cost Cap

The Forecasted Net Cost for the FY2012 through FY2016 period is determined by subtracting (1) the forecasted IP Revenues to be received from CFAC from (2) the Forecasted Cost as illustrated on line J of Table 2 below:

Table 2 - Example Calculation of the Forecasted Net Cost in FY2012 through FY 2016	Maximum Value	Example Value
A) Firm Power	n/a	n/a
B) Requested Increase in Firm Power	n/a	n/a
C) Requested Firm Power = 320 aMW	140 aMW	140 aMW
D) Maximum Contract Volume (MWh) = C * 8760 hours * 5 years	6,132,000	6,132,000
E) Losses percentage	1.9%	1.9%
F) Maximum Contract Volume (MWh, including losses) = D * (1+E)	6,132,000	6,132,000
G) Weighted Average IP rate for FY12-16 (\$ per MWh)	\$ 38.22	\$ 38.22
H) Forecasted Cost (\$) <i>[see definition and example in section 4 of this Exhibit]</i>	\$378,710,708	\$ 330,796,014
I) Forecasted IP Revenue (\$) = D * G	\$ 234,335,708	\$ 234,335,708
J) Forecasted Net Cost = H - I	\$ 144,375,000	\$ 96,460,305
K) Forecasted Cost (\$ per MWh) = H / F	\$ 60.61	\$ 52.94
L) Forecasted Net Cost (\$ per FY in period) = J / (5 fiscal years)	\$ 28,875,000	\$ 19,292,061

The Forecasted Net Cost represents a forecast of BPA's cost (net of IP revenues) to serve the CFAC Load with 140 aMW of Firm Power for the FY2012 through FY2016 period and must be forecast to be less than or equal to \$129 million (the "Cost Cap").

To the extent Parties anticipate a Forecasted Net Cost exceeding the \$129 million Cost Cap, then by mutual agreement the Parties may: i) adjust FTE commitment levels; or ii) reduce the 18 month limit of the curtailment duration during the FY 2012 through FY 2016 period specified in section 9.2 of the body of the Agreement, in order to increase the Cost Cap. The Parties agree that the Cost Cap may not be increased above \$141 million. For example, the Parties may increase FTE commitment (direct DSI jobs) up to ___ FTE in each year of smelter operation (___ job-years) and increase the Cost Cap an equivalent amount up to but not exceeding \$141 million (line K in Table 2 above would increase up to \$60.61 per MWh). The Parties shall amend this Agreement to implement agreed to adjustments to increase the Cost Cap, including revisions to Exhibits that may be necessary.

4. METHODOLOGY TO DETERMINE FORECASTED COST

The Forecasted Cost shall be determined by BPA in its sole discretion and will include, but is not limited to, the sum of the following costs: Acquisition Cost, Inventory Cost, Credit Cost, Environmental and Regulatory Cost. ("Forecasted Cost")

For each month in the period, BPA will assemble the information in Table 3 in the commercially reasonable manner below:

-- Draft is the same as the 8/19/2009 Alcoa draft except for name change and items related to two potline operation of 140 aMW --

Exhibit C
SPECIAL PROVISIONS

1. BPA APPROPRIATIONS REFINANCING

In accordance with section 21.2 of the body of this Agreement, section (i) of the BPA Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. No. 104-134, 110 Stat. 1321–350, is included in this Agreement--

(i) Contract Provisions

In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1996, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1996--

- (1) the Administrator shall establish rates and charges on the basis that
 - (A) the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b) of the BPA Refinancing Act;
 - (B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under subsection (c) of the BPA Refinancing Act;
 - (C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and
 - (D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;
- (2) apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b) of the BPA Refinancing Act and to pay the interest on the principal amount under subsection (c) of the BPA Refinancing Act, no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;
- (3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United

States on a claim for a breach of the contract provisions required by this Part; and

- (4) the contract provisions specified in this Part do not--
 - (A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or
 - (B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to--
 - (i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or
 - (ii) design rates

2. REVISIONS

This exhibit shall be revised by mutual agreement of the Parties to reflect additional special provisions during the term of this Agreement.

**Exhibit D
METERING**

1. METERING

Directly Connected Points of Delivery

BPA POD Name:

BPA POD Number: TBD*;

WECC Balancing Authority: BPAT;

Location: the point in BPA's Conkelly Substation where the 13.8 or 230 kV facilities of BPA and CFAC are connected;

Voltage: 13.8 or 230 kV;

TBD* This data element is currently unresolved and shall be determined by BPA prior to June 1, 2011.

2. REVISIONS

Each Party shall notify the other in writing if updates to this exhibit are necessary to accurately reflect the actual characteristics of POD and meter information described in this exhibit. The Parties shall revise this exhibit to reflect such changes. The Parties shall mutually agree on any such exhibit revisions and agreement shall not be unreasonably withheld or delayed. The effective date of any exhibit revision shall be the date the actual circumstances described by the revision occur.

Exhibit E
SCHEDULING

1. SCHEDULING FEDERAL RESOURCES

CFAC is responsible for creating E-Tags for all deliveries of federal power purchased under this Agreement.

In the event of an unplanned outage that affects future hours, CFAC or its scheduling agent is responsible for adjusting e-Tags to accurately reflect the amount of load actually being served by generation provided by BPA.

2. AFTER THE FACT

BPA and CFAC agree to reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). BPA and CFAC shall verify all transactions per this Agreement, as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

3. REVISIONS

BPA may unilaterally revise this exhibit: (1) to implement changes that are applicable to all customers who are subject to this exhibit and that BPA determines are reasonably necessary to meet its power and scheduling obligations under this Agreement or (2) to comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to CFAC unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

Exhibit F
POWER RESERVES

1. DEFINITIONS

- (a) “Event” is a system condition under which PS needs additional power to meet its obligations during a system disturbance. The beginning of an Event shall be identified by notice from the TS dispatcher to the TS scheduler that such a system disturbance has occurred, and CFAC’s scheduling agent shall notify CFAC that Restricted Energy is required. The end of the Event shall occur the earlier of when; a) initially established; b) CFAC’s scheduling agent has notified CFAC that full service has been restored; or c) 105 minutes from the beginning of the Event. An Event shall not include BPA electing not to purchase power for economic reasons, nor shall an Event include circumstances in which BPA elects not to purchase available transmission capacity to avoid the need to impose a restriction.
- (b) “Event Duration” shall be the total cumulative Event Minutes of the Event.
- (c) “Event Minute” shall be the minutes of restriction (or any portion thereof) during an Event.
- (d) “Contingency Reserves” are those reserves provided by CFAC under this Agreement for purposes of providing reserves for BPA’s firm power loads within the region, as provided for in the Northwest Power Act.
- (e) “Reserve Amount” shall be the kilowatt (kW) amount of Contingency Reserves available to BPA by CFAC specified in Section 2 of this Exhibit.
- (f) “Restricted Energy” means the requested megawatt-hour (MWh) amount of energy not made available to CFAC hereunder because of an Event.

2. AMOUNT AND TYPES RESERVES

When necessary to provide Contingency Reserves, BPA may restrict the Reserve Amount, or the requested portion thereof, for a period of time (Restricted Energy). The Reserve Amount (in kilowatts) shall equal the amount of Minimum DSI Operating Reserve – Supplemental specified in the 2010 GRSP, or its successor.

Notwithstanding any other provision of this Agreement, BPA shall use its best efforts to end an Event as soon as possible, and CFAC agrees to cooperate in development of mechanisms that will enhance BPA’s ability to notify CFAC of the end of an Event.

The Parties recognize that with the addition of certain electronic controls at the Intalco Plant, the Intalco Load can be varied to help accommodate within-hour fluctuations on BPA’s system associated with wind power generation. The Parties agree to undertake discussions within 60 days after the execution of this

Agreement to identify and implement any agreed to actions and agreements necessary to achieve such wind integration benefits.

3. QUALITY AND CHARACTER OF RESERVES

Contingency Reserves provided by CFAC shall be consistent with North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and Northwest Power Pool (NWPP) standards and criteria:

(a) the Reserve Amount, or the requested portion thereof, must be offline within ten (10) minutes after the first telephone call by CFAC's scheduling agent to CFAC;

(b) the Reserve Amount, or the requested portion thereof, must be available to be offline for up to one-hundred five (105) minutes.

CFAC shall provide a contact at the Facility at the following phone number:

CFAC
Phone: TBD

CFAC shall maintain such contact for every hour in the Term of the Agreement in which the Minimum DSI Operating Reserve – Supplemental amount is greater than zero megawatts.

CFAC will provide the Restricted Energy to BPA by an interruption of its loads in an amount equal to or greater than the amount of such specified Restricted Energy, and in each case shall continue such load interruption for the duration of the Event. BPA will bill and CFAC shall pay for the Restricted Energy as though actually delivered to CFAC.

The TS dispatcher will notify the TS scheduler of a contingency event. Depending on whether the event occurs less than 30 minutes past the delivery hour, or occurs greater than or equal to 30 minutes past the delivery hour either the TS scheduler or CFAC's scheduling agent will adjust CFAC's e-tags in real time. In both cases CFAC's scheduling agent shall contact CFAC at the phone number in this section to: (a) initiate each Event; and (b) terminate each Event. Within ten (10) minutes following such notice by the scheduling agent to initiate an Event, CFAC shall commence providing the Restricted Energy to BPA. CFAC shall not restore its use of the Restricted Energy until the lesser of: (a) one-hundred five (105) minutes; or (b) immediately following notice from the scheduling agent terminating an Event.

PS retains the right to verify CFAC's provision of Restricted Energy by comparing the metered amounts before an Event, during an Event, and after an Event is terminated. If such verification fails to demonstrate that the Restricted Energy was made available to BPA by CFAC for the Event Duration, then PS, in its sole discretion, may: (a) terminate the compensation specified in Section 4 of this Exhibit for the undemonstrated portion of the Reserve Amount for the remaining Term of

the Agreement; and, (b) notify TS of the undemonstrated portion of the Reserve Amount. CFAC acknowledges that any undemonstrated portion of the Reserve Amount may cause its transmission supplier to take additional actions subject to the provisions of the Transmission Service Agreements CFAC maintains with its transmission supplier, that may include an assessment of the monetary penalty described in the Failure to Comply provision of the prevailing TS tariff for transmission service.

4. COMPENSATION FOR CONTINGENCY RESERVES

CFAC will be compensated by PS for Minimum DSI Operating Reserve - Supplemental provided in this Agreement through an adjustment to the IP rate, as provided for in the Northwest Power Act.

5. RETURNED ENERGY

BPA must make any Restricted Energy during an Event available to CFAC within 24 hours ("Returned Energy") in mutually agreed flat hourly amounts and hours. It is understood by Parties that Returned Energy does not need to be scheduled during hours immediately following an Event and that the Returned Energy will likely be made available during Light Load Hours.

Scheduling of Returned Energy amounts will be in addition to federal power purchased pursuant to section 4 of the body of the Agreement. CFAC shall be responsible for creating E-Tags and transmission required for the delivery of Returned Energy.

6. TESTING OF RESERVES

BPA shall have the option to conduct annual tests of the procedure specified in this Exhibit and CFAC shall participate and provide any Restricted Energy requested.

7. REVISIONS

BPA may unilaterally revise this Exhibit F to implement changes that are applicable to CFAC and that BPA determines are reasonably necessary for reserves provided under this Agreement to: (a) reflect changes in the value of the DSI Reserves Adjustment; and (b) comply with requirements of the WECC, NAESB, or NERC, or their successors or assigns.

Revisions are effective 45 days after BPA provides written notice of the revisions to CFAC unless, in BPA's sole judgment, less notice is necessary to comply with an emergency change to the requirements of the WECC, NAESB, NERC, or their successors or assigns. In this case, BPA shall specify the effective date of such revisions.

**Exhibit G
EMPLOYMENT LEVELS**

1. Definitions

- 1.1 “Average Firm Power” means the average Firm Power during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.
- 1.2 “Average FTE” means the average FTE, as determined pursuant to Table 1 in section 2 below, during a period of time that is equal to the lesser of the duration of time that this Agreement has been in effect or 5 years.
- 1.3 “Firm Power” shall have the meaning ascribed to it in section 2.9 of the body of this Agreement.
- 1.4 “FTE” shall have the meaning ascribed to it in Section 8 of the body of this Agreement.

2. Relationship between Firm Power and FTE

For the avoidance of doubt, pursuant to this Exhibit G, Firm Power and FTE are proportional for the purposes of this Agreement, based on the amount of Firm Power CFAC is consuming. As applicable and as described in Table 1 below, the proportion is 1.65 Average FTE per aMW of Average Firm Power:

Table 1 - Proportional Relationship between Average Firm Power and Average FTE

Average Firm Power (aMW)	Average FTE	Proportional FTE
140	231	1.65
123	202	1.65
105	173	1.65
88	144	1.65
70	116	1.65
53	87	1.65
35	58	1.65
32	—	
18	—	
6	—	

During periods of curtailment, the average of the reported monthly FTE shall be equal to or greater than __.