



## Department of Energy

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

PUBLIC AFFAIRS

December 14, 2012

In reply refer to: DK-7

Thomas Grim  
Cable Huston  
1001 SW Fifth Ave, Ste 2000  
Portland, OR 97204

### FOIA # BPA-2013-00103-F

Dear Mr. Grim:

This is a partial release to your request for records that you made to the Bonneville Power Administration (BPA), under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

#### **You requested:**

1. Copies of the documents related to each of BPA's facility determinations made after January 1, 2006, regarding New Large Single Loads (NLSLs) under a BPA power sales contract, the NLSL Policy and/or the Northwest Power Act.
2. Correspondence or documents between BPA and any utility requesting, determining, establishing, confirming or otherwise regarding each of BPA's facility determinations made after January 1, 2006.

#### **Response:**

BPA has made no facility determinations since January 1, 2006, regarding New Large Single Loads (NLSLs) under a BPA power sales contract, the NLSL Policy and/or the Northwest Power Act. Therefore, we have no responsive records for the first item of your request.

Documents responsive to the second item of your request are undergoing an Exemption 4 review. This can be a lengthy process and we will release documents as that process is completed for each utility involved.

Thank you for your patience. We will be proceeding as quickly as possible.

Please contact our office at 503-230-7305 with any questions.

Sincerely,

*/s/Christina J. Munro*

Christina J. Munro

Freedom of Information Act/Privacy Act Officer



## Department of Energy

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

PUBLIC AFFAIRS

February 26, 2013

In reply refer to: DK-7

Thomas Grim  
Cable Huston  
Suite 2000  
1001 SW Fifth Avenue  
Portland, Oregon 97201

### **CERTIFIED MAIL—RETURN RECEIPT REQUESTED**

RE: FOIA Request BPA-2013-00103-F

Dear Mr. Grim:

This letter is a final response to your FOIA request dated October 23, 2012, for:

“Copies of the documents related to each of BPA’s facility determinations made after January 1, 2006, regarding New Large Single Loads (NLSLs) under a BPA power sales contract, the NLSL Policy and/or the Northwest Power Act.

Correspondence or documents between BPA and any utility requesting, determining, establishing, confirming or otherwise regarding each of BPA’s facility determinations made after January 1, 2006.” [Exhibit 1]

BPA sent to you a partial response on December 14, 2012, stating that there were no responsive records to your first request for facility determinations by BPA after January 1, 2006. As to your second request, enclosed are the following records:

1. Responsive records for Cascade Grain. BPA made no redactions to these records as Cascade went into bankruptcy, and despite BPA’s efforts to locate the current “owner” of the information for Exemption 4 purposes, BPA has been unable to do so.
2. Redacted responsive records from Umatilla Electric Cooperative (UEC) and Northern Wasco PUD (Wasco). The reasoning for the redactions is explained below.

This determination letter primarily focuses on the issue of whether UEC and Wasco voluntarily provided the responsive information to BPA, as that term is used under Exemption 4.

### A. BPA's Findings

The FOIA's statutory policy favors the disclosure of information. UEC and Wasco (or their respective customers, from whom they received most of the information) have the burden of persuasion to show that the responsive information is exempt from disclosure.<sup>1</sup>

Information may be exempt from disclosure under Exemption 4 if it is "commercial" in nature, is "obtained [by BPA] from a person [UEC/Wasco]," and is "privileged or confidential." Here, there is no question that the responsive information is commercial in nature and that BPA obtained it from UEC and Wasco.

Consequently, BPA must determine whether the information is confidential. To do so, the initial question is whether the information was submitted to BPA voluntarily or involuntarily.<sup>2</sup> If voluntarily submitted, the information is withheld under Exemption 4 without further analysis if it is not customarily made available to the public. Information submitted involuntarily, on the other hand, is confidential only if its release would likely cause the submitter substantial competitive harm.<sup>3</sup>

#### 1. Voluntary v. Involuntary—legal standard

In deciding whether the utilities provided the commercial information voluntarily, BPA must consider all of the circumstances surrounding the submission of the information to BPA.<sup>4</sup> This inquiry focuses not only on whether BPA has the authority to require the submissions, but also whether BPA in fact exercised that authority. Unlike many other federal agencies, BPA has no regulatory authority (except in rate making). However, commercial information still will be considered to have been required, and therefore involuntarily provided, if BPA made the submission of the information a condition of participating in an administrative process or of doing business with it.<sup>5</sup>

<sup>1</sup> Occidental Petroleum Corp. v. SEC, 873 F.2d 325, 342 (DC Cir 1989).

<sup>2</sup> Critical Mass Energy Project v NRC, 975 F.2d 871, 879 (DC Cir 1992).

<sup>3</sup> See National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (DC Cir 1974). Because BPA finds that the Critical Mass test applies here, the competitive harm and government impairment tests under National Parks are not relevant.

<sup>4</sup> As a procedural matter, BPA will refer to the Exemption 4 comments from UEC and Wasco, and their potential industrial customers, collectively as "the utilities." Most of the information from the utilities was a "pass-through" from the potential industrial customers, but the analysis is the same: whether the information BPA received was voluntary or involuntary under Exemption 4.

<sup>5</sup> National Parks, *supra*, 498 F.2d at 770.

For example, in federal contract procurements, a requirement that potential contractors must submit cost breakdowns is “required” information, and therefore submitted involuntarily.<sup>6</sup> It does not matter that the underlying activity (e.g., seeking a government contract or grant) is one in which participation is voluntary. Instead, the key question is whether those entities that choose to participate have information submission requirements as a condition of participation. If so, any information submitted is done so involuntarily for Exemption 4 purposes.

## 2. Information provided by the utilities to BPA

The situation here is considerably different than what normally occurs in federal procurement. To understand why, some background is necessary about NLSLs.

For BPA’s utility customers, it is commercially important to have industrial customers within their respective service territories. But, it is also in their financial interests to have those potential customers avoid an NLSL designation. A NLSL designation, required for electrical loads that grow at a rate above a set maximum, will result in higher electricity rates from BPA to the utility (and thereby ultimately to the utility’s customer).

Other considerations are important. BPA has no direct dealings with a utility’s potential industrial customer. The information that BPA receives—for example, about the utility customer’s business plans, electrical plans of service, contracts, or other data—is from the utility, which obtains it from the potential customer. There is no requirement—contractual or regulatory—that mandates any specific kind of information to be provided to BPA. (Of course it is in the respective commercial interests of the utility and the customer to provide enough information to avoid a NLSL designation.)

Here, the commercial information that the utilities gave to BPA about a potential industrial customer was not required by BPA. The circumstances, reflected in the responsive records, were simply an informal discussion of potential commercial activity within the utilities’ respective service territories.<sup>7</sup> Again, BPA never required that any specific information had to be provided by the utilities as a condition of having a discussion. Thus, for purposes of Exemption 4, BPA obtained the information voluntarily.<sup>8</sup>

The case law supports this conclusion. One example that parallels this situation, although in a procurement context, is Parker v. Bureau of Land Management.<sup>9</sup> In Parker, the BLM received documents from two pipeline companies in response to proposed pipeline projects. Of importance to the analysis here, the BLM right-of-way application regulations did not require

<sup>6</sup> See e.g. Research Focus, \_\_\_ DOE \_\_\_ (TFA-0247 3/26/2008) at pg. 2 (contractor required to submit an agreement in contract negotiations thereby making it “involuntary”); BP Exploration, Inc., 27 DOE 80,216 (1999) (Exxon was to submit a proposed rental fee in negotiating a lease agreement, making it involuntarily submitted).

<sup>7</sup> This conclusion is buttressed by the responsive records themselves—they are primarily email exchanges between BPA and the utilities over whether a potential industrial customer would (or could) become a NLSL.

<sup>8</sup> Whether, in other circumstances, BPA could require a utility to supply it with certain information to make a NLSL designation is irrelevant, as that did not happen here.

<sup>9</sup> 141 F Supp 2d 71 (DDC 2001).

this information. Instead, the documents and information were submitted to assist the BLM in considering and processing the proposals. Since the agency did not require this specific information, the court concluded that the documents that were submitted were done so voluntarily (and therefore that Critical Mass test applied).<sup>10</sup>

4. Is the voluntarily submitted information customarily released to the public?

Since the utilities voluntarily provided the information, it will be "confidential" and protected from disclosure if it is "of a kind that would customarily not be released to the public by the person from whom it was obtained."<sup>11</sup> It is the actual customary treatment of the information by the submitter that is important, not necessarily industry custom. A submitter may have made some disclosure of the information, but as long as it not public, the information is protected.<sup>12</sup>

The utilities have shown that the information has not been disclosed to the public. The lack of public disclosure has been confirmed by BPA account executives.

C. Conclusion

For the reasons given above, it is BPA's determination that the utilities voluntarily provided to BPA the commercial information in the responsive documents. That information has not been released to the public. Therefore, their respective limited objections to disclosure under Exemption 4 are well-taken. There is no need for further analysis under the National Parks competitive harm test.

If you are dissatisfied with this determination, you may make an appeal within thirty (30) days of receipt of this letter to the Director of Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Both the envelope and the letter must be clearly marked "Freedom of Information Act Appeal."

If you have any questions regarding this letter please contact Kim Winn, FOIA Specialist, at 503-230-5273.

Sincerely,

*/s/Christina J. Munro*  
Christina J. Munro  
FOIA and Privacy Act Officer

Enclosures

<sup>10</sup> Id., 141 F Supp 2d at 77-78.

<sup>11</sup> Critical Mass, supra 975 F.2d at 879.

<sup>12</sup> Critical Mass, supra 975 F.2d at 879-880.

Non-responsive

**From:** Nelson, Scott  
**Sent:** Tuesday, November 04, 2008 12:46 PM  
**To:** Johnson, Tim A - LP-7  
**Subject:**

<<18062M20W1Memo 2 (4)(final)>>

Tim,

In late September, Harvey and I collaborated with Clatskanie to produce a memo and letter that addressed the start date and facilities determination for Cascade Grain. Clatskanie received an email back recently from Theresa Rockwood stating that she would respond "in the near future" to the start date issues. She also asked whether Clatskanie and Cascade were requesting a facilities determination. The answer to the latter issue is "yes" and Clatskanie will be communicating that through the appropriate channel.

Regarding the start date issue I am hoping that we can have the opportunity to talk with you and/or Tom before a final determination is made as we feel that the June 7 date on which it appears Ms. Rockwood is insisting to be the appropriate start date is significantly later than other possible dates that can be determined by the terms of the NLSL policy.

I assume that your shop has been consulted on this matter and even seen the memorandum that was attached to Clatskanie's September letter, but I've attached a copy to this email in case you have not had a chance to review it.

Hope we can talk before a start date determination. Please let me know when you might be available.

11/13/2012

Thanks again for all your help and attention to this matter.

Scott Nelson

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed within.

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11/13/2012

# K&L | GATES

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**TO:** Charles Carlson  
**FROM:** Scott Nelson  
**DATE:** September 26, 2008  
**RE:** Application of BPA NLSL Policy to Service to Cascade Grain Products, I

You have asked whether the electric power load of Cascade Grain Products, LLC (“Cascade Grain” or “Cascade”) is a New Large Single Load (or “NLSL”), as defined in the Pacific Northwest Electric Power Planning and Conservation Act (the “Northwest Power Act”)<sup>1</sup> and in the Bonneville Power Administration’s (“BPA”) New Large Single Load Policy dated as of April 2001 (the “NLSL Policy”) and prior BPA decisions regarding New Large Single Load service (the “Prior Decisions”).<sup>2</sup>

A. Issues

A BPA customer that provides service to a New Large Single Load will not be able to purchaser power from BPA for service to such at BPA’s wholesale power rate established pursuant to Section 7(b) of the Northwest Power Act. Instead, under Section 3(13) of the Northwest Power Act, if a BPA customer purchases power from BPA to serve an NLSL it must do so at BPA’s higher cost rates. This new rate structure was built into the Northwest Power Act due to expected shortfalls in power supply during the late 1970s.<sup>3</sup> In addition, inclusion of special provisions for NLSLs was expected to eliminate incentives for industry to move to service areas of BPA preference customers for access to low cost power, preserve low cost BPA power for preference customer’s small farm and residential users, and motivate the adoption of energy efficiency and conservation.<sup>4</sup>

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<sup>1</sup> “‘New Large Single Load’ means any load associated with a new facility, an existing facility or an expansion of an existing facility – . . . (B) which will result in an increase in the power requirements of such customer of ten average megawatts or more in any consecutive twelve-month period.” 16 U.S.C. § 839a(13).

<sup>2</sup> BPA made case-by-case determinations about whether a particular load was a New Large Single Load during the last twenty-eight years. The NLSL Policy restated conclusions reached in the Prior Decisions. However, the NLSL Policy states that it “in no way attempts to change or implement new policy approaches to new large single loads; it is merely a consolidation of previously announced policies and services (sic) approaches.” NLSL Policy at 3. The NLSL Policy states that the Prior Decisions “remain fully in force.” NLSL Policy at 13.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

The NLSL Policy prescribes a sequence for BPA's decisions about whether a particular load is a New Large Single Load.<sup>5</sup> The first issue that must be addressed<sup>6</sup> is whether Clatskanie People's Utility District ("Clatskanie PUD") is providing service for one Cascade Grain facility or for two Cascade Grain facilities. It is our opinion that Clatskanie PUD is providing service to two Cascade Grain facilities: the ethanol production facility and the DDGS facility, as defined below. Nevertheless, it is also necessary to determine whether Clatskanie PUD's service to Cascade Grain's ethanol production facility will increase by 10 aMW or greater in a twelve month period, thereby causing the ethanol production facility to be an NLSL. This raises a second issue which is the proper start date for an NLSL determination.

B. Background:

1. Clatskanie PUD Service to Cascade Grain

Clatskanie PUD purchases its electric power requirements from BPA to serve Clatskanie's retail load, including the retail load at Cascade Grain's facilities. Cascade Grain owns and operates two facilities located in Columbia County, Oregon. The first facility produces ethanol from corn. Cascade Grain sells the ethanol for use as an additive to transportation fuels. The second facility receives waste product from the ethanol production facility and converts the waste into distillers dried grain with solubles ("DDGS"), which is sold to Cascade Grain's marketing partner, Land O'Lakes, Inc. ("Land O'Lakes"). Land O'Lakes distributes the DDGS for use at feed-lots, dairies, feedmills and export.

2. Ethanol Facility

The basic production process for ethanol at Cascade Grain begins with delivery – typically by rail – and handling and storage of grain. The grain is next put through grinders. The ground grain is mixed with water, cooked and the resulting corn starch is converted to fermentable sugars by the action of enzymes that are added to the slurry. In the fermentation step, sugars are converted to ethanol and carbon dioxide by the action of yeast. The alcohol is further refined through distillation, stored, and then shipped to market.

3. DDGS Facility

DDGS begins as a waste product from the ethanol process. Essentially, the post-fermentation and distillation remains of the grain is collected from the ethanol process as

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<sup>5</sup> *Id.* at p. 5.

<sup>6</sup> The first item in the NLSL Policy's "Sequence of Decisions", whether Clatskanie PUD's service to Cascade Grain was pursuant to a commitment made prior to September 1, 1979, is not applicable because neither Clatskanie PUD, nor Cascade Grain, claims that service is provided pursuant to such a commitment.

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Memorandum  
September 26, 2008  
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“wetcake.” Although this wetcake can be sold to users such as dairies without further processing, at Cascade Grain’s DDGS facility most of the wetcake is transported to dryers. Once dried, the DDGS is transported to a storage facility adjacent to the dryers before being shipped to marketers or end users such as Land O’ Lakes.

#### 4. Operations At Cascade Grain’s Facilities

There are five factors relevant to the separate facility determination. First, the ethanol production facility does not require the availability of the DDGS facility to produce ethanol. Cascade Grain could sell the ethanol facility’s waste-product to another entity, and the other entity could manufacture DDGS at a location distant from Cascade Grain’s ethanol production facility. Second, the DDGS facility could purchase waste product to convert to DDGS from other sources in the event that the ethanol production facility did not operate. Third, although the DDGS facility is located in a separate building adjacent to the ethanol production facility, the DDGS facility could be located anywhere. Co-location avoids transportation costs, but that is the only synergy arising from Cascade Grain’s operation of both an ethanol production facility and a DDGS facility. Fourth, the two products have entirely different customers, uses and distribution chains. Fifth, the ethanol production facility and the DDGS facility are served from Clatskanie PUD’s substation by separate feeder lines to separate Clatskanie switchyards and Clatskanie is in the process of having distinct metering currently in place for DDGS integrated into Clatskanie’s distribution control system.

On January 23, 2008, the motors in the facilities commenced operation. Clatskanie PUD’s Substation adjacent to the facilities was connected to the main ethanol production building and the DDGS driers by separate feeder lines. The equipment in both facilities started the systematic testing on January 23, 2008. At that time none of the load billed under Cascade Grain’s contract with Clatskanie PUD was related to construction. Some construction did continue on the site, consistent with any start up operation but the construction load was metered separately from the load to the two facilities.

On March 22, 2008, Cascade Grain received a 22-railcar load of grain and on April 15, 2008, it received a 110-railcar load of grain. Grinding of grain began shortly thereafter, although technical issues typical with startup hampered production in May. However, the entire 110 railcar load was used in the first ethanol production. The first ethanol for commercial sale was produced on June 11 from grain delivered and first ground in April.

#### C. Separate Facility Determination

The NLSL Policy states that whether a utility provides service to one or multiple facilities depends upon a review of several factors:<sup>7</sup>

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<sup>7</sup> 1981 Power Sales Contract, section 8(a); 1991 NLSL Policy

- Whether the load is operated by a single consumer;
- Whether the load is in a single location;
- Whether the load serves a manufacturing process which produces a single product or type of product;
- Whether the load is contracted for, served or billed a single load under the individual Purchaser's customary billing and service policy;
- Consistent application of the foregoing criteria in similar fact situations; and
- A "catchall" consideration of other relevant factors.<sup>8</sup>

The determination based on these considerations is to be based on the cumulative effect of all the criteria and are not weighted.<sup>9</sup>

## 1. Products

The ethanol production facility and the DDGS facility produce distinct products using entirely different industrial process. The only connection between the two products is that the DDGS facility uses the waste by-product of the ethanol production facility. Ethanol is shipped to producers of fuels that use the ethanol as an additive. DDGS, a constituent for animal feed, is shipped to Land O'Lakes, which repackages the DDGS for use at feed-lots, dairies, feedmills, and for export. Ethanol and DDGS are entirely different products that are marketed separately to entirely different end users for entirely different purposes -- a fuel and animal feed.

## 2. Independence

The two facilities are independent from one another. In addition to producing entirely different products sold to different customers for different uses, each facility can be operated without the other facility. Ethanol can continue to be produced even if the DDGS facility is shut down. The DDGS process can operate if the ethanol facility is shut down by securing a new source of wetcake. The two facilities are served with different feeders from Clatskanie PUD's substation, either process could continue if the other were experiencing electrical problems.

## 3. Separate Service

The loads are metered separately and Cascade Grain plans to have them billed separately. The load had been contracted as a single load only for the administrative convenience of Cascade Grain and Clatskanie PUD.

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<sup>8</sup> *Id.*

<sup>9</sup> 1991 NLSL Policy at 10.

#### 4. Consistency

This criterion provides that BPA will take into account “similar fact situations”, *i.e.* Prior Decisions with fact situations similar to the facts with respect to Cascade Grain’s facilities. For instance, in one determination, BPA contemplated a narrow view by not applying previous determinations because, although determinations had been made regarding products such as paper pulp and potatoes, no determination had previously been made regarding gold bars.<sup>10</sup> On the other hand, BPA recently compared the virtual products of an internet provider to physical products such as chemicals, pulp, potatoes, and gold bars.<sup>11</sup> This letter summarizes Prior Decisions that are factually similar to the ethanol production facility and the DDGS facility.

##### a. KemaNord

This determination involved two processes that produced liquid sodium chlorate and crystal sodium chlorate.<sup>12</sup> Both operations were located in the same building, had a single owner, and were similar except as to the final stage in which an intermediate compound was either filtered, dried and formed into crystals, or rendered per customer specifications as a liquid. In the event that either operation experienced a shutdown, there could be a “crossover” of materials between the operations. Although the liquid form and the crystal form were nearly identical chemically, BPA noted that KemaNord had identified distinct markets for the products as one was used for wood pulp production and the other was used for a different type of wood pulp production as well as in other products, such as weed killer.<sup>13</sup> At the time of the determination, the retail electricity supplier said that the two facilities would be served under separate contracts, and metered and billed separately. BPA, noting that this determination was similar with all previous determinations except for the facts that both facilities were in one building and the crossover of materials, nonetheless found the KemaNord operations to constitute two facilities. Presumably, this was based on the analysis that “in all previous cases facilities were found to be separate even though they were in the same “location,” *i.e.*, on the same site.”<sup>14</sup> Further, BPA’s analysis found that “the flow of materials between proposed facilities has not so far been a basis for BPA to determine that operations which supply one another should be determined to be parts of a single facility.”<sup>15</sup>

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<sup>10</sup> BPA Discussion Paper, NLSL Facility Determination – Newmont Gold Mine

<sup>11</sup> BPA Facility Determination, HOYA Technologies LLC (Jan. 18, 2005).

<sup>12</sup> BPA Discussion Paper, NLSL Facility Determination – KemaNord Sodium Chlorate Plants.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

b. Ponderay.

Ponderay Paper operated two adjacent plants, one producing thermomechanical pulp and the other newsprint. The principal input of the newsprint plant was the output from the pulp plant. Notwithstanding this fact, BPA found that even though both products were sold into the paper production market, the market distinguishes between the products because the pulp may be used for production of different kinds of paper than newsprint.<sup>16</sup>

c. Carnation.

This determination involved one facility that produced French fries and hash browns and one facility that produced powdered potatoes. The facility that produced the French fries and hash browns also produced a waste product that served as an input for the facility producing powdered potatoes. BPA has noted that “the basic production input for the two product lines was raw potatoes which went through two separate processes to create an end product, French fries, hash browns, and powdered potatoes, each sufficiently distinct from the other and sold differently.”<sup>17</sup> BPA found these facilities to be separate.

d. Newmont.

The Newmont determination involved a gold mining operation and two different processes for producing the same product: gold bars.<sup>18</sup> The entire operation, including a mine, mill, leaching facility, and refinery were all located on the same property. In addition, the operation had a single owner. The two facilities shared a number of resources, including certain personnel, the mine, maintenance and administrative services. In addition, BPA found that Newmont was operating separate facilities even though it operated under a single contract and that the entire site had been billed under a single metering point.<sup>19</sup> Separate billing was to be instituted as expansion plans for the site proceeded.<sup>20</sup> As explained in the discussion paper, separate contracts had been prepared but were consolidated into a single contract as a matter of administrative convenience.<sup>21</sup>

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<sup>16</sup> HOYA Determination at 10.

<sup>17</sup> HOYA Determination at 10.

<sup>18</sup> BPA Discussion Paper, NLSL Facility Determination -- Newmont Gold Mine.

<sup>19</sup> *Id.* See also Letter from Office of the Administrator, Bonneville Power Administration to Daniel M. Kessler, Wells Rural Electric Company (Mar. 20, 1989).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

## 5. Analysis of the Consistency Criterion

Consistent with past determinations, Cascade Grain's operations should be found to be two facilities. With respect to separate products and independence, Cascade Grain's facilities are analogous to the separate facilities described in KemaNord, Ponderay, Carnation and Newmont decisions. They produce distinct products sold to separate markets for different uses. Although the ethanol production facility and the DDGS facility have a common owner and are located on the same property, the separate processes take place in separate structures, this was true in Ponderay, Carnation and Newmont. In KemaNord, the separate facilities were even in the same building.

In KemaNord, BPA found that two products were produced, even though they were nearly indistinct chemically and sold to similar markets. In contrast, ethanol and DDGS are distinct products sold to very different markets. In Carnation, BPA found that hash browns, French fries, and powdered potatoes were potato products, but had separate markets. Although the information was not included in the record, it was presumably the case then, as it is now for Cascade Grain, that the potato products were sold to retail stores and restaurants and, in the case of retail stores, found near each other in the "freezer section." If these potato products were found to be produced by separate facilities that were not together a New Large Single Load, then, ethanol and DDGS are separate products produced in separate facilities.

Although the DDGS process uses a waste product from the ethanol process, use of a waste product from one facility to manufacture a different product in another facility has not resulted in finding that the two facilities were a single facility for New Large Single Load purposes. Both Ponderay and Carnation used waste product from one facility as an input for another facility. In the KemaNord, the flow of materials between proposed facilities was not a basis for BPA to determine two facilities would be treated as a single facility."<sup>22</sup>

Finally, just as was the case in Newmont, the facilities could have been served under different contracts, but one contract was used for the purpose of administrative convenience. Also consistent with Newmont, the loads will be separately metered and billed. In addition, although delivery of power is taken from only one substation, the presence of distinct feeder lines, present in this case, has been found consistent with satisfaction of this criterion.<sup>23</sup>

## D. Start Date For Ethanol Production Facility

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<sup>22</sup> KemaNord at 3. In addition, BPA noted in a very recent decision that "BPA has applied its NLSL Policy as regards facility determinations based on the separation of the products sold into separate markets or a single market . . . BPA determinations have not focused on the similarity of inputs or intermediate processes in making the product." BPA Facility Determination, HOYA Technologies LLC (Jan. 18, 2005).

<sup>23</sup> See e.g. HOYA Determination at 9.

## 1. NLSL Policy

The NLSL Policy states that “utility should select, with BPA’s concurrence, either the date of energization, the date of first commercial operation, or date of service from the utility as the start date for measurement.”<sup>24</sup> The NLSL Policy does not provide fourth option; BPA cannot impose another, later date.

### a. Energization

The NLSL Policy notes that energization must be “based on the consumption of power by a permanent installation (other than substation equipment) owned by the consumer.” The policy does not define “consumption,” “permanent,” or “installation.” Webster’s New Collegiate Dictionary defines consumption as “the act or process of consuming.”<sup>25</sup> “Consume” is further defined “to do away with completely.”<sup>26</sup> “Permanent” is defined as “continuing or enduring without fundamental or marked change.” Finally, installation is defined as “something that is installed for use.”<sup>27</sup> Install is defined as “to set up for use or purpose.”<sup>28</sup>

The NLSL Policy further states that Construction loads “are not included in first year consumption, and do not establish the energization date.”<sup>29</sup> The NLSL Policy notes that the initial energization date includes energization for “testing or startup.”<sup>30</sup> Although the NLSL Policy expressly states that construction loads are not included in the determination of consumption, the NLSL Policy does not require that construction loads be zero before “consumption of power by a permanent installation” commences.

### b. Commercial Operation

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<sup>24</sup> NLSL Policy at 6 (emphasis added).

<sup>25</sup> Webster’s New Collegiate Dictionary (1981).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> NLSL Policy at 6.

<sup>30</sup> Guide to Bonneville Power Administration New Large Single Load Determinations (Mar. 1991)(“1991 NLSL Policy”).

The NLSL Policy speaks to either the first commercial operation or the “commencement of commercial operation” of a facility.<sup>31</sup> Commercial operation does not appear to be specifically defined in the NLSL Policy or Prior Decisions. The NLSL Policy states that a facility may “phase in” a load, and thus not increase its load by 10 aMW or more in a twelve month period. Therefore, it would be inconsistent with the NLSL Policy to measure an increase in load only from the date a facility first operates at or near capacity.<sup>32</sup> As understood in plain English, “commercial operation” means a creating something for the market.”<sup>33</sup>

### c. Start of Utility Service

The start of utility service option has been determined by BPA to apply to the date of first utility service to a preexisting load.<sup>34</sup>

## 2. BPA Tentative Decision

Recently BPA proposed a tentative start date of June 7, 2008.<sup>35</sup> BPA rests its decision on the theory that “significant” construction was evident during visits to the Cascade site on May 20, 2008 and May 30, 2008. It thus concludes that the start date, based on either energization or start of commercial operation, could not be before May 30, 2008, because of such construction. BPA then notes that its meters show that the site consumed about 3 MW – an amount it assumes to be consistent with construction at the site, an assertion for which it offers no evidence – until about June 7, 2008, after which the load ramped up to 12 or 13 MW. BPA thus concludes that June 7, 2008 is the date of “initial energization for test and start-up,” and the start date for NLSL purposes.

BPA relies heavily on the fact that it viewed construction at the Cascade site in May and its assertion that it “is a settled point in BPA’s implementation of the [NLSL Policy] that initial energization for test and start up in one area of the plant while significant construction activity is

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<sup>31</sup> See, e.g. NLSL Policy at 2.

<sup>32</sup> See, e.g. NLSL Policy at 12.

<sup>33</sup> Webster’s New Collegiate Dictionary, for example, defines “commercial” as “engaged in work designed for the market,” and “operation” as “a method or manner of functioning.”

<sup>34</sup> Letter from Steven J. Wright, Bonneville Power Administration to Frank Lambe, Emerald People’s Utility District (May 2, 2003).

<sup>35</sup> Letter from Theresa Rockwood, Account Executive, BPA to Greg Booth, General Manager, Clatskanie PUD (Aug. 27, 2008) (“August 27 letter”).

# K&L|GATES

Memorandum  
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going on elsewhere in the facility will not meet the standard.”<sup>36</sup> As support for this assertion, BPA sites section II.B. of the NLSL Policy, which, as noted above, merely states that “[c]onstruction loads are not included in the first year consumption, and do not establish the energization date,” and the “energization date must be based on the consumption of power by a permanent installation (other than substation equipment) owned by the consumer.” As noted above, the construction load need not be zero before a start date is determined for a facility. Rather, construction load may not be included in any consumption used to determine the start date. The test is whether power is being supplied to a permanent facility, even if it is for the purpose of testing and start-up.

### 3. Analysis of Cascade Grain Start Date Options

#### a. Start of Utility Service.

The start of utility service option has been determined by BPA to apply to the date of first utility service to a preexisting load. Thus, this option is not available to Cascade Grain as it is an entirely new load.

#### b. Energization

On January 23, Cascade Grain began receiving service from Clatskanie PUD and began testing its facilities. Construction was ongoing at the site, but Cascade Grain nonetheless met the criteria for energization on that date. Namely, its facilities were the permanent installations that exist today, it owned its facilities and it was consuming energy for the purpose of testing its systems – a consumption of energy not associated with construction. The testing included the use of electricity supplied by Clatskanie PUD to the substation and then to both facilities, to ensure the proper function of ethanol production components such as the grinders and various conveyors as well as DDGS components such as the dryers. These activities constituted consumption of power by a permanent installation for testing and thus should establish the energization date. Specifically, power from the substation was being “done away with completely” by using it for testing. Furthermore, facilities such as the DDGS dryers and the grinders “endure without fundamental change” as they are the same today as they were then and are intended to stay the same way for the life of the facility. Finally, the facilities were “installed” as commonly understood as they were put where they were for a purpose.

#### c. Commercial Operation

On April 15, 2008, Cascade received its first load of feedstock and loaded the grain into its storage facilities to be ground. This grain was ground, and then fermented to produce Grinding grain for the ethanol production process start on April 15, 2008, and the ethanol that

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<sup>36</sup> August 27 letter at 3.

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was Cascade's first commercial product sold and delivered to its customers. As noted above, commercial operation is not determined by looking to a certain level of production. Rather, it is whether something is being created for the market. In this case, ethanol was being created for the market as of April 15, 2008. Thus, April 15, 2008 should serve as the start date based on the commercial operation that commenced on that date.

## E. Conclusion

Based on the foregoing, Cascade's ethanol production facility and its DDGS facility should be viewed as separate facilities. These facilities meet each of the criteria for such a determination under the NLSL Policy and such a conclusion would be consistent with prior practice. In addition, the start date for purposes of an NLSL determination should be either January 23<sup>rd</sup>, 2008 as a matter of energization or April 15<sup>th</sup>, 2008 as a matter of commercial production.

Non-responsive

**From:** Joe Taffe Ex 6  
**Sent:** Friday, September 26, 2008 4:28 PM  
**To:** Rockwood,Theresa E - PSW-6  
**Cc:** 'Charles Carlson'  
**Subject:** RE: NLSL Response Letter

Theresa,

As a follow up to Greg letter regarding NLSL activities at Cascade Grain facilities at Port Westward I am forwarding a copy of a memorandum provided to Cascade Grain by K&L Gates their outside legal counsel. This memorandum provides additional useful background clearly presenting our customer's position.

Let's try and formalize the data management piece of this issue early next week to free up our workload for contract activities. I will try to draft something over the weekend.



## Department of Energy

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

POWER SERVICES

August 27, 2008

In reply refer to: PSW-6

Mr. Greg Booth, General Manager  
Clatskanie People's Utility District  
P.O. Box 216  
Clatskanie, OR 97016

Dear Greg:

As we have discussed, it is important to establish the date on which we will begin the twelve month measure of energy usage at the Cascade Grain ethanol plant for purposes of the potential New Large Single Load (NLSL) determination. For your records and to attempt to clearly explain this issue as outlined in the Bonneville Power Administration's (BPA) NLSL Policy, I will describe the four Start Date options and then BPA's decision as to the appropriate start date for Cascade Grain.

Under the Northwest Power Act, customer loads associated with a single facility that grow by 10 or more average megawatts (aMW) in any consecutive 12-month period shall be declared NLSL's subject to service with federal power purchased at BPA's New Resources (NR) rate. Measurement of load growth, particularly in the first year of commercial operation, is therefore of paramount importance to all parties concerned. The date used to start the clock running for 12 consecutive months to measure load growth at a new facility becomes very important.

BPA's current NLSL Policy is a combination of contract and policy decisions recorded in several documents: the 1991 NLSL Manual, relevant sections of BPA's 1981 Power Sales Contract and related decisions there under, the 2001 New Large Single Load Policy, the 2002 New Large Single Load Policy Issue Review, and the 2005 Policy for Power Supply Role for Fiscal Years 2007-2011.

BPA's current NLSL Policy provides four alternatives that BPA can use to determine the date to commence its measurement of load growth at a facility for NLSL purposes.

- A) **Prospective Determination** (mutual consent). BPA and the utility agree that the new load will start at 10 aMW or more in its first year of operation so that the load is subject to NLSL treatment from the date it starts operating. (See attached determination for Hyundai)

- B) **Start of Utility Service.** The date of first utility service to a preexisting load. This option applies in situations in which an existing load of 10 aMW or more is “taken over” in a merger, annexation or similar situation. Here the load is a NLSL from the day the “new” utility begins service. (See 2001 NLSL Policy and attached determinations for Halsey and Plum Creek.)
- C) **Initial Energization.** The date of initial energization (for test and start up) with BPA’s consent. In this instance BPA and the utility agree on a date on which the construction at the site is substantially complete and production equipment is being energized for test and startup. (See 2001 NLSL Policy, section V; 1991 NLSL Manual at page 3.)
- D) **Commercial Operation.** The date of commercial operation (actual production). (See section 8(d), 1981 Power Sales Contract, as referenced in the 1991 NLSL Manual at page 3; see also the 2001 NLSL Policy, section V)

**BPA’s Consideration of the Alternatives to Determine the Start Date for Measuring the Cascade Grain Ethanol Plant Load:**

**Option A - Prospective Determination.**

Although the installed transformation capacity of 32.5 MVA exceeds the NLSL Policy limit of 10 MVA at which load growth at a single facility must be monitored for NLSL purposes, Clatskanie has insisted that the actual load would not result in an NLSL determination. Therefore Option A, requiring mutual agreement, is inapplicable to the Cascade Grain Ethanol plant.

**Option B – Start of Service**

Clatskanie has suggested that the date of energization of Bradbury Substation constitutes “Start of Service” under BPA’s 2001 NLSL Policy (Section II.B.1.a).

The Start of Service Option for selecting a start date only applies in instances in which an existing load is served by a “new” utility, e.g., through annexation or merger. (See attached determinations for Halsey and Plum Creek). The Cascade Grain Ethanol plant is an entirely new facility being built in Clatskanie’s service territory. It is not a pre-existing load and therefore Option B is inapplicable.

**Option C – Initial Energization for Test and Start-Up**

Clatskanie has suggested that the first rail delivery of corn to the plant’s site on April 15, 2008 was the first production related activity at the site and therefore should be used as the Start Date. The fact that material for production was on site does not meet the test of Initial Energization for

Test and Start-Up. Rather, the test is that production equipment is being tested for production and that construction at the site is substantially complete.

It is a settled point in BPA's implementation of the Policy that initial energization for test and start up activity in one area of the plant while significant construction activity is going on elsewhere in the facility will not meet the standard (see section II.B. 2001 NLSL policy). It is clear from BPA visits to the site on May 20, 2008 and May 30, 2008 that the general contractor, JH Kelly, was still very much engaged in significant construction activity. In discussions with Clatskanie PUD staff and Ken McFarland, Cascade Grain's plant manager, on May 30, 2008, we learned that JH Kelly had not completed construction and was actually operating under the liquidated damages provisions of their contract with Cascade Grain. Based on this, the start date is clearly not earlier than May 30.

We note that total metered power consumption at the facility was relatively steady and below 3 MW until June 7, consistent with the ongoing construction activity, at which point it began a rapid rise to 12 to 13 MW over the next two weeks. You have indicated to us that the plant was testing production equipment in this period. This suggests that the June 7 to June 21 period is one in which construction was substantially complete and production equipment was being energized for testing and startup.

#### **Option D – Start of Commercial Operation**

The start of commercial operation would appear to be shortly after the date of initial energization, as is normally the case. We understand that Cascade Grain began an Acceptance Test (7-day, 100% load) on June 24, 2008. In our meeting at Cascade Grain on July 18, 2008, Ken McFarland told us that Cascade Grain had not accepted title to the plant from JH Kelly and would not do so until the Acceptance Test was successfully passed. If we use the Start of Commercial Operation option, the logical start date is when Cascade Grain began the Acceptance Test that ultimately led to the title being transferred.

**Start Date Conclusion:** Based on the preceding discussion we believe that application of either Option C or D result in start dates that reasonably apply in this case. BPA has decided the Option C result, June 7, 2008, as the date of *initial energization for test and start-up* as defined in the NLSL Policy, is the *start date* on which BPA will begin measuring the Cascade Grain ethanol plant load toward the 10 aMW NLSL limit.

We note that contrary to Clatskanie's initial assurances that the Cascade Grain plant would consume less than 10 aMW, BPA has already measured the load as running at 12 to 13 MW. With a June 7 start date, continued operation at 12 to 13 aMW through the balance of the 12 months would result in the facility exceeding 10 aMW in its first 12 months of operation and designation as an NLSL.

As of August 18, with the final installation of meters on the back up diesel generators, BPA is confident that we have metering installed of a quality and in all places needed to monitor load growth at the facility, including the pumping loads at the storage tank and dock. Absent hearing a compelling argument from Clatskanie that the start date of June 7, 2008 is not appropriate, we will use such date for the purpose of making a NLSL determination. If we have not heard back from you within 30 days we will consider this decision final. Thank you for your assistance in this project.

Sincerely,

Theresa Rockwood  
Account Executive

Three (3) Enclosures:

Determinations for 1) Hyundai, 2) Halsey and 3) Plum Creek



## Department of Energy

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

POWER SERVICES

June 18, 2008

In reply refer to: PSW-6

Mr. Greg Booth, General Manager  
Clatskanie People's Utility District  
P.O. Box 216  
Clatskanie, OR 97016-0216

Dear Greg:

This letter is to document the process and next steps of the metering project at Cascade Grain.

Through US&A, you have received a metering plan. I assume the information is clear but if you have any questions please address them to US&A and me.

We are considering setting a date to begin metering for NLSL determination purposes based on the start of commercial operation. While the NLSL Policy calls for mutual agreement on a start date for load growth measurement purposes where possible, in the event the Parties cannot reach agreement BPA reserves the right to select a date it feels is most in keeping with the spirit and letter of the NLSL Policy. During our site visit of Friday May 30, 2008, we noted that a number of fermentation vats were open and there was not a complete connection to the storage tanks for the denatured ethanol, among other factors, which indicated that construction was still ongoing at the plant.

Lack of access to and information on the site earlier in the year make it impossible to arrive at a date of "initial energization" with any degree of confidence. As of June 12, 2008, we are seeing meter readings consistent with what we would assume is close to commercial operation but BPA will require an official statement of notification by Cascade Grain that they are in fact in commercial operation.

Since ethanol storage prior to shipment is an integral part of the production and sale of ethanol fuels; the storage tanks and vapor recovery system remain an integral part of the ethanol plant operations regardless of what rate schedule CPUD uses to bill its customer. Also regardless of the fact that part of the facility is up to a mile outside the "plant gates" { See Fac/CF/CT Det -- DOE Richland - March 30, 2005 } does not disqualify it as part of a single facility. Before we have meters installed at the storage tanks and dock, please send me weekly meter readings from those two meters.

As regards the "emergency shut down generators", while it is true that the generators primary purpose is emergency shut down that does not preclude their use to reduce consumption of energy used for NLSL load measurement process. The fact the generators are "non-synchronous" with the PUD is irrelevant since the switching facilities we've seen at the plant would facilitate the isolation of part of the plant from the CPUD system with a corresponding apparent reduction in metered load at the plant. Under its policy, BPA must be confident that we know what is going on at the plant under consideration from a NLSL perspective. If BPA is prevented from installing the meters deemed necessary to provide such confidence its remedy is to declare the load a NLSL and place the burden on CPUD and Cascade Grain of proving the opposite is true.

Finally, we are expecting a formal request from you for a facilities determination. If you or your staff would like more information on what is involved with that process, we would be happy to meet with you, in Portland, Clatskanie or via conference call.

Please be aware that based on the complexity and difficulty of revisiting a NLSL or Facility determination after the fact, BPA will not reopen the issue of a load's NLSL status once the Administrator has made a decision.

Sincerely,



Theresa Rockwood  
Account Executive

cc:

Mr. Charles Carlson, CEO, Cascade Grain Products, LLC

Non-responsive

**From:** Val Koss Ex 6  
**Sent:** Wednesday, March 07, 2007 7:59 AM  
**To:** Rockwood,Theresa E - PSW-6  
**Cc:** Lebens,John P - PSW-6  
**Subject:** 1982 NLSL Policy

I spent some time last night and this morning trying to locate the 1982 NLSL Policy that is referenced in the NLSL ROD. Would either of you happen to have access to it? I can not seem to locate it on the website.

Thanks so much. V

Valarie Koss  
Columbia River PUD  
(O) 503 397 8157  
(C) 503 369 0929

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11/5/2012

Non-responsive

**From:** Tami Keith    Ex 6  
**Sent:** Wednesday, January 28, 2009 10:28 AM  
**To:** Rockwood,Theresa E - PSW-6  
**Subject:** FW: Facilities Determination  
**Importance:** High

Theresa - Can I please give me Robert Anderson and Kelly Mason's email address? I would like to have an idea what the data they will be bringing will look like so I can do the same type of format on our own data for easy of comparison.

Thanks, Tami

**From:** Joe Taffe Ex 6  
**Sent:** Tuesday, January 27, 2009 12:27 PM  
**To:** 'Keith, Tami'  
**Cc:** 'Leo Quiachon'; 'Brian Taylor'; '>Dave'  
**Subject:** FW: Facilities Determination

fyi

**From:** Joe Taffe Ex 6  
**Sent:** Tuesday, January 27, 2009 12:26 PM  
**To:** 'Rockwood,Theresa E - PSW-6'  
**Subject:** RE: Facilities Determination

1:30 pm will work. I am home ill today but will be back tomorrow. If I recall the 2 documents were K&L Gates memorandum laying out the nature of ethanol and dried distiller grain production and separate markets and a series of past determinations by BPA a to loads at similar locations or working from similar first case raw materials (corn in Nebraska) were separate facilities. What else might we need to have to help keep the meeting moving.

The PUD invoices Cascade Grain Products LLC on a single invoice for administrative ease and the PUD has been requested by the consumer and is installing separate CT's and PT's to improve the metering capability at the DDGS facility up to full revenue quality to support separate invoicing.

In looking over the data from BPA's meters and the PUD's meters for the main feeders to the ethanol facility and DDGS facility seems to be very close. Again from memory in the .15% range (.0015) which was expected. The other contested off-site loads and generator data seems very, very small in the .0008% (.000008) of the combined loads of the ethanol and DDGS facilities, a truly small fraction. As you know the PUD has only monthly totals for the off-site loads as they are served under general service and read monthly but the monthly totals seem close to the sum of hourly totals.

I look forward to seeing you, Robert and Kelly.

**From:** Rockwood,Theresa E - PSW-6 [mailto:terockwood@bpa.gov]  
**Sent:** Tuesday, January 27, 2009 11:53 AM  
**To:** Ex 6  
**Cc:** Anderson,Robert - PSS-6; Mason,Kelly J - PSS-6  
**Subject:** Facilities Determination

Hi Joe, Robert, Kelly Mason and I can meet at your office on Thursday afternoon. Kelly has taken over the responsibility for learning the ins and outs of NLSL since we lost Ryan to the office of General Council. Would 1:30 be ok? We will bring accounting of MW's used to date at Cascade Grain.

If you could review again the 2 documents that were attached to Greg's letter, they outline the type of documentation we will need to proceed with the facilities determination. If you don't have everything right now we can use the meeting to better clarify our needs. Thanks much, Theresa

Non-responsive

**From:** Hobson, Claire A - PSW-6  
**Sent:** Friday, June 24, 2011 2:43 PM  
**To:** 'Steve Eldrige'  
**Cc:** 'Tami Sinor'; 'Canon, Ken'; 'Doug Brawley Ex 6 ; Anderson, Robert - PSS-6; Kolze, Jack A - PST-6; Miller, Thomas - LP-7; Bleifuss, Lindsay A - PSS-6  
**Subject:** FW: NLSL

Steve, please find below answers to the questions you posed in your draft email to me. Robert Anderson and I have discussed and drafted the responses below. Please don't hesitate to call either one of us should you have questions. I can be reached at 503-230-5544 and Robert can be reached at 503-230-4151. Best, *Claire*

Claire A. Hobson  
Account Executive  
Western Power Business Area  
Bonneville Power Administration  
Phone: 503-230-5544

Fax: 503-230-3242  
[www.bpa.gov](http://www.bpa.gov)

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**From:** Tami Sinor Ex 6  
**Sent:** Friday, May 20, 2011 11:11 AM  
**To:** Hobson, Claire A - PSW-6  
**Cc:** Canon, Ken; Doug Brawley Ex 6 ; Steve Eldrige  
**Subject:** NLSL

Claire,

In anticipation of a BPA site visit to the Ex 4 I wanted to provide a summary of our current NLSL assumptions regarding that site and the other Ex 4 to be served by UEC.

As you know, Ex 4 is or will be constructing Ex 4 facilities on three different sites served by UEC. Of these, UEC will only be requesting, at this time, a NLSL determination from BPA on the site known as [ Ex 4 ]

11/15/2012

planned to be of a size to warrant a NLSL determination. If that changes in the future, we will certainly notify BPA.

*As a result of Robert Anderson and Jack Kolze's site visit on 25 MAY 11, and thanks to cooperation from UEC, Ex 4 and the contractor, BPA is better placed to comment on the assumptions of UEC and Ex 4 on the NLSL aspects of the Ex 4 sites currently under construction in UEC's service territory.*

*Two overarching conclusions are applicable to all three sites:*

*A) The current metering arrangements, while acceptable for the construction phase, will not be adequate once commercial operations commence.*

*B) BPA's concern for "Facilities Determinations" represents an attempt by BPA to give UEC and Ex 4 the full flexibility of the NLSL Policy. [*

*Ex 4*

*]*

*UEC will not request a NLSL facility determination from BPA for the current building being constructed at [*

*Ex 4*

*].*

*We assume if additional buildings are constructed in the future at the Ex 4 site that a facility determination could be requested for the second building based on BPA's 7 factor NLSL facility determination test. We also assume that the same would hold true if new buildings are built in the future at Ex 4*

*Based on the 5/25/11 site visit, it would be helpful to agree on terms in describing the sites. In the case of Ex 4 there is currently only the one concrete building but [*

*Ex 4*

*]. Our visit disclosed no*

*impediments to establishing Ex 4 and the transformation so far installed should lend itself to metering individual loads.*

*Ex 4 appear to be even more discrete since [*

*Ex 4*

*]. It is fairly easy to judge the load at the two*

*sites.*

In our last conference call we also discussed the need to make a recommendation to BPA regarding the start date for the 12 month NLSL measuring period and we are working with Amazon on that date. It is our understanding that we have two options – the date of testing and start up or the date of commercial operation. It was also confirmed on the call that construction related power is not considered for measurement purposes and that it needs to be segregated from the permanent power used to operate the facility.

*You are correct, BPA does not include construction load when measuring load growth for NLSL purposes. This makes it even more important that the two types of load be separately metered.*

*In this instance, there are two options for the start of measurement of load growth for NLSL purposes: 1) test and start up or, 2) commencement of commercial operations. BPA and UEC will need to agree on which option and on the start date. Practically speaking, it will be*

*better if we agree on a date that coincides with the start of the month for billing purposes.*

In our conference call discussion it was confirmed that our written recommendation to BPA regarding a preference for a start could be subsequently modified as the project unfolds. That is helpful as project construction timelines are often subject to a number of last minute changes. We did have one question that relates to the subsequent modification of the start date. Assume in our initial start date preference letter we selected a start date based on commercial operation and then later find that using a test and startup date would be more appropriate. Could we make that change, assuming of course that it is made before the date actually occurred and with sufficient time to accommodate BPA's needs?

*BPA will try to remain flexible on agreeing on a start date, however, bear in mind that start date selection may be overtaken by other events . For example, it will do no good to request a change to Test and Start Up after the start of commercial operations. Please also bear in mind that BPA will have the last word on the start date.*

We appreciate your continued help on this project and look forward to your site visit.

*Steve*

M. Steven Eldrige  
General Manager and CEO



Ex 6

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Non-responsive

**From:** Hobson, Claire A - PSW-6  
**Sent:** Friday, February 18, 2011 3:58 PM  
**To:** Canon, Ken; Doug Brawley  
**Cc:** Anderson, Robert - PSS-6; Bleifuss, Lindsay A - PSS-6; Blumhardt, Orville J - PSS-6; Miller, Thomas - LP-7  
**Subject:** Re: The question for you and Tom  
**Importance:** High

Hello, Ken and Doug~Thank you for your patience as we sort through the particulars of Ex 4 unique situation and their proposed business model. As we've noted several times, we are committed to helping Ex 4 avoid the NLSL designation. [

Ex 4 ]  
 Based on our collective understanding of our meeting with you on Monday 1/31/11, Ex 4 would like to set up shop so that their Ex 4 like to start out in this fashion. Ex 4 They would

As you read through the points below it is important to keep in mind that physical separation is a key criteria but no one criterion is determinative. It is more about how the criteria add up to a reasonable conclusion of separation of each facility from the other. Given this context please find below some thoughts and guidance about next steps regarding Ex 4 proposed business model.

1. [

Ex 4 ]

2. It is encouraging that Ex 4 has Ex 4 but that is a statement for which BPA will need facts. [

Ex 4 ]

3. Working under the assumption that [ Ex 4 ] 9-10 aMWs, a Facility Determination  
now is advisable. If EX 4 is confident Ex 4 there is  
no need for a Facility Determination now. But, as you know, once a load trips over 10 aMW, it is a NLSL.

Please don't hesitate to call or email Robert or I should you have questions or concerns regarding this email.  
Thanks~*Claire*

Claire A. Hobson  
Account Executive  
Western Power Business Area  
Bonneville Power Administration  
Phone: 503-230-5544

Fax: 503-230-3242  
www.bpa.gov

Ex 6

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**From:** Ken Canon Ex 6  
**Sent:** Tuesday, February 01, 2011 11:00 AM  
**To:** Anderson,Robert - PSS-6  
**Cc:** Hobson,Claire A - PSW-6; 'Doug Brawley'  
**Subject:** The question for you and Tom

Robert:

I appreciate your participation in the meeting yesterday, it was very helpful. As I traveled home, I pondered the discussion at the meeting yesterday. One way of phrasing the question that we discussed yesterday is as follows:

In a situation where separate and distinct products are produced and where the load serving each distinct product begins at a relative low aMW level and each product can grow incrementally and at different load growth rates, can a facility determination be delayed until one product's growth justifies the need for a separate facility?

Thanks,  
Ken



## Department of Energy

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

POWER SERVICES

January 18, 2011

In reply refer to: PSW-6

Mr. Steve Eldrige, General Manager  
Umatilla Electric Cooperative  
P.O. Box 1148  
Hermiston, OR 97838

Dear Mr. Eldrige:

Thank you for your letter of December 29, 2010 giving Bonneville Power Administration (BPA) notice of a potential New Large Single Load (NLSL) owned by Ex 4 on Umatilla Electric Cooperative's (UEC) system.

Please let me know when UEC and Ex 4 sign the power supply contract that you referenced in your letter and when UEC commences serving construction load at the Ex 4 site. BPA will continue to consider the developments at the Ex 4 sites and will want to do a site visit in the Spring.

Please feel free to contact me at (503) 230-5544, if you have any questions or concerns.

Sincerely,

Claire A. Hobson  
Account Executive

**Winn, Kim S (BPA) - DK-7**

---

**From:** Anderson, Robert (BPA) - PSS-6  
**Sent:** Monday, December 03, 2012 2:30 PM  
**To:** Winn, Kim S (BPA) - DK-7  
**Subject:** FW: EX 4 NLSL Scenarios

[

Non-responsive

**From:** Ex 6  
**Sent:** Friday, August 24, 2012 12:05 PM  
**To:** Bloyer, Dan (BPA) - PSE-BEND  
**Subject:** EX 4 NLSL Scenarios

Dan,

1. [

- a. Ex 4
- b.

2. ]

(Same as Above #1)

3. [

- a. Ex 4
- b.
- c.

4. [

- a. Ex 4
- b. ]

5. [

Ex 4

(Same as Above #4)

6. [

- a. Ex 4
- b.

[

Ex 4

]

Thanks for your time and patience,

Director of Engineering

PUD

Ex 6

Non-responsive

---

**From:** Ex 6  
**Sent:** Wednesday, October 20, 2010 9:10 AM  
**To:** Bloyer, Dan - PSE-BEND  
**Cc:** EX 6  
**Subject:** EX 4 Notice of Transfer

Dan,

Please see attached for the Notice of Transfer for EX 4 to transfer Business Operations and change Meters.

If you need any additional information, please contact me at your convenience.

Thanks,

Director of Engineering

Ex 6

11/14/2012

Ex 4

19 October 2010

Ex 6                      People's Utility District

**VIA FEDERAL EXPRESS AND EMAIL**

Re: Notice of Transfer of    Ex 4    Operations to    Ex 4

Dear Ex 6,

This letter regards the Power Purchase Agreements for                      Ex 4                      dated Ex 4  
between Ex 4 and the                      Ex 4                      People's Utility District ("PUD"). As  
required by Bonneville Power Administration in its letter to PUD dated 5 October 2010, this letter  
constitutes    Ex 4    notice that it intends to transfer the operations of    Ex 4    to    Ex 4  
by 31 October 2010 at 23:59 PST. Specifically, the following changes will occur on that date:

1.    For the portion of    Ex 4    current annual load monitoring period after its  
assumption of    Ex 4    business,    Ex 4    loads will be the sum of the  
loads as measured by meter numbers Ex 4 and Ex 4 feeding Ex 4 facilities  
located at    Ex 4
2.    For the portion of    Ex 4    current annual load monitoring period after its the  
assumption of its business by    Ex 4       Ex 4    loads will be those as  
measured by meter    Ex 4    feeding    Ex 4    facility located at    Ex 4

Thanks very much for your attention to this matter.

Best regards,

Ex 6

Manager

Non-responsive

**From:** Val Koss Ex 6  
**Sent:** Wednesday, March 07, 2007 7:59 AM  
**To:** Rockwood,Theresa E - PSW-6  
**Cc:** Lebens,John P - PSW-6  
**Subject:** 1982 NLSL Policy

I spent some time last night and this morning trying to locate the 1982 NLSL Policy that is referenced in the NLSL ROD. Would either of you happen to have access to it? I can not seem to locate it on the website.

Thanks so much. V

Valarie Koss  
Columbia River PUD

Ex 6

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