

Bonneville Power Administration Record of Decision For 30-Day Sale of 17 MW to Port
Townsend Paper Company Commencing September 1, 2009

August 27, 2009

Background

In September 2006, the Bonneville Power Administration (“BPA”) entered into a surplus firm power agreement (the “BPA/Clallam Contract”) with Public Utility District No. 1 of Clallam County, Washington (“Clallam”), whereby BPA sold to Clallam 17 aMW for the period October 1, 2006 through September 30, 2011. All the power sold by BPA to Clallam under the BPA/Clallam Contract was for the purpose of, and was expressly conditioned upon, resale by Clallam to Port Townsend Paper Company (“Port Townsend”) under a contract by and between Clallam and Port Townsend (the “Clallam/Port Townsend Contract”). The rate paid by Port Townsend under the Clallam/Port Townsend Contract equaled the rate paid by Clallam under the BPA/Clallam Contract, plus a mark-up to cover certain of Clallam’s costs.

In December 2008, the United States Court of Appeals for the Ninth Circuit issued its opinion in *Pacific Northwest Generating Cooperative v. Bonneville Power Administration*, 550 F.3d 846 (2008) (“*PNGC*”), in which the court, among other things, held that the rate in the BPA/Clallam Contract was below both the market rate and the Industrial Firm (IP) Power rate, and was therefore invalid. *Id.* at 879.

Port Townsend filed a petition for panel rehearing in February 2009, and BPA filed a petition for panel rehearing in March 2009. On August 5, 2009, the court amended its original opinion in certain respects in response to BPA’s petition, but denied both BPA’s and Port Townsend’s requests for panel rehearing. Port Townsend then filed a motion to stay issuance of the mandate in the case for 90 days. On August 14, 2009, the court issued an order staying issuance of the mandate in *PNGC* for 30 days “to provide Port Townsend and the Bonneville Power Administration time to attempt to arrange for the provision of power to Port Townsend.” The court stated no extension of the stay would be forthcoming.

Status Quo

BPA has continued to serve Port Townsend through Clallam under the terms and conditions, and at the rate, specified in the BPA/Clallam Contract since the court issued its opinion in *PNGC* in December 2008. BPA believes that maintaining the status quo was appropriate until such time as the court, through its order denying Port Townsend’s petition for panel rehearing, foreclosed any possibility that it would reconsider its holding in *PNGC* that the rate in the BPA/Clallam Contract was invalid. While the court has stayed issuance of the mandate until September 14, 2009, the purpose of the stay, as expressed in the court’s order, is solely to provide the parties additional time to arrive at a

substitute transaction. BPA posted for public comment on June 22, 2009, a draft contract by and between BPA and Port Townsend for the period October 1, 2009 through September 30, 2011, to replace the two-years remaining in the BPA/Clallam Contract. BPA will not make a final decision regarding whether it will offer that contract to Port Townsend until the end of September, when it issues a record of decision with respect to service beginning October 1, 2009, to each of its direct service industrial customers, including Port Townsend.

However, inasmuch as the court has denied the parties' petitions for panel rehearing in *PNGC*, BPA believes, pending a final decision by BPA regarding the longer-term transaction, that it is in keeping with the court's orders that Port Townsend begin to pay, effective September 1, 2009, a rate for BPA supplied power that is consistent with *PNGC*.

Substitute Interim Transaction

In light of the foregoing, BPA and Port Townsend, as of the date of this record of decision, have entered into a surplus firm power transaction under BPA's Firm Power Products and Services (FPS-07R) rate schedule, for the period September 1, 2009, through September 30, 2009, whereby BPA will sell to Port Townsend 17 MWs flat each hour at a rate equal to the monthly average rate for September contained in the IP-07R rate schedule, which equals \$37.95/MWh. BPA, Clallam, and Port Townsend have agreed this transaction replaces deliveries of surplus firm power to Port Townsend under the BPA/Clallam and Clallam/Port Townsend Contracts for September 2009, and those contracts will be suspended effective upon commencement of deliveries under the substitute interim transaction.

While making this interim sale pursuant to a standard "block sale contract" under section 5(d) of the Pacific Northwest Power Planning and Conservation Act, and applying the IP rate schedule directly to the sale, was an option considered by BPA, implementing that option would have required the parties to separately negotiate the terms of a block sale contract, delaying the start date of the interim transaction by several weeks, at least. Instead, the transaction will be effected through the existing Enabling Agreement by and between BPA and Port Townsend (Contract No. 08PB-11920), available for the sale of surplus firm power by BPA to Port Townsend. The Enabling Agreement, in turn, provides that transactions thereunder are subject to the terms and conditions of the Western System Power Pool Agreement. A copy of the Enabling Agreement, and the Confirmation Agreement specifying the essential terms and conditions of the interim transaction, are each attached hereto as Attachments 1 and 2, respectively.

Because this transaction is a substitute for an existing BPA obligation to deliver surplus firm power to Port Townsend (through Clallam), BPA does not believe it constitutes a new, or incremental, sale of surplus power by BPA. In addition, forward market prices for flat blocks of power for September delivery (i.e., prices based on actual market transactions) equal approximately \$30/MWh, or \$8/MWh less than the average IP rate for

the same period. BPA does not anticipate the need to make any purchases to serve Port Townsend under the interim transaction; however, if BPA must make such purchases, they will likely be at prices less than the September average IP rate.

Finally, Port Townsend will pre-pay BPA on September 1 for all deliveries for the entire month, thereby fully mitigating any payment default risk.

This agreement represents a continuation of service to Port Townsend at a rate consistent with the court's decision and thus, this will not lead to any changes in environmental effects. Further, this type of agreement is consistent with BPA's Short-Term Marketing and Operating Arrangements ROD of January 22, 1996

Conclusion

For the foregoing reasons, BPA has decided to enter into an interim 30-day transaction commencing September 1, 2009, for the sale of 17 MW each hour to Port Townsend at a rate equal to the average IP-07R rate for September 2009, pending a final decision by BPA in a separate record of decision with respect to service to Port Townsend beginning October 1, 2009.

/s/Allen L. Burns
Acting Deputy Administrator

Attachments:

Enabling Agreement
Confirmation Agreement

**AGREEMENT TO ENABLE
FUTURE PURCHASES, SALES AND EXCHANGES
OF POWER AND OTHER SERVICES**
executed by the
BONNEVILLE POWER ADMINISTRATION
and
PORT TOWNSEND PAPER CORPORATION

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This AGREEMENT TO ENABLE FUTURE PURCHASES, SALES AND EXCHANGES OF POWER AND OTHER SERVICES (Agreement), is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and PORT TOWNSEND PAPER CORPORATION (Customer), a corporation incorporated under the laws of the State of Washington. BPA and Customer are sometimes referred to individually as "Party" and collectively as "Parties."

RECITALS

The Parties wish to provide a contractual mechanism for future purchases, sales and exchanges of Power (firm and nonfirm) and other products and services which the Parties may agree from time to time to make available as specified below.

This Agreement is not a present purchase, sale or exchange of such Power, or other products and services, and does not constitute any advance agreement or obligation for any Party to make available or to purchase or exchange any amount of such Power or other products and services.

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

The Parties agree as follows:

1. **TERM OF AGREEMENT**

This Agreement shall become effective at 2400 hours on the date of execution (Effective Date), and shall terminate three years from the Effective Date, unless terminated earlier in accordance with the termination provisions specified in section 7. All obligations and liabilities accrued hereunder are preserved until satisfied. Execution of this Agreement shall terminate any prior agreement to enable future purchases, sales, or exchanges of Power and other products and services between the Parties.

2. **UNDERLYING PROVISIONS**

Unless otherwise specified in this Agreement, all provisions required to perform either Party's obligations under this Agreement shall be as described in the Western Systems Power Pool (WSPP) Agreement, attached hereto as Exhibit C.

3. **DEFINITIONS**

- (a) "Excess Federal Power" means excess Federal power as defined in section 508 of Public Law 104-46.
- (b) "Power" means Excess Federal Power or firm or nonfirm Surplus Power (or both) made available by BPA, and firm or nonfirm capacity or energy or both made available by Customer.
- (c) "Surplus Power" means surplus peaking capacity, or surplus energy or both, as defined in sections 5(f) and 9(c) of Public Law 96-501, and sections 1(c) and 1(d) of Public Law 88-552.

4. **REVISION OF EXHIBITS; INTERPRETATION**

(a) **Revision of Exhibit A**

The Wholesale Power Rate Schedules and General Rate Schedule Provisions included in Exhibit A shall be replaced by successor Wholesale Power Rate Schedules and General Rate Schedule Provisions established in accordance with the provisions of section 7(i) of the Northwest Power Act and Federal Energy Regulatory Commission rules.

(b) **Revision of Exhibit B**

BPA shall revise and replace Exhibit B in accordance with the provisions contained in Exhibit B.

(c) **Revision of Exhibit C**

Exhibit C shall be revised unilaterally by BPA to include all future WSPP amendments and revisions, unless a Party notifies the other Party in writing that all or a portion of an amendment or revision is unacceptable within 30 days of its effective date. If either Party finds such future amendments and revisions unacceptable, then such amendments or revisions shall not be included in Exhibit C of this Agreement.

(d) **Interpretation**

In the event of a conflict between the terms of any Exhibit and the terms of the body of this Agreement, the terms of the body of this Agreement shall prevail.

5. **RESALE PROVISIONS**

(a) Resale by Customer of Surplus Power sold by BPA under this Agreement shall, to the extent required by law, comply with the requirements of Section 5(a) of the Bonneville Project Act, as amended (16 U.S.C. section 832). This provision shall not apply to sales of Excess Federal Power. BPA will identify in each Confirmation Agreement that the Power it sells to the Customer is either: (1) Surplus Power; or (2) Excess Federal Power.

(b) Customer may purchase any Surplus Power under this Agreement only pursuant to section 5(a) of this Agreement. In the event that BPA discovers that Customer violated this section 5 in the course of its performance pursuant to a Confirmation Agreement, such Confirmation Agreement shall be immediately terminated; *provided, however*, any and all liabilities incurred prior to such termination shall remain until satisfied.

6. **POWER SCHEDULING PROVISIONS**

All power transactions under this Agreement shall be scheduled and implemented in accordance with the Scheduling Provisions in Exhibit B. The procedures for scheduling described in Exhibit B are the standard utility procedures followed by BPA for power transactions between BPA and other utilities or entities that require scheduling.

7. TERMINATION PROVISIONS

Each Party shall have the right to terminate this Agreement upon 30 calendar days' written notice to the other Party; *provided, however*, that if any Confirmation Agreement between the Parties remains in effect after the termination date of this Agreement and incorporates by reference, individually or generally, provisions of this Agreement, such provisions shall survive the termination of this Agreement and be binding on the Parties until after the termination of the last such agreement.

8. APPLICABLE LAW

All transactions under this Agreement shall be subject to Federal law governing the sale, exchange, or other disposition of Power and other services, including but not limited to, Public Law 75-329 (the Bonneville Project Act, as amended, 16 U.S.C. 832 et seq.), Public Law 88-552 (the Pacific Northwest Preference Act of August 31, 1964, as amended, 16 U.S.C. 837 et seq.), Public Law 93-454 (the Federal Columbia River Transmission System Act, as amended, 16 U.S.C. 838(a) et seq.), Public Law 96-501 (Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839 et seq.), and Section 508 of Public Law 104-46 (codified at 16 U.S.C.A. 832m (West Cum. Ann. Pock. Pt. 1996)).

All sales of Surplus Power for use outside the Pacific Northwest under this agreement are subject to the provisions of Public Law 88-552 and section 9(c) of Public Law 96-501, and the Parties hereby acknowledge their respective responsibilities thereunder. Pursuant to Public Law 88-552, BPA shall have the right to curtail a portion of, or terminate all of: (a) the capacity associated with a surplus firm peaking capacity sale on 60 months' written notice; or (b) the energy associated with a surplus energy sale on a 60-day written notice specifying the amounts and duration of the curtailment or termination, if such capacity and/or energy is needed to meet the capacity and/or energy requirements in the Pacific Northwest. Such curtailments to Customer shall be limited to the amounts and duration necessary to cover BPA's projected Pacific Northwest needs. The sale of capacity and/or energy to Customer under this Agreement shall continue in months during which such capacity and/or energy is not needed, as determined by BPA, in the Pacific Northwest.

9. NOTICES

Either Party may change the address for notices by giving notice of such change in accordance with this section.

BPA representative for Power transactions:

Bonneville Power Administration
P.O. Box 3621
905 NE. 11th Avenue
Portland, OR 97232
Attn: Mark E. Miller - PTL-5
Account Executive
Phone: 503-230-4003
FAX: 503-230-3681

with a copy to: Bonneville Power Administration
P.O. Box 3621
905 NE. 11th Avenue
Portland, OR 97208-3621
Attn: Vice President, Bulk Marketing - PT-5
Phone: 503-230-3295
FAX: 503-230-3681

Customer representative for Power transactions:

Port Townsend Paper Corporation
Bruce McComas, Vice President and Assistant Mill Manager
100 Paper Mill Hill Road
Port Townsend, WA 98368-3170
Phone: 360-379-2158
FAX: 360-385-0355

10. ENTIRE AGREEMENT


This Agreement, including all provisions, exhibits, and documents incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or agreements, either written or oral, which purport to describe or embody the subject matter of this Agreement.


11. SIGNATURES

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

PORT TOWNSEND PAPER
CORPORATION

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By 
Name BRUCE McCOMAS
(Print / Type)

By 
Name Mark E. Miller
(Print / Type)

Title VP - GENERAL MANAGER

Title Account Executive

Date 3/13/08

Date 03/07/08

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Exhibit B
BPA POWER SERVICES SCHEDULING PROVISIONS

1. PURPOSE OF THIS EXHIBIT

Unless otherwise specified in this Exhibit B, all transactions shall be scheduled in accordance with the Western Electricity Coordinating Council (WECC) and the North American Electric Reliability Council (NERC). The purpose of this exhibit is to identify power scheduling requirements and coordination procedures necessary for the delivery of electric power products bought or sold under this Agreement. All provisions apply equally to all BPAP Counter Parties (as defined in section 2 below) and their authorized scheduling agents. Transmission scheduling arrangements are provided under separate agreements/provisions with the designated transmission provider.

2. DEFINITIONS

- (a) **After the Fact:** The process of reconciling all transactions, Schedules, and accounts after they have occurred.
- (b) **APOD:** Alternate Point Of Delivery. Any point other than the POD specified in a Confirmation Agreement or other contract to which this Exhibit B applies.
- (c) **BPAP:** Bonneville Power Administration Power Services.
- (d) **BPAP Counter Party:** A PSE (Purchasing Selling Entity, as defined by NERC) that has contracted to purchase from BPAP or sell to BPAP electric power products.
- (e) **COB:** California-Oregon Border or COI (California-Oregon Intertie). Consists of the Pacific AC Intertie (PACI or Malin) and 3rd AC Intertie (3A or Captain Jack) transmission lines to California. N to S indicates that the energy is flowing on the transmission path North to South. S to N indicates energy is flowing on the transmission path South to North.
- (f) **NOB:** Nevada-Oregon Border. Consists of the Pacific DC Intertie (PDCI or Celilo) transmission line to California. N to S indicates that the energy is flowing on the transmission path North to South. S to N indicates energy is flowing on the transmission path South to North.
- (g) **POD:** Point of Delivery, as defined by NERC.
- (h) **Preschedule Day:** Preschedule Day is in accordance with WECC practice and variations are identified in the WECC calendar to allow for Holidays, WECC meetings, etc.

- (i) **Prescheduling:** The process (verbally and in writing) of establishing and balancing (checking out) schedules on the Preschedule Day.
- (j) **Real-Time Scheduling:** Any new or modified Transaction that occurs after prescheduling is completed.
- (k) **Schedule:** The planned Transaction approved and accepted by all counterparties and Control Areas involved in the Transaction.

3. COORDINATION: GENERAL, CONTROL AREA, PRESCHEDULE, REAL-TIME, AND AFTER-THE-FACT REQUIREMENTS

(a) General Requirements

- (1) BPAP shall have the right to revise and replace this Exhibit B: (1) in the event that scheduling procedures are changed due to agreement among scheduling parties in the WECC; (2) to comply with rules or orders issued by the Federal Energy Regulatory Commission (FERC) or NERC, or (3) to implement changes reasonably necessary for BPAP to administer its power scheduling function in a more efficient manner.
- (2) BPAP and each BPAP Counter Party must have necessary staff available during both parties' Prescheduling, Real-Time Scheduling, and After the Fact check out processes, including the completion of the NERC Etag.
- (3) All transactions shall be stated in the Pacific Prevailing Time (PT), beginning with the 0100 hour ending.
- (4) BPAP and each BPAP Counter Party shall notify each other of changes to telephone or fax numbers of key personnel (for Prescheduling, Real-Time Scheduling, After the Fact, or scheduling agents, etc.).

(b) Prescheduling Requirements

(1) Information Required For Any Preschedule

- (A) When the NERC Tag is prepared, the BPAP Counter Party purchasing from BPAP shall use commercially reasonable efforts to ensure the BPAP Confirmation Agreement contract number is included within the generation/load segment, in the XML "Contract Number" element of the Etag.
- (B) Transactions to or from COB must identify the use of either Malin or Captain Jack.

(2) **Preschedule Coordination**

Final hourly Schedules must be submitted by each BPAP Counter Party to BPAP for the next day(s) transactions by 1100 PT of each Preschedule Day, unless otherwise agreed. After 1100 PT Preschedules can be accepted if mutually agreed to by BPAP and the BPAP Counter Party, and the Preschedules are accepted by the transmission provider(s).

(c) **Real-Time Scheduling Requirements**

- (1) BPAP Counter Parties may not make real-time changes to the schedules unless such changes are allowed under specific Confirmation Agreements or other contracts to which this Exhibit B applies, and by mutual agreement.
- (2) If real-time changes to the schedule become necessary and are allowable as described in section 3(c)(1) above, the requesting BPAP Counter Party must submit requests for such changes no later than specified in the contract or BPAP Confirmation Agreement. Emergency schedule changes (including mid-hour changes) will be handled in accordance with WECC procedures.
- (4) Multi-hour changes to the schedule shall specify an "hour beginning" and an "hour ending" and shall not be stated as "until further notice."

(d) **After the Fact Reconciliation Requirements**

Each BPAP Counter Party agrees to reconcile all transactions, Schedules, and accounts following the end of each month (within the first 10 calendar days of the next month).

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**Department of Energy
Bonneville Power Administration
Power Business Line**

CONFIRMATION AGREEMENT

From: Bonneville Power Administration
P O Box 3621
Portland, OR 97208-3621

To: Port Townsend Paper Company

Fax: 360-385-2971

BPA Preschedule: 503-230-3813

BPA Contract: 09PB-12443

BPA Real Time: 503-230-3341

Trade Date: 08/20/2009

The following memorializes the terms of a transaction agreed to by Bonneville Power Administration (BPA) and Port Townsend Paper Company (PORT). Transactions hereunder are in accordance with Agreement 08PB-11920.

Buyer:	PORT	Broker:	None
Seller:	BPA	Holiday:	NERC
BPA Trader:	Alex Spain	Product:	Surplus Firm (WSPP Schedule C)
Phone:	503-230-3183	Product Description:	Energy
PORT Trader:	Roger Loney	Point of Delivery: Where the Federal generating system interconnects with BPA's transmission network. Customer will provide transmission from the Federal generating system.	

Start Date	End Date	Demand Limit	Energy Price \$/MWh	Hours	Amount (MWh / hr)	Total MWh	Revenue / Cost
09/01/2009	09/30/2009	17	\$37.95	Flat	17	12,240	\$464,508.00
Transaction Total						12,240	\$464,508.00

Additional Provisions:

The parties have agreed to early-payment, via wire transfer, payable as follows, below. Wire Transfer information will be provided to Port Townsend Paper by separate letter. If the early-payment is not received on the date specified herein Bonneville may terminate this contract.

Date Payable	Amount due
Sept. 01. 2009	\$464,508.00

BPA shall submit a schedule on PORT's behalf for 17 MW Flat, commencing on the Start Date and ending on the End Date, unless notified otherwise by PORT.

The Energy Price in this confirmation agreement was established using the applicable rate determinants contained in the Industrial Firm (IP) Power rate schedule (IP-07R) for the term.

This confirmation agreement replaces sales BPA would have made to Clallam PUD under Contract No. 06PB-11694, for resale by Clallam to Port Townsend.

All energy will be shown in Pacific Prevailing Time.

HLHs are defined as HE 0700 - HE 2200, Monday through Saturday (excludes Sundays and NERC holidays).

LLHs are defined as HE 0100 - HE 0600, HE 2300 and HE 2400, Monday through Saturday and all day Sunday and NERC holidays.

Flat is defined as HE 0100 - HE 2400.

Pursuant to the WSPP, this transaction shall be prescheduled. The preschedule day is defined by the Western Electricity Coordinating Council's Preschedule Calendar. Energy shall be prescheduled, identifying source and sink, by 1100 on the preschedule day or as mutually agreed. Real Time modifications will not be allowed except by mutual agreement or due to an uncontrollable force.

This confirmation agreement is intended to memorialize the terms of an existing oral agreement.

We are pleased to have this agreed upon transaction. Please confirm the terms by signing and returning an executed copy of this Confirmation via fax to BPA 503-230-7463.

AGREED AND ACCEPTED

Bonneville Power Administration

Port Townsend Paper Company

Mark E. Miller

Trading Floor Manager

Date: _____

Print Name: _____

Title: _____

Date: _____