

FPS-96 SETTLEMENT AGREEMENT
executed by the
UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
acting by and through the
BONNEVILLE POWER ADMINISTRATION
and
NORTHWEST IRRIGATION UTILITIES
and
PUBLIC POWER COUNCIL
and
PUBLIC GENERATING POOL
and
WESTERN PUBLIC AGENCIES GROUP
and
DIRECT SERVICE INDUSTRIES
and
PACIFICORP
and
PORTLAND GENERAL ELECTRIC COMPANY

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Exhibit A (Excerpt from 1993 Rate Case Record of Decision)
Exhibit B (FPS-96 and APS-96 Clarification)

This FPS-96 SETTLEMENT AGREEMENT (Settlement Agreement), executed January 7, 19 97, by the UNITED STATES OF AMERICA (Government), Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), NORTHWEST IRRIGATION UTILITIES, PUBLIC POWER COUNCIL, PUBLIC GENERATING POOL, WESTERN PUBLIC AGENCIES GROUP, DIRECT SERVICE INDUSTRIES, PACIFICORP, AND PORTLAND GENERAL ELECTRIC COMPANY.

W I T N E S S E T H :

WHEREAS BPA is required to establish rates that recover costs, assure repayment over a reasonable number of years in each of the generation and transmission functions, equitably allocate transmission costs between Federal and non-Federal uses of the transmission system, and otherwise comport with requirements of law; and

WHEREAS BPA has filed a Firm Power Products and Services (FPS-96) rate schedule with the Federal Energy Regulatory Commission (FERC) for confirmation and approval and FERC has granted interim approval of such rate schedule; and

WHEREAS the undersigned parties believe that it would be conducive to a sound business relationship to clarify the implementation of the FPS-96 rate schedule; and

WHEREAS to address concerns raised in protests in FERC Docket Nos. EF96-2011-000 and EF96-2021-000, BPA agrees to apply the following conditions and restrictions in connection with the sale of capacity, energy and ancillary services pursuant to its FPS-96 rate schedule;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. LONG-TERM SALES

Long-term sales under the FPS-96 rate schedule shall be capped by an amount equal to the amount of BPA's critical period firm surplus, plus 1000 annual average

megawatts (aMW). (See Exhibit A). For purposes of reporting and calculations under this Settlement Agreement, long-term shall be defined as greater than 1 year in duration. The 1000 aMW cap shall be applicable to all 12-month periods on a rolling basis. If a sale may be extended at the option of the purchaser, the term will be deemed to run until the end of the option period or periods unless the option must be exercised by a specified time, in which case, if the option is not exercised by such time, the term will not be extended.

2. PURCHASE AND RESALE

BPA will not purchase and resell non-Federal energy or capacity that is not associated with the marketing of Federal Columbia River Power System energy or capacity as a means of augmenting net revenue. BPA will prudently mitigate its risk exposure consistent with good business practice. While BPA will mitigate risk for its total sales portfolio, this does not mean that BPA will mitigate risk for each transaction. Examples of mitigation of risk exposure include, among other things, joint ventures with third parties, financial hedging, and/or advance purchases. BPA will explore with its customers potential internal risk accounting and coverage practices, including those generally accepted in the energy marketing industry.

3. SUMMARY OF LONG-TERM SALES

Not less than every 6 months, BPA shall provide its customers with a summary of then-current total long-term FPS-96 transactions which shall identify the purchaser, the amount of the transactions, the duration of the transactions, and whether the transactions are a part of BPA's critical period surplus or in excess of BPA's critical period surplus.

4. SHORT-TERM SALES

Short-term sales under the FPS-96 rate schedule shall be unrestricted in amount. For purposes of reporting and calculations under this Settlement Agreement, short-term shall be defined as 1 year or less in duration. Short-term transactions shall be those transactions that are 365 days or less in duration from the first day of the next month. If a sale may be extended at the option of the purchaser, the term will be deemed to run until the end of the option period or periods unless the option must be exercised by a specified time, in which case, if the option is not exercised by such time, the term will not be extended.

5. RATE LEVELS

In implementing the FPS-96 rate schedule, BPA shall not charge more than 63 mills per kilowatthour for firm power (at 75 percent load factor) on an average annual basis and \$22 per kilowatt-month for firm capacity. These levels are based on the costs of BPA's highest-cost resource.

6. TRANSMISSION AND ANCILLARY SERVICES

Transmission and ancillary services may be sold at a bundled price under the FPS-96 rate at rates based on the rates applicable under the transmission and/or Ancillary Products and Services (APS-96) rate schedules. Such rates may include discounts that are made available to all transmission customers, including the BPA Power Business Line. The BPA Power Business Line will not pursue separate bilateral discussions with customers to discount ancillary services sold under the FPS-96 rate in the BPA control area. (See Exhibit B).

7. TEN-YEAR TERM

The term of the FPS-96 rate schedule shall be 10 years, commencing October 1, 1996. FPS-96 sales shall be consistent with applicable provisions of then-current statutes, including provisions related to preference in the sale of power and related to the marketing of Excess Federal Power.

8. CHALLENGES TO FPS-96 RATE

Parties shall withdraw their protests and raise no new protests to the acceptance by FERC in Docket Nos. EF96-2011-000 and EF96-2021-000 of rate schedule FPS-96. The parties shall not challenge the establishment or the confirmation and approval of the FPS-96 rate schedule in the United States Court of Appeals for the Ninth Circuit.

9. DISCLAIMER

This Settlement Agreement is only for the purposes of settling the FPS-96 issues in FERC Docket Nos. EF96-2011-000 and EF96-2021-000 and judicial review thereof and does not constitute any agreement or acquiescence by the parties for any other purposes as to the appropriate or legally permissible power marketing practices of BPA. No party shall cite this Settlement Agreement as evidence of any agreement or acquiescence inconsistent with this disclaimer.

10. CUSTOMER ASSUMPTION OF PRICE RISK

None of the above restrictions apply to or limit BPA's ability to purchase and resell energy or capacity on behalf of a customer if the customer bears the entire price risk for the purchased energy or capacity.

11. COUNTERPART SIGNATURE

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

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement in several counterparts.

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By /S/ STEVEN G. HICKOK
Senior Vice President, Power
Business Line

Name Steven G. Hickok
(Print/Type)

Date December 23, 1996

NORTHWEST IRRIGATION UTILITIES

PUBLIC POWER COUNCIL

By /S/ JOEL C. MERKEL

By /S/ SHELLY RICHARDSON

Name Joel C. Merkel
(Print/Type)

Name Shelly Richardson
(Print/Type)

Title Attorney for NIU

Title Of Attorneys for Public Power Council

Date January 7, 1997

Date December 31, 1996

PUBLIC GENERATING POOL

By /S/ JAY T. WALDRON

Name Jay T. Waldron
(Print/Type)

Title Attorney Representing PGP

Date December 26, 1996

WESTERN PUBLIC AGENCIES GROUP

By /S/ TERENCE L. MUNDORF

Name Terence L. Mundorf
(Print/Type)

Title Attorney

Date January 2, 1997

DIRECT SERVICE INDUSTRIES

By /S/ PAUL M. MURPHY

Name Paul M. Murphy
(Print/Type)

Title Attorney

Date December 24, 1996

PACIFICORP

By /S/ MARCUS WOOD

Name Marcus Wood
(Print/Type)

Title Stoel Rives L.L.P.
Of Attorneys for Pacificorp

Date December 23, 1996

PORTLAND GENERAL ELECTRIC
COMPANY

By /S/ ALVIN ALEXANDERSON

Name Alvin Alexanderson
(Print/Type)

Title Senior Vice-President,
General Counsel & Secretary

Date December 31, 1996

EXHIBIT A

BPA's surplus firm power will be determined consistent with BPA's 1993 Rate Case Record of Decision as applied to BPA's 1996 rates. The 1993 ROD provides as follows:

10.1.4 Surplus Products

Surplus firm power, which is firm power in excess of that required to meet BPA's contractual obligations to provide firm service, will be available under four circumstances. Armstrong, et al., WP-93-E-BPA- 16, 20. First, surplus firm power is available if BPA's allocation under the PNCA exceeds its planned firm load. Id. Under the PNCA planning process, the parties to the PNCA annually declare both their planned firm loads for the coming Critical Period and the firm resource capability the parties plan to have available to meet their loads. Id. These resources, are shaped to optimize their use among all parties to the PNCA as if they operated a single system. Each party is then allocated a guaranteed share of the optimized firm resource capability, or FELCC.

Second, some of BPA's energy purchases may not be included in PNCA planning, either because they are acquired too late in the planning process or because excluding them increases flexibility on BPA's system. Id. In such case, even though BPA may be deficit in terms of its available FELCC, BPA may have purchased sufficient resources to have acquired an overall surplus. Id., 21. Third, because BPA's non-surplus firm energy is reserved for service to its planned firm loads, BPA will have excess firm energy if its actual loads underrun its planned firm loads. Id., 20. Finally, surplus firm power becomes available when BPA purchases energy to cover future risks which then dissipate. Id., BPA is required to take reasonable and prudent actions to meet firm loads. BPA is also required to acquire sufficient resources to meet its contractual obligations and other requirements in accordance with the Northwest Power Act and the Transmission System Act. 16 U.S.C. § 839d; 16 U.S.C. § 8381(b)(6)(1). BPA faces certain risks however, such as low streamflows and loss of thermal generation, that may threaten its ability to meet these loads. Armstrong, et al., WP-93-E-BPA- 16, 22. Therefore, BPA may purchase energy to ensure that it will be able to meet its firm obligations. Id. If the risks do not materialize, BPA will not need this additional energy to meet its firm loads, and the energy will become available as surplus firm power. Id.

Recent developments have increased the means by which surplus firm power can be acquired and retained. Id., 18. First, the recently executed Non-Treaty Storage Agreement with BC Hydro substantially increases BPA's off-system storage capability. Id. New requirements to protect fish have obligated BPA to store additional water behind its hydroelectric projects for non-power purposes. Id., 19. BPA must purchase energy to replace the lost power. An increased right to storage space in Canadian reservoirs provides greater flexibility in acquiring firm power to meet BPA's resource needs. Id., 20.

In addition, inter-regional transmission interconnections have become stronger and more numerous, increasing BPA's access to firm energy markets. Id. Improved transmission interconnections also provide BPA a greater choice of products, such as weekly and monthly block purchases and firm energy options. Id.

Changing conditions in the utility industry and in BPA's system operations have increased the means by which surplus firm power can be acquired and retained by BPA. Such power is appropriately sold under BPA's Surplus Firm Power (SP-93) rate schedule. As the parties have taken no position on this subject, BPA will recognize this expanded definition of surplus power.

EXHIBIT B

FPS-96 CLARIFICATION FPS-96 and Ancillary Services

The Federal Energy Regulatory Commission's Order Approving Rates On An Interim Basis included the following footnote:

2/ The [FPS-96 rate] applies to sales of power, and control area services to support transactions not involving the Bonneville control area. Transmission and ancillary services involving the Bonneville control area are provided under separate cost-based rates and are not subject to the negotiated pricing provisions of FPS-96.

The Commission's description of the difference between the FPS-96 rate schedule and the APS-96 rate schedule is very general. Whether an APS or FPS service "involves" the Bonneville control area is not an accurate description of the difference between the FPS and APS rate schedules. The following is BPA's clarification of the Commission's order.

The FPS-96 rate applies to sales of power, and control area services to support transactions outside the Bonneville control area, and supplemental control area services that have not been defined by BPA as ancillary services. Transmission and ancillary services involving the Bonneville control area may be sold at a bundled price under the FPS-96 rate. The charge for such ancillary services, however, shall be based on the rate applicable under the APS-96 rate schedule, and includes discounts as appropriate.