

AUTHENTICATED

BLOCK POWER SALES AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
COLUMBIA FALLS ALUMINUM COMPANY, LLC
and
FLATHEAD ELECTRIC COOPERATIVE, INC.

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This BLOCK POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), COLUMBIA FALLS ALUMINUM

COMPANY, LLC (CFAC), and FLATHEAD ELECTRIC COOPERATIVE, INC. (Flathead). CFAC is a corporation organized under the laws of the State of Delaware. Flathead is a nonprofit corporation organized under the laws of the State of Montana. BPA, CFAC, and Flathead are sometimes referred to in the singular as "Party" or in the plural as "Parties."

RECITALS

On June 30, 2005, BPA issued a record of decision titled "Bonneville Power Administration's Service to Direct Service Industrial (DSI) Customers for Fiscal Years 2007-2011." On May 31, 2006, BPA issued a supplement to the record of decision. The record of decision and its supplement together constitute and are referred to herein as the Administrator's ROD.

This Agreement implements the decisions contained in the Administrator's ROD.

BPA has administratively divided its organization into two business lines in order to functionally separate the administration and decision making activities of BPA's power business from the administrative and decision making activities of its transmission business. References in this Agreement to the Power Business Line (PBL) are solely for the purpose of establishing which BPA business line is responsible for the administration of this Agreement.

BPA, CFAC and Flathead agree:

1. **TERM**

This Agreement, when signed by the Parties, shall become effective on October 1, 2006, and shall continue in effect through September 30, 2011, unless terminated earlier pursuant to section 16 below. All obligations incurred hereunder shall be preserved until satisfied.

2. **DEFINITIONS**

Capitalized terms in this Agreement shall have the meanings defined below, in the exhibits or in context. All other capitalized terms and acronyms are defined in BPA's applicable Wholesale Power Rate Schedule(s), including the General Rate Schedule Provisions (GRSPs).

- (a) "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principle place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.
- (b) "Contract Year" or "CY" means the period that begins each October 1 and which ends the following September 30. For instance, CY 2007 begins October 1, 2006, and continues through September 30, 2007.
- (c) "Demand Entitlement" means, during periods when this Agreement operates as a physical Surplus Firm Power sale, the megawatt (MW) amount each

hour that Flathead shall purchase from PBL, and that CFAC shall purchase from Flathead, as specified in Exhibit E.

- (d) “Equivalent PF” means the applicable average Priority Firm Rate at 100 percent load factor, as determined pursuant to Exhibit F.
- (e) “Escrow Account” means the specific account established pursuant to the provisions in section 9(b) below for receipt of funds from BPA and transfer of funds by Flathead to CFAC.
- (f) “Forecast Market Price” means the annual forecast market price for power at 100 percent load factor, as determined pursuant to the procedures in Exhibit F or, if CFAC has selected an option pursuant to subsection 5(c) or subsections 5(c) and 5(d), then as determined by the average purchase price paid by CFAC during the Option Period.
- (g) “FY 07-09 Rate Period” means the wholesale power rate period that begins on October 1, 2006, and continues through September 30, 2009.
- (h) “FY 10-11 Rate Period” means the wholesale power rate period that begins on October 1, 2009, and continues through September 30, 2011.
- (i) “MB Monthly Payment” means the monthly Monetary Benefit payment that is available during each month, as calculated in section 6(c)(4) below.
- (j) “MB Rate” means the rate in dollars per megawatt-hour (\$/MWh) used to calculate MB Monthly Payments pursuant to section 6(c) below. The MB Rate is determined by subtracting Equivalent PF from Forecast Market Price, and shall not exceed \$24/MWh.
- (k) “Maximum Allocation” means, for the purpose of determining MB Monthly Payments, the maximum average megawatt (aMW) amount that may be used to determine a MB Monthly Payment. The Maximum Allocation is shown in Exhibit E.
- (l) “Maximum MB Monthly Payment” means the amount calculated in section 6(c)(3) below.
- (m) “Minimum Allocation” means, for the purpose of determining MB Monthly Payments, the minimum aMW amount that may be used to determine a MB Monthly Payment. The Minimum Allocation is equal to one-fourth of the Maximum Allocation.
- (n) “Monetary Benefits” means monetary payments made by BPA to Flathead for the account of CFAC under this Agreement, as determined pursuant to the provisions in section 6 below.

- (o) “Monthly Plant Load” means a monthly aMW amount equal to the Total Plant Load for each month divided by the number of hours in each such month.
- (p) “Monthly Purchase Deficiency” means the monthly amount(s) of Surplus Firm Power not purchased due to a curtailment, as such amount(s) may be adjusted pursuant to section 4(e)(1) below.
- (q) “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501.
- (r) “Option Benefits” means the MB Monthly Payments under the options provided for in section 5(c) and 5(d), including UBA amounts if CFAC chooses to establish Monetary Benefits pursuant to the provisions to include UBA in Option Benefits as specified in section 8(a)(4) below.
- (s) “Option Period” means the combined period(s) of the option(s) specified in the provisions of section 5(c) and 5(d) selected by CFAC to establish MB Monthly Payments
- (t) “Other DSIs” means aluminum smelters other than CFAC that have executed an agreement substantially in the form of this Agreement.
- (u) “Points of Measurement” means the interconnection points between BPA, CFAC, and other control areas, as applicable. Electric power amounts are established at these points based on metered amounts or scheduled amounts, as appropriate.
- (v) "Point of Receipt" means the points of interconnection on the transmission provider's transmission system where Surplus Firm Power shall be made available by PBL to Flathead, and where Surplus Firm Power shall be made available by Flathead to CFAC's transmission provider.
- (w) “Power Business Line” or “PBL” means that portion of the BPA organization or its successor that is responsible for the management and sale of BPA’s Federal power.
- (x) “Region” means the definition established for “Region” in the Northwest Power Act.
- (y) “Surplus Firm Power” means electric power that PBL shall make continuously available to Flathead, and which Flathead shall make continuously available to CFAC, under this Agreement.
- (z) “Total Plant Load” means the amount of electric energy in megawatt-hours (MWh) consumed during each month at CFAC’s production facilities. A detailed description of CFAC’s production facilities, including station service requirements and metering equipment, is described in Exhibit B.

- (aa) “Transmission Business Line” or “TBL” means that portion of the BPA organization or its successor that is responsible for the management and sale of transmission service on the Federal Columbia River Transmission System (FCRTS).
- (bb) “Unused Benefit Amount” or “UBA” means either: (1) an aMW amount determined pursuant to section 7(a) during any period in which Monetary Benefits are provided, or (2) a MW amount determined pursuant to section 7(b) during any period in which this Agreement operates as a physical Surplus Firm Power sale.

3. APPLICABLE RATES

(a) **Applicable Rate for Purchases by Flathead**

Purchases by Flathead under this Agreement are subject to the Firm Power Products and Services (FPS) rate schedule or its successor, and the General Rate Schedule Provisions (GRSP). Purchases under the FPS rate schedule are established as follows:

If this Agreement operates as a physically delivered Surplus Firm Power sale pursuant to section 4 below, then section 4(a) below and Exhibit A, Surplus Firm Power Rate, identify Surplus Firm Power amounts, rates, and billing entitlements subject to the FPS rate schedule. If the Surplus Firm Power sale is monetized, then the provisions of section 6 below establish the applicable FPS rate.

(b) **Applicable Rate for Purchases by CFAC**

Purchases by CFAC under this Agreement are subject to the applicable rate schedule developed by Flathead for such purchases. The rates and billing entitlements specified in such rate schedule shall be equal to those rates billed to Flathead by BPA under this Agreement, FPS rate schedule and GRSPs, as specified in Exhibit A.

4. POWER SALE PROVISIONS

This section 4 only applies when this Agreement operates as a physically delivered Surplus Firm Power sale. In this event, the Monetary Benefit provisions in section 6 shall not apply. All physically delivered Surplus Firm Power provided by PBL under this section 4 is solely for service to Total Plant Load.

(a) **Power Sale by PBL to Flathead**

(1) **Hourly Amounts**

PBL shall make available and Flathead shall purchase the Demand Entitlement each hour. The Demand Entitlement is specified in Exhibit E.

(2) **HLH and LLH Energy Entitlements and Demand Entitlement**

The Demand Entitlement multiplied by: (A) the number of HLH; and (B) the number of LLH in the applicable month establishes Flathead's HLH and LLH Energy Entitlements with respect to this Agreement.

(b) **Power Sale by Flathead to CFAC**

(1) **Hourly Amounts**

Flathead shall make available and CFAC shall purchase the Demand Entitlement each hour. The Demand Entitlement is specified in Exhibit E.

(2) **HLH and LLH Energy Entitlements and Demand Entitlement**

The Demand Entitlement multiplied by: (A) the number of HLH; and (B) the number of LLH in the applicable month establishes CFAC's HLH and LLH Energy Entitlements.

(c) **Unauthorized Increase Charge**

CFAC shall not intentionally schedule in excess of the amount specified in section 4(b)(1) above. However, in the event that an excess amount is scheduled due to error, then such amounts taken by CFAC from Flathead at the Points of Receipt in excess of the amounts specified in section 4(b)(2) above shall be subject to the Unauthorized Increase Charge for demand and energy consistent with the applicable BPA Wholesale Power Rate Schedules and GRSPs, unless such power is provided under another contract with PBL. Power that has been provided for energy imbalance service pursuant to an agreement between TBL and CFAC shall not be subject to an Unauthorized Increase Charge for Demand and Energy under this Agreement. Any Unauthorized Increase Charge shall be billed by BPA in accordance with the billing procedures described in section 9(a) below. Any Surplus Firm Power used by Flathead or CFAC for any other purpose shall be subject to the Unauthorized Increase Charge.

(d) **Curtailement**

If CFAC curtails Total Plant Load in whole or in part, then CFAC may request take-or-pay mitigation for purchases under section 4(b) above pursuant to section 4(e) below.

(e) **Take-or-Pay Mitigation for Curtailments**

If CFAC chooses to curtail its purchase obligation, then the following terms and conditions shall apply:

(1) **Notice of Curtailment**

CFAC shall provide written notice to PBL and Flathead at least three (3) Business Days in advance of a curtailment. Such notice shall specify the monthly amounts of power to be curtailed and the duration of the curtailment. The election to curtail such power, and the amount and duration of such curtailment, may not be changed without PBL's consent. PBL's sale to Flathead shall be reduced by the amount of power curtailed, and Flathead shall not be assessed any damages or

incur any liability as a result of any such reduction. The Monthly Purchase Deficiency will be reduced by any reduction to the Demand Entitlement pursuant to section 7(b)(2) below.

(2) **Calculation of Damages**

CFAC shall pay directly to BPA damages for each Monthly Purchase Deficiency equal to the amount by which the reasonable market value of such Monthly Purchase Deficiency is less than the price of the applicable rate specified in Exhibit A. For purposes of calculating damages under this section 4(e)(2), the Monthly Purchase Deficiency(s) shall be reduced by any reduction of Demand Entitlement under section 7(b)(3), effective on the date any such reduction becomes effective. No later than 60 days following the end of each Contract Year, PBL shall, for each month of the previous Contract Year, calculate the reasonable market value for each Monthly Purchase Deficiency during such Contract Year. Reasonable market value and calculation of damages shall be determined as follows.

- (A) No later than 3 Business Days prior to the commencement of a curtailment under this section 4(e), CFAC may obtain one or more transactable quotes for all or a portion of such power from a third party. The transactable quote may be for any length of time and curtailment amount. Each quote shall be deemed equal to the reasonable market value of such power to which the quote applies for the purpose of calculating damages under this section 4(e)(2). BPA may, but shall not be obligated to, resell the curtailed power to the third party, retain the power, or dispose of the power as it chooses. CFAC shall allow PBL at least 4 hours during normal business hours to decide whether or not to transact under such quote.
- (B) BPA shall determine, by any reasonable method, the reasonable market value of the portion of each Monthly Purchase Deficiency for which CFAC has not obtained a transactable quote. The reasonable market value shall be adjusted to reflect volume and BPA transmission costs associated with remarketing each such portion of the Monthly Purchase Deficiency, regardless of whether each such portion is actually remarketed.
- (C) BPA shall bill CFAC and CFAC shall directly pay BPA damages for such Contract Year equal to the amount by which the sum of the product of (1) each Monthly Purchase Deficiency and (2) the applicable rate specified in Exhibit A that BPA would have charged each month if the power had been taken under this Agreement, exceeds the sum of the product of (1) each Monthly Purchase Deficiency and (2) the reasonable market value in each month. Amounts for damages

under section 4(e)(2)(A) and section 4(e)(2)(B) may only be netted within a Contract Year. If a transactable quote for a curtailment or portion of a curtailment extends into a future Contract Year, then the total amounts associated with such quote will be netted in the Contract Year in which the curtailment or portion of curtailment associated with such quote begins. BPA is not obligated to pay CFAC the difference when the reasonable market value exceeds the applicable rate in Exhibit A.

It is expressly agreed to by the Parties that BPA shall not be obligated to enter into replacement transactions to determine or collect damages under this section 4(e)(2).

It is also expressly agreed that BPA will apply its then-current applicable credit policies if damages are due under this section 4(e)(2), and such policies may include an obligation to prepay for damages.

(f) **Scheduling**

All Surplus Firm Power transactions under this Agreement shall be scheduled and implemented consistent with Exhibit C, BPA Power Business Line Scheduling Provisions. The procedures for scheduling described in Exhibit C are the standard utility procedures followed by BPA for power transactions between PBL and other utilities or entities in the Region that require scheduling.

(g) **Delivery**

(1) **Transmission Service for Surplus Firm Power**

This Agreement does not provide transmission services for, or include the delivery of, Surplus Firm Power by BPA to Flathead, or by Flathead to CFAC. CFAC shall be responsible for executing one or more wheeling agreements with a transmission supplier for the delivery of Surplus Firm Power (Wheeling Agreement). PBL and CFAC agree to take such actions as may be necessary to facilitate the delivery of Surplus Firm Power to CFAC, consistent with the terms, notice, and the time limits contained in the Wheeling Agreement.

(2) **Liability for Delivery**

CFAC waives any claims against PBL and Flathead arising under this Agreement for nondelivery of power to any points beyond the applicable Points of Receipt. Neither Flathead nor PBL shall be liable for any third-party claims related to the delivery of power after it leaves the Points of Receipt. In no event shall any Party be liable under this Agreement to any other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership. These limitations on liability apply regardless of whether or not this Agreement provides for transfer service.

(3) **Points of Receipt**

PBL shall make Surplus Firm Power available to Flathead, and Flathead shall make Surplus Firm Power available to CFAC under this Agreement at Points of Receipt solely for the purpose of CFAC scheduling transmission to points of delivery for service to CFAC's Total Plant Load. CFAC shall schedule, if scheduling is necessary, such Surplus Firm Power solely for use by its Total Plant Load. PBL, for purposes of scheduling transmission for delivery under this Agreement, shall specify Points of Receipt in a written notice to Flathead and CFAC no later than October 1, 2008.

If required by the Wheeling Agreement, when PBL designates such Points of Receipt, PBL shall provide capacity amounts for transmission under the Wheeling Agreement associated with the initial Points of Receipt that can be accepted as firm Points of Receipt under CFAC's Wheeling Agreement (except in the event that all Points of Receipt on the Federal Columbia River Power System (FCRPS) would be considered nonfirm). The sum of capacity amounts requested by PBL shall not exceed the amount of Surplus Firm Power specified in sections 4(a) and 4(b) above. Such Points of Receipt and their capacity amounts may only be changed through mutual agreement. However, at any time PBL may request the use of a nonfirm Point of Receipt to provide Surplus Firm Power to Flathead for the account of CFAC, but notwithstanding section 4(g)(2) above, PBL shall reimburse CFAC for any additional costs or production losses incurred by CFAC due to its compliance with such request.

(4) **Transmission Losses**

PBL shall provide CFAC the transmission losses between the Points of Receipt and CFAC's points of delivery for Surplus Firm Power, at no additional charge. Such losses shall be provided at Points of Receipt as established under section 4(g)(3) above, and under the terms and conditions as defined in the transmission provider's tariff.

(h) **Measurement**

- (1) Amounts of Surplus Firm Power taken are deemed equal to the amount scheduled by CFAC under section 4(f) above or an amount of power as measured at Points of Measurement, as appropriate.
- (2) CFAC shall provide reasonable notice to PBL and Flathead prior to changing control areas.

(i) **Interruption Rights**

PBL shall have a one-time right during the term of this Agreement to interrupt deliveries of a portion of the Surplus Firm Power hereunder pursuant to the following provisions. PBL may interrupt a portion of Surplus Firm Power deliveries if PBL anticipates, in its sole and exclusive discretion,

that average forward market prices for a flat block of power will exceed \$125/MWh during an interruption period to be specified by PBL in a written notice. In this event, PBL shall consult with CFAC and Flathead prior to providing such written notice. If PBL decides to interrupt, then it will provide 90 days advance written notice to CFAC and Flathead that specifies the amount of Surplus Firm Power to be interrupted and the associated interruption period; *provided, however*, that a minimum of 6 aMW will not be subject to any such interruption. Unless the Parties mutually agree otherwise, such interruption period shall extend for a minimum of 6 months and for a maximum of 12 months, regardless of the level of actual market prices during an interruption period. In the event of an interruption, BPA shall pay Flathead, and Flathead shall in turn pay CFAC, \$24/MWh for amounts interrupted. Payments shall be made pursuant to section 9(b) below. Payments to CFAC under this section 4(i) shall be used first to compensate CFAC's employees employed at the time of an interruption under this section 4(i) by providing each such employee, at the election of CFAC, either (1) the opportunity to work a regular work week (40 hours) at regular wage and benefit rates, or (2) special supplemental benefits such that the employee's effective after-tax income (including any available unemployment income) will be equal to what the employee's income would have been working a regular work week, plus all benefits the employee would have received, had the employee been working a regular 40-hour work week. BPA shall have the right to conduct an audit to verify compliance with this section 4(i). If there is an interruption under this section 4(i), then the portion of Demand Entitlement interrupted shall be treated as if taken for purposes of section 7(b)(1)(A) and shall not be subject to the take-or-pay provisions in sections 4(a) and 4(b).

(j) **Modification of Flathead's Obligations**

- (1) Flathead shall have no obligation to purchase any power from BPA under this Agreement except for such power that CFAC is obligated to and does purchase from Flathead under this Agreement. Flathead shall have no obligation to make available to CFAC any power under this Agreement except for such power that BPA is obligated to and does make available to Flathead under this Agreement. Notwithstanding anything in this Agreement to the contrary, if the obligation of BPA to make available power to Flathead or the obligation of CFAC to purchase power from Flathead are modified for any reason, including but not limited to curtailment, interruption or any change to the Demand Entitlement, then Flathead's corresponding obligation to make power available to CFAC and/or to purchase power from BPA shall be modified to the same extent.
- (2) Flathead's obligation to purchase power from BPA and Flathead's obligation to make power available to CFAC are contingent upon CFAC performing its corresponding obligation's under this Agreement to purchase power from Flathead and upon BPA performing its corresponding obligation to make power available to Flathead.

Flathead's obligations under this Agreement to BPA and CFAC shall be excused and reduced to the extent of any nonperformance by CFAC or BPA of their corresponding obligations under this Agreement to Flathead.

5. BPA AND CFAC OPTIONS

(a) **Monetary Benefits for the FY 07-09 Rate Period**

BPA has determined that, during the FY 07-09 Rate Period, in order to meet the cost caps described in the Administrator's ROD with certainty, it will monetize the physically delivered Surplus Firm Power sale obligation; provided, however, if CFAC chooses an option specified in section 5(c) or 5(d) and/or 8(a)(4) below, then the physically delivered Surplus Firm Power sale obligation will be monetized for the entire Option Period. As such, BPA will make any MB Monthly Payments during the FY 07-09 Rate Period, the FY 10-11 Rate Period or the CY 2011 period, as applicable, subject to the provisions of section 5(c), 5(d), and 6 below.

(b) **BPA Option for the FY 10-11 Rate Period and the CY 2011 period**

PBL shall have the option to discontinue Monetary Benefits after the FY 07-09 Rate Period and to revert to a physically delivered Surplus Firm Power sale for the FY 10-11 Rate Period or for the CY 2011 period. This option is not applicable to the portion of MB Monthly Payments which CFAC has chosen to lock in under section 5(c), 5(d), and/or 8(a)(4). If PBL chooses to exercise this option, then BPA shall provide written notice to CFAC and Flathead no later than October 1, 2008. In this event, the provisions of section 6 below shall not apply to that portion of Monetary Benefits that have reverted to a physically delivered Surplus Firm Power sale during the period this option is applicable, and this Agreement will operate in whole or in part as a physically delivered Surplus Firm Power sale, subject to the provisions of section 4 above, unless CFAC elects to terminate this Agreement pursuant to section 16(b) below. In addition, in the event of a physical power sale, BPA will require CFAC to provide performance assurances, consistent with BPA's then-current applicable credit policies.

Prior to exercising this option BPA shall conduct a public process providing an opportunity for customers to comment on the merits of exercising the option.

(c) **CFAC Option for CY 2007-2009, CY 2007-2010 or CY 2007-2011**

CFAC shall have a one time option to establish its MB Monthly Payments for CY 2007-2009, CY 2007-2010, or CY 2007-2011 pursuant to this section 5(c). If this option is selected by CFAC, then the lower of the Forward Flat-Block Price Forecast, in effect on the date CFAC provides written notice pursuant to this section 5(c), or the average purchase price paid for power to serve CFAC's Total Plant Load during the Option Period shall establish the Forecast Market Price when calculating CFAC's MB Monthly Payments as specified in section 6 below. The power purchase contracts entered into by CFAC shall cover the full term of the Option Period and, except for UBA

amounts subject to section 8(a)(4), shall be for all power included in the Monetary Benefit calculation during the Option Period. If CFAC chooses to exercise this option, then CFAC shall provide written notice to BPA and Flathead no later than September 30, 2006, specifying the CY 2007-2009, CY 2007-2010 or CY 2007-2011 period for which it has selected this option. In such event, the provisions of section 6(c)(6) shall not apply to Monetary Benefits subject to this option during the Option Period. Within 30 days of providing such notice CFAC shall provide BPA access to contracts, invoices, or other documents reasonably necessary for BPA to verify the purchase price of power used to calculate CFAC's MB Monthly Payments for this option.

(d) **CFAC Option for CY 2010-2011 and CY 2011**

Provided CFAC exercised either the CY 2007-2009 option or the CY 2007-2010 option specified in section 5(c) CFAC shall also have a one time option to establish its MB Monthly Payments for the remainder of the Agreement. If CFAC selects this option, then the lower of the Forward Flat-Block Price Forecast, in effect on the date CFAC provides written notice pursuant to this section 5(d), or the average purchase price paid for power to serve CFAC's Total Plant load during the Option Period shall establish the Forecast Market Price when calculating CFAC's MB Monthly Payment specified in section 6 below. The power purchase contracts entered into by CFAC shall cover the full term of the Option Period and, except for UBA amounts subject to section 8(a)(4), shall be for all power included in the Monetary Benefit calculation during the Option Period. If CFAC chooses to exercise this option, then CFAC shall provide written notice to BPA and Flathead no later than September 30, 2007. In such event, the provisions of section 6(c)(6) shall not apply to Monetary Benefits subject to this option during the Option Period. Within 30 days of providing such notice, CFAC shall provide BPA access to contracts, invoices, or other documents reasonably necessary for BPA to verify the purchase price of power used to calculate CFAC's MB Monthly Payments for this option.

6. MONETARY BENEFIT PROVISIONS

This section 6 only applies when the physically delivered Surplus Firm Power sale is monetized. The provisions in section 4 shall not apply to Monetary Benefits.

(a) **Determination of Forecast Market Price and Equivalent PF for each CY or Option Period**

PBL shall determine the Forecast Market Price and Equivalent PF for each CY, using the procedures described in Exhibit F: provided, however, if CFAC selects any option specified in section 5(c) or 5(d), then the Forward Market Price shall be determined as specified in the option(s) selected by CFAC during the Option Period.

(b) **Determination of Monthly Plant Load**

No later than five (5) Business Days following the end of each month, PBL shall determine the Monthly Plant Load for each such month.

(c) **Determination of MB Monthly Payments**

Except as provided for in section 6(c)(5) below, the procedures described in Exhibit F and the following procedure, as described in sections 6(c)(1) through 6(c)(4), shall be used to determine the MB Monthly Payment for each month.

- (1) Except as provided in section 6(c)(5), if the Monthly Plant Load is less than the Minimum Allocation during any month (Deficient Month), then the MB Monthly Payment for that month is \$0.
- (2) If the Monthly Plant Load is equal to or greater than the Maximum Allocation during any month, then the Monthly Plant Load shall be deemed equal to the Maximum Allocation for that month.
- (3) The Maximum MB Monthly Payment for each month is determined by the following equation:

$$\text{Maximum MB Monthly Payment} = ((\text{Maximum Allocation}) \times (\text{number of hours in month})) \times (\text{lesser of } \$12/\text{MWh} \text{ or MB Rate});$$

provided, however, during the FY 07-09 Rate Period MB Monthly Payments for Option Benefits shall be determined by the following equation;

$$\text{Maximum MB Monthly Payment} = ((\text{Maximum Allocation}) \times (\text{number of hours in month})) \times (\text{lesser of } \$12/\text{MWh} \times 0.92 \text{ or MB Rate}).$$

- (4) The MB Monthly Payment for each month shall be the lesser of the Maximum MB Monthly Payment determined pursuant to section 6(c)(3) above or the amount determined by the following equation:

$$\text{MB Monthly Payment} = ((\text{Monthly Plant Load}) \times (\text{number of hours in the month})) \times (\text{MB Rate})$$

- (5) CFAC may exercise the following one-time option. If CFAC desires to exercise its one-time option pursuant to this section 6(c)(5), then CFAC shall provide written notice to PBL and Flathead that it will increase smelting load as of a date specified by CFAC in such notice (Start Date). Then, for the remainder of the month that includes the Start Date and the following 2 months, the MB Monthly Payment shall be determined by the following equation:

$$\text{MB Monthly Payment} = (\text{Total Plant Load}) \times \text{MB Rate}$$

Each MB Monthly Payment determined under this section 6(c)(5) shall not exceed the Maximum MB Monthly Payment.

- (6) In addition to other limitations specified in the Agreement, CFAC is only entitled to Monetary Benefits which when subtracted from the amount equal to its power costs to serve its Total Plant Load during the CY, does not reduce its power cost below the Equivalent PF multiplied by such total amount of power. If at any time during a Contract Year CFAC knows it has procured power at a cost that will result in less than the full Monetary Benefits to reach the Equivalent PF, then CFAC shall notify BPA of such cost and BPA shall reduce its payments accordingly for the remainder of the Contract Year.

This paragraph applies only for periods other than the Option Period, except with respect to acquired UBA not included in Option Benefits. Within 90 days following the end of each CY, BPA shall have the right to request: 1) Access to contracts, invoices or other documentation reasonably necessary for BPA to verify that purchases by CFAC of power equal to the sum of CFAC's Total Plant Loads for such CY and the cost of such purchases; and/or 2) A written certification from CFAC's CFO of power purchases by CFAC used to serve the sum of CFAC's Total Plant Loads for such CY and the cost of such purchases. CFAC shall provide BPA access to such contracts and documentation for such power purchases, subject to reasonable conditions to maintain the confidentiality of such information. If the difference between the cost of such purchases and their cost calculated as if they had been priced at the Equivalent PF is less than the sum of the Monetary Benefits that were paid to CFAC for such CY, then CFAC shall owe BPA such difference (Overpayment). BPA shall notify CFAC of any such Overpayment and will reduce the total Monetary Benefits in the CY following the CY in which the Overpayment occurred by the amount of such Overpayment. If the Overpayment exceeds Monetary Benefits available during that following CY, then any unrecovered Overpayment will carryover to reduce Monetary Benefits in subsequent years until fully recovered.

If, upon termination of this Agreement, an Overpayment occurred for the CY prior to such termination, then, within 90 days following the end of such CY, BPA shall invoice CFAC and CFAC shall pay BPA such Overpayment within 20 days of receipt of such invoice.

- (7) Notwithstanding anything to the contrary in this Agreement, in no case shall the annual Monetary Benefit total exceed the Monetary Benefit Limit specified in Exhibit E of this Agreement.

(d) **Examples**

Section 1 of Exhibit D contains several illustrative examples of the calculation of MB Monthly Payments, using a variety of assumptions.

7. DETERMINATION OF UNUSED BENEFIT AMOUNTS

The following procedures shall be used to determine UBA.

(a) **Determination of Unused Benefit Amounts During Periods When Surplus Firm Power Sale is Monetized**

This section 7(a) only applies when the physically delivered Surplus Firm Power sale is monetized.

- (1) Beginning in October 2007, and following each month thereafter, PBL shall track the amount of Monetary Benefit that CFAC has taken during each of the preceding 12 months.
- (2) In order to retain its Maximum Allocation, CFAC must, for at least one month during the preceding 12 months, have received the Maximum MB Monthly Payment. If this condition has not been satisfied, then the Maximum Allocation shall be reduced.
- (3) CFAC shall retain the highest monthly percentage of the available benefits that it accessed during the previous 12 months. As such, CFAC's Maximum Allocation shall be reduced by the percentage of the available benefits, rounded to the nearest aMW, that were not accessed during the month that set the highest monthly percentage. The amount of aMW from this calculation becomes an Unused Benefit Amount or UBA.
- (4) In the event of an UBA, PBL shall provide written notice to CFAC and Flathead that CFAC's Maximum Allocation shall be reduced by the UBA. Such reductions shall become effective at 2400 hours on the last day of the month in the month the notice is provided (Date of Maximum Allocation Reduction). CFAC understands and agrees that it will not have an option to re-acquire UBA that it has lost for one month following the Date of Maximum Allocation Reduction and that Other DSIs may acquire the UBA. BPA shall unilaterally revise Exhibit E, effective on the Date of Maximum Allocation Reduction, to reflect the reduced Maximum Allocation. BPA shall also provide notice of the availability of the UBA to the Other DSIs.

(b) **Determination of Unused Benefit Amounts During Periods When the Surplus Firm Power Sale Is Physically Delivered**

This section 7(b) only applies when the Surplus Firm Power sale is physically delivered.

- (1) In order to assure its right to retain its Demand Entitlement, as specified in Exhibit E, CFAC must, for at least one month during the preceding 12 months, have either (A) taken Surplus Firm Power equal to its Demand Entitlement during all hours of such month, or (B) taken the maximum Monetary Benefit available to it during such month. If this condition has not been satisfied, then the Demand Entitlement may be reduced.
- (2) If the condition in section 7(b)(1) has not been satisfied, then BPA shall calculate the following for each of the previous 12 months:

(A) the percentage of the available Monetary Benefit received by CFAC, and (B) the percentage of the Demand Entitlement taken by CFAC. BPA may reduce the Demand Entitlement to the highest of such percentages multiplied by the Demand Entitlement, and rounded to the nearest MW. The MW amount of such reduction becomes an UBA.

- (3) In the event of an UBA resulting from section 7(b)(2), PBL shall provide written notice to CFAC and Flathead that the Demand Entitlement may be reduced by the UBA. If all or a portion of such UBA is acquired by the Other DSIs pursuant to section 8(b) below, then the Demand Entitlement shall be reduced by the amount of UBA so acquired. Any such reduction shall become effective at 2400 hours on the last day of the month prior to the month that UBA has been acquired by the Other DSIs (Date of Demand Entitlement Reduction). BPA shall unilaterally revise Exhibit E, effective on the Date of Demand Entitlement Reduction, to reflect the reduced Demand Entitlement. If UBA made available under this section 7(b)(3) is not acquired by CFAC or the Other DSIs within 6 months following the date such UBA became available, then BPA may, but shall not be obligated to, revise Exhibit E unilaterally to reduce the Demand Entitlement by the UBA not acquired.
- (4) If an UBA results from a termination of this Agreement pursuant to section 16(b) below, then the entire Demand Entitlement becomes an UBA as of the effective date specified in section 16(b) below. BPA shall provide notice of the availability of any UBA that becomes available under this section 7(b)(4) to the Other DSIs pursuant to the notice provisions in section 7(b)(3) above. The Other DSIs may acquire this UBA pursuant to section 8(b) below.
- (5) If CFAC provides PBL and Flathead written notice of curtailment under section 4(e)(1) and UBA will result during the term of such curtailment by operation of sections 7(b)(1) and 7(b)(2), then for purposes of sections 7(b)(2) and 7(b)(3), the UBA that would result during the term of the curtailment shall become UBA upon commencement of the curtailment.

(c) **Examples**

Section 2 of Exhibit D contains several illustrative examples of the determination of UBA, using a variety of assumptions.

8. OPTION TO ACQUIRE UNUSED BENEFIT AMOUNTS

The following procedures shall be used to acquire UBA.

(a) **Option to Acquire Unused Benefit Amounts During Periods When the Physically Delivered Surplus Firm Power Sale is Monetized**

This section 8(a) only applies when the physically delivered Surplus Firm Power sale is monetized.

- (1) Unless CFAC provides written notice to PBL and Flathead that it has chosen not to acquire UBA, available UBA amounts will be added to CFAC's Maximum Allocation, to the extent that doing so will increase the MB Monthly Payment it will receive for each month.
- (2) During months when increases in Monthly Plant Load by CFAC and Other DSIs exceed the amount of UBA available, UBA will be allocated pro rata to CFAC and other DSIs, based on Maximum Allocation.
- (3) BPA shall unilaterally revise Exhibit E to reflect the addition of acquired UBA in CFAC's Maximum Allocation and Monetary Benefit Limit.
- (4) If CFAC has selected an Option Period under section 5(c) above, Monetary Benefits for the acquired UBA will not be included in calculations for Option Benefits and instead will be calculated separately under 6(c) above using the current Forecast Market Price as established under the provisions of Exhibit F of the Agreement unless and until CFAC notifies BPA it will include the acquired UBA in the calculations to establish the MB Monthly Payments for the remainder of the Option Period. If this option is selected, then the purchase price used as the Forecast Market Price in the calculation of the Option Benefits shall be based on a megawatt hour weighted average of: i) the average purchase price previously used to calculate the Option Benefits, and ii) the average purchase price for acquired UBA, provided that the average purchase price for acquired UBA shall be limited by the Forecast Market Price in effect at the time CFAC notifies BPA it will exercise this option.

If CFAC chooses to exercise this option, then CFAC shall provide written notice to BPA and Flathead of the purchase price for the power purchased to serve the acquired UBA. For purposes of calculating MB Monthly Payments, the starting date of the purchase shall be the beginning of the month following the notice. Power purchases under this option must begin no later than 6 months following the effective date of the revision to Exhibit E for such acquired UBA. The provisions of section 6(c)(6) shall not apply to these UBA amounts during the Option Period. Instead, within 30 days of providing its power purchase notice, CFAC shall provide BPA access to contracts, invoices, or other documents reasonably necessary for BPA to verify the purchase price of power used to calculate CFAC's MB Monthly Payments for this option.

- (5) UBA amounts that remain available and unused for 6 months following the Date of Reduction shall be zeroed out and will no longer be available to CFAC or the Other DSIs during the term of this Agreement.

(b) **Option to Acquire Unused Benefit Amounts During Periods When the Surplus Firm Power is Physically Delivered**

This section 8(b) only applies when the Surplus Firm Power sale is physically delivered.

- (1) Following receipt of a notice provided under section 7(b)(3) above, CFAC shall provide written notice to PBL and Flathead of the amount of UBA it wishes to purchase, if any.
 - (2) UBA amounts requested pursuant to section 8(b)(1) above will be added to the Demand Entitlement, effective on the first day of the month following receipt of the notice provided under section 8(b)(1) above.
 - (3) When requests for UBA by CFAC and Other DSIs exceed the amount of UBA available, UBA will be allocated pro rata to CFAC and other DSIs, based on Demand Entitlement.
 - (4) BPA shall unilaterally revise Exhibit E, effective on the date determined in 8(b)(2), to reflect an increase to the Demand Entitlement by the amount of acquired UBA.
 - (5) Any UBA acquired pursuant to this section 8(b) that remains unused after 6 months following the date specified in 8(b)(2) above will no longer be available to CFAC or the Other DSIs. Amounts of Total Plant Load during such 6-month period that are less than the increased Demand Entitlement shall become an unused UBA. Such unused UBA shall be considered a Monthly Purchase Deficiency for each month of the remaining term of this Agreement, and CFAC shall be subject to damages pursuant to section 4(e)(2) above.
- (c) Any increased: (1) Maximum Allocation under section 8(a) above; or
(2) Demand Entitlement under section 8(b) above shall not exceed 171 MW.
- (d) Section 3 of Exhibit D contains several illustrative examples of the acquisition of UBA, using a variety of assumptions.

9. BILLING AND PAYMENT

(a) **Billing and Payment Provisions During Power Sale**

If, pursuant to section 5(b) above, BPA provides written notice that this Agreement will operate as a physically delivered Surplus Firm Power sale during the FY 10-11 Rate Period or the CY 11 period, then no later than March 1, 2009, the Parties shall amend this section 9(a) to include billing and payment provisions for: (1) the physically delivered Surplus Firm Power sale by PBL to Flathead; and (2) the power sale by Flathead to CFAC.

(b) **Billing and Payment When Monetary Benefits Provided**

(1) **Escrow Account**

BPA and Flathead shall establish an Escrow Account, in accordance with the laws governing Flathead, for MB Monthly Payments and any interruption payments pursuant to section 4(i). BPA shall make payments into the Escrow Account, but only Flathead shall have the ability to effect withdrawals from the Escrow Account for payment to CFAC.

(2) **Payments into the Escrow Account**

Within five Business Days after the end of each month, BPA will review CFAC's metered load measurements to determine if the Monthly Plant Load for the month is equal to or exceeds the Minimum Allocation.

Within eight Business Days following the end of the month, BPA shall transfer an amount equal to the MB Monthly Payment, and any interruption payments pursuant to section 4(i) above, into the Escrow Account.

(3) **Payments from the Escrow Account**

Within 12 business days following the end of the month, Flathead shall effect the transfer of all BPA monthly payment amounts received into the Escrow Account pursuant to this Agreement to CFAC.

(4) **Escrow Account Safeguard**

Flathead shall treat the Escrow Account in accordance with the terms of this Agreement and the agreement setting up the Escrow Account and not as property of Flathead. Flathead shall effect the release of such funds from the Escrow Account pursuant only to the escrow instructions consistent with this Agreement that BPA and Flathead shall develop and provide to the escrow agent. Except to the extent Flathead has failed to effect transfer of funds from the Escrow Account pursuant to the escrow instructions developed with BPA, Flathead shall not be liable under any circumstances for the funds deposited by BPA into the Escrow Account, and BPA and CFAC waive and release Flathead from any and all claims, liability or damages that could arise from any loss, payment or lack of payment of such funds in the Escrow Account.

(c) **General Terms**

(1) **Limitation on Flathead's Payment Obligations**

Notwithstanding anything in this Agreement to the contrary, Flathead shall have no obligation under any circumstances to pay to BPA any amounts under this Agreement, FPS rate schedule and GRSPs except for such amounts that Flathead has received from CFAC under this Agreement, and Flathead shall have no obligation under any circumstances to pay to CFAC any amounts under this

Agreement except for such amounts that BPA paid into the Escrow Account under this Agreement and that are available for transfer to CFAC.

(2) **Payment for Flathead's Administrative Costs**

Notwithstanding anything in this Agreement to the contrary, to the extent that Flathead incurs any expenses, fees, charges or costs of any kind not otherwise addressed in this Agreement, including but not limited to, attorneys fees, arising from Flathead's development of and performance under this Agreement, Flathead may bill CFAC and CFAC shall pay Flathead for any such costs in addition to the cost of power delivered from Flathead to CFAC. Amounts that CFAC pays Flathead pursuant to this paragraph 9(c)(2) shall not be treated as amounts Flathead has received from CFAC for purposes of determining the limit on Flathead's payment obligation to BPA under paragraph 9(c)(1) above.

10. NOTICES

Any notice required under this Agreement shall be in writing and shall be delivered: (a) in person; (b) by a nationally recognized delivery service; or (c) by United States Certified Mail. Notices are effective when received. Any Party may change its address for notices by giving notice of such change consistent with this section 10.

If to CFAC:

Columbia Falls Aluminum Company,
LLC
40 Lake Bellevue, Suite 100
Bellevue, WA 98005
Attn: James D. Stromberg
Power Manager
Phone: 425-450-4010
FAX: 425-450-5569
E-Mail: Stromberg_cfac@att.net

If to PBL:

Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621
Attn: Scott K. Wilson – PT-5
Account Executive
Phone: 503-230-7638
FAX: 503-230-3681
E-Mail: skwilson@bpa.gov

If to Flathead:

Flathead Electric Cooperative, Inc.
2510 U.S. Highway 2 East
Kalispell, MT 59901
Attn: Ken A. Sugden
General Manager
Phone: 406-751-4401
FAX: 406-756-6617
E-Mail: fec@flatheadelectric.com

11. UNCONTROLLABLE FORCES

- (a) **Uncontrollable Forces Provisions During Surplus Firm Power Sale**
If, during the FY 10-11 Rate Period, this Agreement operates as a physical Surplus Firm Power Sale, then the following provisions shall apply; *provided however*, that UBA determinations pursuant to section 7 and acquisitions of UBA pursuant to section 8 shall not be subject to Uncontrollable Forces under this section 11(a).

PBL shall not be in breach of its obligation to provide Surplus Firm Power to Flathead and Flathead shall not be in breach of its obligation to purchase Surplus Firm Power to the extent the failure to fulfill that obligation is due to an Uncontrollable Force. Similarly, Flathead shall not be in breach of its obligation to provide Surplus Firm Power to CFAC and CFAC shall not be in breach of its obligation to purchase Surplus Firm Power to the extent the failure to fulfill that obligation is due to an Uncontrollable Force.

“Uncontrollable Force” means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its obligations under this

Agreement and which, by exercise of that Party's reasonable diligence and foresight, such Party could not be expected to avoid and was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (1) any unplanned curtailment or interruption for any reason of firm transmission used to deliver Surplus Firm Power to CFAC's facilities, including but not limited to unplanned maintenance outages;
- (2) any unplanned curtailment or interruption, failure or imminent failure of CFAC's production or transmission facilities, including but not limited to unplanned maintenance outages;
- (3) any planned transmission or distribution outage that affects either CFAC or PBL which was provided by a third-party transmission or distribution owner, or by a transmission provider, including TBL, that is functionally separated from the generation provider in conformance with Federal Energy Regulatory Commission (FERC) Orders 888 and 889 or its successors;
- (4) strikes or work stoppage, including the threat of imminent strikes or work stoppage; *provided, however*, that nothing contained in this provision shall be construed to require any Party to settle any strike or labor dispute in which it may be involved.
- (5) floods, earthquakes, or other natural disasters; and
- (6) orders or injunctions issued by any court having competent subject matter jurisdiction, or any order of an administrative officer which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of any Party shall not constitute an Uncontrollable Force. The Party claiming the Uncontrollable Force shall notify the other Parties as soon as practicable of that Party's inability to meet its obligations under this Agreement due to an Uncontrollable Force. The Party claiming the Uncontrollable Force shall notify any control area involved in the scheduling of a transaction which may be curtailed due to an Uncontrollable Force.

All Parties shall be excused from their respective obligations, other than from payment obligations incurred prior to the Uncontrollable Force, without liability to the other, for the duration of the Uncontrollable Force and the period reasonably required for the Party claiming the Uncontrollable Force, using due diligence, to restore its operations to conditions existing prior to the occurrence of the Uncontrollable Force.

(b) **Uncontrollable Forces Provisions During Periods When Monetary Benefit is Provided**

During periods when the Surplus Firm Power sale is monetized, CFAC understands and agrees that there are no events that will be considered Uncontrollable Forces under this Agreement.

12. GOVERNING LAW AND DISPUTE RESOLUTION

- (a) This Agreement shall be interpreted consistent with and governed by Federal law. Disputes arising out of this Agreement that are not otherwise subject to the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit are subject to the Contract Disputes Act, 41 USC 601, et seq.
- (b) If a dispute arises under any provision of this Agreement, the Parties shall, within 14 business days following the initiation of a dispute, make a good faith effort to negotiate a resolution of such dispute before initiating the mediation provisions in section 12(c) below.
- (c) If the Parties are unable to agree following negotiation pursuant to section 12(b) above, then either Party may request, in writing, to mediate the dispute. The Parties shall seek to reach agreement upon a mediator. In the event that they are unable to agree, then a mediator shall be selected by U.S. Arbitration and Mediation of Oregon. The Parties shall have 30 days from the date a Party initiated mediation to reach agreement before initiating litigation. BPA and CFAC shall each pay one half of the expenses of any mediation between or among the Parties.
- (d) During a contract dispute or contract issue between or among Parties arising out of this Agreement, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impractical. The Parties reserve the right to seek judicial resolution of any dispute arising out of this Agreement.

13. STATUTORY PROVISIONS

- (a) **Priority of Pacific Northwest Customers**
The provisions of sections 9(c) and (d) of the Northwest Power Act and the provisions of P.L. 88-552 as amended by the Northwest Power Act are incorporated into this Agreement by reference. Flathead, together with other customers in the Region, shall have priority to BPA power, consistent with such provisions.
- (b) **Limitation on Resale**
Flathead shall not resell Surplus Firm Power, as defined in this Agreement, to any entity except CFAC.
- (c) **BPA Appropriations Refinancing Act**
The BPA Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (The BPA Refinancing Act), P.L. No. 104-134, 110

Stat. 1321, 1350, is incorporated by reference and is a material term of this Agreement.

14. STANDARD PROVISIONS

(a) **Amendments**

No oral or written amendment, rescission, waiver, modification, or other change of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

(b) **Assignment**

CFAC may assign this Agreement upon 90 days prior written notice, but only to a successor-in-interest that has acquired ownership, through purchase or merger, of CFAC's facilities that are served, in whole or in part, with power or Monetary Benefits provided under this Agreement, and then only if such assignee expressly agrees in writing to be bound by the terms of this Agreement. In the event of such assignment, BPA will apply its then current credit policies to determine whether it will require security or assurances from the assignee to secure performance of assignee's obligations under this Agreement. Monetary Benefits under this Agreement are not transferable for use at other aluminum smelters. Such Monetary Benefits shall only be available for eligible production facilities referred to in Exhibit B of this Agreement, subject to any limitations specifically established in Exhibit B.

(c) **Information Exchange and Confidentiality**

The Parties shall provide each other with any information that is reasonably required, and requested by any Party in writing, to operate under and administer this Agreement, including load forecasts for planning purposes, information needed to resolve billing disputes, scheduling, and metering information reasonably necessary to prepare power bills that is not otherwise available to the requesting Party. Such information shall be provided in a timely manner. Information may be exchanged by any means agreed to by the Parties. If such information is subject to a privilege of confidentiality, a confidentiality agreement or statutory restriction under state or Federal law on its disclosure by a Party to this Agreement, then that Party shall endeavor to obtain whatever consents, releases, or agreements are necessary from the person holding the privilege to provide such information while asserting the confidentiality over the information. Information provided to BPA which is subject to a privilege of confidentiality or nondisclosure shall be clearly marked as such and BPA shall not disclose such information without obtaining the consent of the person or Party asserting the privilege, consistent with BPA's obligation under the Freedom of Information Act. BPA may use such information as necessary to provide service or timely bill for service under this Agreement. BPA shall only disclose information received under this provision to BPA employees who need the information for purposes of this Agreement.

- (d) **Entire Agreement**
This Agreement, including all provisions, exhibits incorporated as part of this Agreement, and documents incorporated by reference, constitutes the entire agreement among the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.
- (e) **Exhibits**
The exhibits listed in the table of contents are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual agreement among the Parties unless otherwise specified in the exhibits. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.
- (f) **No Third-Party Beneficiaries**
This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.
- (g) **Waivers**
Any waiver at any time by any Party to this Agreement of its rights with respect to any default or any other matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.
- (h) **BPA Policies**
Any reference in this Agreement to BPA policies, including without limitation BPA's New Large Single Load Policy and the 5(b)/9(c) Policy, and any revisions thereto, does not constitute agreement by CFAC or Flathead to such policy, nor shall it be construed to be a waiver of the right of CFAC or Flathead to seek judicial review of any such policy.
- (i) **Severability**
If any term of this Agreement is found to be invalid by a court of competent jurisdiction then such term shall remain in force to the maximum extent permitted by law. All other terms shall remain in force unless that term is determined not to be severable from all other provisions of this Agreement by such court.
- (j) **Hold Harmless**
BPA and CFAC assume all liability for injury or damage to persons or property arising from the act or negligence of its own employees, agents, members of governing bodies, or contractors. BPA and CFAC shall indemnify and hold the other Parties harmless from any liability arising from such act or negligence.

15. LIMITATION OF LIABILITY OF FLATHEAD AND HOLD HARMLESS

BPA and CFAC agree to and hereby do waive any suit, claim, demand or cause of action of any kind in law and equity which they may have or may assert against Flathead arising out of this Agreement, except to enforce Flathead's obligations pursuant to this Agreement (i) to effect transfer of Escrow Account funds pursuant to section 9(b) of this Agreement, and (ii) to pay such amounts received from CFAC to BPA in the amount of payments received by Flathead from CFAC pursuant to section 9(a) of this Agreement as may be amended pursuant to section 9(a) of this Agreement.

In no event or any circumstance shall Flathead be liable for special punitive, indirect, incidental or consequential losses or damages of any kind whatsoever (including but not limited to lost profits), even if Flathead has been advised of the likelihood of such loss or damage and regardless of the form of action.

Furthermore, BPA and CFAC agree to share equally any payment necessary to indemnify, hold harmless and reimburse Flathead for damages and/or any reasonable costs, other than Flathead's implementation and administrative costs billable to CFAC under section 9 of this Agreement, including, but not limited to, reasonable attorney fees, incurred by Flathead as a direct or indirect result of its participation in this Agreement.

BPA's and CFAC's agreement to indemnify and hold harmless Flathead pursuant to this section 15 shall survive the termination of this Agreement until extinguished by any applicable statute of limitations.

16. TERMINATION

- (a) BPA may terminate this Agreement on 30 days written notice to the other Parties in the event the Ninth Circuit Court of Appeals or other court of competent jurisdiction issues a final, unappealable order preventing or prohibiting BPA from recovering under the Slice Agreements or its Slice rate schedules that portion of BPA's cost of service associated with this Agreement allocated by BPA to such Slice Agreements or Slice rate schedules. BPA shall diligently litigate any action challenging its ability to assess such costs. Neither CFAC nor Flathead shall be entitled to any damages for such termination and hereby expressly waives any right to seek such damages.
- (b) If, pursuant to section 5(b) above, BPA provides written notice to convert the payment of Monetary Benefit to a physical Surplus Firm Power Sale during the CY 2010-2011 period or the CY 2011 period, then CFAC may terminate this Agreement by providing written notice to Flathead and BPA no later than November 1, 2008. The effective date of any such termination shall be 2400 hours on the September 30 immediately preceding the effective date of such conversion. In this event, the Demand Entitlement becomes an UBA as of the effective date specified in this section 16(b), and shall be offered to Other DSIs pursuant to section 7(b)(4) above.
- (c) In the event the Ninth Circuit Court of Appeals or other court of competent jurisdiction issues a final order that declares or renders this Agreement void

or otherwise unenforceable, no Party shall be entitled to any damages or restitution of any nature, in law or equity, from any other Party, and each Party hereby expressly waives any right to seek such damages.

- (d) Flathead may terminate its obligations under this Agreement upon 30 days written notice to the other Parties if there is an Event of Default by CFAC. An Event of Default shall mean the failure of CFAC to pay when due the reimbursements owed by CFAC to Flathead under sections 9(c)(2), 12(c), 14(j) and/or 15 if payment is not remedied within 30 Business Days after written notice. In the event of such termination by Flathead, BPA and CFAC will establish a mutually agreeable alternative means to effectuate the payments and the acquisition of BPA power by CFAC provided for in this Agreement.

17. SIGNATURES

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

COLUMBIA FALLS ALUMINUM
COMPANY, LLC

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By /S/ STEPHEN J. KNIGHT

By /S/ SCOTT K. WILSON
Account Executive

Name Stephen J. Knight
(Print/Type)

Name Scott K. Wilson
(Print/Type)

Title Vice President

Date June 9, 2006

Date June 12, 2006

FLATHEAD ELECTRIC COOPERATIVE,
INC.

By /S/ KENNETH A. SUGDEN

Name Kenneth A. Sugden
(Print/Type)

Title General Manager

Date June 14, 2006

Exhibit A
SURPLUS FIRM POWER RATE

If BPA chooses to exercise its option, pursuant to section 5(b) of the body of this Agreement, to sell physically delivered Surplus Firm Power under this Agreement during the FY 10-11 Rate Period, then BPA shall unilaterally revise this Exhibit A, effective on October 1, 2009, to include the specific rates and charges that will apply to the physically delivered Surplus Firm Power sale. The cost to BPA to provide such physically delivered Surplus Firm Power will not exceed the cost caps as described in the Administrator's ROD.

Exhibit B
ADDITIONAL PRODUCTS, SERVICES, AND SPECIAL PROVISIONS

1. DESCRIPTION OF CFAC's PRODUCTION FACILITIES, STATION SERVICE REQUIREMENTS, AND METERING EQUIPMENT

Production Facilities: are CFAC's aluminum smelting and other facilities served from the Government's Conkelley Substation, where the 13.8 or 230 kilovolt (kV) facilities of BPA and CFAC are connected.

In addition to the production facilities identified above, CFAC's Total Plant Load may include, at CFAC's sole option, up to six (6) MW of service to the Evergreen Aluminum's (Evergreen) facility served from the Government's Alcoa Substation, where the 13.8 kV facilities of BPA and Evergreen are connected. When establishing CFAC's Total Plant Load the Evergreen portion shall be limited to the lesser of actual energy usage or 6 MW per hour.

Metering Equipment: used to measure energy usage of the CFAC facility and the Evergreen facility located in the Government's Conkelley Substation and Alcoa Substation in the 13.8 kV circuits over which such electric power and energy flows.

CFAC agrees to allow PBL access to all hourly load measurements of its Production Facilities necessary to administer this Agreement.

2. REVISIONS

This Exhibit B shall be revised upon mutual agreement of the Parties to reflect any new products, services, and special provisions that may be added during the term of this Agreement.

Exhibit C
BPA POWER BUSINESS LINE SCHEDULING PROVISIONS

1. PURPOSE OF THIS EXHIBIT

Unless otherwise specified in this Exhibit C, 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 C applies.
- (c) **BPAP:** Bonneville Power Administration Power Business Line.
- (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 C: (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 C 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.
- (3) 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).

**Exhibit D
EXAMPLES**

I. EXAMPLES OF THE CALCULATION OF MONETARY BENEFIT PAYMENTS

Following are examples of the calculation of Monetary Benefit payments pursuant to section 6 of the body of this Agreement.

Example No. 1: Calculation of MB Rate, Maximum MB Monthly Payment, and MB Monthly Payment.

Demand Entitlement 250 aMW
Hours in the Month Equals 744

Difference Between Forecast Market Price and Equivalent PF	MB Rate	Maximum MB Payment	Minimum Load (aMW) to Receive Maximum MB Monthly Payment
\$26.00	\$24.00	\$2,232,000	125.0000
\$25.00	\$24.00	\$2,232,000	125.0000
\$24.00	\$24.00	\$2,232,000	125.0000
\$23.00	\$24.00	\$2,232,000	130.4348
\$22.00	\$24.00	\$2,232,000	136.3636
\$21.00	\$24.00	\$2,232,000	142.8571
\$20.00	\$24.00	\$2,232,000	150.0000
\$19.00	\$19.00	\$2,232,000	157.8947
\$18.00	\$18.00	\$2,232,000	166.6667
\$17.00	\$17.00	\$2,232,000	176.4706
\$16.00	\$16.00	\$2,232,000	187.5000
\$15.00	\$15.00	\$2,232,000	200.0000
\$14.00	\$14.00	\$2,232,000	214.2857
\$13.00	\$13.00	\$2,232,000	230.7692
\$12.00	\$12.00	\$2,232,000	250.0000
\$11.00	\$11.00	\$2,046,000	250.0000
\$10.00	\$10.00	\$1,860,000	250.0000
\$9.00	\$9.00	\$1,674,000	250.0000
\$8.00	\$8.00	\$1,488,000	250.0000
\$7.00	\$7.00	\$1,302,000	250.0000
\$6.00	\$6.00	\$1,116,000	250.0000
\$5.00	\$5.00	\$930,000	250.0000
\$4.00	\$4.00	\$744,000	250.0000
\$3.00	\$3.00	\$558,000	250.0000
\$2.00	\$2.00	\$372,000	250.0000
\$1.00	\$1.00	\$186,000	250.0000
\$0.00	\$0.00	\$0	0.0000

Example No. 2: Difference between Forecast Market Price and Equivalent PF exceeds \$24/MWh and the DSI's operation varies from less than its Minimum Allocation to its Maximum Allocation.

Forecast of Maximum MB Monthly Payment for CY

Equivalent PF subject to same adjustments established for the PF rate.

CY MB Monthly Payments, Demand Entitlement Equals 250 MW

In this example the DSI is entitled to the Maximum MB Monthly Payment each month that the actual monthly load equals or exceeds the Minimum Allocation. January through May monthly loads were less than the Minimum Allocation Requirement, and the MB Monthly Payments equal zero.

Example No. 3: Difference between Forecast Market Price and Equivalent PF equals \$18/MWh and the DSI's operation varies from less than its Minimum Allocation to its Maximum Allocation

Forecast of Maximum MB Monthly Payment for CY

Equivalent PF subject to same adjustments established for the PF rate.

CY MB Monthly Payments, Demand Entitlement Equals 250 MW

In this example the DSI is entitled to the Maximum MB Monthly Payment only September. January thru May MB Monthly Payments equal zero because the DSI failed to meet the Minimum Allocation requirement. For the remaining months an MB Monthly Payment equal to the actual monthly load multiplied by the MB Rate (\$18.00/MWh) was paid.

Example No. 4: Difference between Forecast Market Price and Equivalent PF equals \$8/MWh and the DSI's operation varies from less than its Minimum Allocation to its Maximum Allocation.

Forecast of Maximum MB Monthly Payment for CY

Equivalent PF subject to same adjustments established for the PF rate.

CY MB Monthly Payments, Demand Entitlement Equals 250 MW

In this example, January through May the MB Monthly Payment equals zero because the DSI failed to meet the Minimum Allocation requirement. In the remaining months the MB Monthly Payment equals actual monthly load multiplied by the MB Rate (\$8.00/MWh).

Example No. 5: Equivalent PF is greater than the Forecast Market Price and the DSI's operation varies from less than its Minimum Allocation to its Maximum Allocation

Forecast of Maximum MB Monthly Payment for CY

Equivalent PF subject to same adjustments established for the PF rate.

CY MB Monthly Payments, Demand Entitlement Equals 250 MW

In this example the Forecast Market Price is less than the Equivalent PF so there are no MB Monthly Payments made to the DSI.

II. **EXAMPLES OF THE DETERMINATION OF UNUSED BENEFIT AMOUNTS**

Following are examples of the determination of Unused Benefit Amounts pursuant to section 7 of the body of this Agreement.

Example No. 1: DSI's operation without any UBA made available at the end of the 12 month period. Maximum Allocation equals 250 aMW and the MB Rate equals \$18/MWh.

No UBA is made available at the end of this 12month period because the DSI received a Maximum MB Monthly Payment in April but one more month without accessing the Maximum MB Monthly Payment will result in UBA; up to 6 percent of this DSI Maximum Allocation may be made available to the Other DSIs.

Example No. 2: DSI's operation with UBA resulting at the end of the 12-month period. Maximum Allocation/Demand Entitlement equals 250 aMW and the MB Rate equals \$18/MWh.

In this example, the Maximum MB Monthly Payment was not accessed any month over the past 12 months. The DSI's Maximum Allocation times the highest percentage accessed (93.75%) over the past 12 months rounded to the nearest aMW establishes its new Maximum Allocation ($250 \text{ aMW} * 0.9375 = 234.375$ rounded to 234 aMW). UBA that will be made available to the Other DSIs is 250 aMW minus 234 aMW, 16 aMW.

Example No. 3: DSI's operation with UBA resulting at the end of the 12-month period. Maximum Allocation/Demand Entitlement equals 250 aMW and the MB Rate equals \$12/MWh.

In this example, the Maximum MB Monthly Payment was not accessed any month over the past 12 months. The DSI's Maximum Allocation times the highest percentage accessed (62.50%) over the past 12 months rounded to the nearest aMW establishes its new Maximum Allocation ($250 \text{ aMW} * 0.6250 = 156.25$ rounded to 156 aMW). UBA that will now be made available to the Other DSIs is 250 aMW minus 156 aMW, 94 aMW.

III. **EXAMPLES OF THE ACQUISITION OF UNUSED BENEFIT AMOUNTS**

Following are examples of the acquisition of Unused Benefit Amounts pursuant to section 8 of the body of this Agreement.

Example No. 1: Maximum Allocation increases of two DSI who both increased operation to acquire nearly all available UBA (94 aMW).

In this example DSI-A was allocated 50 aMW and DSI-B was allocated 39 aMW. The new Demand Entitlement for DSI-A is 190 aMW and 139 aMW for DSI-B. The remaining 5 aMW of UBA was never acquired and after September was not available to any DSIs.

Example No. 2: Same as Example #1 except DSI-A has a contractually limited Maximum Allocation of 171 aMW.

In this example DSI-A's Demand Entitlement was limited to 171 aMW. DSI-A was allocated 31 aMW and DSI-B was allocated its 39 aMW of UBA. Available UBA was 24 aMW through September but because none was acquired during this period it was no longer available to any DSIs afterward.

Example No. 3: Maximum Allocation of two DSIs increased over 2-month period with full amount of UBA (94 aMW) allocated.

In this example DSI-B increased its load in April sufficient to acquire 45 aMW of the available UBA, resulting in its Maximum Allocation increasing from 100 aMW to 145 aMW beginning with May. Both DSIs increased load sufficiently for the remaining UBA to be allocated during May, increasing DSI-A's Maximum Allocation to 164 aMW and DSI-B's Maximum Allocation to 170 aMW.

Exhibit E
MAXIMUM ALLOCATION, MINIMUM ALLOCATION, AND DEMAND
ENTITLEMENT

1. MAXIMUM AND MINIMUM ALLOCATIONS

During periods when Monetary Benefit payments are provided pursuant to section 6 of the body of this Agreement, the Maximum Allocation, Minimum Allocation, and Monetary Benefit Limit amounts are as follows:

Maximum Allocation:	140 aMW
Minimum Allocation:	35 aMW
Monetary Benefit Limit:	\$14 ,716,800/CY (Leap Year \$40,320 greater.)

2. DEMAND ENTITLEMENT

During periods when this Agreement operates as a physical Surplus Firm Power sale pursuant to section 4 of the body of this Agreement, the Demand Entitlement shall be as follows:

Demand Entitlement:	140 MW
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3. REVISIONS

BPA shall unilaterally revise this Exhibit E to reflect changes to Maximum Allocation, Minimum Allocation, Monetary Benefit Limit, and/or Demand Entitlement.

Exhibit F
DETERMINATION OF FORECAST MARKET PRICE AND EQUIVALENT PF

1. DETERMINATION OF FORECAST MARKET PRICE

Prior to the beginning of each Contract Year, the following provisions shall be used to determine the Forecast Market Price.

(a) Definitions

- (1) **“2007-2011 Agreements”** means the agreements between BPA and each PNW IOU that provide for among other things, the determination of the Forward Flat-Block Price Forecast for each year, 2007 through 2011.
- (2) **“FBPF Exhibit”** means the exhibit titled “Determination of Forward Flat-Block Price Forecast For Contract Years 2007 through 2011, which is attached to each of the 2007-2011 Agreements.
- (3) **“Forward Flat-Block Price Forecast” or “FBPF”** means the Forward Flat-Block Price Forecast developed from time to time under the 2007-2011 Agreements.
- (4) **“Forward Price Data Agreement”** means BPA Contract No. 04PB-11534 among BPA and the PNW IOUs.
- (5) **“PNW Investor-Owned Utility” or “PNW IOU”** means each of the following investor-owned utilities (and its investor-owned utility successors and assigns) that serves residential and small farm customers in the Pacific Northwest: Puget Sound Energy, Inc., PacifiCorp, Portland General Electric Company, Avista Corporation, Idaho Power Company, and NorthWestern Energy Division of NorthWestern Corporation.

(b) Determination of Forecast Market Price

- (1) BPA has contracted with a qualified third party (QTP) pursuant to the FBPF Exhibit to determine the Forward Flat-Block Price Forecast for each Contract Year, 2007 through 2011.
- (2) During four consecutive quarters prior to the beginning of each Contract Year, 2007 through 2011, the QTP surveys certain eligible data providers (EDPs) that have signed contracts in the form of Exhibit A to the Forward Price Data Agreement.
- (3) The first quarterly survey for CY 2007 is conducted during Q1 of calendar year 2005 (January 2005-March 2005). The last quarterly survey for CY 2007 is conducted during Q4 of calendar year 2005 (October 2005-December 2005). The same procedure is followed for CY 2008 through 2011 but the quarters surveyed change to calendar

years 2006 through 2009, respectively. Each quarterly survey results in an FBPF for the upcoming CY. The average of the four quarterly FBPFs is the FBPF that is used to calculate benefits under the 2007-2011 Agreements.

- (4) For the purpose of determining Monetary Benefit pursuant to section 6 of the body of this Agreement, the Forecast Market Price shall be equal to the FBPF established for Q4 of each calendar year for the upcoming CY. For example, the FBPF for Q4 of calendar year 2005 shall be the Forecast Market Price for CY 2007.

The Forecast Market Price for CY 2007 is \$67.75/MWh.

2. DETERMINATION OF EQUIVALENT PF

Prior to the beginning of each CY, BPA will calculate the initial Equivalent PF for each such CY and, if applicable, for the Option Period.

- (a) For Monetary Benefits not included in Option Benefits the Equivalent PF shall be equal to the actual cost, in \$/MWh, to purchase 1 MW during every hour of the CY at the PF Rate (including but not limited to the effect of any adjustments, surcharges, dividends or true-ups) divided by the number of hours in the CY.
- (b) For Monetary Benefits included in Option Benefits the Equivalent PF for the Option Period shall be the weighted average of the Equivalent PF for each CY included in whole or part within the Option Period calculated as follows:
 - (i) For each CY within the Option Period, a CY Total Plant Load will be calculated by summing the monthly Total Plant Loads for each month of the CY that falls within the Option Period. For this calculation monthly Total Plant Load shall be limited to the Maximum Allocation, less UBA amounts not included in Option Benefits, and will be deemed equal to zero if the monthly Total Plant load is less than the Minimum Allocation.
 - (ii) Each CY Total Plant Load for each CY from step i will then be multiplied by the Equivalent PF for the corresponding CY.
 - (iii) The sum of the numbers calculated in step ii will then be divided by the sum of the CY Total Plant Loads from step i for the entire Option Period to derive the Equivalent PF for the Option Period. For purposes of this calculation, if the Option Period extends beyond CY 2009, BPA will deem the Equivalent PF Rate equal to a rate that results in an MB Rate, for periods beyond the CY 2009, equal to \$24/MWh until BPA's initial proposal is published for the FY 10-11 Rate Period. When the initial proposal for FY 10-11 Rate Period is published the Equivalent PF used in this calculation for CY 2010 and CY 2011 will be established according to 2(c) below.
- (c) Each time any adjustment, surcharge, dividend or true-up to the PF Rate is proposed by BPA in writing (which may be before the date such change will actually be applied to the PF Rate), BPA will adjust the Equivalent PF and the MB Rate and MB Monthly Payments for the remaining months of such CY or Option Period. Such adjustment will take into consideration the

Monetary Benefits provided to date and the PF Rate adjustment to provide an end-of-CY or end of Option Period total Monetary Benefit to which CFAC is entitled. If such recalculation indicates that BPA has paid CFAC more in Monetary Benefits than the amount to which CFAC is entitled, then BPA will reduce the MB Monthly Payments to CFAC over the next following three months (if full recovery of the amount is not possible in the 3-month period BPA may invoice CFAC for the remaining amount), by the amount needed to recover the overpayment. If adjustments, surcharges, and true-ups are established after the CY or Option Period ends, then BPA will calculate the final Equivalent PF rate for each such CY or Option Period, and adjustments to Monetary Benefit will be applied in the following CY.

- (d) If, upon termination of this Agreement, a true-up or other adjustment following the end of the final CY results in a payment owed by CFAC to BPA, then BPA shall invoice CFAC for such payment within 90 days following the end of such final CY. Such payment shall be made by CFAC within 20 days following the receipt of such invoice. If, upon termination of this Agreement, a true-up or other adjustment following the end of the final CY results in a payment owed by BPA to CFAC, then BPA shall pay CFAC no later than 90 days following the end of such final CY.

3. REVISIONS

BPA shall have the unilateral right to revise this Exhibit F to reflect the Forecast Market Price and Equivalent PF for each CY after CY 2007 calculated pursuant to this Exhibit F. Any changes to the procedure used to determine Forecast Market Price or Equivalent PF may only be made upon mutual agreement of the Parties.