

**POWER SALES CONTRACT DRAFT IN DEVELOPMENT  
PROVIDED FOR DISCUSSION PURPOSES ONLY**

**This draft contract reflects a general concept for service which the parties have discussed, not express contract language that the parties have agreed to. Final terms and conditions may differ from those expressed in this draft.**

Contract No. 06PB-11694  
**DRAFT** December 22, 2005

**SURPLUS FIRM POWER SALES AGREEMENT**

executed by the

**BONNEVILLE POWER ADMINISTRATION  
and  
PUBLIC UTILITY DISTRICT NO. 1  
OF CLALLAM COUNTY, WASHINGTON**

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This SURPLUS FIRM POWER SALES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY, WASHINGTON (Clallam). Clallam is a public utility district organized under the laws of the State of Washington. BPA and Clallam are sometimes referred to in the singular as “Party” or in the plural as “Parties”.

**RECITALS**

On June 30, 2005, BPA signed a record of decision titled “Bonneville Power Administration’s Service to Direct Service Industrial (DSI) Customers for Fiscal Years 2007-2011” (Administrator’s Record of Decision).

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This Agreement implements the decisions contained in the Administrator's Record of Decision regarding Port Townsend Paper Corporation (Port Townsend).

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 and Clallam 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 8 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) "Contract Year" or "CY" means the period that begins each October 1 and which ends the following September 30. For instance, Contract Year 2007 begins October 1, 2006, and continues through September 30, 2007.
- (b) "FY 07-09 Rate Period" means the wholesale power rate period that begins on October 1, 2006, and continues through September 30, 2009.
- (c) "FY 10-11 Rate Period" means the wholesale power rate period that begins on October 1, 2009, and continues through September 30, 2011.
- (d) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501.
- (e) "Point of Measurement" means the Port Townsend Meter No. 2871 in Port Townsend's New Mill Substation, which is the point where Total Metered Load is measured.
- (f) "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 Clallam.
- (g) "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.

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- (h) “Region” means the definition established for “Region” in the Northwest Power Act.
- (i) “Surplus Firm Power” means electric power that PBL shall make continuously available to Clallam under this Agreement.
- (j) “Total Metered Load” means the total amount of electric energy consumed during a given time period at Port Townsend’s production facilities, as reduced by any onsite co-generation.
- (k) “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).

**3. RELATIONSHIP TO THE POWER SALES CONTRACT**

Except as specifically provided in this Agreement, the terms and conditions relating to performance by the Parties and administration of this Agreement shall be those set out in Contract No. 00PB-12051, Full Service Power Sales Agreement (PSC), executed by the Parties October 17, 2000, as it may be amended or replaced, including without limitation, delivery of power, scheduling, metering, facilities, dispute resolution, continuity of service and contract interpretation. If any provision of this Agreement conflicts with a specific provision in the PSC, as it may be amended or replaced, then for the purposes of this Agreement, this Agreement shall control.

**4. APPLICABLE RATES**

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

Exhibit A, Surplus Firm Power Rate, identifies rates, and billing determinants applicable to purchases under this Agreement. Unless otherwise agreed to by the Parties, if Total Metered Load exceeds 17 annual average megawatts (aMW) during a Contract Year, then the amount in excess of 17 annual aMW shall be billed at the Unauthorized Increase Charge for energy, as determined for the last month of the Contract Year.

**5. POWER SALE PROVISIONS**

All Surplus Firm Power provided by PBL under this Agreement is solely for service to Total Metered Load. Total Metered Load shall only be served with power purchased under this Agreement except for amounts of power that Clallam and BPA may agree can be used to serve a portion of Total Metered Load in order to reduce the amount of UAI charges that Clallam would otherwise be subject to. The Surplus Firm Power provided under this Agreement is intended to support a corresponding wholesale power sale by Clallam to Port Townsend. Power amounts provided under this Agreement are not included in Clallam’s Total Retail Load under the PSC.

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(a) **Billing Demand**

The monthly megawatt (MW) amount that is measured during the hour of BPA's Generation System Peak establishes Clallam's Billing Demand for Total Metered Load under this Agreement.

(b) **Billing Energy**

The monthly amounts of HLH and LLH energy, as measured at the Point of Measurement, establish Clallam's HLH and LLH Billing Energy for service to Total Metered Load under this Agreement.

**6. UNCONTROLLABLE FORCES**

PBL shall not be in breach of its obligation to provide Surplus Firm Power to Clallam and Clallam 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:

- (a) any unplanned curtailment or interruption for any reason of firm transmission used to deliver Surplus Firm Power to Clallam's facilities, including but not limited to unplanned maintenance outages;
- (b) any unplanned curtailment or interruption, failure or imminent failure of Clallam's or Port Townsend's production or transmission facilities, including but not limited to unplanned maintenance outages;
- (c) any planned transmission or distribution outage that affects either Clallam 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;
- (d) 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.
- (e) floods, earthquakes, or other natural disasters; and
- (f) 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.

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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.

**7. 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 7.

If to Clallam:

Public Utility District No. 1 of Clallam  
County, Washington  
P.O. Box 1090  
Port Angeles, WA 98362-0212  
Attn: Shelley Burgett  
Interim Manager  
Phone: 360-452-9771  
FAX: 360-452-9338  
E-Mail: [Shelley@clallampud.net](mailto:Shelley@clallampud.net)

If to PBL:

Bonneville Power Administration  
P.O. Box 3621  
Portland, OR 97208-3621  
Attn: Charles W. Forman, Jr. – PSW-6  
Account Executive  
Phone: 503-230-3432  
FAX: 503-230-3242  
E-Mail: [cformanjr@bpa.gov](mailto:cformanjr@bpa.gov)

**8. TERMINATION**

BPA may terminate this Agreement on 30 days written notice to Clallam 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. Clallam shall not be entitled to any damages for such termination and hereby expressly waives any right to seek such damages.

**9. SIGNATURES**

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

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PUBLIC UTILITY DISTRICT NO. 1 OF  
CLALLAM COUNTY, WASHINGTON

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

By \_\_\_\_\_

By \_\_\_\_\_

Account Executive

Name Shelley Burgett  
*(Print/Type)*

Name Charles W. Forman, Jr.  
*(Print/Type)*

Title Interim Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

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**Exhibit A  
SURPLUS FIRM POWER RATE**

BPA shall unilaterally revise this Exhibit A no later than September 1, 2006, to include the specific demand, energy and load variation rates that will apply to this Surplus Firm Power sale for the FY07-09 Rate Period. Such rates shall not be less than the corresponding Priority Firm Power rates established by BPA for the FY07-09 Rate Period, including any Cost Recovery Adjustment Clause, Dividend Distribution Clause and Operating Reserves Credit, and shall not exceed the Priority Firm Power demand and energy rates established for service to Clallam's Total Retail Load under Contract No. 00PB-12051, excluding any Low Density Discount, plus the typical industrial margin established in BPA's then-current wholesale power rates proceeding.

BPA shall subsequently revise this Exhibit A to reflect rates to be established for the FY10-11 Rate Period, consistent with provisions in this Exhibit A.

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**Exhibit B**

**ADDITIONAL PRODUCTS, SERVICES, AND SPECIAL PROVISIONS**

**1. MONTHLY CO-GENERATION AMOUNTS**

No later than three business days following the end of each month, Clallam shall provide or cause Port Townsend to provide to BPA in writing or by e-mail the total monthly amount of Port Townsend's onsite co-generation.

**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.