

**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

**PORT TOWNSEND PAPER CORPORATION**

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), PORT TOWNSEND PAPER CORPORATION (Port Townsend), and PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY, WASHINGTON (Clallam). Port Townsend is a corporation organized under the laws of the State of Washington. Clallam is a public utility district organized under the laws of the State of Washington. BPA, Port Townsend, 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).

This Agreement implements the decisions contained in the Administrator’s Record of Decision.

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, Port Townsend 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 12 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) “Planned Maintenance Outage” means a reduction in Total Metered Load due to periodic or routine plant maintenance that is typical of Port Townsend’s industry.
- (e) “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501.

- (f) “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.
- (g) "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, and where Surplus Firm Power shall be made available by Clallam to Port Townsend’s transmission provider.
- (h) “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.
- (i) “Region” means the definition established for “Region” in the Northwest Power Act.
- (j) “Surplus Firm Power” means electric power that PBL shall make continuously available to Clallam, and which Clallam shall make continuously available to Port Townsend, under this Agreement.
- (k) “Total Metered Load” means the total amount of electric energy in megawatt-hours (MWh) consumed during each month at Port Townsend’s production facilities, as reduced by any onsite co-generation.
- (l) “Total Plant Load” means the total amount of electric energy in MWh consumed during each month at Port Townsend’s production facilities, including any onsite co-generation and losses from the Point of Measurement to the point of consumption.
- (m) “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. APPLICABLE RATES

- (a) **Applicable Rate for Purchases by Clallam**  
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:

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. 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; *provided, however*, that in this event, Port Townsend shall have the

option to purchase from other sources in order to avoid the Unauthorized Increase Charge.

(b) **Applicable Rate for Purchases by Port Townsend**

Purchases by Port Townsend are subject to (1) the rates described in section 3(a) above, and (2) a contract rate or fee to be developed by Clallam and Port Townsend under a separate agreement for such purchases.

4. **POWER SALE PROVISIONS**

All Surplus Firm Power provided by PBL under this section 4 is solely for service to Total Metered Load. Total Metered Load shall only be served with power purchased under this Agreement, except as provided for in section 3(a) above. 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 Contract No. 00PB-12051, Full Service Power Sales Agreement, between PBL and Clallam.

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

(1) **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.

(2) **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.

(b) **Power Sale by Clallam to Port Townsend**

(1) **Billing Demand**

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

(2) **Billing Energy**

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

(c) **Planned Maintenance Outages**

No less than seven days prior to the beginning of a Planned Maintenance Outage, Port Townsend shall provide BPA and Clallam with notice in writing or by e-mail that specifies the duration of the Planned Maintenance Outage and the amount of Surplus Firm Power that is to be reduced.

(d) **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 Clallam, or by Clallam to Port Townsend. Port Townsend shall be responsible for executing one or more wheeling agreements with a transmission supplier for the delivery of Surplus Firm Power (Wheeling Agreement). PBL, Clallam, and Port Townsend agree to take such actions as may be necessary to facilitate the delivery of Surplus Firm Power to Port Townsend, consistent with the terms, notice, and the time limits contained in the Wheeling Agreement.

(2) **Liability for Delivery**

Port Townsend waives any claims against PBL arising under this Agreement for nondelivery of power to any points beyond the applicable Points of Receipt. PBL shall not 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 Clallam, and Clallam shall make Surplus Firm Power available to Port Townsend under this Agreement at Points of Receipt solely for the purpose of Port Townsend arranging for transmission of such Surplus Firm Power to points of delivery for service to Total Metered Load.

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 Port Townsend'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 Clallam for the account of Port Townsend, but not withstanding section 4(e)(2) above, PBL shall reimburse Port Townsend for any additional costs or production losses incurred by Port Townsend due to its compliance with such request.

(4) **Transmission Losses**

PBL shall provide Port Townsend the transmission losses between the Points of Receipt and Port Townsend'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(e)(3) above, and under the terms and conditions as defined in the transmission provider's tariff.

(e) **Measurement**

- (1) Amounts of Surplus Firm Power taken are deemed equal to the amount of Surplus Firm Power as measured at the Points of Measurement.
- (2) Port Townsend shall provide reasonable notice to PBL prior to changing control areas.

**5. BILLING AND PAYMENT**

(a) **Billing and Payment for Purchases by Clallam from PBL**

Amounts owed BPA for purchases by Clallam under section 4(a) above shall appear as line items on Clallam's monthly wholesale power bill pursuant to Contract No. 00PB-12051 between BPA and Clallam.

(b) **Billing and Payment for Purchases by Port Townsend from Clallam [To be completed by Clallam and Port Townsend.]**

**6. 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 Port Townsend:

Port Townsend Paper Corporation  
100 Paper Mill Road  
P. O. Box 3170  
Port Townsend, WA 98368  
Attn: Mr. Bruce McComas  
Vice President and  
Assistant Mill Manager  
Phone: 360-379-2158  
FAX: 360-385-0355  
E-Mail: [brucem@ptpc.com](mailto:brucem@ptpc.com)

If to PBL:

Bonneville Power Administration  
P.O. Box 3621  
Portland, OR 97208-3621  
905 NE 11<sup>th</sup> Avenue  
Portland, OR 97232  
Attn: Mr. Charles W. Forman – PSW-6  
Account Executive  
Phone: 503-230-3432  
FAX: 503-230-3242  
E-Mail: [cformanjr@bpa.gov](mailto:cformanjr@bpa.gov)

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

## 7. 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. Similarly, Clallam shall not be in breach of its obligation to provide Surplus Firm Power to Port Townsend and Port Townsend 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 Port Townsend's facilities, including but not limited to unplanned maintenance outages;
- (b) any unplanned curtailment or interruption, failure or imminent failure of 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 Port Townsend 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.

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.

## **8. 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 8(c) below.
- (c) If the Parties are unable to agree following negotiation pursuant to section 8(b) above, then any 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. Each disputing Party shall pay its pro rata share 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.



## 9. 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. Clallam, together with other customers in the Region, shall have priority to BPA power, consistent with such provisions.
- (b) **Limitation on Resale**

Clallam shall not resell Surplus Firm Power, as defined in this Agreement, to any entity except Port Townsend.
- (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.

## 10. 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**

This Agreement may not be assigned by a Party without the written consent of the other Parties. Such consent shall not be unreasonably withheld.
- (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 Port Townsend or Clallam to such policy, nor shall it be construed to be a waiver of the right of Port Townsend or Clallam 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**

Each Party assumes 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. Each Party shall indemnify and hold the other Parties harmless from any liability arising from such act or negligence.

**11. CREDITWORTHINESS PROVISIONS FOR PORT TOWNSEND**  
[The Parties' intent is to develop creditworthiness provisions that ensure payment by Port Townsend to Clallam. Such provisions may include financial tools such as prepayment, letter of credit, or other acceptable tools.]

**12. TERMINATION**  
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 Port Townsend nor Clallam shall be entitled to any damages for such termination and hereby expressly waives any right to seek such damages.

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

PORT TOWNSEND PAPER  
CORPORATION

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

By \_\_\_\_\_

By \_\_\_\_\_  
Account Executive

Name \_\_\_\_\_  
(Print/Type)

Name \_\_\_\_\_  
(Print/Type)

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

PUBLIC UTILITY DISTRICT NO. 1 OF  
CLALLAM COUNTY, WASHINGTON

By \_\_\_\_\_

Name \_\_\_\_\_  
(Print/Type)

Title \_\_\_\_\_

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 3 business days following the end of each month, Port Townsend shall provide to BPA a notice in writing or by e-mail that specifies the total monthly amount of Port Townsend 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.