

Ordinance No. 122801

Council Bill No. 11632 S

AN ORDINANCE relating to the City Light Department; authorizing an amendment to the Power Purchase and Sale Contract for the Lucky Peak Power Plant Project, which simplifies the calculation of the Royalty Payment made by City Light.

CF No. _____

Date Introduced:	<u>9.8.08</u>	
Date 1st Referred:	To:	Energy & Technology (ETC)
Date Re - Referred:	To: (committee)	
Date Re - Ref. d:	To: (committee)	
Date of Final Passage:	Full Council Vote:	
<u>9.22.08</u>	<u>9-0</u>	
Date Presented to Mayor:	Date Approved:	
<u>9.23.08</u>	<u>9.29.08</u>	
Date Returned to City Clerk:	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
<u>10.2.08</u>	<u>2</u>	
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Bruce R. Hunsell
Councilmember

Committee Action:

9/17/08 BH, JA, RC - aye

9-22-08 Passed 8-0 (Absent: Rasmussen)

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

LAW DEPARTMENT

Law Dept. Review	OMP Review	City Clerk Review	Electronic Copy Loaded	Indexed
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City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

August 12, 2008

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that authorizes the Superintendent of Seattle City Light to execute an amendment to the current Lucky Peak power purchase agreement to provide royalty payments to the irrigation districts for the balance of the contract. This action will secure a valuable resource for Seattle City Light for the remaining 30 years on the Lucky Peak contract.

In 1984, Seattle City Light (SCL) entered into a 50-year power purchase and sale contract with the Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District and Big Bend Irrigation District for the purchase of power from the Lucky Peak Power Plant Project. The contract authorized SCL to purchase electrical output from the Lucky Peak hydroelectric project for the period October 1988 through September 30, 2038. This 50-year arrangement included provisions for City Light to pay the Districts a royalty payment. The contract provided two methods of calculating the royalty payment. The first method, which expires on September 30, 2008, was to be replaced by a formula that includes an index that no longer exists. Both City Light and the Districts desire to change this formula that has a base rate with an annual escalator. This new formula would apply for the last 30 years of the contract, from October 1, 2008 through September 30, 2038.

Thank you for your consideration of this legislation. Should you have questions, please contact Ray Camacho at (206) 233-7889.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels".

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

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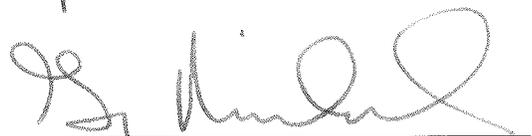
Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 22nd day of September, 2008, and signed by me in open session in authentication of its passage this 22nd day of September, 2008.



President _____ of the City Council

Approved by me this 24th day of September, 2008.



Gregory J. Nickels, Mayor

Filed by me this 2nd day of October, 2008.



City Clerk

(Seal)

Attachment 1: Amendment to the Power Purchase and Sale Contract



Attachment 1

**AMENDMENT TO THE
POWER PURCHASE AND SALE CONTRACT**

Executed by

The City of Seattle

Boise-Kuna Irrigation District

Nampa & Meridian Irrigation District

Wilder Irrigation District

and

Big Bend Irrigation District

for

The Lucky Peak Power Plant Project

Dated April 23, 1984, as amended

Effective Date: xxxx

This Amendment to the Power Purchase and Sale Contract for The Lucky Peak Power Plant Project, dated April 23, 1984 ("**Amendment**") is entered into this _____ of _____, 2008, between The City of Seattle, a municipal corporation of the State of Washington, acting by and through its City Light Department ("**City Light**") and the Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, and the Wilder Irrigation District, all organized and existing under the laws of the State of Idaho, and Big Bend Irrigation District, an irrigation district organized and existing under the laws of the State of Oregon (collectively the "**Districts**").

WHEREAS, in 1984, City Light entered into a fifty (50) year power purchase and sale contract for the purchase of power from the Lucky Peak hydroelectric project (the "**Contract**") ; and

WHEREAS, the Contract provides for City Light to pay the Districts a "**Royalty Payment**" as described in Section 4(c) of the Contract; and

WHEREAS, the formula for calculating the Royalty Payment changes twenty years after the date of Commercial Operation of Lucky Peak hydroelectric project on October 1, 2008; and

AMENDMENT TO THE POWER PURCHASE AND SALE CONTRACT *Executed by* The City of Seattle, Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District *And* Big Bend Irrigation District *for* The Lucky Peak Power Plant Project Dated April 23, 1984



WHEREAS, certain variables in the replacement formula have changed in the past twenty years and now create uncertainty and the potential for conflict; and

WHEREAS, both City Light and the Districts desire to change the replacement formula with a formula that provides greater certainty and less potential for conflict; and

WHEREAS, the Districts are authorized and are willing to amend the Royalty Payment provision of the Contract and City Light desires to amend the same provision.

NOW, THEREFORE, the Districts and City Light, for and in consideration of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, agree to amend the Contract as follows:

1. The previous Section 4 (c) (2) shall be deleted and replaced in its entirety as follows:

(2) beginning on October 1, 2008 through December 31, 2009, the initial Royalty Payment to be made in each Month shall be an amount calculated using the following formula:

$$\text{Initial Royalty Payment} = \text{Net Output} \times \$8.60/\text{MWh}.$$

For the period January 1, 2010 through December 31, 2010 an escalation rate equal to 3% shall be applied using the following formula to determine the initial escalated Royalty Payment:

$$\text{Initial escalated Royalty Payment} = (\text{Net Output} \times (\$8.60/\text{MWh} \times (1 + 3 \text{ percent})))$$

The escalation rate of 3% shall be compounded annually thereafter to determine the "Multiplying Factor" to be applied annually commencing January 1, 2011 and each year thereafter. Each year's Multiplying Factor as shown in the table 1 below shall be effective upon the date shown in the table below and shall be used in the following formula to determine the Royalty Payment:



Royalty Payment = Net Output x \$8.60/MWh x Multiplying Factor

Table 1

Effective Date	Multiplying Factor
January 1, 2011	1.06
January 1, 2012	1.09
January 1, 2013	1.12
January 1, 2014	1.15
January 1, 2015	1.18
January 1, 2016	1.22
January 1, 2017	1.26
January 1, 2018	1.30
January 1, 2019	1.34
January 1, 2020	1.38
January 1, 2021	1.42
January 1, 2022	1.46
January 1, 2023	1.50
January 1, 2024	1.55
January 1, 2025	1.60
January 1, 2026	1.65
January 1, 2027	1.70
January 1, 2028	1.75
January 1, 2029	1.80
January 1, 2030	1.85
January 1, 2031	1.91
January 1, 2032	1.97
January 1, 2033	2.03
January 1, 2034	2.09
January 1, 2035	2.15
January 1, 2036	2.21
January 1, 2037	2.28
January 1, 2038	2.35

AMENDMENT TO THE POWER PURCHASE AND SALE CONTRACT *Executed by* The City of Seattle, Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District *And* Big Bend Irrigation District *for* The Lucky Peak Power Plant Project Dated April 23, 1984



2. All other provisions of the Contract, including any other previously executed amendments, shall remain in full force and effect.

3. This Amendment may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

4. The parties have executed this Amendment on the date following their respective signatures.

THE CITY OF SEATTLE,,
A WASHINGTON MUNICIPAL CORPORATION,
BY AND THROUGH ITS CITY LIGHT DEPARTMENT

BOISE-KUNA IRRIGATION DISTRICT,

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

NAMPA & MERIDIAN IRRIGATION DISTRICT,

WILDER IRRIGATION DISTRICT,

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

BIG BEND IRRIGATION DISTRICT

By: _____
Title: _____
Date: _____

AMENDMENT TO THE POWER PURCHASE AND SALE CONTRACT Executed by The City of Seattle, Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District And Big Bend Irrigation District for The Lucky Peak Power Plant Project Dated April 23, 1984



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
City Light	Robin Cross/ 206-684-3392	Karl Stickel/ 206-684-8085

Legislation Title: AN ORDINANCE relating to the City Light Department; authorizing an amendment to the Power Purchase and Sale Contract for the Lucky Peak Power Plant Project, which simplifies the calculation of the Royalty Payment made by City Light.

• **Summary of the Legislation:**

The legislation approves an amendment to the Power Purchase and Sale Contract for the Lucky Peak Power Plant Project for Seattle City Light ('City Light') to amend the Royalty Payment formula to a fixed rate of 8.60 mills/kWh for the period October 1, 2008 through September 30, 2038 and escalate it each year over the period by applying an annual compounding rate of 3%. This formula replaces the formula proposed in the original contract that refers to an index that no longer exists.

The proposed change to the Royalty Payment formula reduces the uncertainty and potential for disagreement arising out of differences in interpretation of variables contained within the formula currently memorialized in the Power Purchase and Sale Contract for the Lucky Peak Power Plant Project between Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District and Big Bend Irrigation District (collectively the "Districts") and City Light.

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

Commencing on the date of commercial operation, October 1, 1988, City Light began making monthly royalty payments to the Districts as provided for in Power Purchase and Sale Contract for the Lucky Peak Power Plant Project ("Contract"). In order to settle the differences in interpretation of certain variables, City Light and the Districts amended the formula in May 1991. The amended Royalty Payment formula fixed the rate at 8.3 mills/kWh. Per the amendment, this rate is multiplied by the actual monthly generation to determine the monthly Royalty Payment to be paid to the Districts, and is effective through September 30, 2008.

For the period October 1, 2008 through September 30, 2038 the Contract contemplates a formula for determining the Royalty Payments that again is likely to result in differences of interpretation and potential conflict. Therefore, City Light and the Districts have negotiated an alternative formula that fixes the rate at 8.60 mill/kWh commencing October 1, 2008. The rate of 8.60 mills/kWh is escalated each year by applying an annually compounding rate of 3% and is multiplied by the actual monthly generation to determine the monthly Royalty Payment. Implementing this new formula is expected to preserve the financial benefits anticipated in the Contract over the remaining 30 years.



- Please check one of the following:

XX This legislation has financial implications. (Please complete all relevant sections that follow.)

Note: As outlined in the background, the amendment to the contract will have financial implications to Seattle City Light. However, no new appropriation authority is needed as existing budget will cover this change.

Appropriations: This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2008 Appropriation	2009 Anticipated Appropriation
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Notes: None.

Anticipated Revenue/Reimbursement: Resulting From This Legislation: This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
TOTAL				

Notes: Revenue from the contract would be generated if SCL sells the energy received from the project on the open market.

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact: This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2008 Positions	2008 FTE	2009 Positions*	2009 FTE*
TOTAL							



* 2009 positions and FTE are total 2009 position changes resulting from this legislation, not incremental changes. Therefore, under 2009, please be sure to include any continuing positions from 2008.

Notes: None.

- **Do positions sunset in the future?** (If yes, identify sunset date):

Not applicable.

Spending/Cash Flow: This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.

Fund Name & #	Department	Budget Control Level*	2008 Expenditures	2009 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Notes: Not applicable.

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

Different interpretations of the contract terms regarding the Royalty Payment formula after September 30th, 2008, could impact Seattle City Light financially, if the contract isn't amended. That cost is unknown. The City of Seattle through Seattle City Light has invested heavily in the Lucky Peak Power Plant Project and has reached an agreement with the various Irrigation Districts for resolution of the issue.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** (Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)

None at this time.



- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No. However, there will be public notice and comment period providing an opportunity for public comment at the council meeting prior to council's vote to approve or reject the legislation.

- **Other Issues** *(including long-term implications of the legislation):*

None.



STATE OF WASHINGTON – KING COUNTY

--ss.

229958
CITY OF SEATTLE, CLERKS OFFICE

No. 122788-122812

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

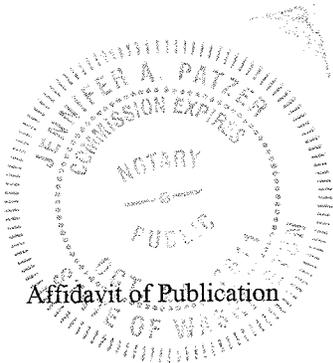
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:TITLEONLY ORDINANCE

was published on

10/07/08

The amount of the fee charged for the foregoing publication is the sum of \$ 196.70, which amount has been paid in full.



Affidavit of Publication

[Signature]

Subscribed and sworn to before me on
10/07/08 *[Signature]*

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council

on September 22, 2008, and published here by title only, will be

mailed, at no cost, on request for two months after this publication.

For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122788

AN ORDINANCE approving and confirming the plat of "Bitterlake Townhomes Addition to the City of Seattle" in a portion of Section 19, Township 26 North, Range 4 East, W.M. in King County, Washington.

ORDINANCE NO. 122797

AN ORDINANCE relating to the municipal water system of The City of Seattle; adopting a system or plan of additions or betterments to or extensions of the existing municipal water system; authorizing the issuance and sale of water system revenue bonds, in one or more series, for the purposes of paying part of the cost of carrying out that system or plan, providing a bond reserve and paying the costs of issuing and selling the bonds; providing for the terms, conditions, covenants and manner of sale of those bonds; describing the lien of the bonds; and creating certain accounts of the City relating to those bonds.

ORDINANCE NO. 122799

AN ORDINANCE relating to reviewing the status of Neighborhood Plans and updating Neighborhood Plans where transit stations are or will be located and removing a budget proviso that restricted spending of a 2008 budget appropriation.

ORDINANCE NO. 122801

AN ORDINANCE relating to the City Light Department; authorizing an amendment to the Power Purchase and Sale Contract for the Lucky Peak Power Plant Project, which simplifies the calculation of the Royalty Payment made by City Light.

ORDINANCE NO. 122803

AN ORDINANCE related to the City of Seattle's 2007 LTGO bonds; amending the 2008 Adopted Budget by changing appropriations to various funds, departments, and budget control levels; and ratifying and confirming certain prior acts.

ORDINANCE NO. 122804

AN ORDINANCE relating to the City Light Department; authorizing the acquisition of real property located in the North Downtown area of Seattle and legally described as Lots 17, 18 and 19, all in Block 13, Pontius Fourth Addition to the City of Seattle, according to the plat thereof recorded in Volume 7 of Plats, Page 8, Records of King County, Washington, for electric system purposes.

ORDINANCE NO. 122805

AN ORDINANCE relating to the City Light Department; authorizing the Superintendent or his designee to enter into a seventeen-year power purchase agreement with the Bonneville Power Administration and related agreements.

ORDINANCE NO. 122806

AN ORDINANCE relating to the City Light Department, accepting various easements for overhead and underground electrical rights in King County, Washington; and placing said easements under the jurisdiction of the City Light Department.

ORDINANCE NO. 122807

AN ORDINANCE relating to the electric system of The City of Seattle; authorizing the issuance and sale of municipal light and power revenue bonds for the purposes of providing funds for certain additions and betterments to and extensions of the existing municipal light and power plant and system of the City, paying the costs of issuing and selling those bonds and providing for the reserve fund requirement; providing for the terms, conditions, covenants and manner of sale of those bonds; and describing the lien of those bonds.

ORDINANCE NO. 122808

AN ORDINANCE relating to the City Light Department; authorizing execution of a 15-year agreement with Redding Electric Utility for the exchange of renewable energy and environmental attributes.

ORDINANCE NO. 122810

AN ORDINANCE relating to economic and community development; authorizing a loan of federal Section 108 loan proceeds to finance acquisition and development of 9800 40th Avenue South and refinance existing debt; appropriating and authorizing the disbursement of Brownfields Economic Development Initiative grant ("BEDI Grant") funds to provide loan loss reserves on the loan and to finance project costs; authorizing loan documents, amendments, replacements and related documents and actions; appropriating and authorizing the collection of loan origination fees associated with the loan; and authorizing amendments to the City's 2005-2008 Consolidated Plan to reflect the transactions contemplated by this ordinance; all by a three-fourths vote of the City Council.

ORDINANCE NO. 122811

AN ORDINANCE relating to economic and community development; authorizing a loan of federal Section 108 loan proceeds to finance a portion of the costs of a community economic development project at 3333 Rainier Avenue South; appropriating and authorizing the disbursement of Brownfields Economic Development Initiative grant ("BEDI Grant") funds to provide loan loss reserves on the loan and to finance project costs; authorizing loan documents, amendments, replacements and related documents and actions; and authorizing amendments to the City's 2005-2008 Consolidated Plan to reflect the transactions contemplated by this ordinance.

ORDINANCE NO. 122812

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Date of publication in the Seattle Daily Journal of Commerce, October 7, 2008.

10/7(229958)