Robert W. Cromwell, Jr.
SCL Boundary Power Assignment Agreement ORD
June 7, 2013
Version #1

**CITY OF SEATTLE**

**ORDINANCE** _____

COUNCIL BILL 117846

AN ORDINANCE relating to the City Light Department; authorizing execution of the Boundary Power Assignment Agreement with Public Utility District No. 1 of Pend Oreille County, Washington, for the term of the Boundary Hydroelectric Project license granted by the Federal Energy Regulatory Commission on March 20, 2013, 42 years.

WHEREAS, Article 49 of the City's original Federal Energy Regulatory Commission ("FERC") license for the Boundary Project (FERC Project No. 2144) provided for the City to assign up to 48 megawatts ("MW") from the Boundary Hydroelectric Project to Public Utility District No. 1 of Pend Oreille County, Washington ("District"); and

WHEREAS, on July 5, 2000, the City and the District entered into a Memorandum of Agreement under which the parties agreed, among other things, that the City would assign 48 MW from the Boundary Project and would seek from FERC a continuation of the power assignment to the District in the City's new FERC license in consideration of the District's support and assistance in the City's relicensing of the Boundary Project; and

WHEREAS, representatives of the City and the District have negotiated a power assignment agreement in the form of the Boundary Power Assignment Agreement; and NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The General Manager and Chief Executive Officer of City Light, or his designee, is hereby authorized to execute for and on behalf of the City the Boundary Power Assignment Agreement, substantially in the form attached hereto as Attachment 1.

Section 2. The General Manager and Chief Executive Officer of City Light is further authorized to execute for and on behalf of the City additional amendments to this agreement and any other necessary and convenient agreements to enable City Light to perform its obligations under this agreement throughout its term.



SEA CITY CLERK

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

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Boundary Power Assignment Agreement



SDCI CITY CLERK

**ATTACHMENT 1:**

# BOUNDARY POWER ASSIGNMENT AGREEMENT

This BOUNDARY POWER ASSIGNMENT AGREEMENT ("**Agreement**") constitutes an agreement by and between the City of Seattle, Washington, a municipal corporation under the laws of the State of Washington, acting by and through its City Light Department ("**City**"), and Public Utility District No. 1 of Pend Oreille County, Washington, a municipal corporation under the laws of the State of Washington ("**District**"). The City and the District are each sometimes referred to individually in this Agreement as "**Party**"; the City and the District are sometimes referred to together in this Agreement as "**Parties**".

RECITALS

WHEREAS, the City owns and operates a hydroelectric project, known as the "**Boundary Project**", located on the Pend Oreille River downstream of the District's Box Canyon Hydroelectric Project in Pend Oreille County, Washington; and

WHEREAS, Article 49 of the City's original Federal Energy Regulatory Commission ("**FERC**") license for the Boundary Project (FERC Project No. 2144) provided for the City to assign up to 48 megawatts ("**MW**") from the Boundary Project to the District; and

WHEREAS, on April 29, 1992, the Parties entered into the *Settlement Agreement for the Article 49 Power Assignment to Pend Oreille Public Utility District No. 1 by The City of Seattle* ("**1992 Settlement**") establishing the terms and conditions for the assignment of firm power by the City to the District pursuant to Article 49 of the original Boundary Project license; and

WHEREAS, on February 16, 1996, the Parties entered into the *Boundary Transmission Tap Line Agreement* ("**Tap Line Agreement**") establishing the terms and conditions for the Parties' upgrade, reinforcement and use of the Boundary Tap Line; and

WHEREAS, on July 5, 2000, the Parties entered into the *Memorandum of Agreement ("**2000 MOA**")* under which the Parties agreed, among other things, that the City agreed to assign 48 MW from the Boundary Project and would seek from FERC a continuation of the Boundary power assignment to the District in the City's new Boundary Project license, including the removal of the requirement to use the assigned energy within the District's retail electric service territory, and the District would support and assist the City's relicensing of the Boundary Project; and

WHEREAS, on October 26, 2005, Bonneville Power Administration (BPA) and the Parties entered into the *Boundary Transformer Agreement* ("**Transformer Agreement**") under which BPA and the Parties provided for installation and operation of a transformer and breaker in the Boundary Substation to allow the cost-effective delivery of power assigned under Article 49 of the original license; and



SEATTLE CITY CLERK

WHEREAS, on October 31, 2005, the Parties entered into the *Tailwater Encroachment Losses Compensation Delivery Agreement* ("**Tailwater Agreement**") under which the Parties agreed, among other things, the tailwater encroachment loss delivery and computation methodology; and

WHEREAS, on October 31, 2005, the Parties entered into the *2005 Memorandum of Agreement between the City of Seattle, City Light Department and Public Utility District No. 1 of Pend Oreille County* ("**2005 MOA**") under which the Parties agreed, among other things, to clarify the District's use of power assigned under Article 49 of the original license from August 1, 2005 until the new Boundary license is issued by FERC and establish certain scheduling provisions for such power; and

WHEREAS, the Parties have agreed, through a letter dated April 30, 2010, to interpret the clause in Section 5 of the 2005 MOA to mean that the District shall schedule a minimum of sixty (60) percent of its maximum entitlement to power assigned under Article 49 of the original license in all heavy load hours;

WHEREAS, on September 9, 2009 the City filed a License Application with the FERC that included language at Exhibit E, Section 2.1.4.7 (Socioeconomics) agreed to by the Parties relating to the continuance of the prior Article 49 provisions; and

WHEREAS, in March 2010 the Parties and other stakeholders entered into and filed with the FERC the Boundary Hydroelectric Project Relicensing Settlement Agreement relating to issuance of a new FERC license for the Boundary Project ("**2010 Settlement Agreement**"); and

WHEREAS, the Parties have agreed, through a letter dated February 8, 2011, to extend the terms and conditions of pre-existing agreements between the Parties with respect to matters addressed herein until such time as FERC issues a new operating license to the City for the Boundary Project; and

WHEREAS, on March 20 2013, the FERC issued to the City a new 42-year operating license for the Boundary Project ("**2013 Boundary License**") which did not provide for the continuance of the prior Article 49 provisions; and

WHEREAS, the Parties have negotiated a long-term power assignment replacement agreement in the form of this Boundary Power Assignment Agreement and have each acquired authority to enter into such agreement pursuant to the actions of their respective governing bodies;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

## SECTION 1 -- DEFINITIONS

1.1 "**BPA**" shall mean the Bonneville Power Administration or its successor agency.

1.2 "**Boundary Power Cost**" shall have the meaning assigned to it in Section 6.1 of this Agreement.



SEATTLE CITY CLERK

1.3 "**Boundary Transformer**" shall mean the District's 230/115 kV transformer installed at BPA's Boundary Substation, pursuant to the Transformer Agreement.

1.4 "**Daily Schedule Total**" shall mean the District's daily amount of assigned power for a calendar day expressed in whole megawatt-hours ("**MWh**") that is derived from the Weekly Schedule Total divided by seven (7); except, if the Weekly Schedule Total does not divide evenly into a whole number, the Weekly Schedule Total shall be rounded down to the nearest whole number evenly divisible by seven (7) and the energy amount resulting from dividing such number by seven (7) will be deemed to be the Daily Schedule Total, with the Remainder set aside to add to the Daily Schedule Total for the following Monday. An example computation of the Daily Schedule Total is included hereto as Exhibit A, Example of Weekly Assignment Report.

1.5 "**District's Cost Share**" shall have the meaning assigned to it in Section 6.2 of this Agreement.

1.6 "**Environmental Attributes**" means all certificates, credits, benefits, emissions reductions, environmental air quality credits and emissions reduction credits, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Project or the generation of energy by the Project, and the delivery of such energy to the electricity grid, and include any of the same arising out of any current or future legislation or regulation. Environmental Attributes also include the reporting rights or Renewable Energy Certificates ("RECs") associated with these Environmental Attributes. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project; or (ii) emission reduction credits that are to be encumbered or used by the Project for compliance with local, state, or federal permits.

1.7 "**FERC**" shall mean the Federal Energy Regulatory Commission or any successor thereto.

1.8 "**Heavy Load Hours**" or "**HLH**" shall mean all hours ending 0700 to 2200 Pacific Prevailing Time ("**PPT**"), Monday through Saturday, excluding holidays as designated by NERC. The Parties may update this definition as necessary to conform to standards of the WECC, North American Electrical Standards Board ("**NAESB**") or NERC.

1.9 "**Light Load Hours**" or "**LLH**" shall mean (1) hours ending 0100 through 0600 and 2300 through 2400 PPT, Monday through Saturday, and (2) all hours on Sundays and holidays as designated by NERC. The Parties may update this definition as necessary to conform to standards of the WECC, NAESB or NERC.

1.10 "**NERC**" shall mean the North American Electric Reliability Corporation, or any successor thereto. For purposes of this Agreement the City is the NERC registered Generation Owner and Generation Operator of the Boundary Project.

1.11 "**Point of Delivery**" shall mean the high side (230kV) of the Boundary Transformer or other points of delivery as mutually agreed.



SEATTLE CITY CLERK

1.12 "**Remainder**" shall mean the difference (in whole MWh) between a Weekly Schedule Total that is not divisible by seven (7) and the nearest lower whole number divisible by seven (7), which difference (between 1 and 6 MWh, inclusive) shall be added to the Daily Schedule Total for the following Monday to ensure that the correct Weekly Schedule Total will be prescheduled for the Schedule Week. An example computation of the Remainder is included hereto as Exhibit A.

1.13 "**Schedule Week**" shall mean 0001 hours on preschedule Saturday through 2400 hours on Friday.

1.14 "**System Load**" shall mean the District's total retail service area load measured in kilowatt hours ("**KWh**").

1.15 "**WECC**" shall mean the Western Electricity Coordinating Council, or any successor thereto.

1.16 "**Weekly Assignment**" shall mean the District's total amount of assigned power for a Schedule Week expressed in whole MWh that is derived from the product of 48 MW times the hours in the week (typically, but not always 168 hours) times the Weekly System Load Factor computed for previous complete Schedule Week. An example computation of the Weekly Assignment is included hereto as Exhibit A.

1.17 "**Weekly Schedule Total**" shall mean the Weekly Assignment reduced by a losses adjustment of 0.3 percent (.003) to account for losses between Boundary Project and the Point of Delivery, expressed in whole MWh. An example computation of the Weekly Schedule Total is included hereto as Exhibit A, Weekly Assignment Report.

1.18 "**Weekly System Load**" shall mean the District's average hourly System Load for the previous Schedule Week measured in kilowatt hours ("**KWh**") that is derived from the average of the District's daily System Loads during such Schedule Week.

1.19 "**Weekly System Load Factor**" shall mean the result of the average Weekly System Load divided by the Weekly System Peak. An example computation of Weekly System Load Factor is included hereto as Exhibit A.

1.20 "**Weekly System Peak**" shall mean the District's peak hourly System Load for the previous Schedule Week measured in KW.

## SECTION 2 -- TERM OF AGREEMENT

2.1 This Agreement shall become effective upon execution by the Parties and shall expire upon the termination of the 2013 Boundary License and any subsequent annual licenses issued for the Boundary Project pursuant to the Federal Power Act pending issuance of a subsequent, new license by FERC (i.e. a third license period).

## SECTION 3 -- POWER ASSIGNMENT TO DISTRICT



Seattle City Clerk

3.1 **Voluntary Power Assignment**. The City shall assign energy and capacity to the District of 48,000 kilowatts to the District from the Boundary Project.

The Parties agree that this assignment to the District from the City's Boundary Project is not restricted to use within the District's service area; provided however, the District must comply with Section 9.1 of this Agreement and all other rules and regulations applicable to this assignment.

3.2 Delivery and Payment. The City agrees to deliver and the District agrees to accept and pay for up to 48 MW of capacity and associated energy delivered hourly at the District's Weekly System Load Factor.

3.3 Losses Adjustment. The District's Weekly Assignment shall be reduced by a losses adjustment of 0.3 percent (.003), as referenced in Section 1.17, to account for losses, expressed in whole MWh. This adjustment shall be made to the District's Weekly Assignment pursuant to this Agreement, regardless of the source of power.

3.4 Title and Risk of Loss. Title to, liability for, and risk of loss associated with the power assigned to the District under this Agreement shall transfer from the City to the District at the Point of Delivery. The City warrants that it will deliver to the District energy and capacity free and clear of all liens, security interests, claims and encumbrances of any interest therein or thereto by any person arising prior to the Point of Delivery. 3.5 Environmental Attributes. The City hereby agrees to assign a pro rata share (initially 48/1024 (4.6875%)) of the Environmental Attributes, if any, associated with the Boundary Project. The City and the District shall cooperate and provide that information which may be necessary or appropriate to establish the Environmental Attributes under applicable local, state, or federal law.

3.4 3.6 Source of Power. The Parties anticipate that the Boundary Project will be the primary source of the power delivered under this Agreement. The Parties agree that the City may deliver assigned power to the District from any generating source and, at the City's sole discretion, it may simultaneously provide a portion of the District's power assignment from Boundary Project and the balance from one or more alternative generating source(s).

3.5 3.7 Environmental Costs Associated with Alternative Sources of Power. In the event that a new or revised emission or performance standard or other new or revised operational or financial requirement or limitation directly or indirectly addressing greenhouse gas emissions is imposed by state or federal laws or regulations on sources of power other than hydropower and the City elects to provide power to the District under this Agreement from a source other than hydropower, the City shall reimburse the District for any costs or losses incurred by the District due to such new or revised laws or regulations.

## SECTION 4 -- TRANSMISSION RESPONSIBILITY

4.1 From Boundary Project. The City will deliver power assigned to the District under this Agreement to the Point of Delivery.



SEA CITY CLERK

4.2 From an Alternative Source. Unless the Parties expressly agree otherwise, the City is responsible for transmission of power assigned to the District from any alternative generating source(s) to the Point of Delivery and for any incremental increase in transmission-related costs, including, without limitation, transmission losses, operating reserves and any other related costs imposed by a third party.

4.3 Alternative Delivery Points. The District may request alternative delivery points for its power assignment subject to approval of the City, in its sole discretion. Where an alternative delivery point is agreed to, the District shall be solely responsible for any incremental increase in transmission-related costs, including, without limitation, transmission losses, operating reserves and any other related costs imposed by a third party.

4.4 E-tagging. The District is responsible for submitting any e-tags required by the transmission service provider for the delivery of power under this Agreement.

## SECTION 5 -- SCHEDULING

5.1 Weekly Assignment Report. Each week by 1200 hours on Monday (Tuesday if Monday is a holiday), the District shall submit to the City's Prescheduling representative (listed in Exhibit B, Contacts Information, attached hereto) the computation of the District's Daily Schedule Total and proposed hourly schedules for the next Schedule Week, including the related Weekly System Load Factor, Weekly Assignment, Weekly Schedule Total and Remainder, if any, as well as the actual daily System Loads and System Peaks that were used to determine the Weekly System Load Factor. An example of the Weekly Assignment Report is included hereto as Exhibit A. The Parties shall use this information to preschedule deliveries of power assigned to the District during the following Schedule Week (i.e., Saturday through Friday).

5.2 Computation Audits. The City reserves the right to audit the District's computation of its Daily Schedule Total. The City may request and the District shall provide any data as reasonably requested by the City to verify the District's computations. If the Parties determine that the District's computation is in error, such error shall be corrected through an adjustment of the Weekly Schedule Total in the next available Schedule Week, or as otherwise mutually agreed.

5.3 Prescheduling. The District shall preschedule the delivery of its Daily schedule Total prior to 1000 hours PPT. Preschedule amounts are deemed delivered for the purpose of determining actual deliveries. Schedules will be in whole megawatts and for one hour's duration or as otherwise mutually agreed and will be consistent with industry scheduling practices in the Pacific Northwest region.

5.3.1 Time Change. To accommodate Daylight Savings Time changes, the Parties will adjust scheduling delivery of its Daily Schedule Total as follows:

On the 23-hour day the Daylight Savings Time begins, the Parties shall remove from the schedule the MWh value from hour ending 0300.



SEATTLE CITY CLERK

On the 25-hour day when Daylight Savings Time ends, the Parties shall add the scheduled MWh value from hour ending 0200 to the second hour ending 0200.

5.4 Schedule Limits. The District may preschedule between 29 MW and 48 MW per hour, inclusive, during HLH and 0 MW to 48 MW per hour, inclusive, during LLH, in any shape the District desires; providing the total prescheduled MWh for the calendar day does not exceed the Daily Schedule Total.

5.5 Incorporating the Remainder. The Remainder, if any, shall be added to any hourly schedule(s) on Monday during the Scheduling Week as mutually agreed, providing no hourly schedule exceeds 48 MW. For the Monday during which a Remainder is prescheduled, the sum of the Daily Schedule Total and the Remainder shall be deemed to be the "Daily Schedule Total" for such Monday.

5.6 Data Reporting. The Parties will work together during the term of this Agreement to meet their respective data reporting needs.

5.7 Scheduling Errors. If a Party suspects a scheduling error, such Party shall immediately notify the other Party in writing and the Parties shall cooperate to promptly research and correct such scheduling error as mutually agreed.

5.8 Procedural Updates. The Parties may mutually agree to amend scheduling procedures for capacity and energy supplied under this Agreement as related business practices, protocols or regulations of the electric industry evolve in the Pacific Northwest.

5.9 Financial Settlements. The Parties may mutually agree to financially settle, or "book out", a pre-scheduled power delivery under this Agreement, including but not limited to, the circumstances addressed in Section 4.2 above.

## SECTION 6 -- COST

6.1 Boundary Power Cost. In consideration of the energy and capacity provided under this Agreement, the District shall pay a proportional share of the City's actual annual costs of the Boundary Hydroelectric Project. The charges to the District shall be calculated based on the annual cost of Boundary Project power ("**Boundary Power Cost**"), which shall be determined for each calendar year according to the methodology set forth by the FERC Administrative Law Judge in his Initial Decision dated November 23, 1990, 53 FERC ¶ 63,015, including, but not limited to: the City's costs related to power production expenses, water for power, system control expenses, transmission expenses, administrative and general expenses, applicable taxes, statutory payments pursuant to RCW 35.21.425 as memorialized in the "2010 Agreement between the City of Seattle and Pend Oreille County" or as may be renegotiated for future periods during the term of the FERC license, depreciation expenses, interest on debt, return on equity and return on general plant; including a proportional share of expenses to comply with the terms and conditions of the 2013 Boundary License, as it may be amended from time to time, and the 2010 Settlement Agreement. An example of this methodology, as it was actually computed for 2011, is attached hereto as Exhibit C, Example of Boundary Power Cost



SEA CITY CLERK

Calculation. The Boundary Power Cost shall be updated annually by the City, by August 1, based on actual amounts from the previous year's audited financial statements.

6.2 District's Cost Share. The District's proportional share of the Boundary Power Cost ("**District's Cost Share**") is based on the maximum capacity of its power assignment (i.e., 48 MW) relative to the Boundary plant capacity rating, which is agreed to be 1024 MW as of the date of execution of this Agreement (pursuant to FERC Order amending the license dated April 1, 1994, 67 FERC 62,009), and which Boundary plant capacity shall be adjusted upward for improvements as they may occur and downward for capacity restrictions and reductions. Therefore, in the absence of any capacity changes, the District shall pay 4.6875 percent (.046875) of the Boundary Power Cost.

The Parties acknowledge that the Boundary Project's generating capacity may, from time to time, either increase or decrease due to a range of operational, financial and regulatory conditions. Examples of such reductions that will affect the District's Cost Share include, but are not limited to: installing lower capacity generators, an environmental license condition that reduces maximum plant capacity, or other state or federal regulatory requirements.

For purposes of this Agreement, the plant capacity rating will not be reduced based on changing operational practices designed to achieve better efficiency or financial decisions within the City's control. Examples of such reductions that would not affect the District's Cost Share include but are not limited to: "best gate" settings, which are intended to make the plant operate more efficiently at a lower capacity level, or temporary capacity reductions that might occur due to damaged plant infrastructure that will be replaced or rebuilt by the City.

The Boundary Project's generating capacity is intended to represent the reasonably prudent maximum plant generating capacity achievable on a continuous basis through operation of the installed infrastructure in compliance with all state and federal regulatory requirements. The City shall promptly notify the District whenever there is a change to the Boundary Project's generating capacity.

6.3 Power Cost Audit Rights. Upon reasonable advance notice from the District to the City's Contract Administration representative (listed in Exhibit B), the City shall provide the District access to its financial record books during regular business hours for the sole purpose of auditing the City's computation of the Boundary Power Cost. Each Party shall pay its own internal costs of labor associated with the audit requirements with the Party requesting the audit responsible for paying any outside contracted audit services.

## SECTION 7 -- BILLING AND PAYMENTS

7.1 Billing and Payment. No later than the last day of each month from August through July the City shall send via email, fax or other electronic means to the District's Invoices & Payments representative (listed in Exhibit B) an invoice for one-twelfth ($1/12^{th}$) of the District's share of the total Boundary Power Cost, which amount the District shall pay to the City on or before the close of business on the $15^{th}$ day of the following month. All payments shall be



SEATTLE CITY CLERK

made on or before their due dates by electronic funds transfer ("**EFT**"). Interest at the rate of one (1) percent per month shall accrue on any invoice amount that is not paid when due.

7.2 Annual True-Up. By August 1 of each year, the City shall invoice the District for the difference between the total amount paid by the District for power received during the previous calendar year and the District's share of the actual annual Boundary Power Cost calculated pursuant to Section 6. The difference between the District's total payments and the District's share of the Boundary Power Cost shall be credited or debited to the next month's regular invoice after the true-up calculation is provided to the District. The City will include a copy of the annual Boundary Power Cost calculation to District with the true-up invoice.

Pursuant to Section 6.1, the City will calculate the current year estimated Boundary Power Cost based on actual amounts from the previous year's audited financial statements.

7.3 Invoice Corrections. If either Party identifies an error in an invoice, it shall give the other Party a reasonably detailed notice describing the nature and effect of the error as soon as practicable after discovery of the erroneous invoice.

7.3.1 If correction of the error requires the City to reimburse the District for amounts previously paid by the District, the City shall promptly credit the District for such amounts on the next invoice to the District, including interest on such amount at the rate specified in Section 7.1. Such interest will accrue from the later of the date on which the District paid the erroneous invoice to the City or the date on which the District gives the City notice of the invoice error.

7.3.2 If correction of the error requires the District to pay the City additional amounts, the City shall add the amount owed to a subsequent invoice, plus interest on such amount at the rate specified in Section 7.1. Such interest will accrue from the later of the date on which the District payment was due or the date on which the City gives the District notice of the invoice error.

7.3.3 Only errors that one Party has identified to the other Party within three years of the issuance of the invoice are subject to correction.

7.4 Business Practice Updates. The Parties may mutually agree to update billing and payment procedures as business practices evolve in the electric industry. Any such revisions must be agreed upon in writing.

SECTION 8 -- DEFAULTS AND REMEDIES; LIMITATION ON REMEDIES

8.1 Non-Performance. The Parties intend that the terms of this Agreement will be fully performed by both Parties throughout its term; however, should a Party become unable or unwilling to perform any of its obligations under this Agreement and fail to remedy such nonperformance within ten business days after receiving written notification from the performing Party, the nonperforming Party shall be considered in default and the performing Party shall be entitled to an order for specific performance, to compensation for any loss or increased cost due



SEATTLE CITY CLERK

to non-performance, and for any other remedies available at law or in equity; provided that the performing Party has exhausted the remedies provided in Sections 8.2 and 8.3 below for conditions of non-payment and non-delivery.

8.2 Non-Payment. If the District fails to pay an invoice by its due date, the City shall promptly notify the District's Invoices & Payments representative by telephone and/or electronically. If the delinquent payment is not received by the City within (1) business day of such telephone and/or electronic notice, the City shall provide written notice of non-payment to the District's Contract Administration representative. If the District does not pay the overdue invoice within three (3) business days of receipt of written notice of non-payment, the City may suspend deliveries of the Daily Schedule Total until such time as the District has paid its overdue bill(s). Once the amounts owed are paid, the City shall deliver any amounts of assigned power scheduled by the District to the extent that such amounts are undelivered as a result of delivery suspension under this Section 8.2. If there is no mutual agreement, in the event of non-payment under this section, the City is entitled to all remedies provided under Section 8.1.

8.3 Non-Delivery. If the City fails to deliver assigned power to the District as scheduled and such failure is not excused by reason of an Uncontrollable Force or because such non-delivery represents the City's action pursuant to Section 8.2, the District shall promptly notify the City's Prescheduling representative by telephone and/or electronically. If the City does not resume deliveries within 24 hours, the District shall provide written notice of non-delivery to the City's Contract Administration representative and may immediately thereafter suspend payment of its share of the Boundary Power Cost until such time as the City has resumed delivery of the District's Daily Schedule Total. Any energy amounts that were prescheduled but undelivered shall be prescheduled from the City to the District as soon as practical and as mutually agreed; or alternatively, the value of the undelivered energy amount may be financially settled by mutual agreement between the Parties. If there is no mutual agreement, in the event of non-delivery under this section, the District is entitled to all remedies provided under Section 8.1. If an unexcused failure to deliver pursuant to this section extends for a time period that extends beyond one Schedule Week, for purposes of future prescheduling or financial settlement of undelivered amounts, the Parties shall assume that the District would have prescheduled amounts during the period of non-delivery equivalent to amounts prescheduled for a representative period of normal operations.

8.4 Termination for Default. If an event of default occurs and is continuing at any time, the non-defaulting Party may by notice to the defaulting Party, designate an effective termination date, not earlier than ten (10) business days after the date such notice is delivered to the non-defaulting party. In the event that the non-defaulting Party so designates a termination date, this Agreement will terminate as of such termination date unless (a) such event of default has been cured; or (b) the defaulting party is continuing to try to cure such event of default. The Parties shall mutually support one another in reasonable efforts to cure.

8.5 There is no warranty of merchantability or fitness for a particular purpose of any Environmental Attributes and any and all such implied warranties are disclaimed by the Parties. The Parties confirm that the express remedies and measures of damages provided in this



SEATTLE CITY CLERK

agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein or in a transaction, the obligor's liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Neither Party will be liable, by statute, in tort or contract, under any indemnity provision or otherwise, for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages; provided, however, that in no event will the foregoing limitations of liability be applied to limit the extent of the liability of either Party to the other for or with respect to any indemnity or other third party claims, arising from the assignment, delivery or acceptance of any energy, capacity, reliability, or other power attributes. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. Nothing in the foregoing will be construed to limit any legal, equitable or statutory rights of setoff or to prohibit any action to enforce any remedy provided under this agreement.

8.6 Cap on Liabilities. In no event will the aggregate liability of either Party arising out of or relating to this Agreement, whether under any indemnity provision or otherwise, whether relating to breach of any representation and warranty, covenant, agreement, or obligation in this Agreement and whether based on contract, tort, strict liability, other laws or otherwise, exceed the value of the contract remaining at the time this provisions was invoked. As to Environmental Attributes under Section 1.6, the value for the remaining term of the Agreement, if any, will be capped at $0.10 per megawatt hour without escalation for the remaining term of the Agreement; provided, however, that if either Party believes that there has been a material change in the value of the Environmental Attributes over a period of two calendar years, that Party may notify the other Party and the Parties shall then meet and confer as to what if any modification to the cap should be made. If there is no mutual agreement as to modification, either Party may invoke dispute resolution pursuant to Section 12 of this Agreement. As to energy, capacity, reliability or other power attributes, the value for the remaining term of the agreement, if any, will be capped at a weighted average of the previous year's Dow Jones monthly Mid-Columbia index prices, less the Boundary Power Cost for that year, as determined in accordance with Section 6.1, for the remaining term of the Agreement. In either or both cases, the present value of all liabilities will be determined by applying a discount rate of 5.5% to costs from the date of breach likely to be incurred over the remaining term of the Agreement.

## SECTION 9 -- USE OF BOUNDARY ASSIGNMENT

9.1 Consistency with BPA Policies. With respect to the energy and capacity delivered to the District under this Agreement, the District acknowledges that it is responsible for complying with BPA's "Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers under Sections 5(b)(1) and 9(c) of the Northwest Power Act". The District



SEA CITY CLERK

shall ensure that the energy and capacity delivered to it under this Agreement is not sold, resold, distributed for use or used outside the Pacific Northwest in violation of the Bonneville Project Act (Public Law 75-329), the Pacific Northwest Consumer Power Preference Act (Public Law 88-552), the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501) or in contravention of any applicable state or federal law, order, regulation or policy. If such sales occur in violation of the foregoing, the District shall reimburse the City for any penalties imposed on or cost incurred by the City as a consequence of such violation.

## SECTION 10 -- UNCONTROLLABLE FORCE

10.1 Non-Performance Excused during Uncontrollable Force. No Party shall be considered in breach of this Agreement to the extent that failure to perform its obligations under this Agreement is due to an Uncontrollable Force. The term **"Uncontrollable Force"** or **"UF"** means an event or circumstance which prevents one Party from performing its obligations, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which by the exercise of due diligence the claiming Party is unable to avoid, cause to be avoided, or overcome. So long as the requirements of the preceding sentence are met, a UF may include and is not restricted to: flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removal or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved.

10.2 Notice Requirements. Any Party rendered unable to fulfill any of its obligations by reason of a UF shall give prompt notice of such fact and shall exercise due diligence, as provided above, to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice, but in no event later than two (2) weeks after discovery of the commencement of a UF event, which written notice shall be in the form of a letter describing the particulars of the occurrence giving rise to the UF claim. Failure to provide written notice within two (2) weeks after discovery of the commencement of an UF event constitutes a waiver of a claim of UF.

10.3 Transmission Interruptions. Where the entity providing firm transmission services for deliveries under this Agreement interrupts such transmission service, the interruption in transmission service shall be considered a UF. The Parties will mutually seek alternative delivery to the extent practicable.

10.4 Effect of Uncontrollable Force. The City shall not be obligated to deliver assigned power to the District during an event of UF and shall not be liable for any damages sustained by the District as a result of the City's failure to deliver such power during such time. Deliveries of power assigned to the District, however, shall be made up when the system is



SEATTLE CITY CLERK

restored on a mutually agreeable schedule, or financially settled if the Parties cannot agree. The District shall not be relieved by operation of this Section 10.4 of any obligation to pay for power delivered by the City or to make payments then due or which the District is obligated to make with respect to performance which occurred prior to the UF.

## SECTION 11 -- NOTICES AND CONTACT INFORMATION

11.1 Notices. Each Party shall appoint official representatives for the functional areas of Contract Administration, Prescheduling, Real Time Marketing, Invoices & Payments and Dispute Resolution to coordinate with the other Party in the implementation of this Agreement and to receive official notices under the Agreement. The representatives of each Party are listed with appropriate contact information in Exhibit B. Either Party may change its representative or update his/her contact information by providing written notice to the other Party.

11.2 Delivery of Notices. Except where this Agreement expressly provides that urgent notice may be made by telephone, all notices and statements other than invoices, payments and scheduling requests shall be in writing and shall be sent to the appropriate representative specified in Exhibit B, depending on the subject matter and as stipulated elsewhere is this Agreement. A Party may reasonably request that copies of notices sent to its official representatives be sent simultaneously via e-mail to additional recipients in order to facilitate timely responses. All written notices shall be delivered by mail, hand delivery, overnight delivery, facsimile or e-mail. Notices sent by facsimile shall (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 3:00 p.m. at the place of receipt or on a day that is not a business day, in which case it shall be deemed received on the next business day). Notices by hand delivery or overnight delivery shall be deemed to have been received upon delivery. Notices by mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt. When a notice is sent by e-mail, the official representative of the receiving Party shall promptly confirm receipt by e-mail and the notice shall be deemed to have been delivered at the time and date set out in such confirming e-mail.

## SECTION 12 -- DISPUTE RESOLUTION

12.1 Initiating Dispute Resolution. Any Party may give the other Party's Dispute Resolution representative listed in Exhibit B written notice of any dispute with respect to performance under this Agreement that is not resolved in the normal course of business. Following receipt of notice of dispute, the Parties' Dispute Resolution representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within ten (10) business days after the written request of either representative. If the Parties' Dispute Resolution representatives are unable to resolve such dispute, executives of both Parties at levels above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within fifteen (15) business days after delivery of such notice or as mutually agreed, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.



SEATTLE CITY CLERK

12.2 Mediation. If the above-described executives fail to resolve the dispute within one hundred eighty (180) days after the delivery of notice of dispute, then either Party may require the other to submit to non-binding mediation with the assistance of a neutral, unaffiliated mediator. The mediator shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any Party to the mediation (except mediation of prior disputes). Mediation shall take place in Seattle, Washington. If the Parties are unable to resolve the dispute through the foregoing non-binding procedures, each Party shall have the full right to seek resolution of the dispute through legal action. Any lawsuit relating to a dispute arising out of or relating to this Agreement that is not resolved by the non-binding procedures provided above must be brought in a state court located in Spokane County, Washington. Each Party shall be responsible for its own costs incurred during the foregoing non-binding procedures and for one half the cost of the single mediator jointly chosen by the Parties.

12.3 Jurisdiction and Venue. Any disputes arising out of, in connection with or with respect to this Agreement, the subject matter of this Agreement, the performance or nonperformance of any obligation under this Agreement that cannot be resolved in accordance with this Article 12 shall be adjudicated in Spokane County Superior Court, Spokane County, Washington. Each of the Parties irrevocably consents to the jurisdiction of such Court and the appellate courts of the state of Washington.

12.4 Governing Law. The obligations of each Party under this Agreement shall in all respect, including all matters of construction, validity and performance, be governed by and construed in accordance with the laws of the State of Washington (without reference to any rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.

## SECTION 13 -- MISCELLANEOUS

13.1 No Operating Rights Assigned. This Agreement does not confer any rights or obligations upon the District with respect to operation of, or planning operation for, the Boundary Project.

13.2 Coordination of Data Reporting. The Parties shall cooperate to report consistent and timely data (planning and actual) pertaining to the transaction described in this Agreement to BPA, FERC, NERC, WECC, Northwest Power Pool and other regulatory, reliability or regional planning organizations.

13.3 Amendments. This Agreement may be amended or modified as provided in Sections 5.8 and 7.4. Other amendments to this Agreement may only be made through a written agreement hereafter entered into by the District and the City. This Agreement will not be amended by any agreement between the Parties' scheduling staff (either pre-schedule or real-time). Any scheduling agreement reached during pre-schedule or real-time will only be applicable to the scheduling period then under discussion.



SEA CITY CLERK

13.4 Nonwaiver. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely on any such provision or right in that or any other instance; rather, the same shall remain in full force and effect. Any waiver at any time by either Party of any of its rights under this Agreement in a particular circumstance or instance shall not constitute a waiver thereof in any other circumstance or instance, including but not limited to, mutual agreement during the daily preschedule and real time scheduling periods of operation.

13.5 Entire Agreement; Interpretation. This Agreement and exhibits hereto constitute, on and as of the effective date set forth in Section 2.1, the entire agreement of the Parties with respect to the subject matter hereof and thereof, and all prior agreements related to the provisions of Article 49 of the original license, whether written or oral, are hereby superseded in their entireties, excepting those identified in section 13.6 below. In the event of a conflict, the body of this Agreement shall prevail over its exhibits. Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporate and vice versa, as the context so requires. Each provision of this Agreement is the product of negotiation between the Parties. Any rule of interpreting ambiguities against the interest of the drafting Party shall not be applied in resolving any dispute over the meaning of any provision of this Agreement or the intent to of the Parties with respect to such provision. The foregoing, notwithstanding, in the event a provision in the Agreement is deemed to be ambiguous, the Parties may refer to prior agreements whether written or oral, to resolve such ambiguity.

13.6 Related Agreements. The Parties acknowledge that the following documents, or their successors, constitute related agreements that shall continue to govern the relationship of the City and the District in regard to their particular subject matter.

*Boundary Hydroelectric Project Relicensing Settlement Agreement dated March 2010;*
*2005 Memorandum of Agreement dated October 31, 2005;*
*Tailwater Encroachment Losses Compensation Delivery Agreement dated October 31, 2005;*
*Boundary Transformer Agreement dated October 26, 2005;*
*Boundary Transmission Tap Line Agreement dated February 16, 1996; and*
*Boundary Encroachment Agreement dated December 20, 1965.*

In the event of a direct conflict between any provision of this Agreement and any provision of any of the above-identified related agreements, the most recent related agreement shall control.

13.7 Headings. The article, section and paragraph headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any of the terms or provision of this Agreement.

13.8 Assignment. Neither Party may assign its rights or obligations under this Agreement without the other Party's prior written consent, which shall not be unreasonably



SEATTLE CITY CLERK

withheld, delayed or conditioned. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assignees. If either Party wishes to assign this Agreement, it shall provide the other Party with a detailed description of the proposed assignee and the circumstances of the proposed assignment.

13.9 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

13.10 Implementation. Each Party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation and continuing performance of this Agreement.

13.11 Relationship of Parties. Nothing contained in this Agreement shall be construed to create an agency, association, joint venture, trust or partnership, or impose an agency, trust or partnership covenant, obligation or liability on or with regard to either of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this Agreement. All rights and obligations of the Parties are several, not joint. Neither Party shall be deemed to control, to be under the control of, or to be the agent of, the other Party.

13.12 No Dedication of Facilities. No undertaking by one Party to the other Party under any provision of this Agreement shall constitute the dedication of the electric system (or any portion thereof) of the undertaking Party to the public or to such other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination, cancellation or completion of such Party's obligations under this Agreement.

13.13 No Third Party Beneficiaries. Except as expressly provided otherwise, this Agreement shall not be construed to create rights in, or to grant remedies to: any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

13.14 Survival. SECTION 7 -- (Billing and Payments), SECTION 8 -- (Defaults and Remedies), Section 9.1 (Consistency with BPA Policies), SECTION 10 -- (Uncontrollable Force) and Section 13.15 (Records Retention) shall survive the termination, cancellation or expiration of this Agreement.

13.15 Records Retention. Each Party shall keep complete and accurate records and shall maintain all records as may be necessary or useful in performing or verifying the accuracy of all relevant data, estimates, or statements of charges or a given invoice or any calculations made pursuant to this Agreement, or in verifying such Party's performance hereunder, or as required by applicable law. All such records shall be retained until the later of (i) three (3) calendar years following the calendar year in which such records were created, (ii) any applicable requirement of applicable law or (iii) if there is a dispute relating to that invoice, 12 months after the date on which the dispute is resolved.



SEATTLE CITY CLERK

13.16 Forward Contract. The Parties intend that this Agreement and the transactions contemplated by this Agreement constitute a **"Forward Contract"** within the meaning of the United States Bankruptcy Code and that the City is a **"Forward Contract Merchant"** within the meaning of the United States Bankruptcy Code.

13.17 Not a Swap. The Parties intend that this Agreement and the transactions contemplated by this Agreement are not "swaps" as defined by the Wall Street Reform and Consumer Protection Act ("Dodd-Frank", PL 111-203, 124 Stat. 1376 (2010)) or any regulations adopted pursuant to that Act.

SECTION 14 -- SIGNATURES

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

| | |
|---|---|
| THE CITY OF SEATTLE,<br>CITY LIGHT DEPARTMENT | PUBLIC UTILITY DISTRICT NO. 1<br>OF PEND OREILLE COUNTY |
| By:_____<br>Jorge Carrasco<br>General Manager and Chief Executive Officer | By:_____<br>John Jordan<br>General Manager |
| Date: _____ | Date: _____ |



SEA CITY CLERK

**EXHIBIT A**
**EXAMPLE OF WEEKLY ASSIGNMENT REPORT**

## WEEKLY ASSIGNMENT REPORT

**Actual Loads**

| Date | KWh (daily total) | KW (peak hourly) |
|---|---|---|
| 3/5/2011 | 2,213,965 | 118,085 |
| 3/6/2011 | 2,905,317 | 130,764 |
| 3/7/2011 | 2,810,112 | 124,850 |
| 3/8/2011 | 2,990,844 | 130,493 |
| 3/9/2011 | 2,931,483 | 126,978 |
| 3/10/2011 | 2,891,161 | 125,213 |
| 3/11/2011 | 2,903,785 | 126,399 |

| | | |
|---|---|---|
| Weekly System Load (average hourly kW) | | 116,944 |
| Weekly System Peak (kW) | | 130,764 |
| **Weekly System Load Factor** | | **0.894** |

| **Schedule for Week of:** | 3/19/2011 | MWh |
|---|---|---|
| Weekly Assignment | | 7,209 |
| Less 0.3% loss adjustment | | (22) |
| Weekly Schedule Total | | 7,187 |
| Daily Schedule Total | | 1,026 |
| Remainder | | 5 |
| Day for Remainder | Monday | |

| **All Other Days of Schedule Week** | | **Monday of Schedule Week** | |
|---|---|---|---|
| Hour ending | Schedule (MW) | Hour ending | Schedule (MW) |
| 1 | 32 | 1 | 32 |
| 2 | 32 | 2 | 33 |
| 3 | 32 | 3 | 33 |
| 4 | 32 | 4 | 33 |
| 5 | 32 | 5 | 33 |
| 6 | 32 | 6 | 33 |
| 7-22 | 48 | 7-22 | 48 |
| 23 | 33 | 23 | 33 |
| 24 | 33 | 24 | 33 |
| LL Total | 258 | LL Total | 263 |
| HL Total | 768 | HL Total | 768 |
| **Daily Schedule Total** 1,026 | **1,026** | **Daily Schedule Total** | **1,031** |



SDC CITY CLERK

**EXHIBIT B**
**CONTACT INFORMATION**

**Date of last update: February 22, 2013**

| **THE CITY OF SEATTLE, CITY LIGHT DEPARTMENT (DBA "SEATTLE CITY LIGHT")** | | **PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON** |
|---|---|---|
| *U.S. Postal Service Mailing Address*<br><br>Seattle City Light<br>PO BOX 34023<br>SEATTLE, WA 98124-4023 | | *U.S. Postal Service Mailing Address*<br><br>PUD No. 1 of Pend Oreille County, Washington<br>N. 130 Washington Avenue<br>PO BOX 190<br>NEWPORT, WA 99156 |
| *Or, if by overnight mail*<br><br>Seattle City Light<br>700 Fifth Avenue, Suite 3200<br>SEATTLE, WA 98104 | | *Or, if by overnight mail*<br><br>PUD No. 1 of Pend Oreille County, Washington<br>N. 130 Washington Avenue<br>NEWPORT, WA 99156 |
| **CONTRACT ADMINISTRATION**<br>Attn: Sarah Davis, Senior Power Analyst<br>Phone: (206) 386-4537<br>Facsimile: (206) 386-4555<br>Email: sarah.davis@seattle.gov | | **CONTRACT ADMINISTRATION**<br>Attn: Sandy Hunt, Power Manager<br>Phone: (509) 447-6350<br>Facsimile: (509) 447-5824<br>Email: shunt@popud.org |
| **PRESCHEDULING**<br>Attn: Prescheduling Desk<br>Phone: (206) 615-0963<br>Facsimile: (206) 615-0969<br>Email: sclpwrsched@seattle.gov | | **PRESCHEDULING**<br>Attn: Teresa Carr, Power Scheduler<br>Phone: (509) 447-9330<br>Facsimile: (509) 447-5824<br>Email: tcarr@popud.org |
| **REAL TIME MARKETING**<br>Attn: Real Time Desk<br>Phone: (206) 615-0966<br>Facsimile: (206) 615-0969<br>Email; N/A | | **REAL TIME MARKETING**<br>Attn: Real Time/System Operators<br>Phone: (509) 447-9348 or (509) 447-9349<br>Facsimile: (509) 447-3540<br>Email: SystemOperators@popud.org |
| **INVOICES & PAYMENTS**<br>Attn: Linda Colby, Power Analyst<br>Phone: (206) 386-4535<br>Facsimile: (206) 386-4555<br>Email: sclpoweraccounts@seattle.gov | | **INVOICES & PAYMENTS**<br>Attn: Accounts Payable Analyst<br>Phone: (509) 447-9324<br>Facsimile: (509) 447-5466<br>Email: accountspayable@popud.org |
| **DISPUTE RESOLUTION**<br>Attn: Caroline Dethloff, Wholesale Contracts Manager<br>Phone: (206) 684-3534<br>Facsimile: (206) 386-4555<br>Email: caroline.dethoff@seattle.gov | | **DISPUTE RESOLUTION**<br>Attn: April Owen, Assistant General Manager<br>Phone: (509) 447-9321<br>Facsimile: (509) 447-5824<br>Email: aowen@popud.org |



SEA CITY CLERK

**EXHIBIT C**

**EXAMPLE OF BOUNDARY POWER COST CALCULATION**

# SUMMARY OF ANNUAL COSTS OF THE BOUNDARY HYDROELECTRIC PROJECT FOR THE YEAR 2011

| COST CATEGORY | PAGE REF | AMOUNT |
|---|---|---|
| Power Production Expenses | 2 | $7,690,371 |
| Water for Power | 2 | 3,350,908 |
| System Control Expenses | 3 | 3,588,474 |
| Transmission Expenses | 3 | 156,126 |
| Administrative & General Expenses | 5 | 6,210,603 |
| Pend Oreille County Tax (per GL Account 40865; work order 72076-01) | | 1,630,123 |
| Depreciation Expenses, Boundary | 6 | 5,577,143 |
| Depreciation Expenses, General Plant | 6 | 882,751 |
| Interest on Debt | 16 | 4,675,883 |
| Return on Equity | 16 | 3,206,134 |
| Return on General Plant | 16 | 711,287 |
| TOTAL ANNUAL COSTS | | $ 37,679,803 |



DWS CITY CLERK

Form revised: December 12, 2012

# FISCAL NOTE FOR NON-CAPITAL PROJECTS

| Department: | Contact Person/Phone: | CBO Analyst/Phone: |
|---|---|---|
| City Light | Robert W. Cromwell, Jr./684-3856 | Anthony Colello/684-5292 |

**Legislation Title:**
AN ORDINANCE relating to the City Light Department; authorizing execution of the Boundary Power Assignment Agreement with Public Utility District No. 1 of Pend Oreille County, Washington, for the term of the Boundary Hydroelectric Project license granted by the Federal Energy Regulatory Commission on March 20, 2013, 42 years.

**Summary of the Legislation:**

This legislation would authorize City Light to execute an agreement with the Public Utility District No. 1 of Pend Oreille County, Washington ("District") to assign 48 mega-watts of power from Boundary Project at cost to the District through the 42-year term of the new hydropower operating license issued by the Federal Energy Regulatory Commission ("FERC") on March 20, 2013.

**Background:**

The proposed Boundary Power Assignment Agreement essentially continues a business relationship with the local utility that was established during the term of the City's first FERC license and fulfills a commitment that was made by the City in 2000 in order to gain the District's support of the City's relicensing effort. Under the proposed agreement, the City will continue to assign a comparable amount of power from Boundary Project to the District as it has since the 1980's and the District will continue to compensate the City at an "at cost" price as determined by the methodology established by order of the FERC in 1990.

Please check one of the following:

____ **This legislation does not have any financial implications.**

__X__ **This legislation has financial implications.**



BAS CITY CLERK

**Appropriations:** *None*

| Fund Name and Number | Department | Budget Control Level* | 2013 Appropriation | 2014 Anticipated Appropriation |
|---|---|---|---|---|
| | | | | |
| **TOTAL** | | | | |

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

Appropriations Notes: Power is committed from the City's power resource portfolio to the District on a planning basis, so there is no planned purchase of power to fulfill this obligation.

**Anticipated Revenue/Reimbursement Resulting from this Legislation:**

| Fund Name and Number | Department | Revenue Source | 2013 Revenue | 2014 Revenue |
|---|---|---|---|---|
| | Light | District | $1,799,799 | $1,842,094 |
| **TOTAL** | | | $1,799,799 | $1,842,094 |

Revenue/Reimbursement Notes: The charges to the District are calculated based on the annual cost of Boundary Project power, which is determined for each calendar year according to the methodology set forth by the FERC Administrative Law Judge in his Initial Decision dated November 23, 1990, 53 FERC ¶ 63,015. The changes include, but are not limited to: the City's costs related to power production expenses, water for power, system control expenses, transmission expenses, administrative and general expenses, applicable taxes, statutory payments pursuant to RCW 35.21.425 as memorialized in the "2010 Agreement between the City of Seattle and Pend Oreille County" or as may be renegotiated for future periods during the term of the FERC license, depreciation expenses, interest on debt, return on equity and return on general plant (including a proportional share of expenses to comply with the terms and conditions of the 2013 Boundary License, as it may be amended from time to time) and the 2010 Settlement Agreement.

**Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:** *None*

| Position Title and Department | Position # for Existing Positions | Fund Name & # | PT/FT | 2013 Positions | 2013 FTE | 2014 Positions* | 2014 FTE* |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| **TOTAL** | | | | | | | |

** 2014 positions and FTE are total 2014 position changes resulting from this legislation, not incremental changes.*



2013 CITY CLERK

*Therefore, under 2014, please be sure to include any continuing positions from 2013.*

Position Notes:

**Do positions sunset in the future?**

**Spending/Cash Flow:** ***None***

| Fund Name & # | Department | Budget Control Level* | 2013 Expenditures | 2014 Anticipated Expenditures |
|---|---|---|---|---|
| | | | | |
| **TOTAL** | | | | |

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

Spending/Cash Flow Notes: none

**Other Implications:**

a) **Does the legislation have indirect financial implications, or long-term implications?**
No. The proposed agreement continues an existing business arrangement, so no incremental changes to costs or revenues are expected.

b) **What is the financial cost of not implementing the legislation?**
If the City does not execute a replacement Boundary power assignment agreement with the District, it may be found to be in breach of its 2000 Memorandum of Agreement with the District. This could result in litigation with the District with unknown costs as a consequence.

c) **Does this legislation affect any departments besides the originating department?**
No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
City Light theoretically could negotiate a financial settlement with the District in lieu of the power assignment agreement, but due to the relative difference in cost between Boundary Project output and alternative market resources, it could be more costly than the proposed arrangements.

e) **Is a public hearing required for this legislation?**
No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.



SEA CITY CLERK

**g) Does this legislation affect a piece of property?**
No.

**h) Other Issues:**
The FERC did not include, as requested by City Light, an article in the new Boundary Project license that obligates the City to assign power to the District. The District has communicated this omission to FERC, but in any event, City Light intends to proceed with the proposed power assignment agreement in order to fulfill commitments previously made to the District in 2000.

**List attachments to the fiscal note below:**
None.



CITY CLERK

**City of Seattle**
Office of the Mayor

July 2, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that authorizes the City Light Department (City Light) to execute a Boundary Power Assignment Agreement with Public Utility District No. 1 of Pend Oreille County, Washington. The agreement will allow for the City and the District to continue a mutually satisfactory business relationship, while fulfilling commitments that were made in 2000.

Pursuant to its original Federal Energy Regulatory Commission ("FERC") license for the Boundary Hydroelectric Project, City Light previously assigned up to 48 mega-watts of power from Boundary Project at cost to the District, energy that City Light has delivered to the District daily since the 1980s. Under the proposed agreement, City Light will continue to assign 48 mega-watts of power from Boundary Project at cost to the District through the 42-year term of the City's new hydropower operating license issued by the FERC on March 20, 2013. Execution of the Boundary Power Assignment Agreement will fulfill a commitment made by the City pursuant to its 2000 Memorandum of Agreement with the District in which the District agreed to support and assist the City's relicensing of the Boundary Project in exchange for the City's agreement to continue to assign to assign the 48 mega-watts of Boundary power during the term of the future license under terms comparable to those of the expiring license and agreement.

By executing the Boundary Power Assignment Agreement, City Light will be able to satisfy its outstanding obligation to the District while continuing to provide cost-effective and reliable customer service. Thank you for your consideration of this legislation. Should you have questions, please contact Robert W. Cromwell, Jr. at (206) 684-3856.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

CITY CLERK