

Chapter 55

False starts and promises

By January 2008, the Columbia Falls Aluminum Co. smelter was running at 60% capacity with the East Plant's three potlines capable of producing about 108,000 tons of aluminum per year. Lower cost alumina and power helped the plant continue to operate after being shut down by the West Coast Energy Crisis in 2001. CFAC was one of four direct-service industries still being served by the Bonneville Power Administration – two were Alcoa aluminum plants in Washington. CFAC's power contract was set to expire on Sept. 30, 2011, and CFAC Spokesman Haley Beaudry said company personnel were in regular contact with Sens. Max Baucus and Jon Tester and Rep. Denny Rehberg trying to secure low cost power. CFAC had expected some kind of long-term decision from the BPA in November 2006, but it never was made. Aluminum metal prices continued to be high at \$2,800 per ton, up from \$2,000 one year earlier. Alumina prices were below \$300 after reaching \$600 several years earlier. The combination of China's demand for aluminum and Australia's increased output of alumina was helping CFAC, Beaudry said. CFAC had a \$17.5 million annual payroll and paid out \$7.5 million in benefits and payroll taxes, more than \$800,000 in property taxes and \$9 million on supplies, fuel, spare parts and other material, much of which was purchased locally.¹

Continuing power problems, however, spelled the end to the positive performance at the plant over the past year. CFAC issued a 60-day layoff warning to Aluminum Workers Trades Council members on May 21, 2008. In a press release issued May 23, Glencore officials said two of the three operating potlines could be shut down. Beaudry blamed high power costs. "It's just way out of range, it's just not out there at a decent price," he said. About 340 workers were employed at the plant, including 225 union workers. Under the plant's five-year BPA contract, CFAC bought power on the open market, supplied BPA with proof of cost, and the BPA sent a financial benefit payment to CFAC. Beaudry said open-market power prices were climbing to \$100 per megawatt-hour while a "reasonable" price would be around \$50. Aluminum metal was selling for about \$1.20 a pound, which was good, but both power and raw material prices were high.² CFAC was obligated to warn workers of a layoff 60 days in advance under the federal Worker Adjustment Retraining Notification (WARN) process, which was required for larger employers. Beaudry said power prices weren't bad at the time of the announcement because of ample spring runoff driving turbines at hydroelectric dams, and the cooler weather was keeping air conditioning loads low, but future prices were forecasted at \$105 to \$110 per megawatt-hour. Metal prices were holding up, but not as high as CFAC might want, Beaudry said – aluminum prices didn't take the big leap in

recent years as copper had. Beaudry noted that plant management did not anticipate a complete shutdown.³

The layoff cycle

On May 29, 2008, the Hungry Horse News reported that CFAC expected to lay off two-thirds of its workforce by July 21. Beaudry said CFAC had notified Montana's state senators, Gov. Brian Schweitzer and Montana's Congressional delegation about the matter. "They have always been very, very helpful," Beaudry said. "Sen. Baucus over the years has gone to Bonneville on our behalf numerous times."⁴ AWTC President Dave Toavs reacted to the news with resignation. He had worked at the plant for 29 years as a truck mechanic and been laid off six or seven times – with layoffs ranging from two weeks to 11 months. "In this day and age, there's no secure job, and here you know that the company can be hurt by a lot of things it can't control," he said. Paul Polzin, director of the University of Montana's Bureau of Business and Economic Research, looked at the bright side of the smelter's legacy. "I think the important thing here is the very fact that they continue to be in operation and for as long as they have," he said "One by one, these plants have gone down, and Columbia Falls for a number of reasons has been successful enough to hang on." Toavs credited support from the community and a good working relationship between the union and ownership. "People here feel an ownership in the plant and do whatever it takes to keep it going, and that means sitting down and working things out with the owners," Toavs said. "We've made sacrifices that employees at other plants haven't, but then again, we're still working and they're not." CFAC continued to be ranked among the top-10 employers in Flathead County and offered competitive pay. As a result, there would be trickle-down effects in the local economy by a cutback, Toavs said.⁵

The names of 124 hourly workers who possibly would be laid off were posted at the plant around July 4. Toavs said he hoped the layoff would not last as long as the previous one, when some workers were laid off for 37 to 38 months beginning in 2003. "But we have reason to be hopeful this won't be so long," he said. Many of the workers named on the list had been with CFAC for about 12 to 15 months. Toavs said he didn't think power prices wouldn't increase as high as company officials had said during the high demand of summer, but Beaudry was more pessimistic. "If you take a look at the power markets today, they're way ahead of where we would expect them," he said. One power quote from July 7 was for \$110 per megawatt-hour. Beaudry said layoffs would begin July 21 and continue through July 31. He said he had contacted the Montana Department of Labor and Industry about training grants and other assistance for the workers. Toavs said training grants would help, as would 26 weeks of unemployment benefits. The union contract didn't offer severance pay, but it did provide for job-recall

rights for three years based on seniority. The previous layoff, however, lasted more than three years and everyone lost their seniority, he said, but CFAC tried to hire back the former workers first. Toavs noted that this was a bad time to be out of work, with construction down.⁶

Jobs across the Flathead Valley were in short supply in early July as CFAC announced the names of workers who might be laid off. "The job outlook is not as good now as it was a year ago," said Bill Nelson, at Flathead Job Service. "It's definitely been a slowdown, and we have fewer jobs available than we did. I don't know what exactly the future's going to hold for those guys up at the plant." Beaudry conceded that power prices were not bad at the moment because of high spring runoff, but the prediction was for a hot, dry summer with power selling at \$105 to \$110 per megawatt-hour.⁷ "That's when it hits you, when the names go up on the board," Toavs said about the layoff. Toavs said he had "seen a lot of ups and downs in this place, and this is a big, big down. But you know, I'm a lot more optimistic now than I was back during the last massive layoffs in 2003." He expected to see only 150 to 180 pots running after the latest layoffs. He noted that workers were making \$20 per hour, not including benefits. "These are awfully good jobs," he said. "When the plant goes down, it hurts everybody, the whole community."⁸ By mid-July, CFAC was looking at laying off about 125 workers when it shut down a potline later in July. Workers would be laid off over 11 days beginning July 21.⁹

By the end of July 2008, CFAC had shut down one potline. "Layoffs are always difficult, but there's a lot of uncertainty right now, and the economy isn't very good," Toavs said. "In the past, guys used to have a fallback job in construction or logging where you could go to work for a few months and then come back when the plant started hiring again. Those options just aren't there like they were." The Flathead Job Service reported 200 fewer jobs existed than at the same time period in the previous year. Construction jobs began to decline in the winter due to declining sales in the housing market. Russ Gerard, a heavy equipment mechanic at CFAC, had dealt with the Montana job market since moving his family to the state seven years ago. "I came here because I wanted to raise my three kids here, but it's been hard to find steady work," he said. "It seems like it's not uncommon for a guy in Montana who's well qualified and can do a lot of things to still find himself having six or seven jobs over 10 years." Gerard, who had 25 years experience as a heavy equipment mechanic, said CFAC was one of the best jobs in the valley and a great company to work for, but he wasn't interested in being a swing worker. "I won't be waiting around for them to call me back," he said. "I want steady work, and this evidently isn't the company for it." Toavs said some CFAC workers were counting on pending federal grants and programs to help them transition into other jobs or careers. In that respect, the situation was better than in the 1980s, he said. CFAC

management had contacted the state's Congressional delegation for help in getting programs for the workers.¹⁰

Two University of Montana economists presented their revised estimates for growth in Flathead County in August, reducing their original estimate of 6.4% growth to 3.5% for 2008 and about 4% for 2009. Paul Polzin called the forecast "very optimistic." Most of the slowdown could be attributed to a downturn in construction and recent layoffs at CFAC, along with the relative absence of agriculture in the Flathead Valley. "For every job lost at CFAC, you're going to lose another one to one and a half jobs elsewhere in the economy," Polzin said. "Slow growth in Flathead County is going to be around for a year or two." Polzin looked at wood products, tourism, federal agencies and retail. He said the recession in the Flathead was nowhere near as bad as elsewhere in the nation, and he said plant closings like CFAC and others across the state were largely responsible for the growth forecast revisions.¹¹ In mid-November, the U.S. Labor Department announced that \$462,000 in grants were available for the CFAC workers laid off in July. The grants were for training and other employment assistance. All 133 workers were eligible for the grants, which included services such as skills assessments, basic skills training, individual career counseling, occupational skills training and employment-related relocation.¹²

Power negotiations

CFAC and Alcoa had been hard at work behind the scenes negotiating better power contracts with the BPA, but it was becoming more and more difficult to get the long-term low-cost contracts that aluminum smelters needed to keep operating. The main hurdles were politics and the law, but they were becoming increasingly intertwined. On Oct. 10, 2008, the Pacific Northwest Generating Cooperative, a watchdog group for BPA customers, issued a press release critical of the BPA's decision to provide federal power to Alcoa's Intalco smelter in Ferndale, Wash. Scott Corwin, the executive director of the Public Power Council, said the subsidy provided in the deal would cost BPA customers and businesses \$70 million per year. John Prescott, president and CEO of the Pacific Northwest Generating Cooperative, said the BPA was selling power that it didn't have and that it was illegal for the BPA to purchase power for resale to aluminum companies at a loss. John Saven, CEO of Northwest Requirements Utilities, said the annual subsidy would amount to \$145,000 per job at the Intalco plant. "That is a tough thing to justify to the rest of the ratepayers," he said. The press release mentioned that another deal in the works between the BPA and CFAC could cost ratepayers \$30 million per year.¹³

By mid-November 2008, the media was reporting that the BPA had proposed \$33 million in annual subsidies for CFAC, but it wasn't clear if the proposal would move forward. The BPA had also proposed \$66 million in power discounts for Alcoa's Intalco

plant through 2028, worth about \$140,000 per guaranteed job at the smelter. A public comment period for the proposal had closed one week earlier, and the contracts could be released within 60 days, which would reopen the public comment period. Public utilities were concerned they would be stuck paying for the benefits to CFAC and Alcoa through higher rates. "We're not sure why, but it appears the BPA values the aluminum industry jobs more than they do other industries," said Mark Howe, a spokesman for the Oregon Trail Electric Consumers Cooperative. Alcoa claimed the amount of power offered by the BPA was only half what was needed at Intalco. The company also noted that Pacific Northwest industries that had not been around as long as Alcoa were provided all the power they needed by the BPA. Alcoa promised to maintain 480 jobs at Intalco, and noted that its \$48 million payroll indirectly supported 2,000 jobs in the Northwest. "We believe we have a right to this power," Intalco manager Mike Rousseau said. Oregon Gov. Ted Kulongoski opposed providing the benefits to the smelters, while Washington Gov. Christine Gregoire and some of the state's congressional delegation agreed with Alcoa's position, saying the loss of family wages would place a burden on the local economy. Only three of the 10 Pacific Northwest aluminum smelters remained running, and many customers believed the BPA had no statutory obligation to provide power to the smelters.¹⁴

BPA Administrator Stephen Wright spoke about the issues in a Dec. 7, 2008, interview in The Oregonian. Wright said he was happy the BPA had been able to conclude six years of negotiations with numerous power customers in the Pacific Northwest and sign long-term contracts. The signing "secures the value of the federal hydro systems for Northwest customers, ensures a cost-based rate and restructures Bonneville's business where we'll be sending a marginal price signal for load growth," he said. "We believe that will create more local control for utilities and unleash creativity that will hopefully lead to more generating resource development." Wright said the 2000-2001 West Coast Energy Crisis was a supply and demand problem. "Under the existing system, there was no clear accountability about who has the obligation to serve load growth, whether it's Bonneville or the customers," he said. When asked if it was fair to give Alcoa a \$66 million annual subsidy to save only 460 jobs while other customers were struggling, Wright said the BPA would recover all its costs, "so ultimately there's no subsidy from taxpayers to ratepayers. The question of whether one ratepayer group is subsidizing another really gets to the question of who has the rights to the underlying system." Wright said the BPA had the discretion to decide whether it would supply any power to the aluminum companies. "We're not going to serve them at their full historical load," he said. "We're proposing to serve them at half that level, and the price we'll charge them is a higher rate than our preference customers get. That's the compromise. They don't get the rate preference customers get, but they don't get nothing." Wright noted, however, that the BPA had not decided whether to go ahead with the current proposal.

A public process had to be completed before signing any final contracts. That could come in a month, he said.¹⁵

Court rules on subsidies

Ten days after Wright's interview was published, the Ninth Circuit Court of Appeals issued a ruling that forced the BPA and its direct-service industry customers to start all over again. The Dec. 17, 2008, ruling came in a complex case involving numerous utilities, direct-service industries and the BPA and involved several important questions – was the BPA obligated to sell power to the DSIs, at what rate should the DSIs pay, could the BPA provide money instead of power, and could the BPA subsidize the DSIs. The case grew out of the BPA's June 30, 2005, record of decision for the contract years 2007 to 2011. The BPA agreed to provide its three direct-service industry customers, CFAC, Alcoa and Golden Northwest Aluminum, payments based on the difference between market power and the BPA's rate for preference power. The DSIs would not get physical power from the BPA, which they would have to purchase on the open market. The BPA placed three limitations on the aluminum plant contracts – the payment plan was limited to 560 megawatts total per year, the price differential was capped at \$24 per megawatt-hour, and the total benefit for all three smelters was capped at \$59 million per year.¹⁶

The BPA acknowledged in its June 2005 record of decision that its preference customers would end up paying for the money given to the direct-service industries. Numerous electrical power cooperatives sued, claiming the DSIs were receiving illegal subsidies. In explaining its decision, the appellate court looked at the BPA's four rate schedules – PF, for preference customers, was \$27.33 per megawatt-hour in the fiscal year ending Sept. 30, 2007; IP, firm power to industrial customers, was \$45.08; NR, for new single large loads, intended to penalize any DSI that did not buy power directly from BPA but instead bought it from a public utility that received BPA power, was \$77.03; and FPS, which stood for "firm power services." According to the BPA, "firm power services" was not even a rate at all – power sales could be made at any price and resulted from negotiations between the BPA and customers. The court said that in its standard of review for cases involving the BPA, the court looked at whether the BPA acted arbitrarily, capriciously or in excess of its statutory authority. The court noted, however, that over the years, it had treated the BPA with deference because the enabling legislation was highly technical and complex, the BPA helped draft its only enabling legislation, and for nearly 50 years Congress typically monitored the BPA's performance.¹⁷

The direct-service industries claimed that the BPA was obligated to sell power to them at a cost-based rate, not market-based, according to provisions in the 1980 Northwest

Power Act. The electrical power cooperatives claimed the act no longer applied and the BPA had no authority to sell power to the DSIs at cost-based rates – the DSIs should pay market rates, the cooperatives said. The BPA claimed the act authorized the agency to sell power to the DSIs but did not obligate the BPA to do so. The BPA also claimed the act gave the agency the authority to sell power to the DSIs at the FPS “rate” without first offering the IP rate. The court ruled that the BPA was authorized to sell power to the DSIs but was not obligated to do so; however, the agency must offer the IP rate first. The direct-service industries had claimed the conditions of the 1980 Northwest Power Act still applied as a “perpetual obligation” for the BPA to sell power at a cost-based rate. The electrical cooperatives had claimed that contracts derived from the act had expired in 2001, and the BPA no longer had authority to sell power to the DSIs except as surplus power at market-based rates.¹⁸

The court found some of the BPA’s arguments unreasonable. By denying the direct-service industries an opportunity to buy power at the IP rate, the BPA had created surplus power that the agency could then offer at the FPS “rate” – which boiled down to letting the BPA and the DSIs negotiate market-based rates. The court also cited statutory language and legislative history that supported the position that the BPA should offer the IP rate first. Only after the DSIs refused to purchase power at the IP rate could the BPA offer power under the FPS “rate.” The court took note of how times had changed and said the BPA should be allowed to change its business approaches. “An agency is entitled to change its course when its view of what is in the public’s interest changes,” the court had stated in an earlier case. But “an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.” The direct-service industries also claimed the BPA violated the 1964 Pacific Northwest Regional Preference Act by selling power outside the Pacific Northwest without first offering it to the DSIs. The court, however, said that argument “was not ripe for adjudication at this time.”¹⁹

The appellate court ruled that the BPA could offer money to customers instead of power “under appropriate circumstances” – such as when the BPA paid the direct-service industries for their power during the West Coast Energy Crisis – but that those circumstances did not exist in the case at hand. The payments to the DSIs conducted under the BPA’s June 2005 record of decision were “an impermissible subsidy,” they violated the BPA’s “sound business principles,” and they violated the BPA’s mandate to provide “the lowest possible rates to consumers,” the court said. The court answered the three rationales provided by the BPA for the payments to the direct-service industries. The BPA said the payment system encouraged the widest possible diversified use of power, but the court noted it only helped three companies and they all smelted aluminum, so that was a targeted use. The BPA noted that it already was selling power

at below-cost rates to the investor-owned utilities, but the court said that was another money-loser for the BPA. The agency also said providing aid to long-term customers helped promote the BPA's business interests, but the court didn't buy that argument either.²⁰

"By subsidizing the DSIs' smelter operations beyond what it is obligated to do, BPA is simply giving away money," the appellate court concluded. The court also did not agree with the BPA's claim that the payments were justified because of the agency's "historic relationship with the DSIs, the important role the DSIs played in the development of the (federal power systems), and the importance to local economies of DSI jobs." The payments did not "further (BPA's) business interests," the court said. Alcoa claimed it was discriminated against because the Port Townsend paper mill received a different deal than other DSIs, and that the DSIs belonged to a class, but the court disagreed. Once a direct-service industry refused to purchase power at the IP rate which it was statutorily entitled to, "it has surrendered the primary benefit that the class of DSI customers receives" under the 1980 Northwest Power Act "and becomes subject to the same treatment as any other in-region customer seeking to purchase surplus firm power," the court said. Furthermore, the appellate court said, the 1980 Northwest Power Act did not say that members within the same class must be treated identically. The act authorized the BPA to sell power to a direct-service industry, but it did not obligate the agency to do so. "BPA could therefore refuse to serve some of its DSIs altogether, while supplying the full power requirement of others," the court said.²¹

In coming to its decision, the Ninth Circuit Court of Appeals looked at the long historical relationship between the BPA and the direct-service industries. "At their origins in the New Deal, the Bonneville Project's hydroelectric operations in the Pacific Northwest, administered by the BPA, were promoted as spreading the benefits of affordable federal power widely, to 'the farmer and the factory, and all of you and me,'" the court said, quoting a line from the popular song "Grand Coulee Dam" by Woody Guthrie. "At the same time, the Project gave a vital boost to the aluminum industry of the Pacific Northwest. Indeed, in the early days of the Project, what was good for BPA was good for the aluminum industry, and what was good for the aluminum industry was good for BPA. Aluminum manufacturers received low-cost federal hydroelectric power to operate energy-intensive smelting operations in the Pacific Northwest, and BPA gained a reliable market for a supply of electric power that otherwise greatly exceeded demand in a region where rural electrification was still a work in progress. BPA's synergistic relations with the aluminum industry during this early period were widely seen as a public good. The aluminum manufacturers and the region's nascent aviation industry, which they supplied, not only brought many high-wage jobs to the Pacific Northwest, but also served as a vital strategic asset for the United States during World War II and the Cold

War decades that followed. Times have changed. Public utilities and electrical cooperatives serve a larger regional population with greater needs for electrical power, to which they are statutorily guaranteed preferential access. Rising energy prices have made the relatively inexpensive federal power generated by BPA more attractive than ever, not only to BPA's regional preference customers, but also to utilities outside the Pacific Northwest. At the same time, due to a variety of factors – among them higher energy costs – the region's aluminum industry has fallen on hard times. The smelting operations of the major aluminum manufacturers, which traditionally ran on electric power purchased directly from BPA, are generally being operated at reduced capacity, and in some cases, have shut down entirely.”²²

The court's ruling ended the \$17 million annual subsidy payments to CFAC through 2011, BPA Spokesman Scott Sims told media in late December 2008. CFAC had been scheduled to receive its next subsidy payment the next month. Caps on the BPA subsidy payments for CFAC were based on 140 megawatts of power, enough power to operate less than half the plant. Sims noted that the court ruling affirmed the BPA's right to sell power to the direct-service industries if it wanted. “That was a great amount of clarity provided by the court,” Sims said. The BPA also recognized that aluminum companies were important customers and provided important jobs to local economies. In a separate deal, the BPA agreed to provide actual power, not money, to Alcoa's Intalco plant, but the Public Power Council claimed that the Alcoa deal was unfair to other BPA customers and provided subsidies larger than the jobs were worth. “The annual subsidy of over \$140,000 per job is more than the average value of the jobs themselves,” the council claimed. Sims noted that the BPA would engage in talks with the direct-service industries in the next couple days.²³

Layoffs and letters

CFAC gave its workers another 60-day notice two days before Christmas 2008, warning of an impending shutdown on Feb. 20, 2009. Beaudry told media the company wasn't permanently closing the smelter, but he wouldn't say when the plant would reopen. He blamed lower aluminum prices, which like other commodities prices were plummeting in the global recession that followed the Wall Street meltdown in fall 2008. “The price of aluminum is still deteriorating like all other metal prices,” Beaudry said. “There's just a slow domestic and worldwide economy. Inventories of aluminum around the world are rather large and the demand is low.” In the meantime, prices for raw materials and electricity were “resilient.” Beaudry also cited the recent appellate court decision, which said Pacific Northwest aluminum producers had no statutory right to power from the BPA. The CFAC layoff would worsen the economy in the Flathead Valley, where unemployment was 7.3% in November, compared to 4.9% in Montana as a whole and

6.7% for the U.S. Since July, when CFAC shut down a potline and laid off 125 workers, hundreds of workers had been laid off across Northwest Montana at Plum Creek Timber Co., Semitool Inc., Goose Bay and the Troy Mine. Union leader Dave Toavs said workers continued to make aluminum, but the mood was somber. "We're running business as usual," he said. "We're still making metal."²⁴ Aluminum had sold for \$4,000 a ton several months earlier, but by Dec. 23 the price had fallen to about \$1,400 per ton, Beaudry said. "Worldwide and domestically, there's a real oversupply of aluminum," he said. About 200 workers could be affected by the shutdown. "This is pretty tough news to break, especially to such a great work force," he said. "The work force out here has done everything it can do. This isn't about how hard they work. It's about a global marketplace we can't control."²⁵

Sen. Jon Tester went to bat for CFAC, following in the footsteps of Sen. Baucus, who had lobbied hard for decades trying to line up good power deals from the BPA to keep the Columbia Falls smelter operating. A third-generation Montana farmer and a former school teacher, Tester continued to farm land homesteaded by his grandparents in 1912 even after he got into politics. He earned a degree in music from the College of Great Falls, taught music at F.E. Miley Elementary in the town of Big Sandy and served on the Big Sandy School Board. Tester successfully ran for the Montana Senate as a Democrat in 1998 after the legislature deregulated Montana's power industry. While in the state senate, he served on the Finance, Agriculture, Rules, Interim, and Business, Labor and Economic Affairs committees. He also served as minority whip and minority leader and was chosen to serve as Montana Senate President in 2005. Tester ran for the U.S. Senate in 2006, defeating incumbent Sen. Conrad Burns in a close election. He won re-election in 2012 in another close race against Rep. Denny Rehberg. According to his website, Tester was an advocate for small business, responsible energy development, sportsmen's issues, clean air and water, Indian nations, women's access to health care, and quality health care for veterans. He had served on the Senate's Veterans Affairs, Homeland Security, Indian Affairs, Banking and Appropriations committees.²⁶

On Jan. 5, 2009, Baucus and Tester sent a joint letter to BPA Administrator Stephen Wright strongly urging him to work within the parameters of the recent appellate court ruling to negotiate an amended power contract with CFAC. "CFAC is a critical business partner for companies throughout the Northwest," they said. "In these challenging economic times, the first step to getting the economy back on track is to keep the good-paying jobs already in the region, like those at CFAC" The senators noted that the appellate court ruling "struck down the manner in which BPA currently provides benefits" to the direct-service industries, but "it upheld the ability of BPA to continue to provide some level of benefits to CFAC." The senators also noted that "BPA has historically been a good neighbor and business partner for Montana and CFAC," and

that CFAC “has been an anchor of the regional economy for nearly 55 years.”²⁷ The BPA and CFAC had already begun talks, BPA Spokesman Scott Sims told local media. “We need to get this resolved,” he said. “If there is a path, we want to find that path.”²⁸

The next day, Beaudry told local media that getting a good power contract might not be enough for CFAC. “For power to be the reason the plant would continue to operate, the new arrangement would have to outweigh the other disadvantages that the economy has forced onto the plant,” he said. Simms noted that the BPA was “in complete agreement with the words stated by Sens. Tester and Baucus that this is an urgent matter.”²⁹ According to Simms, the appellate court ruled that BPA had the authority to provide power to direct-service industries but that the June 2005 offer was too good. The court ruled that subsidies should be based on the industrial rate, not the preferred rate, Simms said. The \$7 difference between the two rates added up to millions of dollars for CFAC, which the BPA recognized. “We were on the phone with CFAC the day after the ruling,” Simms said. “We absolutely understand the urgency of this, in terms of jobs and communities.” Less than a week after the court ruling, CFAC announced it would close in February, but the BPA continued talks with CFAC. “People are at the table right now, as we speak, trying to figure out how this is going to play out,” Simms said. However, “no one knows what we can do for them.” Beaudry acknowledged the difficulties. “It’s never easy to get around the power-cost issue,” he said. “There’s never enough, and it’s never cheap enough.”³⁰

Members of the region’s Congressional delegations continued to be involved in the ensuing negotiations between the BPA and the aluminum companies. On Jan. 12, 2009, Elizabeth Klumpp, the BPA’s liaison for Western Washington, emailed Sen. Maria Cantwell regarding a short-term power-sales agreement recently signed by Alcoa and BPA. The new agreement “makes the existing contract consistent with the December court decision and assures payments to the Ferndale smelter through the end of September 2009,” Klumpp said. According to the contract, BPA payments to Alcoa would continue, but they would be based on a new formula in which Alcoa received the difference between forecasted power market prices and BPA’s industrial firm power rate multiplied by the number of megawatt-hours Alcoa consumed. She added that BPA was in talks with CFAC about a potential interim agreement.³¹ Sen. Tester told the Hungry Horse News that he “had a nice discussion” with CFAC officials about their power problems in light of the appellate court ruling. He urged them to continue talks with the BPA and “find common ground.” Tester, however, admitted that low aluminum prices and low demand for aluminum was also a factor in the company’s decision to close by February.³²

In late January 2009, an anonymous letter emerged that was sharply critical of CFAC's parent company, Glencore, and new management at the aluminum plant in Columbia Falls. The letter, which was sent to Rep. Rehberg, Sen. Tester, the Hungry Horse News and the Daily Inter Lake, claimed CFAC workers would lose vested benefits accumulated from 20 to 40 years of work at the plant. The letter began by saying employees were notified of a coming layoff on Dec. 23, 2008, under the federal Worker Adjustment Retraining Notification process, but the letter claimed an investigation in 2007 showed employers "frequently skirted" the WARN process. The letter claimed one problem was that Glencore "is unreachable." It went on to claim that Glencore's U.S. representative, Matthew Lucke, operated out of an office in Stamford, Conn., and "dodges all employee questions by providing only one, unsubstantial answer," which was, "We don't know yet, we're leaving those questions in the hands of local management." The letter claimed salaried employees were not organized and were scared to speak up because they feared termination. "Glencore has siphoned off tens of millions of dollars from CFAC to corporate coffers," the letter claimed, and "after years of no raises, when an increase did come, it was a token 2%." ³³

The anonymous letter went on to describe how CFAC management had been replaced by management from Glencore's aluminum plant in Vancouver, "a jealous sister plant by the name of Evergreen Aluminum Co.," in a "hostile takeover" that began in 2007. The letter claimed "a handful of highly compensated, greedy EAC managers who continued to draw fat salaries from Glencore while EAC sat idle" eventually moved to CFAC. The man who became CFAC's business manager "did not respect and was not respected by any members of the CFAC management team," the letter said. Eventually the "underachieving plant manager of EAC" came to sit on CFAC's board of directors, and CFAC "was forced to absorb" EAC's computer department manager, the letter claimed. "EAC long believed that EAC was superior to CFAC and that Glencore should restart their plant and idle CFAC," the letter claimed. "It didn't happen that way. CFAC's long history of good labor relations, high plant efficiency and an ongoing relationship with BPA resulted in CFAC being restarted while EAC stood idle. Not long thereafter, Glencore decided to dismantle EAC, selling its parts and components at historically high scrap prices and selling the valuable land for huge profits." But after a while, the letter claimed, Glencore management was convinced by Evergreen management that CFAC management needed to be replaced. "Our local plant manager was abruptly fired without any previous warning, and within a few short months, all but one of our senior managers were terminated or 'allowed' to resign under pressure," the letter said. ³⁴

The anonymous letter claimed the new plant manager began to call his Evergreen team the "All Stars." When the company issued its closure warning on Dec. 23, 2008, the letter claimed, Lucke told CFAC workers they would try to restart the plant by 2010. But

by the time the letter was written, there had been no notification about retirement benefits or 401(k) and health plans. "We believe communications are deliberately stalled to avoid having to face employees in planned take-aways," the letter said. "Our present management team does not have a sincere interest in keeping this plant and the local people working." The letter provided 13 bulleted items it claimed the new management was discussing with Glencore, including terminating 401(k), health and pension plans, telling employees they could not use Flex plans under the WARN act, offering no COBRA health benefits, making employees use vacation time during the WARN period, offering no severance pay, not retaining a potline restart team, offering no bridging for employees close to retirement, continuing to pay for Evergreen employees on a contract basis, improperly disposing of hazardous spent potliner when pots were shut down, and posturing a restart to avoid a Superfund clean-up. "We have shut down before and poised ourselves for a restart," the letter said. "We maintained a skeletal crew so that we could restart when conditions stabilized. We later had a very safe and successful restart. We have never shut down the physical plant in the manner presently being planned."³⁵

News about the anonymous letter only worsened a growing consensus among locals that the Columbia Falls smelter was destined for permanent shut down. "The school is the heartbeat of any community, but (CFAC) wasn't too far behind," Randy Bocksnick told the Flathead Beacon in mid-February. Bocksnick had run Randy's Barbershop on Nucleus Avenue in Columbia Falls for the past 45 years. "It's sad. I can't even explain how sad it is. That place paid for a lot of college educations." Bocksnick said many of his customers talked about whether the plant soon would close for good. At the same time, large layoffs had taken place at F.H. Stoltze Land & Lumber Co. and Plum Creek as a result of the global economic crisis. Columbia Falls City Manager Bill Shaw said the city government had adopted a more conservative approach because of the volatile manufacturing economy since he took office in 2001. Flathead Valley Community College economist Gregg Davis said the Columbia Falls economy had been slowly diversifying, but the county's unemployment rate was 9%, one of the highest in Montana. Shaw had a different view. "I don't know if we've managed to diversify," Shaw said. "There's only a few businesses here in town, and most of them deal with serving those employees." He noted that the number of delinquent city water accounts was increasing, which "worries us." Karl Skindingsrude, owner of K&J's Auto Parts, said his business relied heavily on the big manufacturing plants, CFAC and Plum Creek. He recalled past "Save The Plant" rallies where crowds gathered in the Columbia Falls High School gym and tried to help the aluminum company get lower power rates. But he didn't expect to see another rally this time around, especially if the announced shut down was "the big one."³⁶

A number of workers laid off at manufacturing plants in the Flathead Valley or expecting to be laid off at CFAC were enrolled at Flathead Valley Community College by mid-February 2009 to learn a trade skill. Mark Dofelmire had graduated from Columbia Falls High School and worked seven years at CFAC, where his father George worked. Dofelmire had been laid off twice, the second time in summer 2008. Student numbers at the community college increased by 8% in fall 2008 and by 18% for spring 2009. FVCC Enrollment Director Faith Hodges said an increase in enrollment was typical during a recession. Roddy Hill, who ran the welding and metal fabrication program at FVCC, estimated that 55 of his 60 students were laid-off workers and another 300 wanted to enroll in the classes. Many of the laid-off workers came from Plum Creek plants. Chuck Reeves, who was laid off from CFAC in July 2008, said he was unable to find work. Larry Knutson, who worked as a pin puller at CFAC with Reeves, was also enrolled in Hill's class. More than 100 students at FVCC received federal assistance for retraining. Hill, who was laid off at CFAC in 2001, said he took full advantage of federal programs and money, first enrolling in FVCC's building trades program and then running his own construction company. When the construction business slowed down, he came to FVCC to be a teacher.³⁷

On Feb. 13, 2009, seven days before the announced shutdown, CFAC managers got word from Glencore that it wanted to keep one pot room running to make a restart easier should economic conditions improve. Potroom 9 was left running after Feb. 20 to provide molten bath or metal to restart other pots.³⁸ CFAC Spokesman Haley Beaudry told media that the BPA had proposed a new contract that would keep the smelter running until at least June. "We're going to keep the plant open," he said. "It will be at a reduced capacity, but it will be open and operating through June, at least." Recent negotiations between CFAC and BPA for a bridge contract following the appellate court ruling had finally come to a conclusion. Beaudry said he had been in Helena lobbying legislators from the Flathead to get their unanimous support for a new power contract with the BPA from Dec. 1, 2008, through Sept. 30, 2009, when the federal fiscal year ended. "It's been an arduous negotiation with Bonneville, but we've had a lot of help from Sens. Baucus and Tester and Congressman Rehberg," Beaudry said.³⁹

New power deals

The appellate court ruling had forced the BPA to draft new contracts for CFAC, Alcoa's two smelters and the paper mill in Port Townsend. Beaudry said the earlier power contract terms for Alcoa and CFAC were not the same, and when the latest negotiations concluded, Alcoa had lost no money but power was more expensive for CFAC. "It's just that BPA wasn't even willing to give us the same deal as Alcoa," Beaudry said. "It just got tougher and tougher." One of the sticking points was that CFAC had traditionally signed

BPA power contracts, but now the BPA wanted Glencore to sign the contract. Beaudry speculated that the BPA viewed Glencore's deep pockets as a safeguard in event of legal disagreements. "From our point of view, we always have been a Montana company," he said. "We've always been the one that's the signatory for all 55 years. We don't see how we can give that up." Beaudry said it hurt CFAC not to be regarded as a Montana company. "We'd lose all the stature we have as a significant Montana company," he said. Beaudry noted that CFAC's smelter was running out of raw materials and money because the company had been preparing for a major shutdown. "We want a deal to give us the ability to keep the plant going," Beaudry said. "We want to keep going at some level. It's much easier to gear back up later than to start from a dead-cold stop."⁴⁰

A draft version of an amendment to the BPA's block power agreement with CFAC was made available to local media on Feb. 19, 2009. "This amendment allows BPA to provide service to CFAC while it fully considers the December opinion, including treatment of the payments made to CFAC under the agreement prior to the court's ruling," the amendment said in reference to the appellate court ruling. The original block power agreement would expire on Sept. 30, 2011, but the amendment only covered to Sept. 30, 2009. What would happen after that was not spelled out. The BPA stated that the amended power sale was created "in a manner and amount that is consistent with the December opinion." The BPA recognized that CFAC already had purchased power for the amendment period at a price that exceeded BPA's current forecasts for wholesale market power. The court ruling prohibited the BPA from making payments to CFAC that exceeded the difference between BPA's industrial firm power rate, which was \$32.70 per megawatt-hour from Jan. 1, 2009, through Sept. 30, 2009, and BPA's forecasted wholesale market price for the same time period, which was \$48.05 per megawatt-hour. The difference was \$15.35.⁴¹

Instead of selling firm power to CFAC, the BPA would continue to monetize the transaction, the draft amendment document stated. For the period from March 1, 2009, to Sept. 30, 2009, the BPA would purchase wholesale power CFAC already had contracted for and then sell it back to CFAC at the BPA's lower industrial firm power rate. The BPA would absorb the difference. The BPA's reasoning for conducting the sale this way was to avoid purchasing a large block of power that wouldn't be needed if CFAC wasn't able to keep running "given current uncertain economic conditions." Calculations for the preceding three months were different. The subsidy for December 2008 would be \$14.26 per megawatt-hour, and the subsidy for January and February 2009 would be \$15.35. The BPA would pay the subsidy to CFAC in four equal periods during the months of April through July 2009. To qualify for the benefits, CFAC's entire plant load in any month prior to one of the four payments would have to be at least 37.5 megawatts, and the minimum employee level would have to be 85 full-time-equivalent employees. The

maximum amount of money CFAC could make for the entire amendment period would be \$5.9 million. CFAC's demand entitlement for Dec. 1, 2008, through Feb. 28, 2009, would be the same as the amount the plant used from Dec. 1 to 17, 2008, which was 91.44 megawatts. CFAC's demand entitlement for March 1, 2009, through Sept. 30, 2009, would be 37.5 megawatts. As for the long-term, "This amendment is not intended and shall not be interpreted to establish any precedent or to waive any rights or arguments by BPA, CFAC or Flathead regarding the legal rights and obligations of any or all of them under the December opinion." The effective date of the amendment would be March 1, 2009.⁴²

The amendment only covered a 10-month period. Under its earlier agreement with the BPA, CFAC could have earned a maximum of \$13.9 million based on using 170 megawatts. Under the amendment, CFAC could earn a maximum of \$5.9 million based on using up to 91.5 megawatts for December 2008 through February 2009 and 37.5 megawatts for March through September 2009. Furthermore, the 2007 agreement had provided benefits of \$12 to \$24 per megawatt-hour, but under the amendment the benefit was fixed at \$15.35. The total benefits for CFAC and Alcoa together remained capped at \$59 million.⁴³ The Daily Inter Lake expressed support for the negotiations between CFAC and BPA in a Feb. 20, 2009 editorial. "Thank goodness that BPA didn't fight common sense," the editorial board said. "The power agency is one part of the government which has the muscle to spur or hinder the economy with its decisions. We are glad they chose to support Montana jobs, even if it's only for the short term."⁴⁴

The BPA responded to comments about its draft amendment on March 3, 2009. The BPA rejected the claim by critics who said they didn't have enough time to respond. "Because of the need to act quickly to avoid further economic problems for the smelters, BPA could only provide a limited amount of time for public comment on the CFAC and Alcoa amendments," the BPA said. Several important concepts were used by the BPA to justify the amended power contracts. The BPA said it was obligated to supply power to direct-service industries at a cost-based rate, the IP or industrial firm power rate, before declaring any leftover power to be surplus and then selling the surplus power at market-based or other cost-based rates. The BPA was authorized to purchase power on the open market to maintain contractual obligations, such as load growth, and based on the appellate court's interpretation of the 1980 Northwest Power Act, the BPA could provide some level of subsidy to the direct-service industries so long as the BPA didn't go "beyond what it is obligated to do." As a result of the appellate court's ruling, "if proper application of the IP rate directives results in a benefit to the DSIs, that is simply a consequence of the (Northwest Power Act), and not an illegal subsidy," the BPA said in its response to comments. If the BPA purchased power on the open market to

account for load growth, the firm power rate would increase, which would increase the industrial firm power rate, the BPA explained.⁴⁵

The BPA also referred to the 1937 Bonneville Power Act and the Department of Energy Organization Act, along with related history, to explain why the agency would continue “its exercise of discretion to continue service to DSIs.” The goal was to benefit the entire Pacific Northwest economy, not just preference customers. “The Administrator does not act in accordance with sound business principles with the view to operating as a profit-making enterprise, but rather to act in accordance with sound business principles in carrying out his myriad of responsibilities under the law, many of which evince social policies that might be viewed as inimical to acting purely like a ‘business,’” the BPA said in its response to comments. Among those “social policies” were environmental and conservation benefits, but also helping the direct-service industries in order to help the economy and the BPA’s power capabilities. “The DSI load has provided enormous value to BPA in the past, and it is reasonable to believe that it will do so again,” the BPA said. “DSI loads have historically benefitted BPA by taking power in relatively flat blocks that require little or no shaping; they have taken power from BPA at light load hours, when power has historically been difficult to market; and they have provided the Administrator with additional power reserves. Perhaps more importantly, BPA has in the past found it beneficial to retain the DSI load when its other loads were decreasing.” This happened in the 1990s when many BPA customers went to the open market and the BPA offered deals to the direct-service industries to keep them as customers, the BPA said. “Retention of this load supported BPA’s ability to meet its financial obligations in full and on time, including its Treasury repayment obligation,” the BPA said.⁴⁶

Adverse global aluminum market forces had significantly reduced the power taken by the direct-service industries, but they were still important, the BPA said in its response to comments. “Due to the many unanticipated changes that the electricity market has seen over the past two decades, it would be short-sighted and unwise to conclude that retention of DSI load could never provide significant value to BPA in the future,” the BPA said. Future load loss for the BPA could result from changing market prices, poor economic conditions, natural disasters or changing technologies. “It would be unwise and imprudent, in such circumstances, to refuse to provide service to customers that may provide future value to BPA as they have done in the past,” the BPA said. “This is particularly true when the DSIs currently have no viable alternative for its power needs, and a decision not to sell power to DSIs would almost surely have the immediate consequence of the plants shutting down and perhaps never resuming production.” The BPA noted that “in the opinion of the Administrator,” the amended power contracts with CFAC and Alcoa wouldn’t affect other rates. “BPA’s customers have not

experienced a rate increase during the last six years, and service to Alcoa and CFAC under the contract amendments will have a minimal impact on rates,” BPA said.⁴⁷

The appellate court ruling left another issue – did Alcoa and CFAC pay too little for power during the 25-month period prior to the court’s ruling, and were they required to pay back the BPA? In a June 10, 2009, letter sent to regional customers, stakeholders and others, BPA Administrator Stephen Wright noted that the appellate court had not issued a final ruling on all points. The question of restitution depended on the direct-service industries’ commitments to operate their facilities and what the BPA’s interest was in selling power to them. The BPA announced it would take comments on the issue through August 2009 and issue a final decision in September. However, because the court was not finished with the case, the BPA’s final decision would not be made in September if the court had not ruled by then.⁴⁸

The slow descent

Bad news, however, didn’t stop with the new power contract. On May 29, 2009, CFAC warned workers the plant would completely shut down at the end of July and 88 workers would be out of work, including union and salaried employees. The smelter had been operating one-third of a potline using BPA power provided as a stop-gap measure to keep the plant running. A new power deal had not been negotiated, BPA Spokesperson Nanine Alexander said. CFAC General Manager Chuck Reali provided Columbia Falls city officials with a statement on the closure. “This measure is due to our inability to compete in the world markets during this period of high costs of energy and raw materials, a worldwide accumulation of aluminum inventory and the continued drop of aluminum prices,” he said. The last time the plant completely shut down was in 2001.⁴⁹ “We don’t see right now the relief in sight that would help us keep running,” Haley Beaudry told local media. The closure was not a surprise considering the economic recession and layoffs in 2008. There was a long shot that CFAC could be eligible for federal stimulus money, but the company had not made any formal moves toward applying for the money, Beaudry said. Federal officials might not care as much about jobs lost to the aluminum industry when compared to automotive centers like Detroit. “I can’t say that there is any light at the end of the tunnel,” Beaudry said.⁵⁰

Columbia Falls Chamber of Commerce President Lyle Mitchell told media in June that workers laid off at the Plum Creek timber mill might get their jobs back once the housing industry improved, but he didn’t hold out as much hope for CFAC. He called the closure “kind of the end of an era” with a definite impact. “Over a period of time, it’s provided some of the highest industrial wages in the area, so it’s going to be a big loss for the community.” Mitchell also noted that younger employees were laid off long ago, and the remaining employees were nearing or past retirement age.⁵¹ Beaudry told local

media on June 8 that although the plant intended to close at the end of July, it would continue to negotiate with the BPA in hopes that it could reopen sometime in the future. "In our mind, this is not a shutdown," he said. "This is a curtailment on production right now." CFAC had announced plans to shut down in December 2008 and again in the spring, but each time it was able to keep operating. The BPA was in the process of setting power rates for the next two fiscal years, for September 2009 through September 2011. The federal power agency was also in the midst of a lawsuit with companies across the Pacific Northwest which claimed their rates were too high, he said, including CFAC. The BPA wouldn't take all the blame. "Electricity rates are not the only challenge to the aluminum industry," Nanine Alexander said. Beaudry acknowledged that any decision to keep CFAC open would depend on the cost of raw materials and electricity as well as metals prices.⁵²

Beaudry continued to emphasize to local media that the closure was not permanent and that CFAC was still negotiating with the BPA for a better power contract. "It is not a shutdown," he said. "A shutdown implies you are going out of business. We are not going out of business. We're going to curtail production." Beaudry said the company had been in constant negotiations with the BPA ever since the appellate court ruling in December 2008 "neutered" CFAC's power contract with BPA. The contract was intended to be in effect until Sept. 30, 2011, Beaudry said, but the lawsuit brought by electrical cooperatives resulted in the termination of CFAC's contract in December 2008. A last-minute "bridge agreement" with the BPA allowed CFAC to continue operating through June. A second round of negotiations with the BPA in the spring helped CFAC remain open through July. Now, Beaudry said, CFAC was negotiating a power contract with the BPA that would run from Oct. 1, 2009, through Sept. 30, 2011. "We're also negotiating for a post-2011 power supply agreement," Beaudry said.⁵³

The Columbia Falls smelter was running one room, just half a potline, with 88 workers, and uncertainty was hard on the workers, Beaudry pointed out. "It's hard to run any kind of business on a month-to-month basis," he said. Competition from aluminum companies in other countries was especially hard because they had cheaper power costs at a time when economic conditions had driven down metal prices. He cited use of natural gas in Mideast countries to power smelters. "They're basically turning natural gas into aluminum," he said. CFAC was a perfect candidate for federal stimulus money, Beaudry said. "This goes far beyond the shovel-ready situation," he said. "Here, the shovel was put away 55 years ago." The word from Sen. Max Baucus' office was that the senator was trying to help CFAC stay open. "I've fought to help keep CFAC's doors open for 30 years, and I'm not giving up now," Baucus said. "CFAC is a critical business partner for companies throughout the Northwest and during these tough economic times,

we've got to do all we can to keep folks on the job." Beaudry said he appreciated help from Sens. Baucus and Tester.⁵⁴

The Daily Inter Lake agreed with Beaudry in a June 14 editorial about using federal stimulus money to subsidize BPA power for CFAC in order to keep the smelter operating. The newspaper noted that President Barack Obama had called for using federal stimulus money from the American Recovery and Reinvestment Act to "save or create jobs" and pointed out that keeping CFAC running would save jobs. The newspaper admitted that the idea was "novel," but only \$787 billion in stimulus money had yet been obligated in response to the economic recession, and most of those projects would not start until 2010. "If a BPA power subsidy were extended to all of its big customers, who knows how many jobs might be saved?" the editorial said.⁵⁵ But there were other manufacturing plants that needed help in the Flathead. On June 4, Plum Creek announced it was shutting down its sawmill in Evergreen, near Kalispell, putting 63 employees out of work, and trimming 23 positions at its Columbia Falls sawmill. The economic recession had taken its toll on the timber company. Plum Creek had 1,265 workers in its manufacturing plants at the beginning of 2008. By the end of June there would be 830 – a 34% reduction. "The company's manufacturing business has been hard hit by industrial turbulence," Plum Creek CEO Rick Holley said. "We have done everything possible to keep these facilities running, but improving efficiencies was not enough for our Evergreen stud operations given the current market." Holley said the housing market "remains dormant for new construction" but enough demand existed to keep the Columbia Falls sawmill operating.⁵⁶

A glimmer of hope for CFAC's continuing operation appeared about a week before the company's announced closure date. Elizabeth Klumpp, BPA's liaison for Western Washington, announced in a July 20 email that the BPA had drafted a proposed long-term service contract with CFAC and Alcoa that would meet a portion of their smelters' needs at BPA's industrial firm power rate. The proposed contracts for both companies would run from Oct. 1, 2009, through either Sept. 30, 2013 or Sept. 30, 2016, depending on which option was taken. Klumpp said CFAC had expressed interest in the four-year option, while Alcoa preferred the seven-year option. The BPA would accept comments on the contract proposal through Aug. 3 and a new document called "Summary of BPA's Use of the Regional Economic Study to Contemplate the Service Concept," an update to the results of the "2006 Regional Employment and Economic Study." According to Klumpp, "The update demonstrates there is a small net gain in jobs from offering the new service contracts to the DSIs compared to the proposal that was under consideration earlier in January 2009."⁵⁷ CFAC delayed its closure for a month to Aug. 31, citing 10-cent per pound higher aluminum prices, an electrical contract with the BPA extended through Sept. 30 and new sources for alumina. The additional supplies of

alumina became available after numerous competing aluminum plants drastically cut back on production because of the global recession, Beaudry said. Union leaders were optimistic. "Anytime you're open, that's good," Toavs said. "We're hoping (CFAC) stays open. The mood is hopeful. Morale's good."⁵⁸

Back to court

Opposition to the BPA's offer to sell power to CFAC, Intalco and the Port Townsend paper mill for \$34.60 per megawatt-hour came from the Franklin County Public Utilities District in Pasco, Wash., in August. "We are against it," General Manager Ed Brost said. "Our customers shouldn't have to subsidize a multinational corporation when they are already struggling to make ends meet." Brost said if the direct-service industry companies went on the open market, they'd have to pay \$60 to \$70 per megawatt-hour. The difference at the lower rate would have to be made up by public utilities, he said. BPA Spokeswoman Katie Pruder-Scruggs responded by noting that the BPA's average wholesale power sold for \$28.77. The BPA wanted to sell industrial rate power to the companies because the agency valued its relationship with them, she said. The BPA had been doing business with Alcoa since the 1940s, and the BPA was "trying to balance the needs of the region," she said. The BPA had provided CFAC with several short-term power agreements that stopped the smelter from closing down, and CFAC had been in constant negotiations with the BPA in an attempt to obtain cheaper power. Another court decision was under consideration that could affect power rates for the aluminum plants and direct-service industries, she noted.⁵⁹ By Aug. 30, Sens. Baucus and Tester were said to be helping CFAC in their negotiations with BPA, but the smelter's bridge contract was slated to end on Sept. 30. Meanwhile, Alcoa had successfully negotiated a seven-year contract with BPA for its Intalco smelter.⁶⁰

On Aug. 28, 2009, the Ninth Circuit Court of Appeals ruled against the BPA's new aluminum plant power contracts in another case brought against the agency by a group of Pacific Northwest electrical companies, led by the Pacific Northwest Generating Cooperative. The earlier case headed by the same cooperative was decided on Dec. 17, 2008, and forced the BPA to renegotiate power contracts for CFAC, Alcoa and the Port Townsend paper mill. Intervenor in the second case included CFAC, Alcoa, Avista Corporation, PacifiCorp and Idaho Power Co. The court noted that less than a month after issuing its decision in the first case, the BPA and Alcoa had agreed to an amended version of the same power contract that the court had ruled was invalid. "Although under no obligation to contract with Alcoa, BPA agreed to voluntarily make a nearly \$32 million cash 'benefit' payment to the aluminum company, so that the company could purchase power from one of BPA's competitors," the court said. "BPA's justifications for this unusual transaction, under which the agency received nothing directly in exchange

for its \$32 million, do not demonstrate that the transaction was ‘consistent with sound business principles,’ as required by BPA’s governing statutes. We therefore hold that BPA exceeded its statutory authority when it agreed to the Alcoa contract amendment.”⁶¹

In the amended contract, the BPA switched from using the lower contract rate to the statutorily authorized industrial firm power rate as the basis for calculating monetary benefits for Alcoa, and it limited the power “sales” to Alcoa to a nine-month period through Sept. 30, 2009. Like the previous contract that the court ruled invalid, the amended contract did not have the BPA delivering physical power to Alcoa. Instead, Alcoa would receive a monetary benefit which it could use to purchase physical power on the open market. The amended contract said the BPA would pay Alcoa the difference between the forecasted open market rate of \$48.05 per megawatt-hour and the industrial firm power rate of \$32.70. Benefits for the nine-month period were capped at \$31.9 million. The court noted that in a Jan. 13 letter to its customers, the BPA explained that “it was necessary to move quickly to implement the amendment and avoid, if possible, any unnecessary interruption of smelter operations, especially given the difficult economic times and potential loss of additional jobs. Alcoa’s announcement of substantial worldwide layoffs and (CFAC’s) announcement of a likely plant closure reinforced our view that it was important to act quickly.” On March 3, the BPA announced it had executed a nearly identical amendment to its contract with CFAC. While the CFAC contract was not being reviewed by the court in the new case, the CFAC deal was relevant “because in that announcement, BPA provided more detailed explanations of its reasons for entering into the Alcoa contract amendment.”⁶²

According to the appellate court, one of the BPA’s reasons was that “DSI loads have historically benefitted BPA by taking power in relatively flat blocks that require little or no shaping; they have taken power from BPA at light load hours, when power has historically been difficult to market; and they have provided the Administrator with additional power reserves.” The BPA also said in its CFAC announcement letter that “changing technologies in the aluminum and power industries may permit DSI smelters to provide value to BPA in ways that have not yet been imagined.” The BPA also expressed concern about short-term impacts if they did not execute the amended contract. “DSIs currently have no viable alternative for its power needs and a decision not to sell power to DSIs would almost surely have the immediate consequence of the plants shutting down and perhaps never returning to production.” The BPA, however, acknowledged that providing monetary benefits to Alcoa and CFAC would result in higher rates for other BPA customers. “It nonetheless concluded that the contracts were reasonable because the agency did ‘not believe that the proposed amendment, which

covers only a nine-month period at a relatively modest cost, causes unreasonable upward pressure on rates,” the court said.⁶³

The petitioners in the new case argued that the amended contract “is not a transaction that a rational business would enter,” and that the BPA’s justifications failed to establish that the decision was reasonable. The BPA argued that it was not obligated under the first case to prove that monetization of a power sale under the industrial firm power rate satisfied sound business principles. The BPA also argued that the standard of sound business principles is “so suffused with discretion” that the court could not review a case under that principle. If, however, the sound business principles standard was reviewable, the amended contract met that standard, the BPA argued. The appellate court addressed each of the BPA’s arguments. In the first, the court cited the earlier case and other court decisions in which the BPA was required to use sound business principles. The court also disagreed with CFAC’s intervenor argument that selling power at the industrial firm rate would never make sense under the sound business principles standard whenever market rates were higher. The court pointed out that the BPA was statutorily obligated to establish rates within the Pacific Northwest before it sold power outside the region; selling flat blocks of power to the direct-service industries had physical benefits to the system; and a soundly run business might be expected to offer a short-term discount to a customer in the expectation that it would have that customer’s future business.⁶⁴

As for the BPA’s second argument, the appellate court cited several cases and common law to establish that it and other courts could review cases under the sound business principle standard. As for the BPA’s third argument, the court ruled that the BPA’s amended contract with Alcoa did not follow sound business principles. “In essence, BPA has agreed to provide a non-obligatory gift of up to \$32 million,” the court said. Because the deal would cause rates to go up for other BPA customers, the deal “raises serious questions concerning compliance with its statutory obligation to maintain ‘the lowest possible rates to customers consistent with sound business principles.’” The court noted that the money the BPA would provide Alcoa would be used to purchase power from one of the BPA’s competitors. “BPA has effectively agreed to subsidize the operations of its competitors, competitors who, in the past, have not hesitated to take business away from BPA,” the court said. The court cited competition for power sales in the 1990s, when the direct-service industries were drawn away from the BPA by lower wholesale rates on the open market, and the BPA was forced to adjust its DSI rates downward. Unlike the 1990s, open-market prices in 2009 were significantly higher than the BPA’s preferred and industrial rates, so “BPA’s competitors are therefore at a price disadvantage and cannot put direct pressure on BPA to lower its prices.” With that in mind, offering \$32 million to Alcoa did not make sound business sense, the court said.⁶⁵

The court also rejected the BPA's argument that it was helping prevent aluminum smelters from shutting down and costing additional jobs. "This justification is essentially identical to one we rejected as invalid, while sympathizing with its humanitarian goals," the court said. The court had held previously that "this goal, while 'laudable,' was simply not reflective of a 'business-oriented philosophy.'" The court noted that even the BPA's own lawyers had conceded in oral argument that "it's not Bonneville's responsibility to ensure that (the DSIs) exist." The court recognized the historical role the direct-service industries played in developing the federal power system in the Pacific Northwest, but it noted that because the BPA would provide monetary benefits to Alcoa, not physical power, the transmission and generating benefits of providing physical power to a large customer like a DSI would not exist. The court also noted that the BPA had not explained how it could offer \$32 million to Alcoa to help out the company but wouldn't sign a long-term power contract with Alcoa because it didn't want to assume the risk that the Alcoa smelters one day would no longer be operating.⁶⁶

Citing the declining total direct-service industry load from 3,150 megawatts in the 1990s to 630 megawatts in 2008, the court noted that "the current health of the aluminum smelting industry is precarious at best." The court also wanted some analytical or evidentiary proof of the past benefits that the direct-service industries had provided and didn't understand the urgency of the BPA's decision. In conclusion, the court said the BPA did not act according to sound business principles in offering the Alcoa deal, but if the BPA provided a rational business justification, "we would be obliged to defer to the agency's expertise." Because some of the money already had been distributed to Alcoa, the court remanded the case to the lower court to decide how the unlawful money could be recovered. The appellate court noted that Alcoa had used the money to purchase power on the open market. The court also noted that it had handled the case "with careful regard" to the BPA's essential role in the region and noted that a statutory revision could make the BPA's job easier.⁶⁷

Power politics

BPA Administrator Stephen Wright emailed Department of Energy Deputy Secretary Daniel Poneman about a week after the recent Ninth Circuit Court of Appeals ruling asking for guidance. "I have mentioned before that aluminum issues tend to generate a lot of controversy for us," he wrote. "We are in one of those moments now." Wright explained that the number of aluminum plants that purchased power from the BPA had fallen from nine in the 1990s to two – CFAC and Alcoa's Intalco plant. He also explained that the original power contracts for the two plants for the 2007 to 2011 period had been struck down by the Ninth Circuit Court of Appeals in December 2008. Wright said the BPA worked quickly to address the court's concerns "because of the concern about

near-term job losses.” The BPA came up with new contracts that still provided monetized benefits for Alcoa, but the calculation used the industrial firm power rate rather than the preferred power rate. “Late last month, the court concluded the new contracts are invalid as well,” Wright said. The court’s logic was based on a provision that required the BPA to operate with sound business principles. “The court was dismissive of concerns about job impacts, going so far as to suggest legislative changes would be necessary to use this reasoning as a foundation for making power sales to the companies,” Wright said.⁶⁸

By Sept. 14, 2009, local media were reporting that CFAC would remain open through the end of October instead of shutting down at the end of September. The company was still in the middle of long-term power negotiations with the BPA and continued to purchase power on the open market. BPA Spokeswoman Katie Pruder-Scruggs confirmed that negotiations between the BPA and CFAC were continuing. The latest appellate court ruling did not rule out BPA power sales to direct-service industries, but rather that the BPA could not over subsidize the power sales, she explained. CFAC Spokesman Haley Beaudry said Montana’s Congressional delegation was helping CFAC with its negotiations. In the meantime, aluminum was selling at about 84 cents per pound and there was 4.5 million tons of inventory accumulated in the world’s warehouses.⁶⁹

The back-to-back appellate court cases fired up public opposition to the BPA’s subsidized sales to its direct-service industry customers. A case in point was an article in *Clearing Up*, a weekly news journal covering Pacific Northwest energy issues, which Elizabeth Klumpp, BPA’s liaison for Western Washington, emailed to the offices of Rep. Norm Dicks of Washington on Sept. 8. “I do not vouch for the accuracy of their coverage, but it is likely the most in-depth coverage of the recent court decision,” Klumpp said. The article’s headline read, “BPA seems ‘bound and determined to plunge ahead,’” and the article began by noting that the BPA’s preference customers wanted the BPA to get on with refunding “unlawful benefits provided to DSI customers,” as ordered by the Ninth Circuit Court of Appeals. The article cited a source saying the BPA would not provide Alcoa the final \$6 million in payments under the amended contract that the court had invalidated. The article said public utilities had sent a letter to BPA Acting Deputy Director Allen Burns on Sept. 1 complaining that rates paid by public utilities since Oct. 1 included “the costs of BPA’s unlawful cash payments” to Alcoa and CFAC. According to the article, the public utilities told Burns no more benefits should be provided to the direct-service industries until the BPA determined how it would recover the subsidies already paid to the DSIs.⁷⁰

The Clearing Up article reported that the Pacific Northwest Generating Cooperative told Burns in the letter that the public utilities believed they were overcharged by \$142 million to cover the BPA's payments to Alcoa and CFAC. That included \$110 million under the contracts invalidated under the first appellate court ruling and \$32 million from the second ruling. On the other hand, Alcoa had claimed in a recent rate case that it overpaid \$195 million over five years but was willing to settle for \$147 million. In June, according to the article, the BPA said it wasn't sure how the money would be returned because of the severability and damages provisions in the power contracts. Pacific Northwest Generating Cooperative CEO John Prescott said the BPA's actions were not consistent with "sound business principles," the article reported. Public Power Council Executive Director Scott Corwin said the BPA seemed "bound and determined to plunge ahead" with a new contract with Alcoa "regardless of the fact it can't be justified from a business sense." Canby Utility Board General Manager Dirk Borges said, "We no longer have confidence that BPA's Office of General Counsel will protect the legal interests of the federal government."⁷¹

The BPA decided not to make the Sept. 11 and Oct. 13 payments to Alcoa that were part of the 2006 block power sales agreement after the agreement had been amended and then ruled invalid by the appellate court.⁷² Following the BPA's decision, a flurry of lobbying and political activity ensued in Washington, D.C. On Sept. 22, Randy Roach, general counsel for the Department of Energy, wrote to Robert Kopp, director of the appellate staff for the civil division at the Justice Department, asking that the Justice Department request a rehearing of the second ruling by the Ninth Circuit Court of Appeals. A copy of the letter was sent to Stephen Wright and four other BPA and Energy Department officials. A week later, four senators and three representatives wrote to Wright urging him not to proceed with the seven-year power sales contracts with Alcoa and CFAC. The letter was signed by Sens. Ron Wyden and Jeff Merkley of Oregon, Sens. Mike Crapo and James Risch of Idaho, Reps. Peter DeFazio and David Wu of Oregon and Rep. Michael Simpson of Idaho. Copies were sent to Energy Department Deputy Secretary Daniel Poneman and General Counsel Scott Harris.⁷³

The Sept. 29 letter made several arguments based on the second appellate court ruling. First, the BPA's proposed contracts did not meet the "sound business principles" test. "For the second time in eight months, the court again concluded that BPA must have a business justification for these contracts, and it invalidated the latest contract," the letter said. "The court's finding is not surprising since BPA loses money in these arrangements, receives no discernible benefit from them, and must raise rates to its preference utility customers in order to purchase power for an individual company." The BPA's newest proposal was no different, the letter argued. "Even under BPA's most recent optimistic assessment, the net expected gain in regional jobs comes at a

staggering cost of nearly \$180,000 per job per year – a cost borne by BPA and its customers,” the letter said. While acknowledging that the BPA had historically benefited by selling surplus power to the direct-service industries, the letter noted that “BPA no longer has excess power to sell to the DSIs.” Citing several studies, the letter said “forecasts suggest that power reserves will likely continue to be constrained.” As a result, “Rather than providing system benefits, the proposed contracts will result in increased system costs and financial risks.” The letter suggested that the BPA would pay “\$600 million in additional costs to support these two companies over the next seven years.”⁷⁴

On Oct. 1, Joel Merkel, a legislative counsel for Sen. Maria Cantwell of Washington, sent an email about the power contracts to Lily West, Deputy Secretary Daniel Poneman’s special assistant. Merkel said he was writing on behalf of Cantwell and Sen. Patty Murray of Washington to request a meeting for “some constituents from Washington state and others” with Poneman and Harris to discuss the BPA’s proposed DSI power contracts. Merkel said the DSI companies wanted to explain to Poneman and Harris their understanding of the recent appellate court ruling, including “how DSI contracts can be drafted going forward that will keep these important plants open, and how that contract, if offered by BPA, will tee up the contract issue for consideration again and clarification by the Ninth Circuit.” Merkel described the urgency and the economic impacts. “This matter is quite time sensitive because without a BPA power contract, the two aluminum smelters and one pulp and paper plant may close their doors, resulting in the loss of almost one thousand direct jobs and 2-3 times that amount in indirect jobs,” Merkel said. The DSI representatives who wanted to meet with Poneman would include executives from Alcoa, Glencore and Port Townsend and representatives from two unions.⁷⁵

Sens. Baucus and Tester appealed to Energy Secretary Steven Chu on Oct. 19, 2009, to help CFAC get better power rates from the BPA. They noted that “CFAC has struggled mightily to stay in business” since the appellate court ruling in December 2008. The senators urged the Energy Department and the BPA “to expediently negotiate a workable contract for CFAC so that it can keep its doors open.” They noted that “time is running out for CFAC.”⁷⁶ Two days later, CFAC announced it would shut down its aluminum smelter in Columbia Falls at the end of the month, putting 88 employees out of work. The company said the decision was made after CFAC and the BPA couldn’t reach an agreement on power rates. “We’re hoping this is a temporary condition,” Haley Beaudry told media on Oct. 21, adding that as far as negotiations with the BPA went, “We’re still working on it.” He noted, however, that even if a power contract was signed that day, the plant had run out of raw materials.⁷⁷ CFAC had depleted its supply of alumina, carbon and coal tar pitch and lacked sufficient raw materials to keep the

plant operating past October even if a power contract was signed, Beaudry said. Restocking raw materials could take a month or so. A small number of employees would remain at the plant performing maintenance and “keeping the heat on,” he said. “Beyond that, the plant will be closed.”⁷⁸

“The prices for electricity have gone way up, way beyond what you can make aluminum at,” Beaudry told local media on Oct. 21. The BPA had supplied CFAC with a subsidy so long as the company purchased power from the BPA, but after that ended on Sept. 30, CFAC began purchasing power from the open market. “Right now, we have no power contract,” Beaudry said. “We’ve been in the open market, the commodity market, for the entire month of October.” During that time, power prices had increased from about \$35 per megawatt-hour to \$50. “That’s just too high,” Beaudry said. Negotiations between the BPA and the company and unions were continuing, he said. “Everybody is trying to find a solution,” he said. “There has to be a solution. We haven’t found it yet, but there has to be.”⁷⁹ Another factor in CFAC’s decision was the nine-year global metal supply, a total of 4.5 million tons, which made selling aluminum difficult. “The plan is that it’s not a permanent shutdown, but we don’t have any timeline of when it’s going to reopen,” Beaudry said. The laid-off workers would qualify for assistance from the Trade Adjustment Act, he noted, which provided training and education. Another federal program would help workers pay for insurance premiums. “It’s still a very hard hit on the community and the northern part of Flathead Valley,” Beaudry said. “It’s especially hard on families here in Columbia Falls.”⁸⁰

Creative contracts

With time running out, CFAC management came up with a complex power contract offer that included compensating the BPA with a share of the company’s profits from aluminum sales or a 25% equity share in the company. Haley Beaudry emailed a copy of the draft proposal to Allen Burns at the BPA on Oct. 22. Copies were sent to Sens. Baucus and Tester and Rep. Rehberg. Beaudry said the CFAC proposal “is both creative and in concurrence” with the second appellate court ruling. The proposal called for the BPA to provide up to 140 megawatts of block firm power from Nov. 1, 2009, through Sept. 30, 2013, at the industrial firm power rate. The BPA would be allowed to cancel the contract if the difference between the Mid-Columbia open-market rate and the BPA’s industrial firm power rate exceeded \$40 per megawatt-hour. In addition, the BPA could either participate in future CFAC profits or take an equity share in CFAC based on a specified formula. Under the first option, the BPA could participate in CFAC profits if the difference between the Mid-Columbia and industrial firm power rates exceeded \$15 per megawatt-hour and aluminum prices on the London Metal Exchange exceeded \$2,750 per ton. In that case, if the metal price was between \$2,750 and \$3,500, then for

every dollar per ton above \$2,750, CFAC would pay BPA the industrial firm power rate plus \$55, based on 2% of \$2,750. If the metal price exceeded \$3,500, CFAC would pay the BPA the industrial firm power rate plus \$195, based on \$55 plus 4% of \$3,500. Under the second option, instead of participating in CFAC's profits the BPA could take a 25% equity share in CFAC at any time during the term of the contract. The BPA could sell that equity at any time, the proposal said.⁸¹

Meanwhile, Alcoa was promoting a new power contract for its Intalco plant. On Oct. 26, Michael Dotten, an attorney with Marten Law Group in Portland, emailed an analysis of Alcoa's proposed contract to Scott Harris at the Energy Department that explained why the contract would be consistent with the "sound business principles" test from the second appellate court ruling. "There simply isn't any more time left to negotiate any alternative arrangement," Dotten said. "As you probably know, CFAC has announced that its smelter in Montana is closing down in light of its power contract situation. Alcoa could be close behind if we cannot resolve which contract will be offered to Alcoa by the end of this week." Dotten said 2,000 jobs could be lost in the region around Alcoa's Intalco smelter. The proposed contract would provide Intalco with two-thirds of the power the BPA historically supplied to the smelter and two-thirds of plant capacity.⁸²

According to Dotten's analysis, in the past the Interior Department, the predecessor to the Energy Department, used a three-part standard to determine "sound business principles." They included: "1) to encourage the most widespread use (of power); 2) at the lowest possible rates to consumers; 3) consistent with sound business principles." The intent of encouraging widespread use of power was to meet the BPA's obligation to repay the Treasury Department for money borrowed to build the hydroelectric dams and transmission infrastructure. Dotten said two of the three options proposed in the Alcoa power contract were satisfactory to Alcoa. "Either contract contemplates a traditional physical sale of power rather than a 'contract for differences' or 'monetary benefit,'" Dotten said. He noted that the Ninth Circuit Court of Appeals "has articulated BPA's obligation to make sales of power to the direct service industries at the industrial power rate before BPA may make sales outside the Pacific Northwest region." Dotten also noted that the appellate court in the past had sanctioned BPA power contracts for direct-service industries that included variable rates based on the price of aluminum. "As aluminum prices rose, so too did the price for power, and as aluminum prices declined, power prices were discounted," he said.⁸³

Stephen Wright emailed Daniel Poneman on Oct. 28, 2009, to relay Sen. Murray's concerns regarding Alcoa's power contract. "She said Alcoa wants our answer by no later than the end of the week," Wright said. He said the BPA was working through the issues and once an option was chosen, it would go out to public comment and,

“depending on how difficult the public comment is to address” in the record of decision, a contract could be signed in a little more than a month. Wright also emailed Poneman about concerns Washington Gov. Christine Gregoire raised in a phone call over power sales to Alcoa. “She was very down because Boeing announced today after a long public deliberation that they are going to South Carolina rather than Washington,” Wright said. “She’s very worried about Alcoa making a decision soon to shut down. Wanted to express her concern and urge a prompt decision. Gave her same message as Sen. Murray – we understand the importance and are working to resolve issues.” Wright also noted that Rep. Dicks was worried about power sales to the Port Townsend paper plant.

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News about CFAC’s approaching closure was relayed to Poneman on Oct. 29 by Wright, who informed him that “CFAC has begun ramping down their operation.” The smelter had been using 38 megawatts and went down to half that on Oct. 29. “Looks like they will shut down Nov. 1,” Wright said. “They have not responded to our 14-month offer made on (Oct. 26).” Meanwhile, Wright said, “Alcoa is calling here about every two hours to see if we have made a decision.” BPA staff had chosen an alternative for the proposed Alcoa contract, Wright said.⁸⁵ The Hungry Horse News reported on Oct. 29 that Sen. Tester “didn’t see anything wrong” with the contract between CFAC and the BPA that was struck down by the appellate court in December. He also commended CFAC officials for their efforts to help workers who would be displaced when the smelter shut down on Oct. 31. Tester noted that CFAC’s parent company, Glencore, was not helping. “We’ve had a hard time getting the (Glencore) brass to the table,” Tester said. “That’s been frustrating.” Katie Pruder-Scruggs said the BPA was working to find solutions for its direct-service industry customers. “BPA’s goal has been, and remains, to craft a set of contracts that will balance between minimizing impacts to BPA rates and providing the direct service industry a reasonable chance to continue operating in the Pacific Northwest,” she said.⁸⁶ Virginia Sloan, at Sen. Jon Tester’s office in Kalispell, emailed other Tester aides about the CFAC and BPA negotiations on Oct. 30. “BPA did call Glencore folks but there was nothing of substance to report,” she said. “In the meantime, all the employees are gone from CFAC except for maintenance folks making sure the shutdown is complete. Even Haley (Beaudry) is off the payroll; however, he will continue to work on this project. It’s a sad day in Columbia Falls.”⁸⁷

On Oct. 30, 2009, BPA Administrator Stephen Wright sent Poneman a draft message for Sen. Baucus about a power contract offer for CFAC. “We understand how important the Columbia Falls Aluminum (CFAC) plant is to you (it’s more than just jobs – he worked there as he was going to college),” Wright wrote, with notes in parentheses. “We are aware heroic efforts have been made by BPA to keep the plant operating over the years in part due to interest you have expressed.” The draft message went on to explain how

the two appellate court decisions “have made the challenge of providing affordable power to CFAC significantly harder.” The draft message explained that “Steve Wright and his team at BPA have been in contact with CFAC regularly for the last month. CFAC made an offer to BPA last week that has significant complexity as well as cost and would take months to negotiate.” Instead, the BPA had offered power to CFAC at the industrial firm power rate for 15 months “in order to try to keep the plant open but did not get an answer.” The message went on to say, “It appears as of this morning that the plant is shut down and is no longer using power for making aluminum.” The message went on to say that the BPA was committed to working with CFAC to find a solution that was consistent with the second appellate court ruling. “We think we have found a way to do that with the Alcoa plant in Washington State in a manner where we take some litigation risk in order to preserve jobs,” the draft message said. “The same offer will be made to CFAC. But as I know you and Stephen Wright have talked about, the decision-making process at Glencore (the owner of CFAC) has been opaque. I know you and Steve have worked to try to get more clarity about how decisions are being made, but so far it is still a problem.” The message concluded by noting that Wright intended to contact CFAC that day.⁸⁸

That same day, BPA Acting Deputy Administrator Allen Burns issued a letter to regional customers, stakeholders and other interested parties about service for direct-service industries in light of the second appellate court ruling. The BPA had drafted new identical contracts for Alcoa and CFAC which were available for public review, he said. The incorporation of an “Equivalent Benefits” test with the contract would make new DSI contracts meet the “sound business principles” test required in the two appellate court decisions. “BPA’s goal has been, and remains, to craft a set of contracts that will strike a balance between minimizing impacts to BPA rates and providing the direct-service industries a chance to continue operating in the Pacific Northwest and, in doing so, to retain family wage jobs in these trying economic times such that there are ‘net’ employment benefits for the region,” Burns said. “The purpose of the Northwest Power Act is to afford the Pacific Northwest an adequate, efficient, economical and reliable power supply, and service to the DSI is consistent with that purpose.”⁸⁹

Stiff opposition to the direct-service industries continued among some in Congress. On Oct. 30, Wright wrote to Oregon Sen. Wyden in reply to Wyden’s Sept. 29 letter in opposition to power sales for Alcoa, CFAC and the Port Townsend Paper Co. Wright acknowledged the “difficult and divisive debate for our region” and noted that contract talks still continued. “I do want to respond to your statement that BPA should not serve these customers because it no longer has excess power to sell as surplus,” Wright said. Referring to a provision in the Northwest Power Act, Wright noted that the BPA administrator was authorized to sell power to direct-service industries. “This authority is

not linked to, or otherwise limited by, the existence of surplus BPA power,” Wright said, adding that the first appellate court ruling confirmed this authority. “The question, and it is one we are reviewing, is whether the benefits of DSI service justify the costs of such service,” Wright said.⁹⁰

Wright also got calls from direct-service industry supporters. On Nov. 1, he emailed Poneman about a recent phone call from Washington Gov. Gregoire about the new Alcoa power contract. “Not only was she very pleased with the outcome, she’s willing to help going forward – seeking to discourage new litigation and filing amicus to support us if and when it occurs,” Wright said. Poneman emailed back to confirm his own conversation with Gregoire over the phone. Federal officials tip-toeing the political tightrope also had to deal with the press. On Nov. 2, Wright emailed copies of newspaper articles from Bellingham, Wash., and Columbia Falls and Missoula, Mont., to Poneman. He noted that the Missoula story referenced an electrical cooperative that would have to pay increased costs if the BPA sold power to an aluminum plant. Reaction from Washington Sens. Murray and Cantwell on the Alcoa power contract was “very positive while also sober. Best quote that sums this up – ‘This cat is on its seventh life.’” Wright noted that public power companies “would have preferred that we just not offer any contracts, particularly to the aluminum folks.” Wright also said he had talked with a Glencore representative about CFAC’s power on Nov. 1.⁹¹

The shut down

It was Halloween Day 2009 when the Columbia Falls smelter shut down completely for the second time since it began operating in 1955. “Being a gloomy day like this, the weather is pretty appropriate,” Haley Beaudry told the Hungry Horse News. “It’s closed. The plant is not operating anymore.” Beaudry was among the 88 employees laid off that day. The company had been unable to negotiate a power deal with the BPA, but Beaudry said he had heard that the BPA would have a proposed draft power agreement available for public review by Nov. 9. He said he didn’t know what the proposal would include. “If there’s any way to save these jobs, it’s worthwhile,” he said. “I wish we would have been able to come to a solution before this.” He noted that startup times were long and the plant had run out of raw materials. “It’s a major process to shut down, and it’s another major process to restart,” he said. “We’ve laid everybody off, including me.” Beaudry praised the work force and called for measures to save jobs. “I wish we had been able to come to a solution before this,” he said.⁹²

Lloyd Fine’s last day at the plant was Oct. 31. He started at the Anaconda Aluminum Co. as a laborer in 1968 as the plant was expanding from three potlines to five. He worked his way up to potline foreman by 1978, paste plant foreman by 1989 and head of environmental services by 2001. He was leading three departments in February 2009 –

dayshift services, environmental controls and the paste plant. “I was the chief cook and bottle washer,” he recalled in January 2010. “The last six or seven years, seemed like we weren’t sure the plant would stay open.” Fine said he never lost a day of work in 40 years at the plant due to layoffs or partial shutdowns, but he was able to take the entire hunting season off each year from 1977 through 1995. Fine enrolled in a cabinetry class at Flathead Valley Community College after the plant closed. The federal Trade Adjustment Assistance program paid for up to two years of classroom instruction for laid-off workers. The college reported a record enrollment from layoffs at CFAC and Plum Creek, including 235 students under the TAA program.⁹³

The federal Trade Adjustment Assistance Act provided workers impacted by foreign competition with up to two years of training. CFAC had petitioned the Labor Department for assistance under the act in previous layoffs, so the workers already qualified. The program would pay for unemployment benefits and college at the same time, help pay relocation and job search costs, and pay 80% of medical insurance premiums. Workers over 50 years old could get subsidies if they had to take a lower-paying job – up to 50% of the difference or up to \$10,000 per year. Training costs would be limited to what was cost-effective and to fields that were in demand. Laura Gardner at the Flathead County Job Service said about 350 laid-off workers in the Flathead had benefited from the Trade Adjustment Assistance law.⁹⁴

By early November, the BPA was seeking comment on a proposed power contract that would provide CFAC with enough affordable power to run at 20% capacity for 18 months, and possibly enough to run at 40%. Beaudry, however, said the company wanted a longer-term contract, noting that “the bank won’t give you a five-year contract, no matter who you are.” BPA Spokeswoman Katie Pruder-Scruggs referred to “this brave new world, where there’s so many more demands on the system. This is a situation in flux.” Missoulian reporter Michael Jamison asked if it made sense for BPA ratepayers to subsidize the aluminum company to the amount of \$8.5 million for 88 workers – about \$100,000 per worker. Beaudry responded by noting that the cost amounted to “pennies per person” when spread across the Pacific Northwest. Western Montana Electric G&T Cooperative General Manager Bill Drummond differed. Eliminating subsidies to the direct-service industries reduced electric rates by 3% to 4%, “and every little bit counts when you’re an industrial ratepayer trying to scratch out a living,” he said. CFAC produced about 1 million pounds of aluminum per day at its height, but it had been operating at 10% of full capacity – amounting to about 1% of total U.S. capacity. And it wasn’t just workers who would benefit from a BPA subsidy – Glencore, the Swiss-based global commodities trader that posted \$1 billion in earnings for the first half of 2009, would also benefit. In 1955, when the Columbia Falls smelter plant first began operating, the BPA had surplus power to sell at cheap prices, but with

growth and diversity in the Pacific Northwest economy, that surplus power no longer existed, Jamison said. Sen. Tester, however, continued to stand by CFAC, arguing that it all “boils down to jobs in Montana that stay in Montana,” Tester’s spokesman Aaron Murphy said. Tester also wanted to keep America’s manufacturing base in the U.S. instead of outsourcing it.⁹⁵

The BPA had made a contract offer to CFAC, but the agency was under court orders to follow “sound business principles” when it came to dealing with the direct-service industries. On Nov. 5, BPA Acting Deputy Administrator Allen Burns emailed Wright and other BPA officials about an important provision in the agency’s power contracts with Alcoa and CFAC. Burns noted that the power contracts for 2007 to 2011, which had been overturned by the Ninth Circuit Court of Appeals, had stated that the region’s aluminum companies would not be eligible for a new power contract if they didn’t use BPA power for 11 months. This was a “use or lose” provision, he said. New seven-year contracts proposed for Alcoa and CFAC stated that if the companies curtailed operations for 24 months of the seven years, they would have to terminate operation and not restart during the remainder of the seven-year term. “This is because we will need to make longer term purchases to support the sale and don’t want to have them then walk away because they can get a better deal,” Burns said.⁹⁶

The seven-year contract also had a provision that required a plant to run at least 12 months out of the previous three years to be eligible for the contract offer. “We felt this was necessary to make sure Goldendale would not try to assert an ability to restart and ask for a contract,” Burns said. The BPA also offered a 14-month contract to Alcoa and CFAC, Burns said, but it didn’t contain any of these provisions “because we aren’t making a long term commitment on our end.” The seven-year and the 14-month proposals did not say anything about eligibility for subsequent power contracts being affected by how much time a plant operated within the term of the contract. The BPA, however, could deal with a company that failed to operate its plant for any lengthy time as a policy decision rather than on a contract basis, Burns said. The BPA had a general policy “to avoid having terminated plants trying to restart and get power,” he said.⁹⁷ On Nov. 17, Wright emailed Poneman with an update on the CFAC plant. The company had sent him a draft power contract several days earlier, and Wright planned to contact them the same day, “but we are not hearing much from the Montana senators so far.” Wright said his primary focus was on getting a record of decision written for Alcoa’s power contract. The BPA had received significant public comment on the proposed Alcoa contract, Wright noted.⁹⁸

Glimmers of hope

Sen. Tester continued to work on a BPA power contract for CFAC. On Dec. 6, 2010, Tester wrote to Wright urging the BPA to quickly bring negotiations to a close for a long-term power contract for CFAC. "This recession has hammered the Flathead Valley with double-digit unemployment and job losses in core industries," Tester said. "Reopening the CFAC plant could create as many as 350 good-paying jobs in the Flathead Valley. I urge you to work swiftly and flexibly to ensure that a power contract is signed with Glencore to bring these jobs back to the Treasure State." Tester urged Wright to finalize a power contract by the end of 2010 "so the plant can return to production in the new year and we can return our economy to its full power." Former CFAC Spokesman Haley Beaudry told local media that company officials had been in negotiations with the BPA since the plant shut down. "One of the few things left to settle is the term, the length of the contract," he said. Beaudry said company officials had asked Sens. Baucus and Tester and Rep. Rehberg for help in getting a long-term contract. Other obstacles to a restart included stiff competition from international aluminum producers, despite a growing market for aluminum. "The longer the plant sits idle, the more of a challenge it is to get it reopened," he said. "We're still hopeful." The number of potlines that would restart would depend on the source of raw materials, he added.⁹⁹

Four days later, Sen. Tester met with CFAC's union leaders to discuss the possibility of the plant reopening. Aluminum Workers Trades Council President Dave Toavs said CFAC was nearer to restarting than it had been since shutting down in 2009. "This is as close as we've been since the curtailment," he said. Toavs declined to reveal his sources but added, "It's close, whatever's going on, they're close." Toavs, however, was skeptical of a restart if it didn't happen in a few more months. "If we don't fire this spring, I don't know," he said. "We're at a crossroads." A restart could be a difficult and dangerous process and could take two to three months before production was high enough to employ 350 people, the union leaders told the senator. Tester told them he was confident a power arrangement could be reached between CFAC and the BPA, but he wasn't certain whether the contract would be for 3 1/2 years or five years. "I think BPA is going to try their best to do it," he said. Beaudry noted that it always had been the goal of the company to reopen. "We're pushing to reopen the facility by noon," he said. "Tomorrow, next week, next month, next year. There is no schedule." Meanwhile, several organizations had offered to buy or lease the plant, including the Flathead Economic Development Authority, which wanted to use the site for a rail-served industrial park. The county organization had received a \$1.1 million grant from the U.S. Economic Development Administration to establish such a park in September, but so far Glencore had expressed no interest in selling. Startup companies had also approached Glencore about leasing portions of the property.¹⁰⁰

Tax protests

The CFAC plant had been shut down for about one and a half years when the company applied for a major tax reduction. The School District 6 Board of Trustees learned about the request on April 11, 2011. Beaudry had sent a letter to the Flathead County Commissioners requesting a 95% tax reduction for the shuttered smelter. He cited a 2009 Montana state law that said commercial or industrial properties which had been vacant for six months and were expected to remain vacant for another six months were eligible for a reduction in the assessment of taxable value. "The CFAC facilities are currently idle," Beaudry said in the letter. "The plant is over 50 years old and, like all major plants, was not intended to be idled and restarted intermittently. Going 'dark' or 'cold' is hard on equipment and facilities. The longer the plant stays out of operation, the more challenging and costly it will be to restart. While the evaluation of the market conditions are ongoing, I understand a restart will be farther than six months in the future. Since any decision to resume operations will ultimately be an economic one, I am requesting this property tax reduction." Beaudry said a restart could be possible in April 2012. School District 6 Superintendent Michael Nicosia said a tax reduction for CFAC could result in a "considerable tax increase" for other property owners in the district. The school district received \$188,609 from CFAC's property taxes, the equivalent to property taxes on 277 residential homes with a market value of \$200,000.

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CFAC was the largest taxpayer in the school district in 1996, but the company's taxable value had fallen to \$1.68 million by 2009, of which 23% was protested and held up in escrow. CFAC's taxable value was reduced again in 2010 to \$883,089, about 80% less than in 1996. CFAC had won a significant adjustment in 2006 that cost the school district \$115,000, and the company won an \$82,000 adjustment in a 2009 appeal. About \$296,000 of CFAC's protested taxes from 2009, however, would be released to the school district. Another \$185,000 in taxes was being held in escrow from a 2010 tax protest. The tax protests had reduced the school district's cash reserves to 5%, when most school districts maintained a 10% cash reserve, the school board learned. CFAC had lost the first stage in its latest tax appeal process in February 2011. The tax reduction request would be considered jointly with the Flathead County Board of Commissioners. The school board could refuse CFAC's tax reduction request if it felt it was not in the best interests of the school district. Beaudry said the frequency of the company's tax protests was explained by the demise of the aluminum smelter. The market value of the plant had dropped from \$46 million in 2009 to \$33 million in 2010, according to the Montana Department of Revenue.¹⁰²

CFAC's 95% tax reduction protest went to a joint meeting of the school board and the county commissioners on May 9, 2011. Flathead County Deputy Attorney Tara Fugina explained that according to a new state law, the board members had to choose 95% or nothing. One condition of the law was that a commercial or industrial company was required to prove it hadn't operated at the site for six months prior to the hearing and wouldn't operate for six months after the hearing. CFAC had been idle since Oct. 31, 2009. Beaudry told media ahead of the hearing that he believed the plant "will restart when market conditions warrant. Right now, we need help to make that day more of a likelihood."¹⁰³ During the joint hearing, Beaudry provided a thumbnail history of CFAC's troubles and noted that he hadn't received a paycheck in 1 1/2 years – he was just trying to get the CFAC plant operating again. "Look how skinny I am," he said. CFAC continued to negotiate with the BPA for a new power contract, he said, but to remain viable the plant needed to operate at about 50% to 60% capacity. "The reason for this state law is just for this situation," Beaudry said. "The reason for the law is to get shutdown plants reopened." He noted that it could cost from \$10 million to \$20 million to restart the plant. "The longer it's closed, the higher we are raising the hurdle," he said. Beaudry also said he believed enough people in the local work force existed to get the plant restarted. A restart was "doable," he said. He also noted that the plant had made a profit in 2007 but operated at a loss in 2008 and 2009.¹⁰⁴

Stefan Belman, a member of the public at the tax protest hearing, expressed his discontent that Glencore had not sent a representative, and former state representative and former school teacher Dee Brown claimed CFAC had not been good to the local community since Glencore purchased the plant. Local banker Don Bennett echoed Brown's statement, claiming Glencore had not cooperated with him on economic development projects. "Turn-around is fair play," he said, adding that a tax break might just be an incentive not to restart. Steelworkers Local 320 President Brian Doyle said he opposed the tax reduction unless CFAC could guarantee the plant would reopen – and he doubted that would happen. Local banker Mike Burr noted that granting the tax reduction would not guarantee that CFAC would create jobs. One member of the public noted that Glencore was about to issue an initial public offering worth billions of dollars. With restart costs as high as \$20 million, one school board trustee wanted to know how \$188,000 in savings from the tax request could make a difference. School Board Trustee Larry Wilson called CFAC's request "extremely arrogant" in light of the housing foreclosures in Columbia Falls and the profits "sucked" out of the area by Glencore. He also wanted to know why the millions of dollars in profits generated by the plant over the decades couldn't be used to restart the plant. County Commissioner Dale Lauman said "it's unfair to ask local taxpayers to assume the tax burden of a corporation," and School Board Trustee Barb Riley said she'd "prefer to see CFAC as a local business, not a company in Switzerland."¹⁰⁵

Both boards rejected CFAC's tax reduction request at the May 9 joint hearing. The Daily Inter Lake expressed support for the decision in a May 12 editorial. The newspaper noted that the plant had been closed for two years, but Glencore continued to prosper and there was no guarantee that the plant would reopen if the tax reduction request was granted.¹⁰⁶ For much of the smelter's history, it had been the No. 1 taxpayer in Flathead County. The top-six taxpayers in the county in 2011 were Flathead Electric Cooperative at \$6.7 million, Northwestern Energy at \$3.1 million, CenturyLink at \$3.0 million, Plum Creek Timber at \$1.9 million, BNSF Railway at \$1.1 million and CFAC at \$878,186. Flathead County tax revenue increased by \$2.8 million in 2011, but \$70.5 million of the \$74.2 million in total revenue came from real estate. Tax revenue from business equipment and mobile homes decreased from 2010 to 2011.¹⁰⁷ By 2013, the market value of the property and equipment at CFAC had fallen to \$12.3 million, and the taxable value had fallen to \$363,593. The aluminum company owed \$319,894 for taxes in 2013.¹⁰⁸

Another power offer

Sens. Baucus and Tester had been working on behalf of CFAC to line up a good BPA power deal ever since the plant shut down, but they eventually reported difficulties dealing with Glencore. In a joint May 3, 2011, press release, the senators called on the BPA and CFAC "to come to the table and find a solution for reopening the plant," which they said would create 350 good-paying jobs. The senators said they had written to Stephen Wright at the BPA and Glencore's U.S. representative, Matthew Lucke, but they also expressed concern about Glencore's plans to hold an initial public offering worth \$12 billion while requesting a 95% tax reduction for its smelter in Columbia Falls. The senators cited the 13.1% unemployment rate in Flathead County and expressed confidence in the aluminum market. "We have seen the market for aluminum grow significantly lately, while the spot market of power has declined, and we view this as a real opportunity to continue Montana's economic recovery and maintain our manufacturing base," they said in their letter.¹⁰⁹

On July 27, 2011, the Hungry Horse News ran a BPA advertisement announcing an open house meeting in Columbia Falls to present a proposal to sell CFAC enough power to operate two of its five potlines. A comment period would follow.¹¹⁰ The BPA later reported that CFAC workers and the public at the meeting showed "strong support" for the proposed power deal. Matthew Lucke, who attended the meeting for Glencore, reportedly told BPA officials that if Glencore was offered the contract that day, the company would restart and run three potlines, using BPA power and market power.¹¹¹ The proposed take-or-pay power contract called for selling 140 megawatts for 4 1/2 years beginning at \$36 per megawatt-hour for at least 24 months, at which point the

price could be contested. The proposal needed to undergo an “equivalent benefits analysis” and a review under the National Environmental Policy Act. The latter would be a supplement to a 1986 environmental review of the 10 aluminum smelters in the Pacific Northwest.¹¹²

Beaudry told local media that according to the proposed contract, the BPA could sell any power not used by CFAC on the open market. If the unused power sold at below-market prices, CFAC would have to make up the difference. If it sold at above-market prices, the BPA would keep the difference. Lucke told the BPA at the meeting that it might make sense for Glencore to purchase another 70 megawatts of power on the open market and run three potlines for economies of scale. That would mean hiring 300 employees instead of 230 for two potlines. CFAC would need to find enough skilled workers to put the aging plant into operation, and Glencore faced transportation problems with raw materials because the unloading facilities in Everett and Vancouver were no longer available.¹¹³ According to the terms of the proposed contract, CFAC was required to employ at least 231 full-time-equivalent workers to receive the full 140 megawatts. “Uncontrollable forces” that could affect the contract included unplanned power curtailments caused by the BPA or third-party transmissions, a strike or work stoppage at CFAC, natural disasters and final orders from a court or regulatory body. Nothing in the contract required either party to settle a strike or labor dispute. CFAC also had to agree to hold neither party responsible if the Ninth Circuit Court of Appeals issued another ruling that affected the contract. A legal waiver also existed for the prior power sales agreement between the BPA and CFAC that was terminated by the appellate court’s 2008 ruling.¹¹⁴

The BPA’s “equivalent benefits test” analysis provided a way for the agency to address the “sound business principles” issue raised by the appellate court rulings. The analysis was developed as part of the BPA’s record of decision in selling 320 megawatts to Alcoa and 30 megawatts to the Port Townsend paper plant, and the BPA considered it consistent with the appellate court rulings. The Alcoa ruling, however, was still under appeal by Aug. 1, 2011, when the BPA published the draft results of its equivalent benefits test analysis for CFAC. Unless the courts ruled otherwise, the BPA stated in its analysis report, it was considered BPA policy to offer a power sale to a direct-service industry “when it can be shown that the benefits to BPA of serving the DSI load would equal or exceed BPA’s cost of serving the load during the period of service.” According to the terms of the proposed 2012 power contract with CFAC, BPA would provide 140 megawatts of power, enough to run two of its five potlines, from April 1, 2012 to Sept. 30, 2016 with a price of \$36.32 per megawatt-hour for fiscal years 2012 and 2013. CFAC was required to provide the BPA with a “corporate guarantee” from Glencore or, if required, the BPA could demand a letter of credit from CFAC of up to \$13 million.¹¹⁵

The BPA determined in a draft equivalent benefits test analysis that it expected to have surplus power during the time of the proposed contract, based on load and resource studies in its “2010 Pacific Northwest Loads & Resources Study,” also known as the “2010 White Book.” The BPA also determined that revenues from the sale of power to CFAC under the proposed contract would exceed costs to the BPA in the amount of \$1,093,000. The figure came from four factors in the draft equivalent benefits test analysis. By not selling the power to CFAC, the BPA “would have one less firm power requirement sale in its aggregated portfolio load share.” CFAC was also required to provide the BPA with “contingency reserves” that would not be available to the BPA if it sold the power on the open market. The contingency reserves were valued at 9.4 cents per megawatt-hour. CFAC was also required in the proposed contract to cover the cost of transmission and ancillary services, unlike power sales to the open market. Another factor, “demand shift,” referred to the higher sales prices the BPA could get for selling its surplus power on the open market if CFAC took the contract and increased demand in the market. The BPA estimated it would have from 1,300 to 1,600 megawatts of surplus power under average water conditions. By adding together the benefits of net revenue from the sale to CFAC, of CFAC providing reserves, of avoided transmission costs and of demand shift, the BPA calculated the benefits to the BPA were \$1,093,106.

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“At this time, CFAC has not committed to anything, but has expressed interest in the agreement,” BPA Spokesman Mike Hansen told local media about negotiations with CFAC. “In particular, CFAC likes the duration of the proposed agreement.” The proposal still had to complete an equivalent benefits test and an environmental review, he said.¹¹⁷ “It’s just a step in the process,” Beaudry said. “This is not a contract. We can’t just step up today and say, ‘We’ll take it.’” Beaudry commented on the strength of public support at the Aug. 1 open house. “There were retired-age employees and former employees of the age where they would go back to work and other people interested in the improvement of the situation of the community in Flathead County if we start that plant,” he said. Before the deal could be finalized, the BPA needed to address federal environmental laws, possibly even including a full-blown environmental impact statement, he said. “They will have questions about how, if any, the sale of electricity to CFAC would affect the National Environmental Policy Act,” Beaudry said. It also might not make sense to run just two potlines, he noted, meaning CFAC would need to purchase power on the open market. “Economies of scale dictate that we run three potlines instead of some other number as a way to have the best chance of making the company profitable,” he said. But restarting the plant would be difficult, he noted. “The plant will be older tomorrow than it is today, and so on,” he said. Restarting “is a significant cost, a significant commitment, but I don’t have a number,” he said.¹¹⁸

The public reaction to the BPA's power offer was positive. "Our county has one of the largest unemployment rates in the state of Montana," Columbia Falls Chamber of Commerce Executive Director Carol Pike told NBC Montana. "Being able to put 200-plus people back to work at very good-paying jobs with benefits would just be a win for everyone."¹¹⁹ The Chamber issued an email urging people to support the contract proposal. "Reopening the smelter would create significant renewed opportunities for employment in the Flathead Valley," the email said.¹²⁰ The Daily Inter Lake expressed hope about the contract offer in an Aug. 7 editorial. "The Flathead Valley is in a position where any new jobs and industry are welcome, and that applies precisely to a potential re-opening of the CFAC, which was once a front mover in the valley's economy," the newspaper said. One hang-up was that the deal only offered power for two potlines when CFAC needed three to operate profitably, but the new offer showed that "CFAC maybe shouldn't be regarded as a shuttered business," the newspaper said.¹²¹

The BPA recognized the public reception in the Flathead. "From the BPA's perspective, we consider the positive effect of creating all those jobs in the Northwest," Mike Hansen said. "That is one of the reasons we stipulate in our proposed agreement." Beaudry commented on how difficult the negotiations had been. "I think there was no long touchdown pass," he said. "This was two yards and a cloud of dust. I know that the length of the contract – the four and a half years – was important."¹²² On Aug. 31, NBC Montana reported that public comments continued to "pour in" on the BPA proposal. "We need jobs in Flathead County," Carol Pike told the TV station. "We need good-paying jobs with benefits, and the aluminum plant meets all that criteria."¹²³

Sen. Baucus encouraged public support for the proposed power sales agreement. "Montana jobs rely on this proposal, which is why I've been pressing BPA and Glencore to finalize an agreement," he said in an Aug. 2 press release. "I've also urged Glencore to consider rehiring workers laid off from CFAC as they work through any deal to reopen the company. Families hit hardest in the Flathead deserve a crack at this important opportunity for the future."¹²⁴ Sen. Tester promised his ongoing support for a favorable CFAC power contract despite past setbacks. "The Flathead Valley has been hammered by job losses in recent years, and reopening the CFAC plant would bring back much-needed good-paying jobs," he said in a press release. "We've been down this road before only to be frustrated. It is time for CFAC and BPA to finalize this agreement, and I will keep pressing all sides to get something done." Tester encouraged the public to support the proposal. "Before the plant's closure, CFAC operated for over 50 years and was central to the economy of the Flathead Valley," he wrote. "During these tough economic times, it is important that the BPA adopted sound policies that encourage job creation and grow the economy."¹²⁵

On Sept. 22, 2011, nearly two months after the BPA's open house in Columbia Falls, Baucus issued a press release calling again for the CFAC plant to reopen. He said he had recently met with BPA Administrator Stephen Wright and urged the BPA to move forward with a plan that would reopen CFAC and put 350 people to work. "It's my hope that BPA gets the message loud and clear: It's time to reopen CFAC and bring back hundreds of jobs in the Flathead," Baucus said. "It's time to get a deal done to get people back to work so they can provide for their families." He noted that he was "also pressing Glencore to give laid-off CFAC workers the opportunity to get back to work as soon as possible."¹²⁶ Sen. Tester also met with Wright and urged him to help get CFAC started again. "I reminded BPA that reopening CFAC is the right thing to do for Northwest Montana and for our manufacturing industry," Tester said. "I'm still pushing both sides to reach an agreement that reopens this plant and brings back hundreds of jobs to the Flathead Valley, and I will keep on doing so until employees go back to work."¹²⁷

Final shut down

The global aluminum industry had seen some improvements by September 2011, according to some market experts. Metals analyst Jorge Vazquez of Harbor Intelligence's Aluminum Intelligence Unit told participants at the Aluminum Week event in Chicago that he was pessimistic about the economy generally but optimistic about the global aluminum industry. Vazquez forecasted six U.S. aluminum smelters would start up in 2012, including CFAC with 180,000 tons-per-year idled, Alcoa Wenatchee with 42,000 tons idled, Alcoa Intalco with 75,000 tons idled, Alcoa Tennessee with 215,000 tons idled, Century Aluminum's Ravenswood with 170,000 tons idled and Alcoa Rockdale with 267,000 tons idled. Vazquez noted that average power costs in North America were relatively cheap at \$29.50 per megawatt-hour, far below even China. The cost to produce aluminum per ton was \$1,900 in North America, \$2,048 in Europe, \$2,594 in China and \$1,624 in Latin America. Vazquez, however, noted that aluminum producers wanted "10- to 20-year power contracts, and that's not realistic anymore." Alcoa Wenatchee could make a 10% profit if London Metal Exchange prices were \$2,230 per ton, he said. CFAC, however, would need to see London Metal Exchange prices reach \$2,400 to \$2,550 to make the same profit. Vazquez projected global primary aluminum demand to grow by an average of 9.1% from 2011 to 2015, compared to 6.6% in 2002 through 2010, and he forecast a global primary aluminum deficit in 2011 of 500,000 tons. Lloyd O'Carroll of Davenport & Co. differed, forecasting a 900,000 ton surplus. Paul Williams of CRU forecast a surplus of 800,000 tons and growing "even if a recession is avoided." Unlike O'Carroll and Williams, Vazquez only counted visible inventory levels, not "stealth" stocks.¹²⁸

Sen. Baucus met again with BPA Administrator Stephen Wright on Feb. 29, 2012, and “pressed” him to come up with a timeline for finalizing a power contract and reopening the CFAC plant. “Hundreds of families are waiting in limbo for the jobs that I hope are not being held up by red tape,” Baucus said in a press release. “Unemployment in Flathead County remains at an unacceptable 10.6%. Direct jobs from finalizing this agreement would lower that number into the single digits. I’m going to keep pressing BPA and Glencore to move forward so we can reopen CFAC.” Baucus noted that the BPA had completed the court-required environmental review for the CFAC power contract.¹²⁹ But a contract had still not been signed by March 2012. There had been talk in August 2011 of reopening the smelter by April 1. BPA Spokesman Mike Hansen said talks were continuing in “a kind of wait-and-see situation.” The environmental analysis and a draft record of decision had been completed, but the BPA still needed the equivalent benefits test analysis and details for a letter of credit that would pin down responsibility for payment of the contracted power. CFAC Spokesman Haley Beaudry noted that the current aluminum market was a deterrent to reopening the plant, but starting up three potlines instead of two still made more sense. “It’s been sitting there 2 1/2 years,” he said about the smelter facility. “Just like anything, it suffers deterioration. So things need to be fixed. I also imagine we would upgrade a few pieces of equipment.”¹³⁰

Montana’s senators continued to work on the CFAC contract into summer 2012. In a July 12 press release, Sen. Tester reported talking with Deputy Energy Secretary Daniel Poneman about the need to get a favorable power contract in place for CFAC. Tester said he told Poneman that CFAC’s owners needed to reopen the plant under a 10-year contract “or allow plant workers to negotiate alternative options with the company.” Tester expressed concern about how long the plant had been closed and the uncertainty about its restarting. “The hard-working Montanans who made CFAC a strong part of Montana’s economy deserve a seat at the table,” he said. “Montana families have been waiting for nearly three years for some certainty, and we need a decision on the plant’s future. BPA’s long-term contract is a reasonable offer, and CFAC’s owners should be trying to put folks back to work.”¹³¹

Several weeks later, Sen. Baucus met with Poneman to outline Montana’s energy priorities as the BPA prepared to appoint a new administrator. Wright had announced his upcoming retirement in June. Baucus stressed the need to keep rates low for Montana’s rural cooperatives and prioritizing projects in Montana, such as reopening the CFAC plant. “From day one, I want BPA to get the message that our rural cooperatives rely on low rates from BPA to make sure Montanans have reliable access to affordable energy,” Baucus said in a press release. “I’m also going to keep sounding the horn on other Montana priorities, like reopening CFAC and making sure Montanans have plenty of input into what happens with the Libby Dam.”¹³² Lack of results led to a

rebuke of Glencore by Sen. Tester in early August 2012. Tester told media in a conference call that Glencore was not negotiating in good faith with the BPA. He said Glencore “keeps moving the goal posts” and was to blame for the plant not reopening. At the same time, rumors in Columbia Falls described a contingent of Chinese investors or specialists visiting the closed smelter plant to see if the plant could be restarted by replacing the Soderberg pots with pre-bake pots.¹³³

The big announcement the public had long anticipated came nearly three years later on March 3, 2015, when Haley Beaudry issued a press release announcing Glencore’s decision to permanently close the aluminum smelter in Columbia Falls. “For me it’s kind of a sad day,” he said. “A lot of people have put a lot of time into that plant. It’s been a major part of the valley for a long, long time.” Beaudry said costs for raw materials and power and the low price for finished metal prompted Glencore’s decision. Beaudry said redevelopment of the site was the next step. Equipment that still had value would be sold, particularly equipment related to aluminum production. “We’re trying to find someone who might want it,” he said. Glencore also was looking for a company to handle demolition, he said. “CFAC has people talking to the union guys, but I don’t know what the actual plan is,” he said.¹³⁴

Public reaction to the announcement ranged from sadness to inevitability to optimism. Carol Pike had dealt with CFAC for years as executive director at the local Chamber of Commerce. “It’s a very sad day,” she said. “They were such a good employer and partner in the community.” State Sen. Dee Brown said permanent closure was the first step toward redevelopment. “I’ve always wanted them to do something,” she said. “I’m glad they’re being honest. I’ve been very frustrated by the process throughout. Glencore has danced around the issue.” State Rep. Zac Perry said the permanent closure announcement provided the community with an opportunity to look to the future. “It’s been a long time coming,” he said. “I’m excited about the possibility of finding alternative uses for that property and getting some industry back for Columbia Falls.” Lyle Phillips, CFAC’s former human resources manager, said he was sad to hear about the permanent closure, “but I understand it.” He pointed to the plant’s positive impacts to the local economy and the stiff competition in the current global aluminum market. “I think it was very good for the valley. A lot of families really benefited from it,” he said about the plant. “It’s unfortunate the markets changed. I could see the handwriting on the wall. When Bonneville couldn’t provide the power, when we were shut down,” the Chinese were able to quickly build aluminum production plants and overtook the market, he said.¹³⁵

Former CFAC employees reacted to the permanent closure announcement with a mixture of surprise and speculation. “I hoped I would never see the day I read that in

the newspaper,” said Lee Smith, a longtime plant manager who retired 21 years earlier. Smith said he couldn’t speak to whether the plant was still viable today — power, raw material and metal markets had changed since he retired. Loyal Chubb was the plant’s longest-serving employee at nearly 48 years. He started sweeping floors at the plant in 1956 at age 18, earning a little more than \$2 an hour. “It was good pay compared to most other work in the valley and stayed one of the higher-paying companies throughout my work there,” he said. Chubb said he would miss the plant. “I really would have liked to have seen the plant stay open and productive,” he said. “There was a lot of money spread throughout the valley from the plant.”¹³⁶

Vic Cordier started working at the smelter in 1955. “They hadn’t started production when I began working there,” he said. Cordier said he did a “little bit of everything” at the plant and retired in 1986 after 31 years. The plant was good to him, he said. “It let me build a home and pay for that and put my kid through college,” he said. Cordier said he didn’t think the plant would restart after it shut down in 2009, but he was surprised Glencore had plans to scrap it. Former Aluminum Workers Trades Council President Dave Toavs said he believed Glencore bought the plant for its power contract. The Swiss-based global commodities trader made millions selling power back to the BPA during the West Coast Energy Crisis in 2000 and 2001. The power was worth far more than any aluminum they could ever produce, he said. Toavs said he wasn’t sure if the plant was still viable, but he said he was glad Glencore finally admitted it would never restart the plant. “There were still a lot of people who thought they’d fire it up,” he said. Company officials had said they were hoping the closure was just temporary. “In my opinion, it was all a lie,” Toavs said. “At least now it’s over.”¹³⁷

The plant’s permanent closure was soon followed by setbacks in the local timber industry after Plum Creek was acquired by Weyerhaeuser. A former aluminum plant employee who had been at the smelter from the beginning and was involved in the plant’s expansion plans through the 1960s commented on the town’s future in a 2016 interview. Paul Cannaday had moved to the Flathead in 1949 to work on the Hungry Horse Dam. A civil engineer born in Virginia, he was hired as a contractor during construction of the AAC plant and became one of AAC’s first employees soon after the plant began operating in 1955. As an estimator, Cannaday prepared budgets whenever the aluminum plant expanded. Long after he retired, he looked back at how the city had changed. Columbia Falls once had the feel of a “company town,” he said. “When you put thousands of people to work, that’s a city in and of itself... You can understand, there was nothing else except the plant and the timber mills... They were the only business of consequence.” With the closure of the CFAC plant in 2009 and the Weyerhaeuser lumber and plywood plants in Columbia Falls in 2016, the local community turned to

tourism and other industries to fill the gap. “It’s not a company town anymore,” he said. “It’s grown up a lot.”¹³⁸

The power market significantly changed in the decade and a half after the West Coast Energy Crisis crippled the Pacific Northwest and shut down the region’s aluminum smelting industry, going from tight supply and growing demand to surplus supply and flat demand. On Nov. 28, 2017, during a presentation on future energy trends, former BPA Administrator Randy Hardy spoke about the rapid growth of solar power in California and how that could affect power prices in the Pacific Northwest. “It’s a fascinating social experiment that’s occurring down there,” he said. “California is probably 40 to 50 percent of the total Western Electricity Coordinating Council’s load. It inevitably will have major ramifications for what happens here.” Hardy was the BPA administrator from October 1991 to September 1997 – he was the administrator during the initial years of federal de-regulation but was not the administrator when the West Coast Energy Crisis occurred.¹³⁹

Hardy noted that in 2011, California lawmakers passed an ambitious renewable energy portfolio standard with the goal of having 50% of the state’s power resources be renewable by 2030. By 2017, about 30% of the state’s power resources came from renewable energy. All of the wind potential had been developed, but solar power continued to grow at a rapid pace, aided by the most generous net metering policies in the U.S., Hardy said. “You have a situation where you have flat or declining load growth in California... and you’re growing solar at 2 gigawatts per year,” he said. “You’re going to have this enormous surplus that is going to force wholesale prices quite low, ironically, while retail rates go up because all the solar costs... will continue to flow through retail rates.” Hardy said the BPA and the Pacific Northwest already had seen significant implications from this trend – power from a combination of low gas prices and surplus solar had replaced a large portion of the surplus hydropower produced and sold each spring by Columbia River system dams. Hardy, however, saw a beneficial opportunity in this growing trend – Pacific Northwest hydropower could be used to meet California’s load when the sun went down. That load was currently being met with gas-fired generating plants in California, but the overall goal was to reduce the portfolio’s carbon footprint for climate change reasons. “One pretty straightforward solution would be to simply access Northwest hydro,” Hardy said. “Hydro is by far the most flexible resource that you can use.”¹⁴⁰ This good news, however, came too late for the region’s aluminum smelters.

Increasing energy efficiencies also played a significant role in the changing energy picture for the Pacific Northwest. On June 5, 2018, three power analysts for the Northwest Power and Conservation Council presented the results of their look at energy

efficiencies in the Pacific Northwest economy since 1990. Massoud Jourabchi, Tina Jayaweera and Kevin Smit were responding to the council's interest in seeing if the impacts of energy efficiency were real and sustainable. The analysts' study concluded that the energy demand in the manufacturing, commercial and residential sectors would have been higher in 2015 if efficiency levels in 1990 remained the same. The Pacific Northwest economy has been producing more goods and services with lower demand for energy, they concluded. Since 1990, per capita total energy use has gradually declined across all four states in the BPA region, they reported. Across the region, per capita energy use had declined by 25%. Assuming megawatts per dollar of gross state product held at 1990 levels, demand for electricity for the Pacific Northwest would have been 100 percent higher, they reported. In the industrial sector, based on total energy use per unit of economic output, energy demand fell by 57% from 1990 to 2015. Based on the electricity intensity per employee held constant at 1990 levels, the industrial demand for electricity would have been 7,700 megawatts higher by 2015. All told, the report concluded, energy efficiencies accounted for 12,364 megawatts in savings for the three demand sectors across the region.¹⁴¹

Northwest Power and Conservation Council spokesman John Harrison issued a press release on the energy efficiency study. Harrison noted that about 6,000 megawatts of energy efficiency had been accomplished since the council published its first power plan in 1983. This power savings in turn saved consumers billions of dollars by eliminating the need to build expensive generating plants. The total gain of 6,000 megawatts was roughly equivalent to the average annual power demand of five cities the size of Seattle. The new analysis concluded that energy demand in the Pacific Northwest would have been about 13,500 megawatts greater in 2015 without energy efficiencies based on the energy "intensity" (the ratio of electricity use per unit of economic output) in 1990. About 42% of that 13,500 megawatts could be attributed to actual improvements in energy efficiency, and about 58% could be attributed to "ongoing changes in the regional economic mix and efficiency improvements occurring independent of utility programs, building codes and federal energy standards," Harrison said. As a result of the energy improvements, the Pacific Northwest economy produced nearly twice the economic output for one megawatt-hour of electricity than it did in 1990, the analysts found. For the manufacturing sector, if the intensity of electricity use were the same in 2015 as in 1990, demand would have been about 7,700 megawatts higher. For the commercial sector, demand would have been about 2,400 megawatts higher. For the residential sector, demand would have been about 1,600 megawatts higher.¹⁴²

The Northwest Power and Conservation Council energy efficiency report contained no specific comments about the decline of aluminum smelting in 2000-2001 except to exclude aluminum smelting from a table on durable goods. But the report's graph

depicting industrial demand clearly showed the dramatic decline in industrial electricity demand in 2000-2001, the time when the Pacific Northwest aluminum industry shut down during the West Coast Energy Crisis. And the analyst's graph rose steeply from 2002 to 2011 as if the aluminum industry rebounded to full capacity following the energy crisis and then continue to grow. In this way, the overall regional economic gains from energy efficiency measures claimed by the report are entangled in the loss of an industry that was a major consumer of electrical power, with a high energy consumption per worker. If the aluminum smelting industry was zeroed out from this analysis, the gains from energy efficiency measures would be dramatically different. The elimination of the Pacific Northwest aluminum industry was not an "efficiency" measure, nor was it even a conservation measure. It was simply the elimination of a type of manufacturing that consumed a lot of electrical power per employee and per unit of output.

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