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NRU RESPONSE TO COUNCIL PAPER ON BPA FUTURE ROLE

The following is a response from Northwest Requirements Utilities to the April 8, 2004 draft Council document entitled "Council Recommendations for the Future Role of the Bonneville Power Administration in Power Supply." We appreciate the Council's continuing involvement in this topic and your interest in providing meaningful comments to BPA in advance of the Agency issuing its draft ROD in June regarding regional power supply issues. We reference our March 22, 2004 comments submitted to the Council by NRU and others on behalf of over 90 public preference utilities, and advise you that those comments continue to reflect our views on the specific questions posed by BPA, including the future role of the Agency.

We agree with many of the suggestions contained in the draft Council document. In bullet fashion, key areas of concurrence include the following:

- Support for long term contracts
- No pressing for tiered rates at this time
- Support for clarifying BPA's long term role as a power supplier
- BPA should continue to offer the general categories of service it now provides
- Minimize the cost potential of DSI service to other BPA customers
- Financial benefits only for residential and small farm customers of IOUs
- Make changes within existing statutory framework.

For purposes of providing meaningful input, it may be most useful to address areas where we disagree, or where further clarification needs to be provided as to the Council's intent. These are listed generally in priority order.

Recommendation to Define Policy Direction by Rule Making

There is a recommendation that BPA establish its future role policy through "rule making" in accordance with the federal Administrative Procedures Act. Such a rule would have the force of law, the same as a statute, and bind the agency. We agree that

federal legislation is risky, and would support trying to accomplish an allocation consistent with existing statutes. However, “rulemaking” as an alternative approach to providing certainty, would need much more exploration and discussion with BPA’s customers.

It is not clear to us that BPA has the legislative authority to do rulemaking. To our knowledge BPA has not employed this mechanism in the past. This approach may raise a number of questions regarding future business relationships between BPA and its customers. To our knowledge, customers have not recommended this approach to the Council, nor has this strategy been discussed with us in advance of seeing the Council’s draft document. It would be useful to have a separate discussion of this issue involving the legal counsels of all interested parties. Alternatively to rule making or federal legislation, we would like to more fully explore the certainty that could be achieved by making the needed changes through contractual approaches and BPA record of decisions.

From the Council paper, the “rule” would be adopted during 2004 and would have a binding effect both in the contract negotiations and in the next rate case. It is not clear how a rule meshes with the Administrator’s responsibility to decide rate case matters during the rate case. Similarly, if we try to do an allocation pursuant to rule in 2004, it may be quite premature, and people would have to agree to live with the result well in advance of the outcome being determined. This would make it extremely tough to gather much public support. For these and other reasons, we are skeptical about the proposed rule making approach.

Schedule of Activities

Our paper to the Council, widely supported by the public power community, contains an aggressive work schedule, combined with an approach to implementation that allows sufficient time for utilities to plan. We recommend that the results of the allocation process be incorporated in the offering of new long term contracts. The mechanics of the allocation might be resolved well in advance of all of the issues associated with the negotiation, drafting, offering and signing of new long term contracts. New contracts would go into effect at the beginning of FY 2010 for those so choosing, or in FY 2012 (or in limited cases a later date if contract expiration occurs post 2012) for those that want to ride out their current contracts.

We believe that this schedule, as recommended by many publics, comports with the Council’s language of “as soon as possible” and “well before the end of the current contracts.”

Allocation Methodology

The Council paper discusses using a multi-year historic period of net requirements placed on BPA as a means to achieve an equitable allocation. The allocation would be done monthly for heavy and light load hours. We agree that historical data will be a key component for doing an allocation, and would also be a foundation for future projections.

However, within BPA's existing policies there seems to be a heavy emphasis on preparing forecasts of net requirements, and that the forecasts need to take into consideration future operation of the customer's resources (if any).

Parties need to have additional discussions about the actual allocation methodology and the relationship between the allocation and the initial and ongoing net requirements determination done by BPA for each utility. It is too early for us to draw a final conclusion regarding the allocation methodology, and we believe the Council is facing a similar set of circumstances. An alternative approach here would be for the Council to have future discussions with customers and BPA, and to reserve judgment on approaches until a more definitive proposal emerges.

Tiered Rates – Linkage to Rule Making

NRU does not support BPA moving forward with tiered rates for the period beginning FY 2007. The Council paper does not recommend tiered rates, but with two conditions – 1) that new contracts are offered well before the end of current contracts, and 2) that BPA's role is defined in rule making. We recommend that the Council have no linkage between tiered rates and the definition of BPA's role through rule making. We believe our projected implementation dates for new contracts meets the Council's criteria for customers that want to move to them prior to the end of FY 2011. Therefore, tiered rates should not be discussed for or implemented in the next rate period. The durability of long-term allocation of the Federal Base System can only be secured through enforceable contracts that include cost control and accountability provisions. It cannot exclusively be secured through a tiered rate mechanism.

The NRU members in nearly all cases have contracts guaranteeing them the lowest priority firm rates for contracted power purchases through 2011. This language was included in contracts to avoid the imposition of tiered rates, or other non embedded cost based rates upon these utilities. We fully expect that language will be honored.

Cost Controls

The Council document highlights the importance of cost controls, references the newly formed Customer Collaborative and goes on to discuss alternative forms of dispute resolution mechanisms. The foundation of a meaningful allocation is a belief on the customers' part that what is being allocated to them inherently has value. And the value can only be assured by contractual protection that unwarranted costs will not migrate to the customers that want to sign long term contracts. We want to identify this subject as an priority area of concern, and one that needs to be addressed by the Council, the customers, and BPA early in the work program.

Dispute Resolution Process Through the Department of Energy

The document contains a reference to establishing "perhaps through administrative action of the Department of Energy" a dispute resolution process that could arbitrate disputes

over costs and business practices. Without endorsing or rejecting any idea, this is a subject area in which we have a keen interest. The interest is to make sure that any mechanism provides a reasonable opportunity for participation by all parties that may have a financial interest in broadly based cost or business practice matters that may become the topic of a dispute. We are also very interested in the scope of items subject to dispute resolution through arbitration rather than judicial review.

Future Reallocations of FBS

The following concept is being investigated, and does not yet represent the formal position of the members of NRU. Any allocation method employed must be fair to all parties.

Assuming an allocation of the FBS is accomplished, we have viewed it as something that would generally remain in place through the duration of the contract. To the extent that a new public is formed, or annexed load is added from an IOU service territory, in the previous Joint Customer Proposal there was a recommendation that a designated amount of power, 75 aMW, be set aside to be used if needed to partially accommodate such loads for the duration of the contract period. New public loads beyond a capped amount would be eligible for an allocation at the end of the contract period.

Individual utilities may gain or lose loads due to changes in economic conditions. This raises issues of BPA periodically doing net requirement determinations for utilities. The allocation should represent a cap, expressed as a percentage of the available FBS generation resources. In the event that a utility's load declines, the allocation should stay in place, and the utility should preserve the right to grow back over time and be eligible for the use of FBS resources to serve net requirements, up to the capped amount. We need to do additional work on the topic of what happens operationally when net requirements are below the capped amount. But our druthers would be to leave the underlying allocation alone

The Direct Service Industries

The Council paper identified three potential options for consideration for providing some level of support to the DSIs. These include access to non-firm hydro, interruptible service, and credit support for the development of resources to firm up non firm energy. NRU agrees with the Council that any power sale to the DSIs should be short term in nature and only offered to responsible DSI customers. No DSI should receive an actual allocation since BPA is no longer required to offer contracts to the DSIs.

We recommend eliminating the third option, credit support, from further consideration. There are many examples of NRU members' end use customers that have gone out of business or are greatly suffering as a result of a global competitive market and a languishing Northwest economy. Offering BPA credit support to the DSIs is not good public policy and is not a risk the Agency should take.

Conservation and Renewables

We recognize and appreciate the Council's support for the Conservation and Renewables discount. As reflected in a recent survey of the NRU members, many utilities have found this to be a valuable program. Once we have the opportunity to discuss the survey results with the membership, we will forward additional information to the Council and BPA. It is also important to mention the importance of continuing the small utility exemption currently used by the smaller NRU members, such as Columbia Power, which has 1.4 consumers per mile.

With regard to renewables, as we have stated in many forums, Full Requirements customers do not want to be the backstop for BPA and the region's renewable development projects. The document as drafted leads us to the conclusion that the Council is headed in that direction. The language includes the following: "*The cost of that resource acquisition (renewables) should be allocated to those customers that chose to have Bonneville meet their load growth or resource replacement requirements.*" We disagree. Alternatively, we do not take issue with a future in which we work with the Council and BPA to determine those renewable resources that best serve the load growth needs of the full and partial requirements customers as part of a balanced, cost effective resource portfolio. We support the principles that 1) BPA should only acquire to meet need – that is when the allocated system is insufficient to meet the load growth of the customers that request this service, and 2) any acquired resources must be cost effective with the least cost resources acquired first.

Conclusion

While we support much of the Council's work, the purpose of this document is to help flag areas where we believe the Council should take a different approach on a key issue, provide further clarification, or enter into further discussions with us and BPA. If you have any questions, please call us at (503) 233-5823.

Sincerely,



John D. Saven
Chief Executive Officer

CC: Bonneville Power Administration
Joint Customers
Members of Northwest Requirements Utilities