



October 18, 2002

Stephen J. Wright, Administrator
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97298

Frank Cassidy, Jr., Chairman
Northwest Power Planning Council
851 SW 6th Avenue, Suite 100
Portland, OR 97204-1248

RE: Addendum to *“Incorporating Regional Stewardship Obligations for Conservation, Renewables, RD&D, and Low-Income Efficiency Services in a ‘Slice of System’ Approach to BPA Service”* (“Public Interest Proposal”)

Dear Mr. Wright and Mr. Cassidy:

On September 12, 2002 the NW Energy Coalition, jointly with other organizations submitted two Public Interest Proposals regarding potential changes to the way the federal government markets the power and distributes the costs and benefits of the Federal Columbia River Power System (FCRPS) after 2006. Our conservation and renewables (“C&R”) proposal focused on what we believe to be serious questions about the role of BPA in acquiring new conservation and renewable resources and the related roles of public and investor-owned utilities. This “addendum” will focus on that proposal. (NWEC has also submitted an addendum to its previous comments regarding impacts of any “Slice” proposal on BPA’s ability to meet its obligations regarding fish restoration, along with the Save Our *Wild* Salmon Coalition and others.¹)

Since submitting our C&R Proposal, we have participated in six public meetings across the Northwest and heard clear and overwhelming support from citizens of this region for the basic principles our proposal outlines that would lead the region to a clean and affordable energy future. Through these hearings, we have also learned new information about the proposal submitted by public and investor-owned utilities (“Joint Customer Proposal”) that we would like to take this opportunity to address. In addition, we would like to expand upon and clarify certain components of our own proposal for your consideration.

¹ Addendum to *“Improving Federal Performance and Accountability for Salmon Recovery under Potential Changes in Allocation of the Federal Columbia River Power System after 2006”* submitted Oct. 18, 2002.

I. Customers' request for “meaningful and enforceable” participation in Bonneville's budget-setting process raises serious policy and legal questions.

The Joint Customer Proposal, submitted to BPA and the Council on September 16, 2002, contained a proposal that we did not address previously. The Joint Customer Proposal asks for “meaningful and enforceable participation in the process for setting BPA’s expenditures, and the rates that these customers will pay under the new contracts.”²

We are particularly concerned about what is meant by the phrase “meaningful and enforceable participation.” Currently, public and investor-owned utilities, along with other concerned parties are entitled to “meaningful and enforceable” participation in BPA’s budget process through the administrative provisions set forth in the Northwest Power Act (“Act”). The Act provides for a formal rate setting process including review by FERC and judicial review in the Ninth Circuit Court of Appeals. In addition, Bonneville has always encouraged a meaningful dialogue with all regional stakeholders to devise ways to cut costs and squeeze more efficiency from the system. We agree with suggestions by the customers that BPA work to provide more clarity and information about its budgeting and accounting process. However, we can only assume, based on the customers’ request, that they are not asking simply for better information and clarity. Instead they are seeking “meaningful and enforceable” participation beyond that granted equally to all interested parties. This request raises serious legal and substantive concerns that must be addressed.

BPA’s budgeting process requires an obligation to fund the agencies’ public purpose responsibilities under federal laws and treaties, including the Endangered Species Act and the Northwest Power Act. Public and investor-owned utilities have a keen economic interest in managing BPA’s costs, yet are not bound by the same federal laws which require investments in salmon recovery and clean energy. We can only assume that the customers are not asking to supercede federal law in BPA’s budgeting process. However, the lack of clarity surrounding their request leaves this question unanswered. Granting customers “meaningful and enforceable” participation in BPA’s budget process beyond what is already equally granted to all interested parties would be an illegal delegation of Bonneville's authority and abrogation of its responsibilities.

Another interpretation of the utilities' proposal is that they want their future contracts with Bonneville to provide some sort of "off-ramp" if their budget recommendations are not adopted or adhered to by BPA. We strongly oppose BPA putting any language into customer contracts which would give customers this type of leverage that would put Bonneville's public interest obligations at risk.

Legal questions aside, granting the utilities any direct or indirect ability to determine BPA's budgets is simply bad public policy. We implore BPA to reject this

² See, *Joint Proposal from Investor-Owned and Preference Utilities on the Future Role of BPA* (September 16, 2002), Public Power Council, pg 6 (E1).

request.

II. DSI Service

At this time the NW Energy Coalition has not taken a position on either the US Steelworkers' or the Joint Customers' proposals for DSI service beyond the following statement:

Worker Protections: At this point the Public Interest Proposal does not take a position on whether or not Direct Service Industries (DSIs) should have access to federal power. If any contracts are ultimately negotiated with regional aluminum companies, provisions should be in place to allow BPA to curtail their loads under drought conditions in order to meet salmon requirements. In these circumstances, we support appropriate compensation and advance notice for the workforce for the duration of any curtailments. We believe that aluminum workers, their families, and their communities should be protected from the adverse effects of such changes.

However, we would like to make it known to Bonneville and the Council that we are still working on this issue and hope to deliver a more specific proposal in late November of this year. We are working to prepare a proposal which meets both worker and customer needs by aligning the interests of the aluminum industry with the region's interest in promoting the public purpose goals of BPA.

III. Clarifying the distinctions between the Public Interest Proposal and the Joint Customer Proposal

During the course of the public meetings on changes to BPA's power supply role post-2006, it became evident that there may be confusion surrounding the differences between the details of the Joint Customer Proposal and the C&R Proposal, and the degree of agreement public interest groups have negotiated with the utilities.

We have engaged in numerous discussions with the utilities in regard to how conservation and renewable obligations would be met under any allocation model. Other public interest groups, BPA, the Council and Oregon and Washington Energy Office staff have also been involved. In many ways those discussions have been fruitful and we appreciate the opportunity to work with the utilities and others to try and reach agreement on goals and implementation. While there have been some tentative agreements in principle and on some technical and procedural issues such as, how utility targets would be set and changed over time; BPA's verification and backstop role; the Regional Technical Forum's role, the Council's role in determining certain parameters; etc., there are still significant differences that prevent the stakeholders from reaching complete agreement.

We are continuing discussions to try and identify areas of common ground, however, we want to be clear that there is no deal until there is a complete deal. Thus, as

in all negotiations, preliminary agreements should not be assumed to hold if other pieces of the negotiation are not successful.

Conclusion

We appreciate the opportunity to provide clarifications to the C&R Proposal and comment on concerns surrounding the Joint Customer Proposal. We look forward to further discussion with you on this important topic.

Sincerely,

Sara Patton, Director, NW Energy Coalition