

**COMMENTS ON COUNCIL RECOMMENDATIONS
FOR THE FUTURE ROLE OF THE
BONNEVILLE POWERADMINISTRATION IN POWER SUPPLY**

1. Introduction

These comments are submitted by the utilities that comprise the Western Public Agencies Group (“WPAG”).¹ In addition to these comments, WPAG also generally supports the Customer Comments on Council’s Draft Recommendations.

WPAG actively participated in the development of the Joint Customer Proposal and in the Regional Dialogue process conducted by the Bonneville Power Administration (BPA), as well as the Council process leading up to the draft Council Recommendations released on April 8, 2004. The WPAG utilities have a vital interest in the successful resolution of the issues addressed in the draft Council Recommendations, and intend to remain actively engaged in this process.

2. WPAG Supports Many of the Council’s Recommendations

The WPAG utilities commend the Council for the thoroughness of its analysis, and support many of the draft Recommendations. However, the WPAG utilities suggest that some of the draft Recommendations be reconsidered, for the reasons set out below.

A. The Scope of the Recommendations is Appropriate

The draft Recommendations focus on the long-term role of BPA as a power supplier, rather than on BPA’s questions about the next rate case and the last five years under the current contracts. This is the appropriate focus for the Council. It is on the long-term issues that the Council can best assist the region in finding consensus solutions.

B. Support for a Fundamental Change in BPA’s Power Supply Role

The Council continues to support a change in BPA’s power supply role, by way of a long-term allocation of the Federal power system. This is a worthwhile goal, and if properly implemented, can benefit all electric consumers in the region.

C. Define BPA’s Power Supply Role Through a Rulemaking

The draft Recommendations suggest that a durable change in BPA’s power supply role can be achieved by adopting rule using the Administrative Procedures Act (APA), and that this approach will eliminate the need for legislation. The rule would require BPA to allocate and sell power from the existing system using one rate; to only supply load obligations beyond the existing system through bilateral contracts with the customer; and to only sell such power at the incremental costs of such resources. The

¹ Because of the short comment period, many governing boards of the WPAG utilities have not had the opportunity to review or approve these comments. They should be viewed as staff comments.

rule would have the binding force of law and would govern BPA's activities in rate cases and in contract negotiations. It would be adopted in 2004. While this approach is innovative, it raises serious concerns with the WPAG utilities.

In the first instance, it is clear that a rule adopted by BPA, regardless of what provision of the APA is utilized, would not have the needed durability. BPA customers will be making long-term (20 years or more) resource acquisitions based on the allocation. A BPA policy, even when combined with a particular rate treatment, can be easily revised with a notice, comment and publication process. BPA's rates are even more malleable and impermanent. And the customers lack meaningful influence over the outcome of these processes. The allocation must be immune from change for the term of the contract to support the resource decisions that the customers will be making.

A BPA policy process is not an adequate substitute for allocation provisions that are permanent and enforceable. The only means of achieving such durable commitments is through a long-term contract enforceable by the customer and, if determined to be needed and in the appropriate circumstances, through legislation. Seeking federal legislation should not be undertaken lightly. However, it is difficult to see how a durable allocation can be achieved without some limited legislation. Resolving contract enforceability, cost control and BPA governance issues will be very difficult without legislation. Hence, the primary benefit of the rulemaking approach appears to be illusory.

The timing suggested timing of rulemaking also causes concern. Implementation in 2004, as suggested in the draft Recommendations, would result in the rule being in effect during the next BPA rate case. This would require BPA to adopt tiered rates in that rate case. This directly conflicts with the Council's recommendation that tiered rates should not be implemented in the near term.

Finally the draft Recommendations would result in the adoption a final, binding policy with the force of law requiring an allocation of the Federal power system before the nature of the allocation is known, and before the customers are certain that the allocation will include enforceable cost control, cost separation and governance provisions. Absent such provisions, there will be virtually no support for a long-term allocation. The suggested approach would have the customers make a binding commitment to allocation before the nature of the allocation is even known. This is akin to jumping off a diving board without knowing if there is water in the pool.

Under current circumstances, an aggressive schedule for negotiating the contracts needed to implement an allocation of the Federal power system is the best approach.

D. Offering New Long-Term Contracts as Soon as Practicable

The Council recognizes in its draft Recommendations that a key element in any change to BPA's power supply role is the offering of new, long-term contracts as soon as practicable, and well before the 2011, so timely resource planning can be done by BPA's utility customers. This draft Recommendation is sound, at least as far as it goes.

However, it fails to address issues of cost separation and contract enforceability, which are key to a successful allocation of the Federal power system.

The value of an allocation is the fact that it protects a customer from the costs incurred by BPA to serve the loads of others. Proper separation and allocation of incremental resource costs cannot be done in a rate or policy process, since the outcome can be altered in the very next process. For customers to believe that they will only pay their costs and not those of others, cost separation and allocation must be memorialized in enforceable contract provisions that cannot be unilaterally revised by BPA in a rate case or other policy forum. And for such a contract provision to be durable, it must be enforceable by the customer. Without such protection from the incremental resource costs incurred to serve the loads of others, an allocation will not be acceptable to customers. As a consequence, contract enforceability is one of the key issues that must be successfully resolved if an allocation is to be implemented.

E. Cost Control and Business Practices

The draft Recommendations mention binding arbitration and placing BPA's revenue requirement into the rate case as possible solutions to the BPA cost control issue. Obviously, cost control and governance are two of the three the key issues presented by an allocation. Without cost control, and governance provisions giving customers a real voice in budget and spending decisions, signing long-term take or pay contracts will be viewed as giving BPA a blank check for the term of the contract. Cost control and governance are complex areas that will require much hard work. The suggestions on this topic contained in the draft Recommendations only scratch the surface of these issues.

F. Allocation of the Existing System

The draft Recommendations go into some detail recommending a specific methodology for allocating among customers the Federal power system. The suggested methodology is historic net requirements from a multi-year period divided into heavy and light load hour periods. In this instance, the draft Recommendations have gone into too much detail by addressing a highly technical area instead of sticking with policy matters.

In the final analysis, the acceptability of the allocation methodology will hinge on whether the customers judge it to be fair, equitable and understandable. This topic should be left to the customers to sort out, taking into account a myriad of factors including contract rights, statutory requirements, and basic fairness. The public utilities are currently engaged in discussions on this topic, and should be left to complete this task. This draft Recommendation should be withdrawn.

G. New or Annexed Public Loads

The draft Recommendations make a number of thoughtful suggestions regarding the treatment of new and annexed public loads. These suggestions are worthy of serious consideration when preference customers grapple with this issue.

H. Reduced Public Utility Loads

For an allocation to serve as the basis for long-term resource planning and acquisition, it cannot be subject to reduction due to retail load loss. An approach that provides a secure and predictable allocation over the term of the contract, regardless of retail load swings, is a necessity. Using the mechanisms from the current contracts to address retail load loss would provide such a stable allocation.

For example, in the current Block, Slice and Partial Requirements contracts, customers can undeclared non-federal resources equal to any retail load loss. This permits the customer to retain its full BPA purchase, and to sell the undeclared non-federal resource. For customers without non-federal resources, such current DSI contract and IOU Exchange Settlement Agreement, BPA sells any power that is not purchased due to load loss and credits the customer with the revenues from such sales. A modified version of this mechanism is also contained in BPA's current full requirements contracts. And finally, the current Slice contract permits customers to increase the amount of Surplus Slice relative to Requirements Slice as the utility loses load, which keeps the BPA purchase constant. All of these mechanisms would be effective ways of dealing with the retail load loss without requiring a reduction in the customer's allocation.

In any event, a long-term allocation is only useful if it is not subject to reductions for retail load loss. Using mechanisms contained in the current BPA contracts would provide such a stable allocation. The Council should recommend this approach to BPA.

I. Loss of Existing Federal System Resources

The draft Recommendations suggest that customers should have the option of either having BPA replace a reduction in the Federal system, or replacing the resource reduction themselves. Such an option is a good idea. A similar option is already included in the current Slice contract, so this would not be breaking new ground.

J. Tiered Rates Are Not Needed in the Near Term

The draft Recommendations state that tiered rates should not be implemented in the near term. This is a sound recommendation. Implementing tiered rates in the upcoming rate case would cause strife and controversy among those who have to work cooperatively to implement an allocation. It would also pull valuable resources away from the effort to implement a long-term allocation.

The draft Recommendations also indicate that if sufficient progress towards the implementation of an allocation of the Federal power system is not made well before 2011, the Council will revisit this recommendation. To the extent that this reservation is linked to a timely offer of a new, enforceable power sales contract implementing an allocation, it is an appropriate reservation that will motivate the region to keep focused on solutions to allocation issues. However, because of the problems described in section

2(C) of these comments, this reservation should not be linked to the adoption to the proposed rulemaking described in the draft Recommendations.

K. Product Choice Should be Maintained

The Council has recommended that a range of product choices should be available to BPA's utility customers under an allocation. This draft Recommendation recognizes that the diversity of BPA utility customers makes a "one size fits all" solution both unworkable and unacceptable to a majority of customers. Providing a choice of BPA products, including full requirements, Block and Slice products, consistent with an allocated system that appropriately separates and assigns costs, will retain the best of the current system while correcting some of its major flaws.

L. DSI Service

The statutory right of the DSI customers to a power supply from BPA has expired. Any decision by BPA to sell power to the DSIs is a discretionary matter. In an allocated system, DSIs have not right to an allocation of the Federal power system. Further, they have no claim to a power cost subsidy from BPA's other customers, who will be facing incremental costs to serve their load growth. If BPA elects to serve the DSIs, it will have to acquire power to do so, and consistent with the treatment of all other BPA customers who place loads on BPA in excess of the existing Federal system, the DSIs should pay the full costs incurred by BPA to serve them. There were many other industries that were important to local communities that, for want of a power cost subsidy, are no longer in operation. They received no special treatment, and neither should the DSIs.

M. Benefits for Small Farm and Residential Customers

The draft Recommendations suggest that the Federal system benefits available to small farm and residential customers must be provided in a manner that is transparent and not subject to manipulation, and that the level of benefits must be judged to be equitable to all parties. WPAG supports these goals.

N. Conservation and Renewables

The Council suggests that the Conservation and Renewables Discount (C&RD) approach be maintained and improved, and that it remain a major component of the region's conservation effort. The draft Recommendations also recognize that other approaches, such as conservation augmentation, can be useful supplements to the C&RD approach. WPAG supports this approach.

How BPA's role will change with regard to conservation and renewables acquisition remains to be seen. It would be prudent to first determine the nature of the business relationship between BPA and its customers under an allocation before the region attempts to determine how BPA's role in conservation and renewables acquisition

should be modified. The allocation of the costs of conservation and renewables should similarly await a better understanding of how the allocated world will operate. It is premature to conclude at this point that some or all of the conservation and renewable acquisition costs should be paid by those who receive an allocation. Until we know how and when BPA will be acquiring conservation and renewables, it is speculative to discuss who should pay these resource acquisition costs.

O. Resource Adequacy

The Council recognizes that resource adequacy is a regional issue, and commits to work with interested parties to identify and implement appropriate policies to address this issue. This is a helpful commitment by the Council.

However, the Council should be cautious regarding the possible use of a resource adequacy standard. In an allocated world in which customers will face the incremental cost of resources, trying to force behavior using a resource adequacy standard is counter-intuitive. In the first instance, it is unclear that BPA or the Council has the authority for force the planning or construction of resources. Second, establishing such a standard at the regional level will run afoul of state and local resource planning activities.

A far better approach is to treat failure to plan and acquire sufficient resources as a price or cost question, rather than a rule violation. BPA can ensure that the full cost of the resource acquired due to inadequate resource planning is assigned to the customer that failed to adequately plan and acquire. The price signal received by such customer will deliver the message that it is cheaper to plan than to lean on BPA. This approach is also consistent with resource pricing that will be applied under an allocation.

Lastly, the WPAG utilities urge the Council to keep in mind, in addressing this issue, that resource acquisition is a uniquely local decision with local impacts, and for preference utilities, involves matters of local control and decision making. Any resource adequacy policy must be crafted so that it does not impinge on local control and decision making.

3. Conclusion

The WPAG utilities appreciate the opportunity to comment on the Council's draft Recommendations, and look forward to working closely with the Council in the coming months to successfully implement a long-term allocation of the Federal power system.