

# NIU

Northwest Irrigation Utilities

RECEIVED BY BPA ADMINISTRATOR'S OFC-LOG #: 09.0124
RECEIPT DATE: 11.13.09
DUE DATE: 12.1.09

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November 13, 2009

Steve Wright, Administrator and Chief Executive Officer  
Bonneville Power Administration  
PO Box 3621  
Portland, OR 97208

**ASSIGN: Garry Thompson-PSE/Spokane**  
**cc: FO3, DKN/Wash, L-7, P-6, PS-6, F-2,**  
**Jon Hirsch-PSS-6**

Re: Underpayment of Irrigation Mitigation Benefits

Dear Mr. Wright,

The purpose of this letter is to request your assistance to expeditiously and equitably resolve an issue of overpayment to BPA during the last 8 years by the Load Following customers that are eligible for the Irrigation Mitigation Product for the period FY 2002 – FY 2011. Our intent is to resolve this issue administratively in a manner that is fair to our customers and is in accordance with the intent of the program design we agreed to with the Agency in 2000. To that end, our Executive Director, John Saven is authorized to work with Mark Gendron and other members of your staff as needed to resolve this matter on terms that are acceptable to the NIU Board. If agreement is not reached at a staff level, the Officers of NIU would like to meet with you at a mutually agreeable time. We firmly believe this is a matter within your discretion as Administrator to resolve.

### Brief History of Irrigation Mitigation

BPA and NIU have a long standing and constructive working relationship where BPA has provided attractively priced power supply for summer seasonal irrigation loads that allow our retail customers to remain competitive in regional, national and international markets. We have worked with the Agency in supporting an Irrigation Discount in the 1980s and early 1990s, then a Summer Seasonal Product (SSP) from 1996 - 2000, then an Irrigation Mitigation Product, and now for the post 2011 period a return to an Irrigation Discount. However, we note that the future Irrigation Discount will only cover about 75% of our irrigation loads and contains no provision for load growth. While these changes in program design have been difficult as benefits decline compared to our total irrigation loads, each has been characterized by an agreement between BPA and the NIU members that we have developed and implemented in good faith.

You may recall that when the Irrigation Mitigation Rate Product was developed in the late 1990s, it was at a time when BPA was struggling with the competitive market. There was an expectation that the PF 02 rates would be lower than PF 96. At that time NIU and BPA forged an agreement in which the price for NIU members' qualifying loads under the IRMP in FY 2002 would go up 7.5% over the

FY 96 rates with the SSP. That was our agreement, and that is what we explained to our retail irrigation customers. We then began charging our retail irrigation customers based on these assumptions.

### **The Low Density Discount**

In order for this 7.5% cost differential between 1996 and 2001 to be implemented, BPA needed to apply a consistent methodology to calculate the Low Density Discount for both the PF 96 rates with the SSP and the PF 02 rates with the IRMP. Unfortunately an error was made in the LLD value which ultimately translated into higher energy charges for the qualifying irrigation loads contained in Exhibit D of our power sales contracts. BPA staff documents show that only 25% of the eligible irrigation MWh sales received the LLD credit rather than the intended 100%. Given the complexity of the modeling this error was not detected within BPA or by NIU staff.

BPA staff has determined that the Full Requirements customers were underpaid by \$1,995,000 for the FY 2002 – FY 2009 period. This significant amount of money cannot go unaddressed by the NIU Board. The consequence of this underpayment is that rather than having the NIU/BPA agreed to 7.5% increase in rates for qualifying irrigation loads beginning in FY 2002, the actual rate increase (if not corrected) exceeds 10%.

### **Options for Resolving the Underpayment**

We appreciate BPA disclosing this underpayment and offering to correct it for the remainder of the current contract period, FY 2010 – 2011. This will increase benefits to NIU members and other Load Following recipients by about \$380,000 per year.

With regard to the underpayment of \$1,995,000 for the FY 2002 – FY 2009 period, the NIU Board is willing to work with BPA to craft a solution that makes our customers whole, while accommodating issues BPA may have regarding the period of repayment. In other words we are not insisting on a one-time payment plus back interest. We are open to considering repayment over a longer period of time than FY 2010 – FY 2011, say up to 5 years and assuming interest on outstanding balances would be paid at a mutually agreeable rate.

### **Relationship to Other Customer Groups and Other IRMP Payments**

The briefing materials provided by Garry Thompson reference a miscalculation of IRMP benefits for the Slice/Block customers. The NIU Board of Directors has not reviewed this matter in detail nor are we asserting how BPA should respond to it. We view the underpayment of the Load Following customers as independent from the simultaneous overpayment to the Slice Customers tied to other billing determinants.

### **The Discretion of the Administrator to Settle Disputes**

Over the years we have seen the Administrator exercise broad discretion in using his/her settlement authority to attempt to resolve regional issues. On a very broad basis this includes the original

Subscription contracts extended to the IOUs, power and financial benefits offered to the DSIs, and the recent FCRPS Bi-Op MOAs that broadened support from certain Tribes.

Closer to home for NIU members, and concurrent with the settlement of the unrelated Slice litigation; we watched as BPA revamped the IRMP benefits for Slice customers that essentially doubled the amount of financial benefits Slice customers received for their qualifying Block irrigation loads for the period FY 2007 – FY 2011. When BPA changed direction from the basic program design of FY 2000, NIU did not object, as long as our perceived benefits were not being diminished.

Recent materials from Agency staff acknowledge that a decision has not been made regarding miscalculation of FY 2002 – 2009 IRMP benefits, but states “BPA is proposing to not look back at the underpayments nor overpayments.” While we recognize that there may be differing technical or legal interpretations within the Agency regarding BPA’s obligation to address the miscalculation, the matter is straightforward from NIU’s perspective. A miscalculation of nearly \$2 million has harmed NIU members, and results in our paying more for irrigation than the capped amount BPA and NIU agreed to at the program inception. This is a matter where we believe the Administrator has the clear discretion, as well as the obligation, to rectify the problem, using your settlement authority. While there is no pending formal claim that has been filed to date by NIU, we believe it would be a prudent and administratively efficient outcome to resolve the matter at this time.

**Moving Forward to Resolution**

We are not looking to other bodies, such as other elected or administrative officials, or the balance of BPA’s customer groups to resolve this matter. We believe it is within your discretion as Administrator. It is up to the Agency to determine the methodology and funding source for providing payment for the miscalculation. In the event that NIU needs to be involved in any public discussions of this issue, we will be prepared to support the Agency. However, at the end of any process we will be looking to you to make the final decision based on the underlying merit of our request.

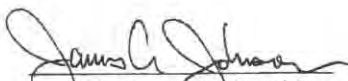
As stated above, the NIU Officers are prepared to meet with you at a mutually agreeable time. We have a fiduciary responsibility to our retail irrigation customers to represent their interests, and to ensure that the program we developed with BPA is implemented as intended. We also have a desire to maintain our mutually beneficial close working relationship with BPA on irrigation related issues for the overall benefit of the region, including BPA’s Load Following customers in rural areas.

We look forward to hearing from you in the near future.

Best regards,



Ralph Williams, President  
NIU Board of Directors  
Manager, United Electric



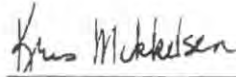
Jim Johnson, Vice President  
NIU Board of Directors  
Manager, Big Bend Electric



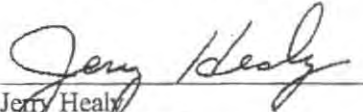
Jeff Davis, Secretary/Treasurer  
NIU Board of Directors  
Manager, Wasco Electric



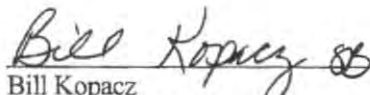
Chuck Dawsey  
NIU Board of Directors  
Manager, Benton Rural Electric



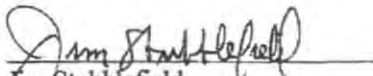
Kris Mikkelsen  
NIU Board of Directors  
CEO, Inland Power & Light



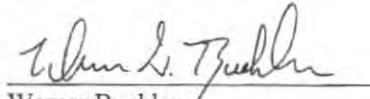
Jerry Healy  
NIU Board of Directors  
Manager, Columbia Basin Electric



Bill Kopacz  
NIU Board of Directors  
Manager, Midstate Electric Cooperative




Jim Stubblefield  
NIU Board of Directors  
Manager, Columbia Power Cooperative



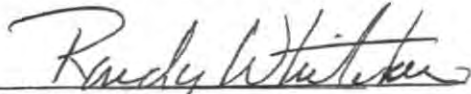
Werner Buehler  
NIU Board of Directors  
Manager, Oregon Trail Electric Cooperative



Les Teel  
NIU Board of Directors  
Manager, Columbia Rural Electric Association



Dan Silveria  
NIU Board of Directors  
Manager, Surprise Valley Electric



Randy Whitaker  
NIU Board of Directors  
Manager, Harney Electric Cooperative



Clay Fitch  
NIU Board of Directors  
Manager, Wells Rural Electric

CC: Mark Gendron, Acting V.P. Requirements Marketing  
Garry Thompson, Manager Eastern Power Business Area  
NIU Board of Directors  
John Saven, NIU Executive Director