

Affiliated Tribes of Northwest Indians

January 11, 2008

Tiered Rate Methodology December 21, 2007 Preliminary Draft Comments

Please allow this memo to serve as the comments of the Affiliated Tribes of Northwest Indians (ATNI) to Bonneville Power Administration's (BPA) Long-Term Regional Dialogue Policy Tiered Rates Methodology Discussion Paper. We understand that this is a preliminary document of staff work. We anticipate that a later draft will be presented for our formal review and comment.

ATNI has commented on the new public issues throughout the Regional Dialogue process. In October of 2005 we presented a "new public" proposal to BPA and its customers in a Regional Dialogue public meeting. We included the attachment that is also included here. Our proposal reminded BPA as follows:

First, BPA laws that give preference to public utilities nowhere set an end-date for preference. Preference is guaranteed for all customers described under the statutes. Tribal utilities are deemed to be preference customers and are currently served as such by BPA. The difference between a Tier 1 and a Tier 2 rate is the difference between preference service and non-preference. Offering a Tier 2 (market) rate to new customers is clearly not honoring the spirit of the law.

Second, Bonneville is obligated by statute to promote the "widespread use" of power.

Third, BPA has obligations under federal treaties, and a federal trust obligation, and a unique relationship to Tribes.

Fourth, the Energy Policy Act of 2005 provides a *statutory mandate* to BPA to encourage tribal energy development.

In October of 2006 in a letter to the Administrator, we wrote,

We also have a number of grave concerns that *must be remedied* since they are foundations of the way our member tribes will interface with Bonneville as preference customers for the foreseeable future.

It is of clear importance to us that Bonneville establish policies that will *truly encourage* the formation of tribal utilities and truly allow utilities that have already formed to grow according to their existing plans. Bonneville is not exercising its trust responsibility to act on the behalf of tribes, nor is it acting consistent with the Energy Policy Act of 2005 if it does not create policies that meet this requirement of encouraging tribal utilities.

We appreciate the exception in the policy proposal for new "small utilities", however, as is described in the list below, this step needs change and refinement to make tribal utility formation and the long term success of tribal utilities workable. Indian tribes generally sacrificed many

valuable resources in order to allow for the construction, maintenance and operation of the federal hydroelectric system, yet so many of these tribes have been unable to become Bonneville customers because of the complicated steps necessary for utility formation under Bonneville policies.

There should be no limit to the amount of power available for the establishment of new small utilities. Further, to limit high water marks to initial loads makes new utilities uneconomical as they implement planned phasing of load growth. The deadlines for utility formation are totally unworkable. The three year notice provision before utility formation is simply not in line with the reality of forming a new utility. ATNI requests that rather than deadlines, the proposal facilitate new utilities by creating a process for contingent contracts so that forming utilities can be assured a source of federal power while they are going through the steps of meeting the standards for service. It is also clearly important to us that transmission for tribal utilities be equivalent to transmission for existing utilities, whether they are on the Bonneville system or whether they are transfer service customers.

We reiterate those comments here.

Efforts have been made by BPA to provide some compromise provisions on behalf of new publics and tribal utilities in the Regional Dialogue policy. In our opinion, compromises are not sufficient to comply with statutory obligations. Instead, the policy should actually be designed to meet the letter and the spirit of the law. However, if the compromises are implemented in such a way to encourage the formation of tribal utilities and other new publics BPA may avoid a challenge to the policy.

Some of the issues in the tiered rate methodology paper clearly *discourage* tribal utilities and new publics and are in fact contrary to the previous Regional Dialogue meeting discussions that we have had with BPA management and staff. In particular, 2.1.9.1 currently states:

Once qualified for service, a new public utility must provide a 3-year binding notice in advance of the time it will be eligible to purchase power with a HWM. During the interim period, if necessary to supply load, the utility may purchase power from BPA at rates that are established for that purpose....Details for this approach will be worked out in the applicable rate cases.

This 3-year notice has been discussed in previous letters and comments and meetings. ATNI objected to the notice as unworkable. It will most likely discourage all new tribal utilities if they have no idea of the rate they will pay in the critical first three years. We do understand the need for BPA to plan their acquisitions, so we were amenable to the new utility providing notice as soon as possible prior to and during the period of time they are qualifying for service, so that the utility would receive power at Tier 1 rates as soon as they come on line. The “binding” nature of the notice is also unclear and must be addressed in a manner that will encourage new utility formation.

On page 2, line 9, we propose that “further available power” that might be “left over” after the needs of existing customers are met be used to extend the opportunities for new publics. We also propose that any unneeded augmentation in the 300 MW category also be added to the available augmentation for new publics.

In 2.1.9.2 regarding small utilities, a reference is made to the “first five such utilities”. We were informed in earlier meeting that this means the first five such utilities *in each rate period*. Please make that clarification.

In 2.1.9.3 there is language “Any such amounts will be added to the 50 aMW rate period limits...” We understand this to mean “will be in addition to the 50 aMW rate period limits...” Also we will state for the record that the overall limit of 250aMW for new utilities is based on the last 20 years new public growth. As pointed out in previous meeting with BPA, this 250 aMW does not include any new tribal utilities since during that time period tribes were not specifically designated as preference customers by BPA.

Section 2.1.9.4 is unclear and ignores details addressed in previous tribal/BPA meetings. For example, if a new public forms out of an existing public’s territory and the existing public has its own resources, the new utility’s HWM should be adjusted upward and the existing utility’s HWM should be adjusted downward, as the new utility will not have access to the existing utility’s generating resources. Additionally, for new publics formed from IOU territory, residential exchange treatment must be discussed in clear detail. Lastly, it seems that in the discussion of phasing of HWM amounts there is a possibility that if there is more than a 50MW request for power by new customers that less than the whole 50MW will be allocated. That is simply contrary to the policy, not to mention how this whole scheme may be inconsistent with legal mandates.

We propose that new language be included to detail the treatment of potential new publics after new public augmentation limits have been reached. This is the set of customers that stand to be disenfranchised by being given disparate treatment from other preference customers. We suggest that flexibility be build into this portion of the policy to meet statutory obligations.

Another major concern that has arisen is BPA’s mention that they may apply a tribe’s settlements under FERC dam relicensing processes to the question of their net requirement determination. For example, if a tribe received a share of a private power resource as compensation for flooding of lands, cultural resources, and other treaty and trust resources, BPA has considered requiring a tribal utility (not the same entity as the tribe) to use that resource to serve its load rather than allowing the tribe to dispose of the compensation as it wishes. BPA has said that each such determination would be made on a case-by-case basis. No compensation to a tribe for the taking of a trust or treaty resource should be used against that tribe as it attempts to form a utility. BPA should make clear that tribal resources resulting from dam relicensing settlements are outside the scope of a net requirements consideration. To do otherwise clearly discourages formation of a tribal utility and devalues negotiated settlements reached pursuant to statutory requirements that are approved by FERC.

3.1.5.4’s statement “BPA will augment up to 250 aMW for the CHWMs of newly qualified public utility customers formed during the term of the Regional Dialogue

Contracts” is not consistent with the policy. According to the policy, new customers include those tribal utilities formed pursuant to Subscription.

ATNI reserves its right to comment on cost allocations once more detail is provided regarding the full treatment of fish and wildlife costs.

Regarding Tier 2 vintage rates, ATNI has proposed that BPA create a tribal renewable power product, specifically designed for federal customers who receive a double credit for using such power towards their renewable portfolio standard. Please include this proposal in the language of vintage rates.

If there are any questions, please call Margie Schaff at 303-443-0182 or write to mschaff@att.net. We look forward to submitting formal comments on the additional drafts of this document.

Energy Policy Act of 2005 (emphasis added)

**SEC. 2605. FEDERAL POWER MARKETING
ADMINISTRATIONS.**

(a) Definitions- In this section:

(1) The term 'Administrator' means the Administrator of the Bonneville Power Administration and the Administrator of the Western Area Power Administration.

(2) The term 'power marketing administration' means--

(A) the Bonneville Power Administration;

(B) the Western Area Power Administration; and

(C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

(b) **Encouragement of Indian Tribal Energy Development- Each Administrator shall encourage Indian tribal energy development by taking such actions as the Administrators determine to be appropriate, including administration of programs of the power marketing administration, in accordance with this section.**

(c) Action by Administrators- In carrying out this section, in accordance with laws in existence on the date of enactment of the Energy Policy Act of 2005--

(1) **each Administrator shall consider the unique relationship that exists between the United States and Indian tribes;**

(2) power allocations from the Western Area Power Administration to Indian tribes may be used to meet firming and reserve needs of Indian-owned energy projects on Indian land;

(3) the Administrator of the Western Area Power Administration may purchase non-federally generated power from Indian tribes to meet the firming and reserve requirements of the Western Area Power Administration; and

(4) each Administrator shall not--

(A) pay more than the prevailing market price for an energy product; or

(B) obtain less than prevailing market terms and conditions.

(d) Assistance for Transmission System Use-

(1) An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

(2) The costs of technical assistance provided under paragraph (1) shall be funded--

(A) by the Secretary of Energy using nonreimbursable funds appropriated for that purpose; or

(B) by any appropriate Indian tribe.

(e) Power Allocation Study- Not later than 2 years after the date of enactment of the Energy Policy Act of 2005, the Secretary of Energy shall submit to Congress a report that--

(1) **describes the use by Indian tribes of Federal power allocations of the power marketing administration** (or power sold by the Southwestern Power Administration) to or for the benefit of Indian tribes in a service area of the power marketing administration; and

(2) identifies--

(A) the quantity of power allocated to, or used for the benefit of, Indian tribes by the Western Area Power Administration;

(B) the quantity of power sold to Indian tribes by any other power marketing administration; and

(C) **barriers that impede tribal access to and use of Federal power, including an assessment of opportunities to remove those barriers and improve the ability of power marketing administrations to deliver Federal power.**

(f) Authorization of Appropriations- There are authorized to be appropriated to carry out this section \$750,000, non-reimbursable, to remain available until expended.