



May 6, 2008

Mr. Mark O. Gendron, Vice President of Northwest Requirements Marketing
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

SUBJECT: NIPPC Comments on Draft Regional Dialogue Contracts

Dear Mr. Gendron:

The Northwest & Intermountain Power Producers Coalition ("NIPPC") has reviewed the Bonneville Power Administration's draft 20-year Regional Dialogue contracts, and we find them inadequate for the important job at hand.

NIPPC is an advocacy organization representing the collective public policy objectives of 15 members with 4000 megawatts of installed capacity in the region and several thousand additional megawatts planned.¹ We support the development of robust wholesale markets in the Pacific Northwest, and we have endorsed BPA's efforts to tier its power rates and give public power customers choice in making resource decisions.²

We are ready to do business with public power utilities if they want to assume greater responsibility for meeting their own load growth. On the other hand, if these utilities want BPA to continue in its role of acquiring new resources, then we are ready to do business with BPA. Under either of those alternatives (or a combination of both), NIPPC members are prepared to propose power sale agreements.

¹ Our members include: Calpine; Constellation Control Energy and Dispatch; ENMAX Corp.; enXco; EPCOR; EverPower Renewables; Grays Harbor Energy Center LLC; Horizon Wind Energy; Mint Farm Energy Center LLC; National Energy Systems Co.; Sempra Energy Trading Corp.; Sierra Pacific Industries; Suez Energy North America, Inc.; TransAlta Energy Marketing, Inc.; and TransCanada.

² For a history of the Regional Dialogue beginning with the Comprehensive Review See: http://www.moreperfect.org/wiki/index.php?title=Northwest_Independent_Power_Producers_Coalition

Unfortunately, BPA's Regional Dialogue contracts are incomplete and excessively complex. As a consequence, they fall far short of meeting BPA's stated goals of promoting infrastructure development and providing stability to utility customers

SUMMARY

The proposed Regional Dialogue contracts represent a new, long-term way of doing business for both BPA and its utility customers. The agreements that BPA is asking utilities to sign later this year will begin in FY 2012 and end in FY 2028.

BPA has repeatedly said that the Regional Dialogue process must, among other things, be simple and clear. Regrettably, BPA's draft contracts do not meet those goals. In fact, the draft Regional Dialogue contracts rank as the most complex and obscure we have ever seen. The draft contracts use terms and acronyms that are not defined within the document – terms that will only be defined in a rate case scheduled to begin this month and which will conclude *after* BPA has given the utilities final contracts to sign.

In fact, the draft documents are not contracts at all but agreements to buy something at a price to be determined and under conditions to be established later. As a result, these agreements will likely have the opposite effect of BPA's long-stated intention; they will deter an efficient wholesale power market from developing in the Pacific Northwest by sowing confusion and anxiety among public power utilities and the market generally.

BACKGROUND

On October 31, 2006, NIPPC submitted comments encouraging BPA to proceed with the Regional Dialogue contracts. At that time, we identified serious problems with the proposed schedule. We suggested that BPA provide utilities with an allocation as soon as possible. By postponing the day when utilities receive their Tier 1 amount, BPA was only adding uncertainty, we said at the time.³

In response, BPA said it shared some of NIPPC's concerns and "will remain open to ideas for transition mechanisms that might mitigate the timing issue for the early years of the Regional Dialogue contract." (Record of Decision, July 2007, page 20).

³ See comment 130 posted at www.bpa.gov/corporate/public_affairs/Comment_Listings/Regional_Dialogue_Proposal

Instead of resolving these issues, BPA has continued down the same path. The result is a set of draft Regional Dialogue "contracts" that is utterly unworkable, as we explain in detail below.

BPA's actions jeopardize the regional consensus that had developed in public power and elsewhere around tiered rates and long-term contracts for public power utilities. To a remarkable degree, regional stakeholders had agreed on a new paradigm, where BPA would create a favorable environment for utilities to assume greater responsibility in making resource decisions.

Unfortunately, this consensus has been seriously eroded in a series of increasingly arcane debates that have stymied progress and led BPA to propose Regional Dialogue contracts with blank tables where there should be tangible numbers.

SPECIFIC COMMENTS

1. The draft Regional Dialogue contracts do not contain a "right to buy" a specified amount of federal power at cost (called "High Water Marks"). These High Water Marks define the eligibility of utilities to buy cost-based Tier 1 power. Because of this omission, utilities cannot plan ahead and decide how much they need by a date certain.

Furthermore, the High Water Marks are subject to recalculation and calibration for temperature-based normalization, conservation, force-majeure-type events and other anomalies. Then, they are subject to more recalculations to become Rate Period High Water Marks. Eternal tinkering is not conducive to making a business decision about investing in new resources.

The objective is to get close enough in calculating the High Water Marks now. Once a utility knows its share of the Federal Base System, it can decide how it will meet the rest of its obligations: from its own power plants or contracts; from conservation; from BPA; or some combination.

2. The draft Regional Dialogue contracts do not define key terms. Despite the length of the draft agreements, several truly essential terms are missing.

There is no definition, for example, of "Contract High Water Mark" or "Rate Period High Water Mark," or "Net Requirements," even though those terms are vital to an understanding of how BPA is proposing to proceed. BPA plans to define these terms through the upcoming Tiered Rate Methodology ("TRM") rate case, set to begin this month.

What that effectively means is that the Regional Dialogue contract is dependent on the results of an administrative proceeding that will not conclude for months

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and that is, in any case, subject to appeal at the Federal Energy Regulatory Commission and in the Ninth Circuit.

Nor are we reassured by BPA's 21-page list of Draft Regional Dialogue Definitions (April 15, 2008), a document available on the web site that contains definitions of terminology, such as "composite customer charge" and "calibrated simulator discharge" and "diurnal flattening service." BPA staff have gone far afield to develop a set of new acronyms and terms, a vocabulary for insiders, many of whom are understandably frustrated by the pace and lack of real progress to date.

3. The draft Regional Dialogue contracts rely too much on information in exhibits (appendices) rather than on terms in the body of the agreement. A long-term agreement needs to be transparent. A utility manager should not have to flip pages back and forth between the body of the agreement and an appendix and the TRM rate case Record of Decision and other supporting documents in an attempt to discern what BPA's basic obligations are to his or her utility, and vice versa.

4. NIPPC is concerned with other issues notably, our concern with BPA's relative treatment of Tier 1 and Tier 2. NIPPC reiterates from its prior comments, the need for BPA to create a level-playing field for both power and transmission services. To the extent that this is a contract issue, we request that BPA include "firewall" language in the final version of the contract that clearly separates Tier 1 and Tier 2 costs. Language to the effect, for example, that "BPA will separate Tier 1 and Tier 2 costs and will not charge utility customers for Tier 2 costs unless the utility has purchased the specific Tier 2 product." Finally, we reiterate our concern about BPA's implementation of transmission comparability standards for both federal and non-federal resources, as the region attempts to move forward to tiered rates.

CONCLUSION

NIPPC continues to support the important and fundamental concept of offering public power utilities more choice in how they meet loads. Utilities that want to assume greater responsibility for their load growth should be enabled – indeed encouraged – to do so. Likewise, utilities that want to stay with BPA need to be able to do so as well.

But if this new arrangement is going to work, it has to be expressed in a 20-year contract that is written in plain English. And it also should be articulated in a contract where the business terms are transparent and fully discernable at the time of execution, not after the fact.

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NIPPC hopes that BPA sees merit in getting "back to basics" by re-drafting simplified agreements that public power utilities, after a second round of public comment, could justify signing.

A utility manager must be able to understand what he or she is buying from BPA, and what he or she needs to acquire elsewhere. Anything short of this common sense standard will only add to prevailing uncertainty at a time when all industry participants seek a durable, predictable climate within which to do business.

NIPPC looks forward to a definitive conclusion to the Regional Dialogue process and sincerely hopes that it will result in implementation of the long-pursued, consensus vision of clearly-defined responsibilities and greater self-reliance.

The Coalition's membership stands ready to generate and deliver the electrons that all agree will be needed to sustain our regional economy.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Kahn".

Robert D. Kahn, Ed.D.
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