

REG-029

**Comments of the Industrial Customers of Northwest Utilities  
at the Northwest Delegation Staff Meeting  
on BPA's Long-Term Regional Dialogue Policy Proposal**

**September 11, 2006**

The Industrial Customers of Northwest Utilities ("ICNU") appreciates the opportunity to comment on the Bonneville Power Administration's ("BPA") Long-Term Regional Dialogue Policy Proposal ("Regional Dialogue"). ICNU is a non-profit trade association of over 30 large industrial electric customers in the Pacific Northwest that has represented its member companies on BPA issues for over 20 years. Members include Weyerhaeuser, Longview Fibre, Ponderay Newsprint, Boeing, Kimberly-Clark, Boise Cascade, Simplot, ConAgra, and Georgia-Pacific. Many of ICNU's members indirectly purchase power from BPA.

ICNU's comments address the following issues: 1) the Administration's proposal to use any secondary revenues above \$500 million per year to prepay BPA's U.S. Treasury debt rather than reduce current rates; 2) BPA's proposed tiered rate "construct"; and 3) cost control and contract enforceability. ICNU will submit additional comments for the September 18, 2006 meeting. In addition, ICNU will submit detailed written comments to BPA on its Regional Dialogue proposal by the end of September 2006.

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As a preliminary matter, ICNU is concerned with the lack of specificity and detail in the Regional Dialogue. BPA is seeking to resolve, for the next twenty years, a wide array of complex and contentious issues. Although BPA wishes to obtain regional consensus on its proposal, many critical issues are deferred for later development. Without additional information, it is impossible to fairly evaluate how many of the proposals in the Regional Dialogue would work over the next few years, let alone the next two decades. ICNU hopes that, after hearing comments from regional stakeholders, BPA will understand that determining whether there is a consensus must wait until a more comprehensive and detailed proposal has been developed with the parties.

**1. BPA's Secondary Sales Revenues Should Not Be Used to Prepay the U.S. Treasury**

The Administration's 2006 budget proposed to use any secondary revenues above \$500 million per year to prepay BPA's U.S. Treasury debt. Through the leadership of the Northwest Delegation, legislation was passed that prevented such administrative action at least through April 2007. ICNU will strongly oppose any similar future budget proposals to prepay U.S. Treasury debt because it would harm the Northwest economy. ICNU appreciates all the hard work that the Northwest

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Congressional delegation has done and appreciates their continuing commitment to work with ICNU and other BPA customers on this issue.

BPA relies upon its secondary sales revenues to set low, cost-based rates for the Northwest. Secondary sales can vary markedly based on actual market and hydro conditions, and over the years ratepayers in the Northwest have borne the benefits and burdens associated with these secondary sales. Although the Administration's proposal differs from past efforts to sell BPA power at market prices, it could have a similar impact on customer rates. Initial estimates were that the budget proposal would have increased BPA's rates an additional 10% for the 2007-2009 rate period. In the current fiscal year ("FY"), revenues on secondary sales have exceeded \$812 million as of the end of August 2006. If the Administration's budget proposal was applied to 2006, BPA's rates for 2007 would have been increased by over \$3 per MWh. This is a substantial increase that would have imposed significant economic harm on industry in the Northwest.

## **2. BPA Should Modify Its Tiered Rate Proposal**

ICNU has serious concerns about BPA's proposal to provide service to the public utilities at tiered rates. BPA's tiered rate proposal is not sufficiently detailed at this time for ICNU to support or to oppose the proposal; however, the tiered rate proposal is a significant departure from

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BPA's historic melded rate approach, and it should be carefully considered and well understood before being implemented. Tiered rates, as currently proposed, are not fair to all customers and may not be consistent with the statutory requirements in the Pacific Northwest Electric Power Planning and Conservation Act ("Northwest Power Act").

BPA's tiered rate proposal would limit the amount of firm, cost-based power ("Tier 1" amount) available to public utility customers after 2011. Each public utility would be allocated an amount of cost-based power that is, or will be over time, less than the utility's net requirements. The amount of Tier 1 power available to each utility would be based on its high water mark ("HWM") of loads and resources in 2010. Public utilities that chose to purchase power from BPA above their HWM will be charged Tier 2 rates, which will be based on the market price of electricity.

As currently drafted, BPA's Tiered Rate Proposal inappropriately deprives certain end use consumers of their statutory rights to cost-based BPA power. BPA claims that the "tiered rate construct" will limit BPA's open ended resource procurement obligation and limit its costs, rates, and risks. In achieving these goals, however, BPA should not penalize end use consumers for resource decisions that were made when BPA policy

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was that BPA would continue to serve its public utility customers' net requirements at a melded power rate. Nor should BPA unfairly take away public power's statutory rights to cost-based power. Given this shortage of cost-based power BPA should not voluntarily offer to serve any portion of the direct service industry load.<sup>1/</sup>

**A. The Regional Dialogue Unfairly Penalizes End Use Consumers with Cogeneration Resources**

BPA's proposal to use 2010 loads and resources for establishing the HWM would be a major and very harmful change in BPA policy for end use consumers that are currently using their own generation resources to serve load. These cogenerating consumers have electric generation that typically is a part of their industrial facilities, and they currently can choose during the period covered by the Regional Dialogue proposal to have their loads served either by BPA through their local utility or their own generation resources. The Regional Dialogue removes this flexibility, because an end use consumer that utilizes its own generation resources to serve its load in 2010 will reduce the Tier 1 amount available to its public utility for the next 20 years.

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<sup>1/</sup> ICNU will discuss the DSI issues in detail in its September 18<sup>th</sup> comments.

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BPA's proposal should be modified because it would significantly limit the ability of cogenerating consumers to use cost-based BPA power to serve their load. ICNU recommends that such consumers' entire loads should be included in determining its utility's Tier 1 amount. In addition, BPA should maintain cogenerating end use consumers' current flexibility and allow them to remove or add their resource from its public utility's net firm requirements in each rate period. In the alternative, BPA should use the Public Power Council's proposal to base the Tier 1 amount on 2012 resources committed to the utility, instead of FY 2010 resources, to set the HWMs. Because the public utilities' current contracts expire in 2011, the Public Power Council's proposal would allow cogeneration consumers to decide whether their resources will reduce their local public utility's allocation of cost-based power. This would, at least, allow such consumers to decide whether to commit their resources to load after knowing that tiered rates will be in place.

**B. The Regional Dialogue Eliminates End Use Consumers' Rights to Cost-based Power**

BPA's Regional Dialogue proposal treats a portion of existing end use consumers' loads as new large single loads ("NLSL"). This is inconsistent with the Northwest Power Act. The Regional Dialogue

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eliminates the distinction between NLSLs and portions of the loads of existing BPA end use consumers in a manner that ignores BPA's statutory responsibilities. BPA should correct this problem by ensuring that BPA's end use consumers who are currently using less power than their historic levels should be able to purchase power at Tier 1 rates up to the amounts they were historically allocated through what is known as "contracted for/committed to" amount ("CFCT").

The Northwest Power Act treats NLSLs differently than historic end use consumer loads. A NLSL is defined as any new load that was not contracted for, or committed to, prior to September 1, 1979, and which will result in an increase in power requirements of 10 aMW in any consecutive twelve-month period. NLSLs are not eligible to receive the same cost-based power as other end use consumers that take service from BPA's preference utilities. In contrast, BPA's historic end use consumers have the statutory right to cost-based rates up to the amount that was contracted for or committed to them in 1979.

The Regional Dialogue Proposal harms those end use consumers with expected 2010 loads that are less than the full amount of their CFCT. Under the Regional Dialogue, increases in load above its 2010 amount, but less than its CFCT amount, if will not create a corresponding

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increase in the utility's Tier 1 amounts. All additional load for that end use consumer, even though under its CFCT amount, will be charged the higher Tier 2 rates and receive the same rate treatment as a NLSL, *i.e.*, market price for power.

ICNU recommends that BPA revise the Regional Dialogue to ensure that end use consumers with 2010 loads that are lower than the amount contracted for or committed to in 1979 not lose their statutory right to cost-based power. The simplest remedy would be an adjustment to the utility's HWM to allow any end use consumer to purchase power at Tier 1 rates up to its historic CFCT allocation. If necessary, BPA could augment its system to purchase additional power to meet this load.

BPA has already recognized that, to meet its statutory responsibilities, it may need to augment its system to provide more power than is available from the Federal base system. For example, BPA has recognized that new public utilities may be formed, and that new utilities will have a statutory right to cost-based power at the Tier 1 rate. BPA cannot accurately estimate the amount of new public utility load that will form over the next twenty years, but it has proposed that it will augment the system up to 250 MWs to provide Tier 1 power for new public utilities. Similarly, BPA has a statutory right to provide cost-based power to end use



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consumers at amounts equal to consumers' historic commitments, and BPA should ensure that it will augment the system and provide these consumers with cost-based, Tier 1 power.

### 3. Cost Control and Contract Enforceability

ICNU appreciates BPA's efforts to establish a more transparent long-term cost control process, and to implement an effective contract enforceability and dispute resolution process. Many of the proposals contained in the Regional Dialogue are rough, broad outlines that could develop into reasonable options; however, as currently drafted, BPA's proposals do not provide customers with any real assurances that BPA will continue to develop more effective cost controls or provide customers with any meaningful rights to dispute BPA's decisions.

ICNU recommends that BPA adopt a more rigorous review of its costs through a formal cost management process, as well as provide customers with the ability to review BPA's costs in rate cases. Because BPA is asking customers to make 20-year commitments, it is critical that BPA provide the opportunity to conduct a comprehensive review of the agency's costs and policy proposals before BPA makes its final decisions. ICNU also supports allowing an independent and impartial third party to review disagreements between BPA and its customers.

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BPA has proposed “that the overall construct of tiered rates would not be abandoned or changed for a period of 20 years;” that customers would have a guarantee against identified changes; and that there would be a binding process to ensure that the guarantee was enforceable. Notably, the “overall construct of tiered rates” is still undefined and the methodology to do so is many months away. Thus, it is unclear at this point what, and to what extent, BPA would be committing not to change over the 20 years. In addition, BPA has proposed broad exceptions that could make this commitment unenforceable. BPA should be encouraged to provide all its customers with a meaningful dispute resolution and contract enforceability rights.

ICNU appreciates the opportunity to share its views on BPA’s Regional Dialogue. The Regional Dialogue would be a dramatic change to BPA’s rate and service policies and it remains a work in progress that needs certain revisions and specificity. We urge the Delegation to continue its oversight of this process.