



Comments of the Northwest & Intermountain Power Producers Coalition

Bonneville Power Administration's Long-Term Regional Dialogue Policy Proposal October 31, 2006

The Northwest & Intermountain Power Producers Coalition (NIPPC) commends the Bonneville Power Administration ("BPA") for proposing a "new paradigm" in the way it sells and prices power. NIPPC represents the interests of the independent power producers (IPPs) in the Pacific Northwest and Intermountain states.

BPA's stated goal in its paper entitled: *Regional Dialogue: BPA's Policy Proposal for Power Supply Role for Fiscal Years 2007-2011*, is to "tier" its wholesale power rates after October 1, 2011. Tier 1 consists of the Federal Columbia River Power System and other resources that BPA would continue to sell at cost. Tier 2 consists of new market-based purchases. Utilities could choose whether to buy Tier 2 from BPA or other sources such as independent power producers (IPPs) and qualifying facilities (QFs).

Bonneville's laudatory goal is to create a level playing field for Tier 2 products so as to not subsidize those products with Tier 1. "BPA will not subsidize Tier 2 rates to create a financial advantage for a customer to make a choice to buy from BPA instead of the market."¹

A careful review of the document raises questions and suggests that BPA is creating obstacles to the development of markets and does not intend to create genuine opportunities for buyers and sellers to operate on a level playing field.

While NIPPC is hopeful that these comments and those of BPA customers and others will successfully encourage BPA to correct these problems, NIPPC, in the interest of seeing a timely resolution of the allocation plan supports the fallback proposal. The pursuit of consensus has been a ten year enterprise and if achieving it fails, now is the time for BPA to unilaterally implement its fallback plan.²

¹ *Regional Dialogue: BPA's Policy Proposal for Power Supply Role for Fiscal Years 2007-2011*. Page 13.

² In the interests of documenting the considerable, good faith effort to reach consensus, NIPPC assembled and posted the history of the Regional Dialogue beginning with its origins in the Comprehensive Review at: <http://www.moreperfect.org>.

Using 2010 Actual Loads Not Historic Loads

BPA has developed a complicated allocation formula³ that appears to give incentives for public agency customers to remain captive for some years (i.e., 3-5) of the new contract. This part of the proposal may appeal to many small public power utilities that do not want to be independent but it would likely defer market-based decisions until after 2011.

BPA proposes to have individual utilities forecast their net requirements for 2010 in 2007. There would be a “true up” in 2011 based on actual loads in 2010. But this process places more demands on Tier 1 than if the allocation were done earlier. As a result, BPA needs to augment Tier 1. See below.

The alternative is to allocate the system *now* based on the historic average of 5-year resources and loads for the Subscription contracts ending (2001-2006).

BPA’s proposal requires more waiting and guessing. What’s the utility’s actual load in 2010? How is the utility to determine what amount it needs from the market in 2011 if it doesn’t get a firm “high water mark” (allocation) well before that date? The later utilities postpone the calculation of what they will get from Tier 1, the more BPA has to augment the system (assuming regional loads are growing) and the *less* likely it is that utilities will diversify.

Creeping Augmentation of Tier 1

BPA proposes to “augment” (supplement) Tier 1 by purchasing 300 aMW of additional power and 250 aMW for new public agency customers. That’s a total of 550 aMW.⁴

In addition, the issue of service for the Direct Service Industries (“DSIs”) is left for future resolution. BPA’s existing five-year DSI contracts, signed in July 2006, “monetize” up to 560 aMW of power for the first three years but leave open the possibility that BPA will sell some or all of the companies power in the last two years of the contract.

Might BPA also supply power to the DSIs *after* 2011, when the Regional Dialogue Proposal goes into effect? Suppose BPA agrees to supply 300 aMW to the DSIs after 2011. When combined with the 550 aMW of existing proposed augmentation that brings BPA’s proposed supplementation of Tier 1 to 850 aMW. That’s a significant amount that customers would not have to buy on the market.

The 300 aMW plus augmentation also creates another potential problem: unused Tier 1 allocations. There is a greater chance that BPA may have unused Tier 1 allocations if the size of Tier 1 increases to 7,400 aMW and more. BPA could sell

³ *Ibid.* Page 14.

⁴ *Ibid.* Pages 3 and 22.

unused Tier 1 at market-prices and “credit back” the “profit” to existing Tier 1 customers but that means BPA is “wheeling and dealing” (again) in the wholesale markets. Having increased the size of Tier 1 to more than what is needed, it now is reselling unused allocations.

On the other hand, if BPA does not augment at all for Tier 1, then the chances are smaller that this scenario will happen.

NIPPC supports an allocation of the federal power system without any augmentation. There is no obligation for Bonneville to allocate (or reserve) power for the DSIs. Augmentation for a new public customer could – and should be – subtracted from all other public customers’ share of the system on a pro rata basis.

Sign Now – See the Price Later

BPA intends to issue a Record of Decision on the Policy Proposal in January 2007 and to begin a rate case to establish a long-term rate methodology in February 2007. The methodology rate case is expected to last until October 2007.⁵

Customers are expected to sign the new 20-year contracts in April 2008. These contracts are for *both* Tier 1 and Tier 2. Tier 1 obligations are for the length of the contract. Tier 2 obligations are for at least five years with a minimum notice of three years to switch.⁶

In other words, customers will have to decide whether or not to have BPA supply Tier 2 by April 2008. But the process to establish rates (as opposed to a tiered rate methodology) begins in November 2008, *after* the contracts are signed. There is no off ramp for customers to void the contract after they learn the rates. They’re captive.

In addition, BPA proposes that customers signing the contract agree not to challenge the final tiered rate methodology adopted in 2007.⁷

But the Northwest Power Act gives customers the right to challenge final BPA actions before the U.S. Court of Appeals for the Ninth Circuit. Can BPA force customers who have a statutory right to buy power (i.e., preference customers) to waive their statutory appeal rights?

NIPPC considers this provision a virtual “poison pill” for the proposal since it is inconceivable that BPA customers would agree to surrender their rights to appeal particularly when the content of their allocation contracts are unknown.

⁵ *Ibid.* Pages 5-6.

⁶ *Ibid.* Page 28.

⁷ *Ibid.* Page 29.

Shifting Tier 2 Costs Back to Tier 1

BPA is leaving itself room to shift certain Tier 2 costs to Tier 1, thus giving itself an advantage that other independent power producers would not have.⁸

Although BPA states that Tier 2 products and rates would be designed to assure full cost recovery, BPA also states that it “must preserve the ability to reallocate costs to the Tier 1 rate in the unlikely even that Tier 2 costs cannot be recovered through the Tier 2 rate.”

What would precipitate such an event? BPA does not say.

Although BPA staff has said they intend to make Tier 2 products self-sufficient (a stand-alone commodity), the open-ended language in the proposal raises basic questions. Why can't BPA align its contract obligations with its purchase obligations (i.e., over a 5-year period) to reduce or virtually eliminate the risk that BPA would buy power for a utility that didn't (or couldn't) pay BPA's costs?

Consider the following example (offered by BPA staff as an illustration of the problem). Suppose a utility buys 100 aMW under Tier 1 and 30 aMW from Tier 2. Suppose also that the utility has an industrial customer with a 50-aMW load. If the plant closes, who's on the hook for the fact that the utility now has a load of only 80 aMW?

This example – offered to support the notion that BPA may need to recover Tier 2 costs from Tier 1 – seems unsatisfactory. Why isn't the utility on the hook if its retail customer closes the plant? The utility may have to pass on its Tier 2 costs to a smaller base of retail customers, but that would appear to be *its* problem, not BPA's.

In sum, BPA needs to more carefully spell out when the “wall” between Tier 1 and Tier 2 would be breached.

BPA also proposes to force Tier 1 to pay certain costs (\$21 million per year) on renewable resource development. See pages 59-60. Furthermore, This sum could include the development of new renewable resources *in advance of need* – a cost that Tier 1 customers would pay.

But this breach in the wall between Tier 1 and Tier 2 has the effect of lowering Tier 2 costs and giving BPA an unfair advantage over utilities and developers.

Defining Tier 2

BPA has given no indication when it will characterize the types of products and services that it will offer for Tier 2.

⁸ *Ibid.* Pages 13 and 30.

NIPPC believes that BPA should provide such a characterization well in advance of its customers deciding whether or not to commit to Tier 2 for their load growth starting on October 1, 2011. How else can customers determine whether BPA is offering a competitive supply option or not?

It seems reasonable to expect that if Bonneville plans to develop or otherwise secure a major generation resource, it will need to notice the region under Section 6c(3) of the Northwest Power Act. Alternatively, if BPA is planning to purchase power from the market for Tier 2, it should make those plans known since that option presents commercial implications as well.

In any case, Bonneville should make known how it plans to provide power to customers who opt for Tier 2 well before there are expected to do so.

Consensus is illusory

Consensus is illusory in matters related to Bonneville policy. While solicitation of regional interests' perspectives is commendable, there comes a time when decisions must be made. Ten years is a more than adequate time period to solicit and process toward regional consensus. In the end, no proper business model operates on consensus as the region most recently found in connection with the failed ten year effort to form a regional transmission provider.

NIPPC supports BPA's stated intent to proceed with its fallback proposal should the region fails to achieve consensus on outstanding key issues. While NIPPC appreciates that such an outcome may prove unsatisfactory to various constituencies within the region, NIPPC believes that the time for decision has come. Investment in new generation and associated transmission capacity hinges on BPA reaching resolution on the Regional Dialogue. The burgeoning economy and promise of continued growth depends on the willingness of utilities, IPPs and the financial community to proceed. The uncertainty that will result from an indefinite continuation of the Regional Dialogue or a return to the status quo ante of undisciplined provision of Bonneville service will severely compromise the region's economic health.

NIPPC supports a timely and conclusive outcome to the Regional Dialogue and trusts that its concerns stated here will prove helpful to BPA as it leads the region toward a new – and more competitive – power paradigm.

Robert Kahn
Executive Director, NIPPC
7900 SE 28th St, #200
Mercer Island, WA 98040
rkahn@nippc.org