



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

PUBLIC AFFAIRS

September 13, 2012

In reply refer to: DK-7

Benjamin Nivison, Attorney at Law  
Helsell Fetterman LLP  
1001 Fourth Ave, Ste 4200  
Seattle, WA 98154-1154

### FOIA #BPA-2012-01776-F

Dear Mr. Nivison:

Thank you for your request for information that you made to the Bonneville Power Administration (BPA) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Your request was received in this office on Friday, August 17, 2012, and has been assigned a control number, BPA-2012-01776-F. Please use this number in any correspondence with the Agency about your request.

#### **You have requested:**

“(1) For each Calendar Year ("CY") from 1997 to 2011, please produce all data submitted to BPA by each LDD customer (which information is due to BPA by June 30th of the following year) that is related to BPA's calculation of that customer's LDD discount percentage and/or annual dollar benefit. This includes, but is not necessarily limited to:

- (a) each LDD customer's annual financial and operating reports (e.g., USDA Rural Utility Services Form 7, similar National Rural Utilities Cooperative Finance Corporation form, or other audited financial report);
- (b) each LDD customer's annual EIA-861 report to the Energy Information Administration;
- (c) any other CY data submitted by each LDD customer that is related to BPA's determination of the customer's LDD; and
- (d) each LDD customer's certification that the data submitted is true and correct.

If BPA's data submission requirements between 1997 to 2011 have varied from the types of documents listed above (which we understand to be the current requirements), please provide us with whatever data the LDD customer submitted for each calendar year from 1997 to 2011 pertaining to BPA's determination of the customer's LDD under the then-applicable guidelines.

We understand that CY 2011 data was due from BPA customers that receive a LDD by the end of June 2012. If some BPA LDD recipients have not yet submitted their required data,

please identify these customers, and state the date by which BPA expects to receive the required LDD information.

(2) For each year from 1998 to 2012, please produce information reflecting BPA's applicable discount percentage and/or annual dollar benefit awarded for each LDD customer. Please state the date of this discount calculation and determination by BPA, provide documents communicating the amount of this discount calculation to each LDD customer, and indicate the effective date(s) of each such LDD determination for each LDD customer.

Please note that we are not requesting all of BPA's internal calculations, correspondence, or other documentation of BPA's LDD adjustments based on certain types of loads and ineligible charges. Such information is not intended to be within the scope of this FOIA request. However, we are requesting BPA's customary form of notice to or communication with the customer informing the customer of BPA's determination of any applicable LDD discount percentage and/or annual dollar benefit.

(3) For each year from 1997 to 2012, please produce documentation reflecting the total dollar amount value of the LDD awarded to each of BPA's LDD customers in that year (i.e., documents showing that Customer A received a LDD valued at \$100,000.00 in 2001, and a LDD worth \$115,000.00 in 2008).

Again, please note that we are not requesting all forms of BPA documentation showing the yearly breakdown of LDD benefits by customer. But given what we have been able to locate via our independent research, we would expect that BPA is in possession of charts or spreadsheets listing all LDD customers and the dollar amount of each customer's LDD discount for each year, for example. That is the type of documentation we are requesting.”

We have reviewed your request and have determined that it addresses all of the criteria of a proper request under the FOIA, DOE, and BPA regulation that implements the FOIA at Title 10, Code of Federal Regulations, Part 1004, except fees.

Your request indicated that you were willing to pay \$500 in fees. However, an estimate provided by the Authorizing Official indicates that search fees, duplication fees, and review fees will be approximately \$14,300. This estimate was provided you during a phone conversation with Kim Winn on August 28, 2012. In a follow up email dated August 29, 2012, Ms. Winn described what information must be provided to request a fee waiver (see enclosed).

As BPA has not received a request for fee waiver, or an agreement to pay the fees associated with this request, we have no option but to officially close this request.

Should you have any questions regarding this letter please contact Kim Winn, Communication Specialist, at 503-230-5273.

Sincerely,

*/s/Christina J. Munro*

Christina J. Munro

Freedom of Information/Privacy Act Officer

Enclosure: email dated August 29,2012

**From:** Winn, Kim S (BPA) - DK-7  
**Sent:** Wednesday, August 29, 2012 1:47 PM  
**To:** 'Nivison, Benjamin T.'  
**Cc:** 'Grad, Andrea E.'; 'Milliard, Laurie T.'  
**Subject:** RE: FOIA Request No. 12-01776 (LDD Data from BPA)

Your list is the same as ours. And no, there is not benefit to limiting the customer type. According to the FOIA attorney here, we still have to ask about releasing their commercial/financial information.

As I explained earlier, the records for this program are not electronic. To gather the information requested would take going through each year's files to get to the appropriate information and copy it. Easier to do that once for all of the information, then three times to complete three different requests. If the requests were separated by time then further fees would apply.

There are really only two options for you since you feel you need all of the information you requested: agree to pay the estimate (which with my time (160x\$38.16=\$6106.24) would total \$14,298.24), or request a fee waiver.

To request a fee waiver please complete the information requested below (pulled from the online FOIA request form) and return it to me. I will put it in front of our FOIA Officer for a decision when she returns to the office on Sept 5th.

Because you are requesting a waiver, the reason for making the request needs to be answered. How you plan to use the information provided. Also, you stated that you are representing the government. You will need to identify your client so that we can determine whether fees are applicable.

### **Type of Requester**

Select a description of yourself and the purpose of the request to help determine your category for assessing fees:

Affiliated with an educational or noncommercial scientific institution, and this request is made for scholarly or scientific purpose and not for commercial use.

Affiliated with a private corporation and seeking information for the use in the company's business.

A representative of the news media affiliated with \_\_\_\_\_ and the request is made as part of news gathering and not for commercial use.

Select type of media: Newspaper, Magazine, Television Station, Other

### **Waiver**

The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."

The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.

The contribution to an understanding by the general public of the subject likely to result from disclosure, taking into account your ability and intent to disseminate the information to the public in a form that can further understanding of the subject matter.

The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

The existence and magnitude of a commercial interest: Whether the requester has a commercial or "profit" interest that would be furthered by the requested disclosure.

The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

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**From:** Nivison, Benjamin T. [mailto:bnivison@helsell.com]  
**Sent:** Wednesday, August 29, 2012 11:30 AM  
**To:** Winn, Kim S (BPA) - DK-7  
**Cc:** Grad, Andrea E.; Milliard, Laurie T.  
**Subject:** FOIA Request No. 12-01776 (LDD Data from BPA)

Dear Ms. Winn,

Thank you again for our phone conversation yesterday. I appreciate your willingness to work with us to obtain and produce responsive materials. As I indicated then, I am attaching a chart listing the current LDD recipients of which we are presently aware. Hopefully this is helpful to you and your staff in working through this FOIA request.

Regarding the inability to sever our requests #2 and #3, which you reference below, I admit I am a bit perplexed by that. The documents requested in connection with those two items are really just whatever form of communication BPA has with its customers regarding the LDD awarded for each year (i.e., a letter), and also any documents that reflect the actual dollar value of the LDD awarded to each customer for each year. These should not be voluminous materials. In any event, can your staff proceed to produce items responsive to these two simpler requests, while we work together to establish the scope of request #1?

I've also reviewed your estimate that you faxed to me yesterday, and I am concerned. First, as I explained to you yesterday, our request in furtherance of the public interest, and so is not a "commercial request". We represent interested taxpayers and ratepayers as relators for the United States in connection with this request; our work would directly benefit BPA and its bottom line, the United States government, and most of BPA's ratepayers. But more fundamentally, the items requested are relatively simple reports that are made by power customers to BPA, pursuant to federal law. These reports are defined by specific BPA rules, as described in each Rate Case. Our investigation has revealed that the LDD submission made annually by each customer is often a relatively modest packet of information. Please note that we are only requesting the actual annual submissions made to BPA by each LDD recipient customer; *we are not requesting all information on which BPA bases its LDD award*. I am quite skeptical that 40,000 documents are actually at issue here. Hopefully these points of clarity can streamline the request, and control costs.

Some additional ideas occur to me, to this end. Because of your representation that external vetting and third-party review fees could apply to this request (which we would dispute), we may be willing to limit our request #1 to only public entities that receive LDD discounts. Were we to limit our request in this respect, how would that impact your previous statement regarding third party review and associated costs? Similarly, if we were to limit the timeline of our request #1 to only the past 10 years (i.e., 2002-2012), how might that affect the estimated costs?

Again, thank you for your assistance with this request. I look forward to hearing from you soon.

Best regards,  
 Ben Nivison

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**From:** Winn, Kim S (BPA) - DK-7 [mailto:kswinn@bpa.gov]  
**Sent:** Tuesday, August 28, 2012 3:17 PM

**To:** Nivison, Benjamin T.

**Subject:** Items #2 & 3

I spoke to the program manager and this program's records are not electronic. It would take the physical pulling of files and copying the documents to provide documents for all items of your request. So unfortunately, there is no way to really segment your request.