

To: BPA via the BPA website: www.bpa.gov/comment
From: Northwest Requirements Utilities
Date: November 9, 2009
Re: NRU Comments on BPA's Proposed Revised ALCOA and CFAC Contracts

NRU appreciates this opportunity to provide comments regarding BPA's proposed revised contracts with aluminum companies, ALCOA and CFAC. In general, NRU is still not persuaded that the contract is a good one for the agency or its preference customers.

First, NRU has a number of concerns about the economic analysis provided in support of the contract. By NRU's calculations the market prices used in the analysis are about 5 mills per kWh lower, on average, than those used for the final proposal in support of the FY 2010/2011 rate case. This is a significant reduction in market prices and has the effect of swinging the analysis from one where this offering would be out of the money to one where to contract could be in the money. We are not suggesting that this was a results driven analysis, and in fact natural gas prices have come down significantly since the Final Proposal was developed. However, the test of whether BPA's other customers will have been financially harmed by this sale will not really be demonstrated until actual market prices are known for the period in question.

To the extent that BPA loses money on this arrangement, BPA's financial reserves will be reduced, and this loss will ultimately be recovered through higher rates to preference customers. While NRU continues to oppose this contract, if BPA proceeds to offer the contract, NRU suggests that there should be a check-in half way through the term of this contract to determine whether the contract is still in the money. If it is not, then an adjustment should be made to the IP rate so that the IP rate as applied to the Alcoa and CFAC loads will generate more revenues than BPA would have obtained through market sales of power.

Second, it is unclear to NRU how BPA's Slice and non-Slice customers will be affected by these transactions. We understand that the power available to the Slice customers will be reduced by these transactions while the quantity of BPA sales of secondary energy will also be reduced. It is BPA's Block and Load Following customers that are most affected by the impact on financial reserves of reduced secondary sales. If BPA offers this contract, in spite of our opposition, we would like a demonstration that there is no Slice/Non-Slice cost shift as a result of it.

The structure of the contract also makes it difficult to determine whether BPA will actually be "in the money" regarding these sales, even though BPA forecasts that the transactions will have a very slight net benefit to the agency. In some instances, BPA appears to be prepared to lose money on the transactions. From our perspective the likelihood of BPA losing money far outweighs the small probability that BPA would break even or make money. Therefore in our view the contract offering is inconsistent with sound business principles. Please consider the following::

- The contracts are take-or-pay, except that (a) Section 9 of the contract gives these loads the right to curtail service from BPA, and (b) Section 9.3 states that for the period of the curtailment, the take-or-pay obligation is suspended ("No Compensation to Either Party

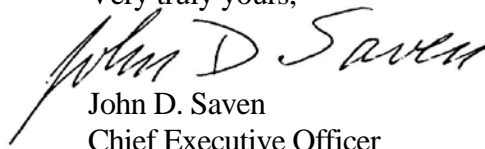
During Curtailment”). If BPA has already incurred costs to serve these loads, and prevailing market prices are below the IP-10 rate as BPA forecasts they will be, then such a suspension of the take-or-pay obligation during curtailment can only work to the disadvantage of BPA and BPA’s Load Following and Block customers. The existence of the Section 9.3 almost guarantees that the net benefit from the contract that BPA has calculated cannot actually be realized.

- Section 11.2.3 of the contract provides that BPA will compensate Alcoa for “any incremental, direct, non-administrative costs incurred by Alcoa” if BPA provides power to Alcoa at a Scheduling Point of Receipt that is different from Alcoa’s Primary Point of Receipt. It is not clear why this is required, or what the estimated costs might be. Therefore, it is not possible to estimate how those costs might affect BPA’s “Equivalent Benefits” analysis.
- There does not appear to be a “survival” clause that preserves all obligations under the agreement until satisfied in the event of Alcoa’s termination. NRU recommends that such a clause be added.

NRU’s overall impression of the revised contract is that it *may* satisfy BPA’s “Equivalent Benefits” test,¹ but it is not obvious that it in actuality *will* satisfy BPA’s test. In sum, the contract is disappointing. BPA shows only modest appreciation for the recent rulings of the Ninth Circuit in the *PNGC I* and *PNGC II* cases, but does not seem to accept the spirit of the Court’s rulings or the validity of its preference customers’ concerns that led to the litigation in the first instance.² Those concerns have to do with BPA’s apparent desire to enter into business transactions that are *completely discretionary* to the agency, yet which may impose costs on those customers which are BPA’s *non-discretionary, native load* customers.³ The contracts and BPA’s analysis of them are not sufficiently robust to give NRU confidence that the transactions should be completed.

Finally, NRU joins in the comments of the Public Power Council and the detailed rationale and technical supporting information they provide for opposing this contract offer. At the end of the day, given the speculative economics of the transaction, the recent court decisions, and the risk being passed onto BPA’s public power customers despite their unanimous opposition, a litmus test for the Agency to consider is whether the employees would invest their own funds in this manner.

Very truly yours,



John D. Saven
Chief Executive Officer

CC: Members of NRU

¹ NRU does not accept BPA’s “Equivalent Benefits” test as a proper expression of what is required by the *PNGC* cases. The language of the test itself (“equivalency” and “benefits”) leaves the meaning of this test open to considerable fluidity. Even as BPA may interpret or apply its test, however, the contracts themselves do not establish that they could satisfy BPA’s test.

² Expressed in previous comments.

³ Also, the contract appears to reveal a preference for the employees of one industry over the employment prospects in the service territories of BPA’s native load customers.