

**UNITED STATES DEPARTMENT OF ENERGY  
BONNEVILLE POWER ADMINISTRATION**

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<b>IN THE MATTER OF</b>	)	<b>BPA Docket No. BP-12</b>
	)	
<b>FY 2012-2013</b>	)	
<b>PROPOSED POWER RATE</b>	)	
<b>ADJUSTMENTS</b>	)	
	)	

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**Brief on Exceptions of**  
**Pacific Northwest Generating Cooperative and Members,**  
**Northwest Requirements Utilities, and**  
**Western Montana Electric Generating and Transmission Cooperative**  
**(JP02)**

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BP-12-R-JP02-01

**June 24, 2011**

**TABLE OF CONTENTS**

INTRODUCTION ..... 1

ARGUMENT ..... 1

    I. JP02 Supports the Administrator’s Draft Decision to Allow Non-Customers to Propose Narrowly Tailored Changes to the TRM and to Work with Non-Customers to Abide by the TRM Change Process as Necessary ..... 1

    II. JP02 supports the Administrator’s Draft Decision to Base the Financing Assumptions in the Calculation of the Demand Rate on Municipal/PUD Financing but Takes Issue with BPA Including Inappropriate Costs not Specified in the TRM in the Calculation. .... 4

    III. JP02 Strongly Supports the Administrator’s Decision to Make Unanticipated Load Service Available in Cases when a New, non-Federal Specified Resource Permanently Fails or Is Delayed in Coming On-line and When a New Dedicated Resource Cannot Be Used to Serve Load Due to Issues Related to Transmission Access. .... 7

        A. The Northwest Power Act does not prohibit BPA from offering ULS..... 9

        B. Expanded ULS availability will encourage the development of Non-Federal Resources. .... 9

        C. BPA has provided sufficient justification for establishing the 10 MW Cap..... 10

        D. The ULS Rate design isolates costs to customers utilizing ULS..... 11

        E. JP02 agrees that there are fundamental differences between the Load Following and Slice/Block Contracts, and therefore, finds it reasonable to offer ULS to Load Following but not Slice/Block customers. .... 11

CONCLUSION..... 12

## INTRODUCTION

In accordance with §1010.13(d) of the Bonneville Power Administration's (BPA's) Procedures Governing Rate Hearings,<sup>1</sup> the Pacific Northwest Generating Cooperative and Members, Northwest Requirements Utilities, and Western Montana Electric Generating and Transmission Cooperative, collectively Joint Party 2 (JP02), respectfully submits this Initial Brief to set forth legal, factual, and policy arguments in response to some of the issues raised in the Administrator's Draft Record of Decision (Draft RoD) released on June 14, 2011.

This brief discusses potential changes to the TRM that may be proposed by non-Customers, the demand rate, and unanticipated load service. All of these issues are related to the Power portion of the case. In addition, the JP02 parties continue to support the positions taken in initial briefs.<sup>2</sup>

## ARGUMENT

### **I. JP02 supports the Administrator's draft decision to allow non-Customers to propose narrowly tailored changes to the TRM and to work with non-Customers to abide by the TRM change process as necessary.**

In this proceeding, the Industrial Customers of Northwest Utilities (ICNU) submitted testimony that, *inter alia*, proposed two changes to the Tiered Rates Methodology (TRM) relating to Contracted For/Committed To potential loads.<sup>3</sup> JP02 filed a motion to strike this portion of ICNU's testimony on multiple grounds, including that the proposals were

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<sup>1</sup> 51 Fed. Reg. 7,611 (March 5, 1986).

<sup>2</sup> Pursuant to BPA's Procedures Governing Rate Hearings §1010.13(b), the Special Rules of Practice to Govern These Proceedings, and Section 1.1.1.4 of the Draft RoD, we need not raise in this brief issues discussed in Initial briefs for purposes of issue preservation. Instead, all arguments raised in initial briefs are deemed raised in briefs on exceptions. 51 Fed. Reg. 7,611 (March 5, 1986); BP-12-HOO-02; BP-12-A-01 at 4-5.

<sup>3</sup> BP-12-E-IN-01 at 19-22.

impermissible proposals to change the TRM outside of the scope of the rate case as set out in the Federal Register Notice (FRN).<sup>4</sup> The Hearing Officer granted the motion to strike on these grounds.<sup>5</sup>

In the Draft RoD, the Administrator proposes to reverse the Hearing Officer's Order, finding that the FRN is an inaccurate reflection of the change process set out in the TRM. The Draft RoD points out that the TRM provides that "Nothing in section 12 or this section 13 [of the TRM] either 1) precludes any party to a BPA 7(i) Process, other than a Customer, from making any proposal or offering any testimony of other evidence on any matter that may otherwise be raised in a BPA 7(i) process."<sup>6</sup> However, the Draft RoD also states that the Administrator expects that proposals to change the TRM from non-customers "will be limited to items directly affecting their interests,"<sup>7</sup> and that "[e]ven if a proposal is directly linked to its interests, the proposed modification is to be enacted in a manner that cures the non-Customer's adverse impact while making as little change as possible in the overall effect of the TRM on Customers."<sup>8</sup> Further, "BPA would look to see whether a TRM change proposed by a non-Customer that is directly tied to its particular interests should observe the Section 13 process."<sup>9</sup> If a proposed change affects customers, "BPA is willing to work with ICNU and any other party to construct TRM changes and present them to voting customers."<sup>10</sup> The Draft RoD rejects ICNU's specific proposals to change the TRM in this proceeding because the proposals would

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<sup>4</sup> BP-12-M-JP02-01 at 2-3.

<sup>5</sup> BP-12-HOO-44.

<sup>6</sup> BP-12-A-01 at 27 (citing TRM-12S-A-03 at Section 13.1).

<sup>7</sup> *Id.* at 26.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 27.

<sup>10</sup> *Id.*

materially impact all public customers, therefore giving Customers the right to be consulted and to express support or opposition.<sup>11</sup>

We are sympathetic to ICNU's "Catch-22"<sup>12</sup> situation that the FRN created and support the Administrator's effort in the Draft RoD to address the problem. We agree that the TRM allows non-Customers to propose changes to the TRM in a rate case proceeding. We also agree with the Administrator that any proposal to change the TRM from a non-Customer should be very narrowly tailored to address only items directly affecting the interests of the particular non-Customer. Such a proposal should appropriately address the situation at hand while "making as little change as possible in the overall effect of the TRM on Customers." And, even if a proposal by a non-Customer is directly linked to that non-Customer's interests, if the proposal would affect Customers, the Section 13 process is appropriate. In such a circumstance, as the Draft RoD proposes, the non-Customer should work with BPA to draft the proposed change and to present the proposal to Customers for a vote.

Most, if not all, changes to the TRM that non-Customers may propose would need to go through the Section 13 process. The TRM is the document that establishes how BPA sets rates for Customers, accordingly we can imagine very few proposed changes to the TRM that do not affect Customers and therefore need not go through the Section 13 process.

These boundaries around proposals to change the TRM that may come from non-Customers are necessary to preserve the integrity of the tiered rates structure and the 17-year contracts that preference customers entered into in 2008. A significant part of the value of both

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<sup>11</sup> *Id.*

<sup>12</sup> BP-12-B-IN-01 at 22.

the tiered rates structure and the contracts derive from their stability over time. To preserve this stability, it is essential that the TRM change as little as possible. Proposals for change, from whatever source, should be infrequent, narrowly tailored, and discouraged unless absolutely necessary. BPA is helping to preserve this integrity by proposing these limits on proposed changes from non-Customers. At the same time, these limits as proposed in the Draft RoD appropriately and fairly preserve the procedural rights of non-Customers.

JP02 also supports the draft decision to reject ICNU's specific proposals to change the TRM in the testimony at issue. These proposals would materially affect not only ICNU members, but also preference customers and therefore should first go through the Section 13 process.

**II. JP02 supports the Administrator's draft decision to base the financing assumptions in the calculation of the demand rate on municipal/PUD financing but takes issue with BPA including inappropriate costs not specified in the TRM in the calculation.**

JP02 agrees with the Administrator's draft decision to base the capital costs of a marginal resource on the capital costs associated with a municipal/PUD financing, including the decision not to add additional costs for property taxes.<sup>13</sup> As BPA notes, the "municipal/PUD financing option with BPA-backed bonds would likely be the least-cost financing option, and thus the option first sought by BPA."<sup>14</sup> BPA would certainly pursue the least cost option first, which makes the municipal/PUD financing the most appropriate assumption to calculate the demand

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<sup>13</sup> BP-12-A-01 at 94.

<sup>14</sup> *Id.* at 92.

rate. Also as noted by BPA, the agency has a long history of acquiring the output of resources from municipal/PUD developments.<sup>15</sup>

Furthermore, BPA correctly dismisses JP01's argument that the demand rate "should fully compensate Bonneville for the cost [of] capacity."<sup>16</sup> The Demand Rate is only intended to, "send a price signal to a limited portion of overall demand on BPA."<sup>17</sup> BPA notes that, "[w]hat is important in the instant case is whether the level of the demand rate is sufficient to induce public utilities to investigate and procure resources and programs that would reduce their demand charges."<sup>18</sup>

JP02 also supports the Administrator's decision to base the O&M costs of the marginal resources from the Northwest Power and Conservation Council's (Council) Sixth Power Plan.<sup>19</sup> This is the most appropriate source to reflect the O&M costs for a plant in the Pacific Northwest, and, as BPA correctly states, using one source will avoid any, "double counting or failing to include some costs."<sup>20</sup> Finally, JP02 agrees with BPA's draft decision to not include additional property taxes or in lieu taxes in the demand rate calculation since they are already accounted for by the 1% adder.<sup>21</sup>

The only draft decision regarding the demand rate to which JP02 objects is the inclusion of fixed fuel transportation and insurance costs in the calculation of the demand rate. BPA is incorrect when it says the TRM, "does not say that the demand rate would be based on only

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<sup>15</sup> *Id.* at 91.

<sup>16</sup> *Id.* at 92 citing Murphy, Oral Tr. at 227.

<sup>17</sup> TRM at 66.

<sup>18</sup> BP-12-A-01 at 92.

<sup>19</sup> *Id.* at 96.

<sup>20</sup> *Id.* at 95.

<sup>21</sup> *Id.* at 94.

those costs listed in the parenthetical of the TRM.”<sup>22</sup> The TRM very clearly states that the demand rate should be based on those costs listed in Section 5 of the TRM. Section 5.4 of the TRM states,

“BPA will limit Tier 1 rates and charges *to those detailed in this Section 5*. These limitations pertain to the core charges of the PF rate design, which include Customer Charges, Load Shaping Charge, and Demand Charge, and do not encompass other adjustments, charges, and special rate provisions . . . or any other charges allowed under section 12.5.”<sup>23</sup>

Section 5.3.6 of the TRM lists *only* capital and O&M as the annual fixed costs to be used to calculate the demand rate.<sup>24</sup> Nothing in the section indicates that these costs were only examples of costs to be included in the calculation. BPA claims that, “[i]ncluding fixed fuel and insurance is also not inconsistent with the TRM,” but they clearly are inconsistent if the TRM specifically says that the rates and charges are limited to those detailed in Section 5.<sup>25</sup> BPA should adhere to the plain reading of the TRM, which says that the only fixed costs to be included in the calculation of the demand rate are capital and O&M. If BPA or other customers wish to bring in additional costs that it deems to be fixed costs such as insurance and fixed fuel cost, then they should use the TRM change process provided in Section 13 of the TRM.

BPA claims that JP02’s arguments regarding the inclusion of fixed fuel and insurance in the calculation of the demand rate are somehow inconsistent with JP02’s assertion that BPA should adhere to one source, the Council’s Sixth Power Plan (the Plan), for the data source for the cost of the capacity resource. JP02 fails to see how its position is inconsistent. JP02 simply

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<sup>22</sup> *Id.* at 98.

<sup>23</sup> TRM p. 73 (emphasis added).

<sup>24</sup> *Id.* at 72.

<sup>25</sup> BP-12-A-01 at 97.

argues that BPA should follow the plain language of the TRM when calculating the demand rate and nothing more. The TRM is the guiding document on how BPA calculates its customer charges. When it specifies how a charge should be calculated, it is the document to which BPA should adhere. As stated above, the TRM is clear that capital costs and O&M are the annual fixed costs on which the demand rate should be based, and the Administrator should adopt a calculation, which only includes those costs.

Furthermore, as BPA looks to the Plan as the data source for the cost of the capacity resource, it will find that the Plan supports JP02's argument that insurance and fixed fuel costs should not be included in the calculation of the demand rate. The Plan defines Fixed O&M as including, "operating and routine maintenance labor, maintenance materials, routine contract services, and administrative and general costs. Insurance and property taxes are excluded."<sup>26</sup> Insurance costs and fixed fuel costs are not included in the Plan's definitions of Fixed O&M and should not be included in the calculation of the demand rate.

For the reasons set forth above, JP02 urges the Administrator to revise his decision in the Draft RoD and remove fixed fuel and insurance costs from the calculation of the demand rate.

**III. JP02 strongly supports the Administrator's decision to make Unanticipated Load Service available in cases when a new, non-Federal Specified Resource permanently fails or is delayed in coming on-line and when a New Dedicated Resource cannot be used to serve load due to issues related to transmission access.**

JP02 explained in its Initial Brief that an expansion of Unanticipated Load Service (ULS) is necessary to support and encourage non-Federal resource development, a primary goal of the

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<sup>26</sup> Northwest Power and Conservation Council's Sixth Power Plan (February 2010), Appendix I at 73.

Regional Dialogue. Due to the strict deadlines for adding new Specified Resources imposed by the Regional Dialogue Contracts, if a resource were to fail or was delayed in coming online, a customer would be exposed to punitive Unauthorized Increase (UAI) Charges.<sup>27</sup> Similarly, contractual deadlines for transfer customers who plan to use a new Dedicated Resource present a risk that a customer may face UAI charges.<sup>28</sup> BPA accurately characterizes the nature of the problem and why ULS provides an adequate remedy. The Draft RoD states,

One of the underlying objectives of Regional Dialogue and tiered rates is to encourage resource development. With smaller utilities, which may lack experience in resource development, the knowledge that BPA will provide a temporary backstop for resource delays and failures will encourage rather than discourage resource development. This backstop will not relieve the utility of its contractual obligation but rather is intended to encourage the utility to engage in resource development when it might otherwise elect not to because of the downside risk.<sup>29</sup>

Snohomish opposes BPA making ULS available in any of these situations.<sup>30</sup> Snohomish expresses many concerns with BPA's proposed ULS service. These concerns include: (1) that providing ULS conflicts with the Northwest Power Act,<sup>31</sup> (2) providing ULS will somehow discourage the development of non-federal resources,<sup>32</sup> (3) BPA has not provided sufficient rationale to cap ULS at 10 MW,<sup>33</sup> and (4) that a customer utilizing ULS may result in stranded costs.<sup>34</sup> In addition, Snohomish argues that if BPA expands ULS eligibility, Slice/Block transfer

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<sup>27</sup> BP-12-E-JP02-04 at 9-10.

<sup>28</sup> *Id.* at 11.

<sup>29</sup> BP-12-A-01 at 150.

<sup>30</sup> BP-12-B-SN-01 at 10.

<sup>31</sup> *Id.* at 10.

<sup>32</sup> *Id.* at 13.

<sup>33</sup> *Id.* at 14.

<sup>34</sup> *Id.* at 16.

customers should be able to utilize ULS as well. BPA correctly dismisses each of Snohomish's arguments, each of which is addressed below.

A. The Northwest Power Act does not prohibit BPA from offering ULS.

Snohomish first argues that Section 5(b)(1) the Northwest Power Act requires BPA to treat a resource as one that is serving load until BPA grants the customer resource removal rights, and therefore, it is inappropriate for BPA to provide ULS in these circumstances.<sup>35</sup> In response, the Draft RoD states, "While the Northwest Power Act does state how BPA will handle resource removal, it does not indicate that BPA cannot provide a temporary service to customers while they engage in the process."<sup>36</sup> The Administrator is correct that the Northwest Power Act permits BPA to provide ULS to its customers. Specifically, section 9(i) of the Northwest Power Act states that, "At the request and expense of any customer or group of customers of the Administrator within the Pacific Northwest, the Administrator *shall*, to the extent practicable – acquire any electric power required by (i) any customer or group of customers to enable them to replace resources determined to serve firm load under section 839c(b)."<sup>37</sup> Clearly, the Northwest Power Act enables and actually encourages the Administrator to provide a service such as ULS to BPA's customers. The Draft RoD correctly dismisses Snohomish's argument regarding the Northwest Power Act and permanent loss of failure of a resource.

B. Expanded ULS Availability Will Encourage the Development of Non-Federal Resources.

Snohomish argues that expanded ULS availability will discourage development of non-

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<sup>35</sup> *Id.* at 10.

<sup>36</sup> BP-12-A-01 at 150.

<sup>37</sup> 16 U.S.C. 839f(i)(1)(A) (emphasis added).

federal resources. JP02 has explained at length why the opposite is true.<sup>38</sup> BPA aptly describes why the ULS provision was included in the TRM. The Draft RoD states,

Parties that helped craft the TRM recognized that problems could arise with resource development and there needed to be some mechanism with which BPA could provide some support in the event the resource development did not go as planned. Rather than discouraging resource development, the ULS encourages utilities that might otherwise shy away from such an endeavor.”<sup>39</sup>

If ULS eligibility is not expanded customers may face UAI charges for circumstances that are beyond their control, such as issues with transmission access or permanent resource failure, development of non-federal resources will be discouraged. Expanded eligibility of ULS is necessary to advance the Regional Dialogue goal of non-Federal resource development and mitigate risks associate with non-Federal resource development that are due to BPA contractual and policy matters, while preventing cost shifts among customers. JP02 supports the Administrator’s decision to expand eligibility in order to encourage the development of non-Federal resources.

C. BPA has provided sufficient justification for establishing the 10 MW Cap.

Snohomish has argued that BPA has not provided sufficient rationale for the 10 MW limit, but BPA has provided ample justification for the 10 MW limit.<sup>40</sup> As BPA explains in the Draft RoD, several thresholds under the Regional Dialogue are set at or around 10 MW, which provides consistency between BPA’s power rates and contracts.<sup>41</sup> Furthermore, Snohomish has failed to provide an argument while 10 MW is *not* a reasonable limit. JP02 is also puzzled as to

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<sup>38</sup> See BP-12-B-JP02-01 at 11 – 13; BP-12-E-JP02-04 at 6-13.

<sup>39</sup> BP-12-A-01 at 153.

<sup>40</sup> *Id.* at 156.

<sup>41</sup> *Id.*

why Snohomish would not support such a cap when it has concerns about spreading costs to other customers. This is one of the provisions BPA has included to avoid cost exposure to other customers. For the reason stated in the Draft RoD, JP02 support's the Administrator's decision to implement a 10 MW on ULS eligibility.

D. The ULS rate design isolates costs to customers utilizing ULS.

Snohomish expresses concern about cost shifts and believes that if BPA offers ULS, it must revise the GRSPs to adjust the rate two or possibly more times during the rate period.<sup>42</sup> Snohomish's concerns are unfounded as the proposed ULS rate design proposed by BPA strictly limits the costs associated with ULS service to the customer taking ULS service. Furthermore, as BPA correctly notes, "There does not appear to be a material distinction between Staff's proposal and Snohomish's."<sup>43</sup> JP02 supports BPA's decision to calculate the cost of ULS at the time the customer makes a request and the right to update the pricing at the start of the second year of the rate period to reflect any changes in market prices.<sup>44</sup>

E. JP02 agrees that there are fundamental differences between the Load Following and Slice/Block Contracts, and therefore finds it reasonable to offer ULS to Load Following but not Slice/Block customers.

In the Draft RoD, the Administrator also takes the position that ULS should not be available to customers with Slice/Block Contracts. JP02 does not take a position on whether ULS should be available to Slice/Block customers as JP02 maintains that the cost of providing ULS is passed onto the individual customer and, therefore, does not affect other BPA customers.

However, JP02 agrees that there are fundamental differences between the Load Following

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<sup>42</sup> BP-12-B-SN-01 at 15.

<sup>43</sup> BP-12-A-01 at 157.

<sup>44</sup> *Id.*

Contract and the Slice/Block Contract. BPA is obligated to meet the remainder of the customer's load when a resource is not available for Load Following customers, but Slice/Block customers are obligated to meet their own hourly, daily, weekly, monthly, and annual consumer loads.<sup>45</sup> It is, therefore, reasonable, for BPA to offer ULS to Load Following but not Slice/Block customers.

## CONCLUSION

For the reasons stated above, JP02 supports the Draft RoD and modifications thereto.

Respectfully submitted this 24th day of June, 2011.

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<sup>45</sup> *Id.* at 154.