NRU

Northwest Requirements Utilities

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January 6, 2009

Allen L. Burns
Vice President, Bulk Marketing
Bonneville Power Administration
PO Box 3621 Portland, OR 97208-3621

Re: BPA's Proposed Agreement with Aluminum Smelter Columbia Falls Aluminum Company (CFAC)

Dear Mr. Burns,

By e-mail correspondence of February 13, 2009, you asked for public comment on an amendment to the contract between CFAC and BPA that will continue to provide monetary benefits to CFAC through the remainder of FY 2009. This amendment is made necessary due to the recent U.S. Ninth Circuit Court of Appeals decision in *PNGC v. BPA*. That decision clarified certain aspects of BPA's services regarding DSIs and the agency's preference customers. The Court confirmed that BPA had the authority, *but not the obligation*, to sell power to the DSIs. The Court also found that BPA had the authority to monetize a power sale provided that the monetization comported with its other statutory obligations, such as the requirement to act in accordance with "sound business principles."

In the case of the 2006 contract, monetization was unlawful because BPA monetized the power sale based on prices that were both below the published IP rate and below the prevailing market price. BPA is proposing now to monetize this power at the existing IP rate. BPA's current rates include the $59 million in "monetized benefits" to support the DSIs, adding 1 mill/kWh to the cost of wholesale power. The amendment BPA proposes will result in up to $17 million in "costs" being charged in rates to publicly owned utility customers of BPA in 2009, a level of subsidy to CFAC that is virtually unchanged from the subsidy the Court just ruled unlawful.

Northwest Requirements Utilities (NRU), along with other public power organizations and other customer groups, recommended in the Regional Dialogue process that benefits to the DSIs be terminated. We continue to think that the DSIs as a customer class have no statutory *right* to continued BPA service of any kind following the expiration of their contracts in September of 2006. In *PNGC v. BPA* the court confirmed this conclusion. Any decision, therefore, to offer service to the DSIs is a discretionary one that must be made consistent with BPA's other statutory obligations, such as "establishing rates at the lowest possible cost consistent with sound business principles."

NRU does not believe there is a credible, business-like rationale for tying any level of financial support for the DSIs to the competitive markets they face. That simply is not BPA's role. In addition, given the volatility of world markets, and the continuing emergence of energy

intensive heavy industries overseas with their own unique competitive advantages, further increments of BPA financial support whether through a "monetized" power sale or a physical power sale supported by market priced power (which is then subsidized by rolling the costs of the purchase into the total cost of the FBS) will not resolve the competitiveness problem of the DSIs.

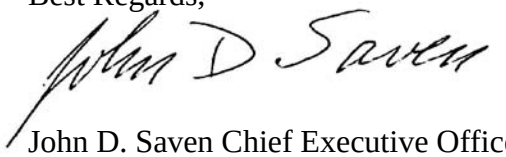
NRU's members represent about 25% of BPA's public power loads, they rely almost exclusively upon BPA for their power supplies, and they pay for power supplies through BPA's power rates. Therefore any action that BPA takes to increase or decrease its power supply costs will directly affect NRU member utilities' power supply costs. BPA already has made other key decisions that will increase the overall cost of our future power supply, such as the Memoranda of Agreement with Tribes and States regarding FCRPS operations, and expected future benefits for residential and small customers of Investor Owned Utilities. This amendment does not require CFAC to face these cost pressures. Yet, preference customers and their retail customers will. Retail customers of NRU members count on a cost based power supply from the Agency as a key component to their economic survival, particularly those businesses engaged in national and international competition where power supply is an important component of the underlying cost of doing business.

NRU opposes this contract amendment because it requires preference customers and their retail customers to bear the costs of a discretionary decision to provide service to the DSIs.

Finally, NRU notes that the time available to interested parties to comment on the amendment has been extremely limited. BPA has not yet begun to address the other issues that the Court asked BPA to reconsider in its *PNGC* remand decision. NRU would prefer that the agency not bind itself to the results indicated in the amendment for a full year; rather, NRU asks the agency to put off contract signing until such time as the agency and its affected customers have had a reasonable period of time to understand the transaction and give meaningful input.

If you have any questions or would like clarification of any of the points raised here, please give us a call at (503) 233-5823.

Best Regards,



John D. Saven Chief Executive Officer

CC: Scott Corwin, Executive Director, Public Power Council
Members of NRU