

## Regional Dialogue: THE PRESSURE IS ON

**BPA Administrator Stephen Wright is on a political mission.**

**With only a few months left in the Bush Administration, Wright is pushing utilities in the Pacific Northwest to sign 20-year Regional Dialogue contracts that will “lock up” their share of cheap federal power.**



Photo: Courtesy of BPA

Wright insists there's a sound reason for utilities to act quickly. The region does not want to deal with the political uncertainties of a new President and his appointees, who might restrict the Bonneville Power Administration's

autonomy, or meddle in its decisions, or perhaps even decide that other parts of the nation should get the benefits of the region's federal hydropower.

To prevent this interference, Wright's deadline for signing the Regional Dialogue contracts is the end of December 2008, just weeks before the new President – Barack Obama or John McCain – takes office.

But it is not clear that a new President will necessarily be hostile to BPA or to the region's desire to preserve low-cost federal power for itself. Historically, new administrations have taken a hands-off approach to BPA. The political world, however, is full of unknowns. Alternative scenarios are easily imaginable. With \$4.00 gas at the pump, who knows what energy policies might emanate from the nation's capital?

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## The Regional Consensus is Under Stress

The name “Regional Dialogue” is supposed to reflect a consensus on regional power issues that BPA has facilitated over the years. But the consensus, if it ever truly existed, is now becoming strained, and Administrator Wright is resorting to pressure to meet BPA’s deadline in the twilight of the Bush Administration. He has served as Administrator since late 2000.



The irony is that utilities have a legitimate need to know what BPA is going to do in the future. There is more than just politics at stake. Will BPA buy electricity to meet the public’s continuing demand for power, or will it turn over this responsibility to others?

The problem is that the Pacific Northwest – Washington, Oregon, Idaho

and Montana – does not have enough power to meet all its needs in the future. Someone must assume the financial risk and build new power plants because energy efficiency, while hugely important, is not the sole answer.<sup>1</sup> Whoever takes this step – BPA, the utilities, independent power producers – needs to start planning, financing and building infrastructure *now*.

Although BPA intends to sign Regional Dialogue contracts this year, the agreements will not take effect until October 1, 2011, when BPA’s existing contracts expire. The three years remaining on the existing BPA contracts are meant as a transition period, allowing BPA’s utility customers to plan for the future.<sup>2</sup> Should they stick with BPA for all their power needs (beyond what the existing federal power system provides) or should they explore alternatives?

## BPA’s Proposal for Tiered Rates

BPA, a federal agency in Portland, Oregon, markets power from 31 federal dams in the Columbia River Basin and from other sources. It currently supplies 40% of all the electricity used in the Pacific Northwest. BPA

customers include cities, like Seattle and Ellensburg, in Washington, and Eugene, Oregon, which have their own municipal electric utilities, as well as 125 other public agencies and rural electric cooperatives. These utilities – known collectively as “public power” – are by law BPA’s preferred customers.<sup>3</sup>

**BPA currently supplies 40% of all the electricity used in the Pacific Northwest.**

BPA’s Regional Dialogue contracts with public power anticipate it will “tier” (separate) its power rates. BPA will continue to sell power at cost from the existing federal network of dams. BPA calls this block of power “Tier 1.” That is the asset that its customers want to “lock up.” But if the existing system cannot meet needs, as is expected in two or three years, BPA will charge market prices when it makes purchases on behalf of public power utilities. BPA calls this block of power “Tier 2.”

Tiered rates are a paradigm change for BPA. Ever since it was created in 1937, BPA has mixed (“melded”) the costs of the existing



system with new power purchases. As a result, BPA has shielded public power utilities from facing the true cost of acquiring new resources.

Now, under tiered rates, utilities will see market signals. The federal power system currently produces electricity at \$27 per megawatt hour (“MWH”). In contrast, new resources (such as plants fired by natural gas or wind) cost between \$70-\$120 per MWH, depending on the type and location. Faced with a disparity of this size, BPA’s public power utilities will have tough choices. They can encourage energy efficiency (and the public, faced with higher retail rates, will respond on its own, too). If energy efficiency is not sufficient and if utilities need power from new sources, they can buy it from BPA at market prices, or from someone else at market prices, or they can build a new plant themselves. But in any circumstance, they will see the true cost. Cheap power that BPA markets from Grand Coulee Dam and other federal dams, built in the 1930s and 1940s, will no longer mask the reality of volatile, contemporary prices.

It is not just public power

utilities that will have a new relationship with BPA. By December 2008, BPA wants to offer new long-term contracts to six investor-owned utilities (“private power” companies) and a group of energy-intensive companies, primarily aluminum smelters, known as the Direct Service Industries (“DSIs”).<sup>4</sup>

**Public power, private power and the DSIs have “straws” in the BPA punchbowl.**

Each of these customer groups – public power, private power and the DSIs – has a “straw” in the BPA punchbowl. Public power utilities buy roughly 90% of BPA’s power. Private power utilities receive cash payments from BPA for their residential and small-farm customers. The amount of money, however, is extremely controversial. Last year, a federal appeals court invalidated BPA’s prior contracts with the private power utilities and held that its formula for making these cash payments violated the Northwest Power Act. [Click here](#) to read a **BPA Watch** article on the court cases.

BPA is now conducting a special rate case to decide how much money it will pay to private power utilities in the future. The rate case is complicated and contentious: public power utilities have demanded that BPA reduce future payments to reflect past over-payments; the private power companies have resisted this effort and sought to restore higher cash payments in the future. No amount of “dialogue” will likely resolve this dispute, which has distracted both BPA and utilities for months.

As for the DSIs, they also want power or cash payments to reduce their energy costs and stay in business, but their contracts are under challenge in federal court, too, adding even more uncertainty to Wright’s agenda. Although BPA has concluded the DSIs have no statutory right to federal power, BPA has indicated it will offer the DSIs some benefits after 2011, when their existing contracts expire.

## **Our Hydro Heritage**

The Pacific Northwest has enjoyed cheap hydropower for so long that the public often forgets that the last major federal dam was

finished more than three decades ago.

Even then, there was talk about power shortages. To solve the problem, BPA agreed in the early 1970s to buy electricity from three nuclear power plants built by the Washington Public Power Supply System (“WPPSS”), a consortium of public power utilities, and from Portland General Electric’s Trojan nuclear plant in Oregon. BPA’s contracts committed it to pay for the nuclear plants no matter what they cost and even if they never worked. PGE finished the Trojan plant, but WPPSS ran into severe problems and completed only one of its plants. BPA’s power rates skyrocketed as the multi-billion-dollar bill for the nuclear program came due, and utility executives in the region once again fretted about shortages.<sup>5</sup>



In response, Congress passed the Northwest Power Act in 1980.<sup>6</sup> The Act expanded BPA’s duties

and gave it even more authority to buy power from “non-federal” plants. BPA was supposed to become the electricity czar of the region, acquiring electricity from a range of sources to meet regional demand.

But over the last two decades, BPA has stumbled in its efforts. In the 1990s, for example, BPA signed a contract to buy power from a natural gas-fired plant near Tacoma, Washington, but then cancelled the agreement abruptly. BPA was forced to pay \$315 million in damages to Tenaska, the developer, and its banks without ever seeing a kilowatt hour of electricity.

Another BPA decision that raised doubts about the competence of executive management occurred in 2001, in the middle of the West Coast energy crisis. BPA had a legitimate need to reduce demand for power in the region, but it used this opportunity to sign a \$226-million “curtailment” contract with the new owner of an aluminum smelter in Longview, Washington. BPA paid the money ostensibly so the owner could buy the smelter, shut down the facility, retrofit it, pay workers during the temporary shut-down, and then start producing

aluminum again when the energy crisis subsided. In fact, the new owner took the money and laid off the workers. The Longview smelter never produced a pound of aluminum again. In 2003, several members of Congress asked BPA to conduct an audit of what happened to the money. BPA conducted what can best be described as a sham audit and then closed the books on the transaction in the hope that Congress would never inquire about the transaction again. (And Congress did not.) **Click [here](#)** to read the **BPA Watch** newsletter on the Longview story.

**In a transaction gone awry, BPA paid \$315 million in damages without seeing a kilowatt of electricity.**

A related problem concerns the transparency of BPA decisions. Although BPA routinely publishes extensive studies and documents, it quickly becomes secretive whenever it is asked about how much it pays for purchased power.

In February 2008, for example, Canby Utility, a municipal electric utility

in Oregon, submitted a Freedom of Information Act request to obtain a copy of BPA's contract to buy energy from an Oregon wind plant. BPA had issued a press release and a Record of Decision on the sole-source acquisition, but did not divulge a price or explain why it decided to buy the power from the developer, PPM Energy in Portland, and not others. Four months later, Canby Utility is still waiting to see the contract.<sup>7</sup>

Because of those and other incidents, the frustration with BPA management and its decision-making process runs high in some quarters of public power. These utilities have in effect said to BPA: "Just give us a share of power from the existing federal dams, and we'll take responsibility for everything else."

Whether these utilities can do better than BPA is a matter of opinion. It is worth remembering that WPPSS attempted to build two additional nuclear power plants on its own, without BPA help, and was forced in the early 1980s to abandon those, too. To some in public power, the sheer mention of WPPSS, now known as Energy Northwest, may seem like ancient history, but it is a

fair question to ask: how prepared is public power for this "brave new world?"

What is certain is this: the Regional Dialogue contracts are supposed to create significant changes in the way utilities interact with BPA. In theory, the Regional Dialogue contracts will decentralize decision-making among BPA's public power customers. BPA will go into the market and buy power **only if utilities want it to do so**. The new BPA contracts will give public power utilities the right to "shop around," to compare BPA's price with prices offered by other utilities or independent power producers. Those are all sensible goals that foster utility choice and should ultimately benefit the region's consumers.

To develop the new contracts, BPA sought consensus among public power, private power, the DSIs, environmental groups, states and other stakeholders. BPA did not want these groups running to Congress with their own agendas. As a result, BPA held extensive meetings, forums and workshops to draft Regional Dialogue contracts.<sup>8</sup> Admittedly, this was, and is, a difficult task. Each of BPA's three customer groups – public

power, private power and the DSIs – has its own laundry list of "must haves" for the contracts. Public power itself is composed of different types of utilities (some with dams of their own, others entirely dependent on BPA) and different personalities.

Nonetheless, an outsider might think that after all this time, both BPA and its utility customers would have resolved major issues and would be ready for a fanfare-filled ceremony to sign 20-year contracts.



But that is not the case. A draft version of BPA's public power contracts, released in April 2008, shows they are partially written and so obscure it is not clear what public power utilities are agreeing to do.

### **The Problem with the Draft Regional Dialogue Contracts**

"For over two years BPA Administrator Steve Wright

has traveled around the region speaking to various meetings about the need to ‘secure the benefits’ of the federal power system, the manager of the Public Utility District of Skamania County, Washington, wrote to BPA. “So my question is: what does this contract secure?”

Other utilities and trade groups bemoaned the unfinished state of the agreements. “BPA has repeatedly said that the Regional Dialogue process must, among other things, be simple and clear. Regrettably, BPA’s draft contracts do not meet these goals,” the Northwest and Intermountain Power Producers Coalition (“NIPPC”), a Seattle-based trade group of non-utility generators, wrote. “[T]he draft Regional Dialogue contracts rank as the most complex and obscure we have ever seen...As a result, these agreements will likely have the opposite effect of BPA’s long-stated intention [to provide stability]: they will deter an efficient wholesale power market from developing in the Pacific Northwest by sowing confusion and anxiety among public power utilities and the market generally,” NIPPC concluded.<sup>9</sup>

The latest version of the Regional Dialogue contract, released June 17, 2008, looks somewhat better but still has significant shortcomings, despite the enormous amount of hard work by public power representatives and BPA staff.

**If BPA were a commercial landlord, it would tell a prospective tenant: “Here’s a 20-year contract that is not finished yet.”**

Instead of defining basic terms, BPA still lists a number of key concepts that will be defined in a separate document, a “Tiered Rate Methodology,” which BPA will adopt later this year, at the conclusion of a formal rate case (an administrative proceeding) in late September.<sup>10</sup> Even in its unfinished state, the latest Regional Dialogue contract totals 101 pages and is still extremely complex. It is difficult to imagine how most general managers of public power utilities (or their board members) could understand the details of this arrangement before the 2008 deadline passes. There are too many moving parts, too

many unknowns.<sup>11</sup>

If BPA were a commercial landlord, it would tell a prospective tenant: “Here’s a 20-year contract that is not finished yet. Please sign it now. You’ll see that the contract refers in passing to the amount of space you’ll lease and how we’ll calculate your rent. We will decide those matters in a separate process that you can participate in if you want. Bring a lawyer. But remember, it’s basically our choice. When we’re done with that process, we’ll fill in the numbers on your contract. OK?”

Despite these obvious problems, BPA Administrator Wright says he wants to sign Regional Dialogue contracts by the end of 2008. BPA cannot delay further if it is to meet its deadline (before the new President takes office in January 2009).

In a May 8, 2008 letter to utility customers, Wright said BPA would not consider alternatives to the proposed contracts. “The time that remains is precious.... There can be no alternative contract offering this year. Nor is there time to specify the nature or duration of the contract we would offer in the future in the event any utility customers choose not to sign this year.”<sup>12</sup>

Wright apparently believes he can keep pushing utilities in the Pacific Northwest because the Secretary of Energy, to whom he reports, has given him permission to execute the agreements.

Furthermore, the Northwest Congressional delegation has informally endorsed the Regional Dialogue efforts and has gone to great lengths in the past to ensure that the BPA Administrator is beholden to them, not to “outside” interests. But the dynamics of the Regional Dialogue process have changed: a slow-moving, consensus-driven process has now given way to a last-minute rush. Some skeptics wonder whether Wright is pushing his agenda to enhance his own legacy or use the signed contracts as political leverage with Congress to remain in the job.



### **A Fiendishly Complex Arrangement**

Proponents of increased energy efficiency and

others have long advocated that BPA “tier” its rates by separating the cheap federal power system from more expensive market purchases. BPA attempted once before, in the early 1990s, to implement tiered rates but withdrew its proposal under criticism from utility customers. BPA is now back at the table, pushing tiered rates, but this time with what is (or was) utility support.

**Some utilities now want to extend their existing contracts.**

The problem is not the hortatory goal of what BPA hopes to accomplish but the formidable reality of BPA’s partially-complete draft agreements. At a recent meeting, one public power lawyer complained that BPA has turned a sensible concept into a “fiendishly complex” system of allocation and ratemaking. The reverse of what was intended is now true. The Regional Dialogue goals of durability and simplicity have given way to obscurity and uncertainty.<sup>13</sup>

Because of these problems, some utilities now want BPA to “roll over” (extend) the existing contracts – as

an option. These utilities, many of them small cities and cooperatives, say they do not want to stop tiered rates or new Regional Dialogue contracts, if that is what other public power utilities want. But they do not want to participate in the uncertain world of Regional Dialogue, as designed by BPA. They would rather keep the current system of melded rates and the current contracts, which, in their view, have worked fairly well in the last decade.

Whether this option is feasible is not known. The concern in some quarters is that this alternative may make matters even more complicated as BPA attempts to placate different customer perspectives. Furthermore, BPA Administrator Wright is unlikely to agree to this request, in the absence of broad utility support and agreement from members of Congress from the Pacific Northwest.

### **Is it Time for Congress to Intervene?**

Public power utilities, however, are not without a remedy: they can take their case to Congress. That scenario is clearly not what BPA wants, but the utilities have an obligation to protect their own interests. Twice



in the last decade they have taken problems to Congress and succeeded. In the late 1990s, a group of utilities asked BPA to offer a “Slice” product that would let them buy a share of the federal power system output. In wet years, when there was lots of hydroelectric power, they would buy more from BPA. In drought years, they would receive less. BPA initially resisted their request for these types of contracts but eventually agreed when it heard from members of Congress from the Pacific Northwest.



Then, in 2006, public power utilities demanded that BPA reduce power rates, which had been set high during the West Coast energy crisis four years earlier. BPA initially proposed to raise rates even further. The utilities formed a political alliance called the “\$27 in ’07 Coalition” because they wanted BPA to lower rates to \$27 per MWH starting in 2007. BPA initially resisted this effort too, but eventually agreed to lower rates in response to members

of Congress from the Pacific Northwest. Those examples show, if nothing else, that just because an issue goes to Congress does not necessarily mean someone outside the region will step in and “steal” our power.

Nor are public power utilities without legal rights. They have existing contracts to buy BPA power until September 30, 2011. After that date, BPA cannot throw them overboard. The Northwest Power Act **requires** BPA to meet their net requirements whenever requested.<sup>14</sup>

The bottom line is this: BPA’s Regional Dialogue contracts, despite a six-year effort, are still unfinished. It will likely take weeks, if not months, to understand the terms and conditions that BPA is offering. Why should utilities perform this due diligence under stress?

**The utilities need time to understand what they are signing and to examine options.**

No matter what they think of Regional Dialogue, public power utilities should make clear to BPA that its

political deadline is not necessarily their **business** deadline. A contract with BPA, or anyone else, is first and foremost a business arrangement. The utilities need time to understand what they are signing and must have the freedom to examine alternatives. After all, they must live with the Regional Dialogue contracts for two decades.



## ENDNOTES

1. See the Fifth Power Plan (2005), published by the Northwest Power and Conservation Council. [www.nwcouncil.org/energy/powerplan/default.htm](http://www.nwcouncil.org/energy/powerplan/default.htm) More recent studies are also available on this web site.
2. The Regional Dialogue contracts would take start October 1, 2011, and expire September 30, 2028, and would therefore remain in force for 17 years. The length of the contract is consistent with the Northwest Power Act, which precludes BPA from signing contracts in excess of 20 years. Most of BPA's contracts with utility or DSI customers last between 10-20 years.
3. BPA also supplies power to seven federal agencies, one port district (the Port of Seattle), and two Indian Tribes. See "BPA Facts" on its web site. [www.bpa.gov/corporate/About\\_BPA](http://www.bpa.gov/corporate/About_BPA)
4. The two main DSIs with existing BPA contracts are Alcoa, for its smelters in Wenatchee and Bellingham, Washington, and Columbia Falls Aluminum Corp., for its smelter in Montana.
5. BPA still carries almost \$6.2 billion in debt from these plants. Of this amount, \$3.8 billion is related to the abandoned plants that never generated electricity.
6. 16 U.S.C. § 839 et seq. The Northwest Power Act also created the Northwest Power and Conservation Council, an eight-member body whose members are appointed by the governors of Washington, Oregon, Idaho and Montana. The Council's duties include preparing a 20-year power plan (regional forecast). The Act also gave BPA responsibilities to acquire energy efficiency.
7. The author represents Canby Utility and submitted the FOIA request on its behalf.
8. For a chronology of BPA's Regional Dialogue decisions, see the web site created by the Northwest & Intermountain Power Producers Coalition ("NIPPC").
9. [www.moreperfect.org/wiki/index.php?title=Northwest\\_Independent\\_Power\\_Producers\\_Coalition](http://www.moreperfect.org/wiki/index.php?title=Northwest_Independent_Power_Producers_Coalition)
10. To read the complete set of comments received by BPA on its draft contracts, go to: [www.bpa.gov/power/pl/regionaldialogue/implementation/Documents](http://www.bpa.gov/power/pl/regionaldialogue/implementation/Documents)
11. The proposed BPA Regional Dialogue contracts, for example, attempt to describe a "Contract High Water Mark" (CHWM), an essential term that defines each utility customer's access to Tier 1 (cost-based) federal power. But the "definition" in section 6.6.1 states: "CHWM is equal to the customer's Eligible Load (as defined in the TRM), proportionally scaled to the firm critical output of Tier 1 system Resources (as defined in the TRM), and adjusted for credited conservation. The CHWM is specified in each eligible customer's CHWM Contract. See section 4.2 (of the TRM)."
12. Furthermore, the TRM – Tiered Rate Methodology – is a work in progress and depends on the outcome of the ongoing rate case. The contracts specify that TRM disputes are not contract disputes. See section 6.4: "The Parties intend that the TRM will be binding on them in accordance with its terms, but references to rates or the TRM in this Agreement do not make the rates or TRM a matter of contract. This Agreement shall not be construed as causing any rate issue or TRM matter to become a contract issue or matter. Disputes over the meaning and implementation of the TRM shall be resolved exclusively pursuant to the procedures set forth in the TRM." BPA will finish the TRM by September 2008, before the December 2008 deadline. But there is concern that the TRM itself will remain vague in places, thus giving BPA even more discretion than it has now under the existing contracts.
13. Curiously, there is little discussion in the region about how other federal power marketing agencies conduct their business. Although BPA often likes to describe how "special" it is, there are three other federal power marketing agencies elsewhere in the country that basically

do the same or similar functions as BPA: the Western Area Power Administration, which serves 15 states in the central and western United States, and is based near Denver; the Southwestern Power Administration, with headquarters in Tulsa, Oklahoma; and Southeastern Power Administration in Elberton, Georgia.

All three agencies, like BPA, are part of the U.S. Department of Energy and have regional missions. All three agencies have stable contracts that foster a cooperative business relationship with public power customers.

14. Letter from BPA Administrator Wright to customers and other interested parties, May 8, 2008. This is not the first time BPA has pressured public power customers. Only a year ago, BPA proposed that if customers wanted to receive power under the new Regional

Dialogue contracts they had to agree not to challenge BPA power rates. Many public power utilities found this idea to be unacceptable -- they have a statutory right to challenge BPA actions in the U.S. Court of Appeals for the Ninth Circuit -- and BPA dropped the proposal.

15. See, for example, BPA's "Long-Term Regional Dialogue Final Policy," July 2007, page 3. BPA's interests include durability, stability, certainty and simplicity.
16. A utility's "net requirements" is its total load (consumption) less its own resources (i.e., dams, other contracts, etc.). E.g., a utility with a load of 100 aMW that has a 50 aMW contract from a non-BPA supplier, it can buy 50 aMW from BPA.