

**Comments of the
Confederated Tribes of the Umatilla Indian Reservation
on the BPA's
Long-Term Regional Dialogue Policy Proposal**

October 31, 2006

We agree with the comments submitted by the Columbia River Inter-Tribal Fish Commission (CRITFC). In addition, we particularly note the following:

1. Fish & Wildlife

- a. BPA should not use sales of surplus energy to lower Tier 1 rates. Tier 1 rates already are based on low costs. Instead, such funds should be used to offset the costs to serve the loads of new utilities at the Tier 1 rates. This will remove the incentive to lower Tier 1 rates by squeezing the fish and wildlife program to produce more surplus power.
- b. Deciding how much federal power is available for allocation should only be done after the FCRPS Biological Opinion remand process is complete. Otherwise, BPA may be forced to purchase additional electricity and supply it at Tier 1 rates, putting added pressure on fish and wildlife program funds. Further, BPA must provide a clear commitment to fully implement the Northwest Power Planning and Conservation Council's fish and wildlife program goals and the FCRPS biological opinion in order to create the same certainty for fish and wildlife funding that it is trying to achieve for utilities on their rates.
- c. This Proposal is better than the status quo, when it comes to fish and wildlife funding, because it avoids the past scenario of BPA adding resources to serve additional utility needs when power costs are high forcing BPA to cut costs elsewhere including fish and wildlife funding. However, BPA's current fish and wildlife program funding is inadequate to prevent extinction of fish stocks or rebuild the tribal fishery. Nor does this Proposal remove the specter of BPA's costs rising as it tries to meet customer demands for additional electricity. BPA must make the same commitment to fish and wildlife restoration, as it is making to keep preference rates low, to provide the region security.
- d. Finally, BPA must stop asserting that fish and wildlife costs prevent it from providing firming for wind power. Fish and wildlife costs are only one constraint of many on the BPA's hydropower capacity including irrigation, flood control and navigation. Pitting renewables against salmon restoration presents a false choice and does the region no service. The Power Act is clear that fish and wildlife are to be treated on an equitable basis with power generation.

2. New Small Utilities

- a. New small tribal utilities should be exempt from any limits. New tribal utilities should not be forced to race to develop utilities in competition with others. BPA has the discretion, especially in light of its federal trust responsibility to tribes, to provide the necessary flexibility to allow tribes to benefit from the hydropower system for which they have paid so dearly with their cultures and health.
- b. New tribal utilities should not be limited to Tier 1 rates for their initial loads. Again, BPA has the discretion, especially given the federal trust responsibility, to allow small new tribal utilities the flexibility to expand their service in phases to eventually serve all lands within a tribe's reservation. Tier 2 rates should only be assessed against new load growth within the tribe's reservation after full service to their territory has been achieved. Otherwise, BPA's current proposal will fail to achieve any new tribal utility start ups.
- c. New tribal utilities should be on the same footing as existing small public utilities, both with Tier 1 rates as well as in other regards, such as transmission/transfer service.
- d. However, new tribal utilities should not be required to seek state PUC approval or be forced into costly buyout agreements by utilities currently serving tribal lands. State PUC's do not have jurisdiction over tribal lands. Requiring a tribe to purchase existing poorly degraded local distribution systems from the servicing utility and then have that utility receive approval from the PUC for the sale, extends state jurisdiction onto tribal lands. Again, the BPA has the discretion to provide wholesale power to tribal utilities serving tribal lands regardless of whether the prior utility or state PUC approve or disapprove. Because an existing utility may demand too high a price for its system, forcing the tribes into costly condemnation litigation, BPA is essentially handing an economic veto to the local utility which may be poorly serving the reservation. In doing so, BPA is thwarting the federal policy of helping tribes achieve self-determination. BPA must clarify its language regarding transfer service for annexed loads.

LAW OFFICE of J.D. WILLIAMS

October 31, 2006

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Re: Regional Dialogue

Dear Mr. Wright:

I am writing to you on behalf of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) regarding the Long-Term Regional Dialogue Policy Proposal. Enclosed, please find the CTUIR's comments.

As they illustrate, the CTUIR likes some of the Policy Proposal and strongly disagrees with it on major points. The CTUIR's major concerns are:

1. The failure to balance the long-term power supply security for the public utilities with security for long term adequate funding of fish and wildlife restoration; and
2. A lack of flexibility in the proposal which will effectively prevent future new tribal utilities.

The CTUIR hopes the BPA will take seriously its comments and looks forward to continuing to work with BPA on these issues.

Sincerely,

J.D. Williams
Attorney at Law

cc: CTUIR Board of Trustees
Don Sampson, CTUIR Executive Director