



Affiliated Tribes of Northwest Indians

May 9, 2008

TO: Mark Gendron, Vice President Requirements Marketing
Bonneville Power Administration

FROM: Margie Schaff
Energy Director

RE: Initial Comments on Draft Load Following Regional Dialogue Contract
Template

Dear Mark,

Please allow these comments to serve as the initial comments of the Affiliated Tribes of Northwest Indians (ATNI) on the Draft Load Following Template. We reserve the right to provide additional comments as further clarifications are made to the Template. We have designed these comments with existing tribal utilities and potential new tribal utilities in mind. We support many of the comments of public power customers as they seek to protect the rights of utility customers generally.

Because current tribal utilities are Bonneville full requirements customers and most new tribal utilities will likely also choose load following service, we have not chosen to spend time to review the block or slice contract templates. However, we feel that some of the comments set forth herein may also apply there. In the future tribal utilities may choose to become block or slice customers. Please address those comments below to block and slice contract templates where they apply.

General Comments:

1. This Template was apparently written in most instances with non-tribal customers in mind. In the following places language changes are needed for tribal utilities.
 - a. Parties: Tribal utilities will likely be formed under the laws of a tribe, not under the laws of a "state". Throughout these contracts, limitation of authorities to a "state" is improper when other authorities of competent jurisdiction have similar powers or authorities as states, or state courts.

- b. Language implementing the tribal utility 40 MW HWM exception is not included either in 5(a) or adequately in Exhibit B. This language is necessary for tribal utility customers.
- 2. This Template was apparently written in most instances with existing customers in mind. In the following places language changes are needed for new customers.
 - a. First recital should indicate that this is an initial contract.
 - b. Section 1. Term: The commencement of the term should be a negotiated date between Bonneville and the new utility.
 - c. Section 3 Load Following Power Purchase Obligation: Change commencement date.
 - d. Section 10 Scheduling: Change commencement date.
 - e. Section 16 Resource Adequacy: Change commencement date.
 - f. A number of other places contain dates that will not apply to customers signing contracts at later dates.
- 3. Section 2 Definitions: We have a procedural problem with defining terms in the TRM, rather than the contract. Currently the TRM is subject to *ex parte* rules, and many interested parties will not be parties to the rate case so will have different access to information and leverage than others who are Parties. Definitions should be included in the contract, not the TRM, and to the extent they are needed in both, they should be consistent.
- 4. We have the same issue as set forth in 3 above with regard to all issues to be established in the TRM and not also subject to the contract.

Specific Issues/Concerns

- 1. Section 2(a) "Annexed Load":
 - a. This definition is too broad in that it includes new load of a tribal utility that would be subject to the 40MW tribal utility HWM exception. We would like that exception expressed in the definition.
 - b. Delete "state" as in some cases it may be another entity's (tribal, federal) regulatory or court action. Any such action of a regulatory body or court of competent jurisdiction is a legal action which BPA must honor.
 - c. After "acquires" add "during the term of the contract". All current tribal utility load was otherwise "Annexed load".
- 2. Section 4 Tiered Rate Methodology: Delete 4(b). The TRM may properly be limited in duration to allow certain flexibilities after a first phase of this process. That is a proper issue for future rate proceedings.
- 3. Section 8 One Time Right to Change Purchase Obligation: We propose that this one-time right extend to the election made pursuant to Exhibit C
- 3. How Tier 2 will be served should be more flexible to encourage

- customers to develop their own resources, and to give BPA more flexibility in developing Vintage Rates to meet particular needs that may arise later.
4. Section 11 Delivery (c) "Liability for Delivery": add "under this agreement" after "BPA shall not be liable" to cover any liabilities under transmission contracts.
 5. Section 11 Delivery (f)(2-3) Low Voltage Delivery/Direct Assignment costs: From our understanding of past practices and from discussions regarding this issue, delivery to any particular POD (or across particular facilities) will be EITHER by low voltage deliver, or direct assignment or by a separate contractual arrangement not involving BPA. The way this is drafted it appear that some PODs could be subject to both the GTA charge and direct assignment for facilities costs.
 6. Section 11 Delivery (f)(7) Annexed Loads: See Specific Issue #1. Further, we assume this section will not apply to any new utility.
 7. Section 15(a)(2) Conservation Reporting Requirements: For small utilities we would like a 5 year reporting cycle rather than a 2 year reporting cycle to minimize paperwork. For 15(b)(2)(c) please add "if any" after renewable resource plan. Many small full requirements customers will not have any plans to build renewable energy facilities.
 8. Section 18(a)(2) Uncontrollable Force: After "transmission" (appears twice) add "or distribution" since many small utilities have PODs on distribution systems.
 9. Section 19(d) Governing Law and Dispute Resolution Arbitration Remedies: Change "BPA" to "either Party" since there should be no specific performance against either party not just BPA.
 10. Section 22(i) Bond Assurances: See concerns regarding "Annexed Loads". Tribal utilities will be "governmental".
 11. Section 23(c) Customer's Right to Terminate: We suggest that there be a voluntary termination provision upon 5 years notice.
 12. Exhibit A:
 - a. (4)(f) Resource Additions for Annexed Loads: See concerns regarding "Annexed Loads".
 - b. Paragraph 5: Delete "all" from second line. This is confusing regarding whether all resources or all resources elected to be specified is meant. A new customer may own resources that will not be dedicated to load.
 - c. 5(c): This paragraph states that the customer "shall dedicate" each of its Small Non-Dispatchable Resource. This is not correct. We understand that this will be an election for new customers.
 13. Exhibit B:
 - a. (b)(2): See concerns regarding "Annexed Loads". There is a mixture of the concepts of annexed loads and new publics formed out of previous public's territories. We believe these issues have

slightly different connotations, especially when the 40 MW exception is considered.

- b. (b)(2-3) There is a missing element of adjusting the CHWM for the previous utility's Schedule C resources. It is highly likely that load will be annexed *without* also getting the previous utility's Schedule C resources that served all or part of that load. In that case, the proportionate share of the CHWM should be adjusted upwards to make up for the new public's lack of that resource. See also (b)(5)(C): the use of "pro rata" is unclear. The same issues arise in (3)(B)(1-2) regarding "CDQ Amounts".
 - c. (b)(2-3) There is also a missing element regarding use of the 40 MW exception to "fill in the gap" left if a tribal utility's load grows due to the annexation of a current public customer's load, and the CHWM brought from the public customer is insufficient to meet all the tribal utility load at Tier 1.
 - d. (b)(5)(c) The "Drafter's Note" mentions Yakama Power, and should also include Umpqua Indian Utility Cooperative.
14. Exhibit C: Requiring utilities to elect in writing their choice of options 1-2 or 3-4 by November 1, 2009 and then allowing no changes over the course of the 20 year contract is unduly restrictive. It does not encourage customers to develop their own Tier 2 resources, nor does it allow BPA to develop Vintage rates in a flexible and useful way.
15. Exhibit G: The caps in the amount of transfer service will not be workable over the long term. We request a "reopener" if caps are insufficient due to a de-rating of the FCRPS for purposes of serving Tier 1 rates, or if new utilities require unplanned amounts of transfer service to deliver power to new PODs.

Thank you for your assistance in working through these matters. Please contact me if there are any questions at (303) 443-0182 or (303) 717-3876.

Sincerely,

Margie

Margie Schaff
Energy Director