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SNOHOMISH COUNTY PUD
PUBLIC UTILITY DISTRICT NO. 1

May 9, 2008

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Via electronic submittal

RE: **Snohomish County PUD No. 1 Comments on the Regional Dialogue Contracts**

Snohomish County PUD No.1 desires a 20-year power purchase contract from BPA that contains: 1) a clear and binding statement of the business arrangement, including full development of all key business provisions *within the body* of the contract; and 2) a clear and concise understanding of the obligations and responsibilities for both parties. In order to achieve these results, Snohomish staff has actively participated in BPA's Regional Dialogue workshops and various contract review and drafting meetings. Many of our comments and concerns regarding the contract templates have been raised in past weeks with BPA staff directly and jointly through public power and trade associations (primarily PGP).

The comments provided below represent many of Snohomish's concerns. We reserve the right to submit additional comments, including contract language clarifications, at a later time.

1. **The Regional Dialogue contracts must fully describe the method and process by which the Tiered Rates Methodology (TRM) can be amended.**

   Section 4 of the contracts state the TRM is only to be changed under very specific circumstances, but then points back to the TRM for a listing of the procedures governing changes. The method and conditions under which the TRM can be changed must be embedded in the contracts to ensure durability of the rate structure, which ultimately determines how the power purchased under these contracts is priced. Imbedding them in contract ensures any TRM changes will be limited to those prescribed circumstances.

2. **The "Applicable Rates" section of the contracts (Section 5) should be modified to include rate design calculations currently embodied in the TRM (Sections 5.1-5.5).**

   Section 5, "Applicable Rates," merely points to the TRM for several important calculations (e.g., Composite, Non-slice and Slice customer rate charges). Snohomish recognizes that while BPA's costs will vary over time, the methodology used to determine the applicable rates should not. Inclusion of TRM Sections 5.1 to 5.5 in contract provides customers a greater degree of certainty before signing a 20-year power purchase contract.

3. **True-Up for Actual Costs**

Unlike the current Block/Slice contract, there is no language in the proposed contract for an annual true-up to actual costs. Yet, we note that BPA itself preserves and exercises financial audit rights with its own business partners (e.g., Energy Northwest). We don't believe the rate case is an appropriate forum to true-up to actual costs. Should a dispute arise in a rate case, the customers' only recourse is the Ninth Circuit, which is not a commercially reasonable business proposition.

The provisions in effect in the existing Slice contract should be carried over into the new Block/Slice contract.

4. **Subjective Changes to the Slice System**

Section 2 of the Block/Slice contract contains definitions for a variety of terms (e.g., Operating Constraints, Federal Operating Decisions, Prudent Operating Decisions and System Obligations). These terms are loosely defined, and to a greater or lesser degree effectively allow BPA to reduce the size of the Slice System available to purchasers under this contract. The present definition of System Obligations allows BPA to include, without limit, both revenue-motivated sales in and out-of-region, and the renewal/origination of new capacity peaking contracts—all of which would reduce the Slice System. While customers may be compensated through a variety of mechanisms, these provisions introduce significant uncertainty into the quantity and timing of power available under the Block/Slice product, with no provisions for accountability on BPA's part.

5. **The method for determining the "Contract Demand Quantities" (CDQ) for Subscription Block and Slice/Block customers transitioning to a Load Following contract has not yet been provided to customers.**

In order for customers to properly evaluate the Regional Dialogue products offered, the CDQ methodology and billing determinants need to be included in Section 5(a) of the contracts. Customers will require this methodology when considering the one-time election to switch products for the balance of the contract term. Determining a methodology in the contract now will eliminate any controversy later.

6. **The "Information Exchange" and "Confidentiality" provisions of the contracts are overly broad in scope and unnecessarily burdensome, requiring customers to provide BPA with significant quantities of data at a level of detail not necessary for implementing long-term power contracts.**

   a) **Transparency of Net Requirements Determination**
   Snohomish proposes BPA apply its envisioned process for transparency in the Net Requirements (NR) determination to ***all*** of its customers, at an aggregate planning level in average megawatts, not by diurnal period, and not solely for Block and Slice/Block customers. To do so otherwise is inequitable treatment.

b) Data Submittals

Certain portions of the language under Section 14 of the contracts appear to convert BPA from a long-term business partner into a regulatory body. Snohomish and many of its utility brethren are already required by their governing board and state law to meet a variety of legislative reporting requirements (e.g., Renewable Portfolio Standards, Integrated Resource Planning, Emissions Portfolio Standards as it pertains to long-term resource commitments, etc.). Snohomish cannot legally assign its reporting responsibilities to any other party and will not agree that BPA should become a reporting party responsible for meeting data submittals to EIA, PNUCC, WECC, FERC, NERC or any other regulatory or oversight agency.

c) Unnecessary Data Request

The extent and detailed level of data being requested by BPA is not necessary to administer the long-term power contracts.

7. The exhibits in all of the contracts are unduly long and confusing.

The resource exhibits included in the contracts are long and confusing at best. By way of example, the resource declarations required in Exhibit A, "Dedicated Resources," are challenging for even the most experienced power manager to provide. It is difficult to imagine how a customer can forecast meaningful on and off peak energy projections in megawatt hours, for both dedicated and unspecified resources for the entire term of the contract (2012–2028), including identification of peaking amounts (in MW) for the same resource pool. While Snohomish believes it is reasonable to require such resource declarations, we alternatively propose BPA require customers to provide an update of this planning information in five-year increments.

8. Snohomish specifically requests BPA provide more concrete and effective dispute resolution in all contracts.

To ensure the longevity and durability of the power contracts, effective dispute resolution procedures must be in place. The contracts only provide binding dispute resolution before a neutral third party when BPA consents to it, and only when the dispute is strictly a matter of fact. A process that leaves the disputes to the Ninth Circuit is not workable because the time required is not commercially reasonable. Likewise, a process whereby the Administrator retains ultimate discretion on the most important areas of the contract is also unworkable.

Snohomish joined with public power in the April 9, 2008 proposal entitled, "Securing the Benefits of the Federal System," submitted to BPA's Randy Roach. The proposal articulated that discretion be left to the Administrator in the areas of cost recovery and complying with court orders, yet provided an effective and efficient dispute resolution mechanism in numerous substantive areas. BPA should adopt the public power proposal of April 9, 2008.

9. **The "Charge to Change Purchase Obligation" should only include those charges incurred by BPA as a direct result of the product change.**

Section 8(b) describes a charge potentially incurred by customers who elect to change products. To clarify which charges would be assessed to a customer, a sentence parallel to the language already included in Section 11(b)(3) should be added after the first sentence that effectively reads:

"Such charges will include only those incremental, direct, non-administrative costs incurred by BPA as a result of «Customer Name»'s request."

10. **Metering**

Snohomish has separately provided redline edits to BPA on May 9, 2008, covering Section 12, Metering, for the all of the product templates. These modifications provide comparable and equal treatment for customer and BPA owned meters, and establish a requirement for transparent access to meter data. Snohomish expects metering technology to evolve substantially over the term of the contracts and proposes the metering section of the contracts establish that meter data will be available remotely, in real-time for use by both the customer and BPA. This data transparency will aid customers in the verification of their monthly power bill.

11. **Planned curtailment or interruption is not an Uncontrollable Force.**

It is Snohomish's belief that a curtailment or interruption *planned in advance,* is not an Uncontrollable Force, and thus subsection (2) of section 18(a) should be removed. BPA has defined Uncontrollable Force in section 18(a) to include any event "beyond the reasonable control" of a Party which is unavoidable despite "exercise of that Party's reasonable diligence and foresight." The inclusion of subsection (2) merely undermines this definition and relieves BPA of any obligation to mitigate operations it imposes upon itself.

12. **Section 21(c), "New Large Single Loads," should be modified to ensure consistency with the Northwest Power Act.**

To ensure consistency with the Northwest Power Act, the test utilized in section 21(c)(1)(A) should be replaced with the definition contained in Section 3(13) of the Act.

13. **Slice Water Routing Simulator/Termination Section 23(c)(3)**

Customers have the right to terminate the Block/Slice contract when the Water Routing Simulator or model becomes available, based solely on a test of the model's accuracy. Snohomish is concerned about the aggressive timeline BPA has outlined for completion of this model, and the described accuracy test. Customers are working with BPA through Slice Technical meetings to develop an appropriate accuracy test to verify simulator results. Absent a positive outcome to this collaborative effort, customers should be allowed to elect an alternative product when the Water Routing Simulator and Computer Application become available, for whatever reason. This would avoid

construction and application of an accuracy test, with the potential for disputes and controversy.

Snohomish appreciates the opportunity to submit its initial comments, and is committed to working with BPA staff to further clarify these contracts. The drafting of comprehensible contracts will enhance a sound business relationship between Snohomish and BPA, and ultimately lead to Regional Dialogue contracts to which each party can responsibly commit.

Sincerely,

by electronic signature

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cc: Steve Klein, General Manager
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