

CON-028

Larson, Cheryl A - PS-6

From: King, Larry D - PSE-BURLEY
Sent: Monday, April 14, 2008 2:15 PM
To: Burbank, Nita M - PFP-6
Cc: Thompson, Garry R - PSE-SPOKANE; Coe, Scott A - PSW-6; Latham, Dale S - PSS-6; 'Rick'
Subject: Load Following Contract Comments -WREC

Nita, Wells Rural Electric Company's (WREC) attorney has reviewed the Load Following Contract. WREC forwarded to me non-technical comment on 4 points. They may provide additional power specific comments later.

1. In Section 13(d) which provides for termination by BPA under certain circumstances, it should be revised to say the following: "If customer does not provide such payment assurance and it reasonably appears that customer is unable to make the payments, BPA may terminate this agreement upon ____ days' prior written notice." The concern I have is that it is now discretionary and does not provide any time period for notice if termination is going to occur.
2. In Section 19 with respect to governing law and dispute resolution, the language appears to me to be inconsistent. In the first general paragraph it states: "The Parties reserve their rights to seek judicial resolution of any dispute arising under this agreement." However, in subsection 19(b), it states that any contract dispute or contract issue between the parties arising out of this agreement shall be subject to arbitration except for the matters set forth in Section 19(a). It appears to me that the general paragraph in Section 19 should read: "Subject to the limitations described herein, the Parties reserve their rights to seek judicial resolution of any dispute arising under this agreement." Otherwise, if, in fact, the parties can seek any disposition of anything by judicial resolution, it makes the mandatory arbitration provision meaningless.
3. In Section 23, under termination, once again, it seems to me that some type of written notification of intent to terminate should be given to the customer. Certainly, the customer's right to terminate is only triggered by written notice. It should be somewhat reciprocal.
4. My final concern is something with which you are probably familiar, but in Section 21, under the statutory provisions at paragraph (d), it states that Pacific Northwest customers are given priority pursuant to the certain sections of the Northwest Power Act. I am not exactly sure to what extent that priority supersedes all rights that would be provided under this contract.

LDK