



Yakama Power

CON-34

May 20, 2008

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

FROM: J.D. Williams
Attorney

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

Dear Mark,

Please allow these comments to serve as the initial comments of Yakama Power on the Draft Load Following Template. We may provide additional comments as BPA makes further clarifications to the Template. We support many of the comments of Margie Schaff on behalf of the Affiliated Tribes of Northwest Indians (ATNI).

Because Yakama Power expects to remain a full requirements customer and will likely choose load following service, our comments do not include specific comments on the block or slice contract templates. However, most of our comments apply to those templates as well.

1. Regulatory Jurisdiction. Because the Template focuses on non-tribal customers it uses jurisdictional language that might create confusion in the future in applying the Template to Indian tribes simply because states do not have jurisdiction over Indian lands and tribal utilities are formed under tribal jurisdiction. To avoid adding substantial language trying to address the complexities of state versus tribal jurisdiction over utilities, we suggest the following clarifying changes:

a. Page 3, introductory paragraph, where a blank is left for each utility to insert what state law it was formed under, we recommend you increase the blank to encompass "[the State of (state name)]" so that a Tribal utility may insert, after "under the laws", a phrase such as "the Yakama Nation, a federally recognized Indian tribe".

b. Page 5, paragraph 2(a), defining 'Annexed Load', should simply eliminate the term "state" or add "or tribe" after the term "state".

2. Use of TRM Definitions. We share ATNI's concerns about the use of legally unenforceable TRM definitions. The needed terms from the TRM should either be included in the Template or a specific dated version of the TRM should be explicitly referenced as legally binding through the Template.

3. Tribal Utilities' 40 MW High Water Mark Exception. On pages 7-9, paragraph 5, on Applicable Rates, fails to include under subparagraph (a), an exception for the 40 MW reserved for tribal utilities. For example, a paragraph 5(a)(5) could be added that directs the use of Exhibit B to spell out the portion of the reserved 40MW that a specific tribal utility is using and at what rates.

4. Tribal Utilities' 40 MW Exception to Annexed Load. On page 5, paragraph 2(a) defines "Annexed Load" in a manner that would include the BPA's 40MW reservation for existing or new tribal utilities. We would like a sentence added that reads something like this: "This definition does not apply to the use of BPA's 40MW reservation for tribal utilities."

Also, on page 35, paragraph 22(i), "Bond Assurances", should have a similarly worded exception added to it.

Again, we share ATNI's concerns regarding the language involving Annexed Load and the 40 MWs reserved for tribal utilities as new public that may be taking over existing loads from other utilities. We repeat ATNI's comments here regarding 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.”

We are especially concerned that Exhibit B, paragraph 1(b)(5) regarding “Other Changes to CHWM”, add language to subparagraph (A) making it clear that as long as a tribal utility takes another utility’s load, within the 40MWs reserved for tribal utilities, then that tribal utility gets both it’s share of the other utility’s CHWM as well as PF or Tier 1 treatment for the remaining portion of the MWs received from the other utility that are not covered by that utility’s CHWM.

5. ATNI Comments. Again, we want to re-emphasize that we join in the comments provided by ATNI.

Finally, we want to emphasize that, if the language in the template is not clarified regarding the 40MW reservation for tribal utilities, the Template will essentially make that reservation meaningless and completely undermine the BPA’s goal of developing Tribal utility customers.

We appreciate your consideration and look forward to working with BPA on these issues. Please do not hesitate to contact me at (503)295-1020 or Ray Wiseman, General Manager, at (509)865-7697.