CON-053

Larson,Cheryl A - PS-6

From: Burbank,Nita M - DKC-7
Sent: Wednesday, July 16, 2008 3:23 PM
To: Larson,Cheryl A - PS-6; Miller,Robyn M - PS-6
Subject: FW: Comments on Contract Templates
Attachments: RegDialogcomments7-16-08B.doc

From: Lynn M. Aspaas [mailto:LAspaas@clarkpud.com]
Sent: Wednesday, July 16, 2008 3:22 PM
To: Gendron,Mark O - PS-6
Cc: Rockwood,Theresa E - PSW-6; Burbank,Nita M - DKC-7
Subject: Comments on Contract Templates

Clark Public Utilities submits these comments for consideration.

These comments are submitted on behalf of Clark Public Utilities in response to the letter from Mark Gendron dated June 16, 2008, soliciting comments on the draft Regional Dialogue Contract Templates, including the Load Following Contract ("LF Contract"). These comments respond to the LF Contract draft dated 07/02/08, and where appropriate to other contract templates, such as the Master, Block, and Block/Slice Contract Templates as well.

These comments will address the same four topics as presented in the WPAG comments BPA has received on this same issue:

1. The forced waiver of statutory rights to participate in residential exchange and billing credits, and the unduly discriminatory treatment of preference customers that elect to participate in the residential exchange under the terms prescribed by BPA.
2. The unduly burdensome provisions which make non-federal resource development under the LF Contract unattractive to preference customers.
3. Section 22, which makes it clear that enforcement of the LF Contract terms by the customers, is left to BPA's discretion.
4. The "no warranty" provision.

1. Forced Waiver of Statutory Rights

Section 12.1 requires customers to "forego" their statutory right to participate in the billing credits program established by Congress in § 6(h) of the Northwest Power Act. This is not a voluntary waiver, but one that is being required under the threat that if a customer does not "agree" to such a waiver, it will have no access to a Contract High Water Market power sales agreement ("CHWM Contract") with BPA. It is unknown what type of contract BPA would offer if Clark chose not to sign this contract in order to retain its statutory rights.

Congress did not grant BPA the authority to condition access to billing credits based on the type of power contract a preference customer signs with BPA. (See further cites in the WPAG comments).

Similarly, in section 12.2 of the LF Contract, BPA seeks to limit the vintage of the resources a preference customer can include in the calculation of its Average System Cost ("ASC") used to determine its residential exchange benefits, as well as limiting the residential and small farm load it can include when calculating its the residential exchange payments.

In section 12.2 BPA goes a step further in limiting preference customer participation in the residential exchange. This provision will prohibit any exchanging preference customer from including load growth occurring after FY 2010 in its exchange benefit

calculation. No such limitation has been imposed on IOUs participating in the residential exchange, and no justification has been offered for this differing and discriminatory treatment of preference customers.

The agreement to forego residential exchange benefits is made under the implied threat that if the "agreement" is not forthcoming, the pricing of and access to federal power at cost will be in jeopardy.

As with the statutory billing credits program, Congress did not endow BPA with discretion on whether to offer the residential exchange. BPA was directed to do so by § 5(c) of the Northwest Power Act (see further cites in the WPAG comments).

We can only conclude that Sections 12.1 and 12.2 are beyond BPA's statutory authority and are contrary to the clear statutory directives of §§ 5(c) and 6(h) of the Northwest Power Act.

Clark would also object to any similar limitations in the ASC methodology and / or the RPSA contract for the same reasons as outlined above.

2. **Burdens on Non-Federal Resources**

The timing and length of the notice periods required to bring non-federal resources to load are major hurdles to non-federal resource development, particularly to preference customers that have not previously developed a non-federal resource. In addition, sections 18 and 19 of the LF Contract impose a plethora of new forecasting and reporting obligations for preference customers that pursue non-federal resources to serve their post-2010 load growth.

Given that Clark Public Utilities has an obligation under Initiative 937 in the state of Washington to acquire renewable resources for its portfolio, we can only conclude that the LF contract with BPA is not the proper vehicle to accomplish that obligation.

3. **Lack of Contract Enforceability**

Clark supports the WPAG comments on this issue.

4. **No Warranty**

It is particularly troublesome that this issue has not been resolved to the satisfaction of the legal group working the contract issues with BPA.

This section must be removed in its entirety from the LF Contract.

Thank you in advance for your consideration of these comments.

Regards,

Patrick R. McGary
Director, Energy Resources
Clark Public Utilities