

CONF-055



RECEIVED BY BPA ADMINISTRATOR'S OFC-LOG #: 07-0092
RECEIPT DATE: 8.23.07
DUE DATE: 4.6.07

Affiliated Tribes of Northwest Indians

August 21, 2007

Mr. Steve Wright
 Administrator
 Bonneville Power Administration
 P.O. Box 14428
 Portland, OR 97293-4428

ASSIGN: Ken Johnston-DKT-7
cc: FO3, DKN/Wash, DK-7, L-7, P-6,
PS-6, KE/KEW-4

RE: Regional Dialogue

Dear Mr. Wright,

The elected representatives of members of the Affiliated Tribes of Northwest Indians and ATNI staff have had the opportunity to review the Bonneville Power Administration Regional Dialogue Policy. We understand that the implementation details of most parts of the policy are not yet final and are subject to a schedule of meetings to address various elements of the policy. ATNI does not represent any particular tribal interest and some tribes will have opinions different from ATNI or issues that we have not addressed in this letter. However, at the request of member tribes, this letter is to request Government-to-Government consultation on behalf of a number of our member tribes regarding portions of the policy during the ATNI annual conference which will be held from September 17-20 at the Quinault Beach Resort in Ocean Shores Washington.

To further our discussion, we first include a list of our interests that we have considered in reviewing the Regional Dialogue Policy. These interests include:

1. Tribes are sovereign governments with interests in protecting and exercising that sovereignty.
2. Tribal ability to form or expand tribal utilities so that tribes may choose to serve their electric loads and receive the direct benefits of the federal hydroelectric and transmission system as a government or non-profit utility business of the tribe.
3. Tribes and tribal members are customers of Bonneville served utilities. These utilities serve our membership on reservation and non-reservation trust lands, and outside of Indian Country.
4. Tribes are owners and developers of generation facilities, including renewable energy facilities.
5. Tribes have traditional and treaty rights in land, fish, wildlife and cultural places that are impacted by Bonneville policies.
6. Tribes must be participants in the public processes that create these policies.
7. Tribes have traditional responsibilities as environmental stewards of their resources and the environment of the region.

As you know, the Energy Policy Act of 2005, and numerous other policy statements, including Bonneville's own tribal policy encourage federal support for tribal energy ventures and tribal utilities. Additionally, federal law and policy, including recent case law, affirms the importance of the protection of fish and wildlife as a federal purpose that is equal to the Bonneville purpose of providing a power benefit to the region. Federal law also requires the protection of cultural resources. We are reminded every day by the facilities on tribal lands of the impacts created by the construction and operation of the federal hydroelectric and transmission facilities. Tribes have been uniquely impacted by these federal projects.

We appreciate the difficult task that Bonneville has faced and continues to face with the development of this set of policies. We understand that there are many interconnected facets of the policy that must all work together and that you and your staff have spent long hours creating what can become a workable compromise. The policy is in many respects very good and is responsive to many of our earlier comments. We would, however, like you to consider the following changes to the policy. Most of these requests would mean very much to the membership of ATNI and do not seem to us to be overly invasive to the policy as a whole.

Tribal Utility Related Changes:

In quite a few cases the policy has created exceptions or concessions for new utilities, or tribal utilities, but then other parts of the policy make these concessions unworkable. We believe that these issues may have been oversights in drafting the policy and they can be worked out. It is important to us to note that Bonneville is statutorily mandated to support new tribal utilities and to promote widespread use of its power resources. Some of these provisions are therefore also contrary to federal law. The following are our requested changes to the policy as they impact tribal utilities:

- Maximum of 250 MW augmentation for new publics: We believe that this may not be a sufficient amount of augmentation over the 20 year contract period, and will create a race to form utilities. Utilities should not be created for their own sake at times convenient to a federal agency, but as a response to local issues and business judgments. Whether the 250 MW is sufficient may not be known until the latter part of the contract period, when many other unknown factors could make further augmentation appropriate. We would ask for a statement in the final policy that after 10 years there may be flexibility in this number and also that there may be the opportunity to negotiate business arrangements to permit additional access to lowest cost power. Further augmentation could be determined through another public process. We also suggest that new publics be given access to any unused portion of the 300MW augmentation that is already proposed for service to publics based on 2011 loads.
- 40 MW exception: We appreciate your willingness to include this exception for tribal utilities in the policy. However, the exception is large enough only to cover only one existing utility, Yakama Power, and is then even 2MW short based on their projected loads. All other new utilities would be competing with Yakama for the opportunity to grow their load through acquisition of service territory. Annexation of service territory is the right of sovereign tribes dealing with

companies doing business on their reservations. We request that this exception be doubled. In addition, the deadline for use of the exception makes it only partially effective. We request a removal of the deadline for use of this exception, as it does not seem that it serves any major policy objective and prevents even Yakama Power from fully using the exception.

- Five new small utilities: We ask that you remove the limit of the number of new small utilities. We expect that over the course of the 20 years more than five tribes will form small utilities. The five utility limit in the policy is not available only to tribal utilities and we have no idea how many other small utilities will form. We ask that new small utilities generally be exempted, without limiting it to the first five. Again, this creates a race to form utilities.
- Three year binding notice: Inclusion of a three year binding notice before a tribal utility can take federal power puts us in the position of racing to form and meet standards for service by 2008 so that we can begin receiving power by 2011. It also puts us in the position of having no power source with a known rate for our loads for the first three years a utility is operational. This notice period ruins the ability to make a business case for utility formation. We do not understand the policy behind the notice provision, and will prohibit formation of most utilities. We suggest that notice provisions be determined on a case-by-case basis in such a manner as to encourage utility formation rather than to block utility formation. For example, if a new utility is formed from the service territory of an existing Bonneville customer, there should be no need for notice unless there is a particular circumstance to consider.
- New publics formed from existing Bonneville customers' territories: The policy states that new publics formed from existing customer territories will be given a portion of the existing customers' High Water Mark. The tribe's High Water Mark should be adjusted to account for any existing customer owned resources used to serve that customer load, but not transferred to the tribal utility.
- Transfer Service issues:
 - We are also concerned with the requirement that Bonneville will only arrange and pay for transfer service for power deliveries to a new utility annexing load in situations where written consent is given by the utility losing load or if a state or court has made a final determination that a utility has the legal right to serve the annexed load. This consideration should be made on a case-by-case basis rather than creating a broad policy that may not be workable in every situation.
 - The 50 MW cap for additional Transfer Service for annexed loads and new publics per rate period is inconsistent with the new customer exception for new small utilities. A new utility with a source of power will not be feasible without transmission. We suggest that this cap be removed to the extent that it will limit new utilities otherwise permitted in earlier parts of the proposal.
 - \$10/MW Cost cap: This cap could similarly prohibit utility formation and is inconsistent with the goal of equity between BPA transmission customers and Transfer Service customers.
 - New Customers Formed Prior to October 1, 2009: Again, a race to form utilities is created by this portion of the policy. Almost all new tribal

utilities will need transfer service as most will need transmission through the system from whom they were formed. We request that the deadline be extended to October 1, 2011.

- We are concerned that the Direct Assignment Guidelines, which will be effective upon adoption by the Administrator, will create large additional costs for new and existing tribal utilities. Most of the new tribal utilities will have some low voltage delivery service, and directly assigning often unknown or unpublished charges from incumbent utilities for low voltage service can severely impact utility rates for small utilities.
- Transmission Issue: We have a major concern with the issue of new customers' access to network transmission. We understand that this policy will be addressed by the Transmission Business Line in various transmission specific meetings and in meetings to address the implementation of Order 890. Specifically, we are concerned that new preference customers will be required to "get in the queue" as a new request to obtain transmission. This could result in a Bonneville preference customer being denied network transmission on the Bonneville federal transmission system if it is behind non-preference entities in the queue on a constrained path. Because the federal transmission system is part of the system to which preference entities are supposed to receive preference, it is contrary to statute to permit non-preference uses of the federal system when preference uses have a pending request. We request that Bonneville's tariff be amended in the Order 890 process, or in another appropriate process, to acknowledge preference in transmission for Bonneville preference power customers.

Environmental Stewardship and Tribal Customers Related Changes

The Regional Dialogue policy still contains a disincentive to fully implement conservation prior to 2011. Existing utilities, including existing tribal utilities have an incentive to increase their loads prior to 2011 in order to maximize their High Water Mark. This policy effect is contrary to both good business practice and federal law.

Bonneville should also require its customers to develop new resources based on the Council Power Plan and the priorities in the Northwest Power Planning and Conservation Act if resources are available within the service territory. We strongly support a robust renewable energy requirement and we support including costs for integration of renewable energy projects in the Tier 1 rate.

Tribes as Owners and Developers of Generation

We have started initial discussions with your staff regarding a tribal purchase program to facilitate development of tribal energy projects, a federal policy established by the Energy Policy Act of 2005, and to facilitate federal utilization of a double credit toward their renewable portfolio standards by purchasing tribally generated power. We also believe that other power customers may be interested in purchasing tribally generated power. We are pleased to note that the Tier 2 power rates include a "vintage rate" for programs such as ours. We would like to

continue meeting with your staff to determine how Bonneville might create a Tier 2 tribal power product.

Tribes as Holders of Land and Other Treaty Rights

We understand that Bonneville has taken the position that specific issues, like the implementation of fish and wildlife and cultural resource programs are not within the scope of the Regional Dialogue. Some of our member tribes disagree with this position. We also understand that Bonneville has taken the position that the tiered rate structure *could* improve Bonneville's ability to meet its fish and wildlife goals. Some of our member tribes are not satisfied with Bonneville's current efforts and are not convinced that the policy will provide sufficient improvements. We are also concerned that the structure could also be a detriment to the fish and wildlife and cultural resource programs if customer cost reviews are given inappropriate oversight of these programs. We are also concerned that there will be political problems implementing future fish and wildlife constraints if constraints placed on the federal based system lower customers' high water marks. We do not want high water marks to be a *de facto* limitation on future fish mitigation programs. To alleviate this concern, we suggest that a statement be included in the final policy that augmentation will be permitted in the event that there are substantial changes to the federal based system during the 20 year contract period. We also believe that Bonneville should provide certainty that fish and wildlife programs that are essential to rebuilding treaty and trust resources will be fully implemented. Lastly, we would like to discuss the implementation of the cost review process and whether and how both fish and wildlife and cultural resources costs will be included in that process.

Thank you for your consideration of these important issues. We look forward to meeting with you on these issues. We will contact your office in the near future to schedule times that may work for Government-to-Government Consultation between Bonneville and tribal leaders from our member tribes. We hope that you will be available to join us at our annual conference.

Sincerely,



Ernest L. Stensgar, President
Affiliated Tribes of Northwest Indians

Cc: file

**Department of Energy**

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

EXECUTIVE OFFICE

SEP 13 2007

In reply refer to: DKT-7

Ernest L. Stensgar, President
Affiliated Tribes of Northwest Indians
1827 NE 44th Ave, Suite 130
Portland, OR 97213

Dear Mr. Stensgar:

Thank you for your letter of August 21, 2007, requesting a Government-to-Government consultation concerning Bonneville Power Administration's (BPA) Regional Dialogue Policy on behalf of ATNI member tribes. As you noted, the policy is complex with many interconnecting provisions. BPA appreciates the views you expressed and understands ATNI would like BPA to make changes to the policy as outlined in your letter.

The issues raised in your letter reiterate many areas of the Policy that were discussed prior to adoption of the policy. Indeed, they reflect many of the same issues raised by ATNI and others in their comments to BPA's draft Regional Dialogue Policy proposal. While BPA has fully addressed these issues in the Regional Dialogue Policy Record of Decision, I propose discussions be held between ATNI (your members who have an interest) and BPA to explore the pertinent parts of the policy that are of concern. Using this approach, BPA can be apprised of the depth and extent of the Tribes' issues, while the Tribes can gain a fuller understanding of BPA and the policy. I suggest we follow the technical discussions with a Government-to-Government meeting if you and your members still believe one is warranted. If this proposal is acceptable to you, the ATNI Quinault meeting would be a good time for ATNI and BPA representatives to meet.

Also, I would encourage all tribal parties that have an interest in the Regional Dialogue to attend the public workshops that are taking place. The workshops are an important opportunity to work through the Regional Dialogue issues. Information about the Regional Dialogue workshops is available at the following web site: <http://www.bpa.gov/power/pl/regionaldialogue/implementation/>.

If you have any questions please call Ken Johnston, Tribal Affairs Manager, who will be coordinating the details of this meeting. He can be reached at 503-230-7631. Thank you for your continued support of the Regional Dialogue process.

Sincerely,

(Sgd.) Stephen J. Wright

Stephen J. Wright
Administrator and Chief Executive Officer