



Alliance of Western Energy Consumers ♦ 3519 NE 15th Ave. #249 ♦ Portland, OR 97204 ♦ 971-544-7169 ♦ AWEC.solutions

July 24, 2024

Via Electronic Submission

Re: July 16, 2024, Provider of Choice Workshop – Section 17 Information Exchange

The Alliance of Western Energy Consumers (“AWEC”) appreciates the opportunity to provide comments on Bonneville Power Administration’s (“BPA” or “Agency”) July 16th workshop during which BPA’s updated proposal regarding Section 17 of the Provider of Choice contracts was among the topics of discussion. AWEC offers these comments in support of the Section 17.2.3 language proposed by Western Public Agencies Group (“WPAG”) that would allow for a customer to require Pacific Northwest Utilities Conference Committee (“PNUCC”) or the Northwest Power and Conservation Council (“the Council”) to execute a commercially reasonable non-disclosure agreement (“NDA”) prior to providing those entities with the data and information that the customer is required to provide pursuant to Section 17.2.3. WPAG’s proposal – or substantially similar language that accomplishes the same outcome – is necessary to facilitate the disclosure of commercially sensitive information to third parties.

Many of AWEC’s members are end-use consumers of BPA’s customers and participate in highly competitive industries such as pulp and paper, aeronautics, agriculture, air products, metals, information technology, and more. Commercially sensitive information, such as current and forecast electricity use, could be used by competitors to discern business plans, capacity/production, etc. in a way that if disclosed, would cause competitive harm to these end users. For this reason, it is commonplace for AWEC’s members to seek NDAs with their serving utilities in order to ensure that competitively sensitive information is not inappropriately disclosed. Even in a case where the serving utility is subject to public records laws that govern disclosure, such laws allow commercially sensitive and/or trade secret information to be exempt from disclosure. Thus, contract language that would facilitate similar treatment from third-parties such as PNUCC and the Council is necessary. In all circumstances, contract terms that ensure that end-user data is protected, subject to a particular process in the event that disclosure of such data is requested, is paramount.

Moreover, as discussed at the July 16th workshop, today’s intentions on how PNUCC or the Council may disclose data (i.e. disclosure on an aggregated basis) does nothing to quell AWEC’s concerns. Today’s intention to publicly disclose only aggregate data by either PNUCC or the Council is not binding on how it may disclose the raw information provided by customers in the future. Over the duration of Provider of Choice contracts, it is entirely possible that data disclosure could change. If that were to become the case, BPA’s customers would have no recourse under Provider of Choice contracts, which would be to the detriment of large end-users such as AWEC’s members.

Finally, the lack of concern with such language raised by either the Council or PNUCC to date, as far as AWEC is aware, further supports inclusion of language that allows BPA customers to seek NDAs with PNUCC and the Council. As Jennifer Light from the Council



AWEC

Alliance of Western Energy Consumers ♦ 3519 NE 15th Ave. #249 ♦ Portland, OR 97204 ♦ 971-544-7169 ♦ AWEC.solutions

indicated at the workshop, the Council is open to NDAs if that is helpful to customers. Based on discussions at the workshop, AWEC also understands that PNUCC has not raised concerns with WPAG's proposal.

AWEC understands and appreciates that not all customers may desire or benefit from an NDA with either the Council or PNUCC, but allowing for customer discretion to seek an NDA must be preserved in Provider of Choice Contracts. Pointedly, if a utility has confidentiality obligations to one or more of its end-use consumers, a confidentiality agreement between the utility and PNUCC and/or the Council would be required to avoid violating the utility's obligations to its customers. Language in BPA's Provider of Choice contracts that recognizes these obligations will serve to help ensure that end-users' commercially sensitive or trade secret information is not inappropriately disclosed and avoids BPA's customers from being in the position of either violating their own contracts with BPA or violating NDAs with current or potential customers. As such, AWEC respectfully requests that BPA ensure that customers have options to ensure that commercially sensitive information is subject to the appropriate protections and processes.

/s/ Bill Gaines

Executive Director

Alliance of Western Energy Consumers