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Theresa Rockwood
Account Executive
Bonneville Power Administration
PO Box 3621 – PSW-6
Portland, OR 97208-3621

Dear Theresa:

Attached is the Bonneville Power Administration (BPA) Power Sales Agreement (PSA) covering power deliveries starting October 1, 2011. The PSA has been executed by Columbia River People's Utility District (CRPUD).

As you are aware, CRPUD has generally supported BPA efforts in supplying power to the Preference Customers in the Northwest. CRPUD does have some concerns, however, regarding the PSA and the issues that remain outstanding at the time BPA requires execution of the contract. While I acknowledge that the template and draft contract were addressed in public forums that BPA held over the past months, BPA is effectively putting its customers in the position of accepting contract terms before all relevant facts are known. This is an especially troublesome situation given the respective bargaining positions of BPA and CRPUD.

CRPUD has concerns in the following areas of the PSA (presented in the order they appear):

Section 3.5.8 – This section requires CRPUD to purchase BPA's Diurnal Flattening Service (DFS) when the output of a PURPA project is purchased by CRPUD. However, it is not clear that every PURPA resource will require the purchase of DFS. The purchasing of DFS should be optional and depend upon the operational characteristics of the resource and the manner in which it is dispatched by CRPUD.

Section 6.3 – This section references the Tiered Rate Methodology (TRM) that BPA will use to implement its new policy construct of tiering BPA's Priority Firm Power rates for serving loads under the new contractual arrangements. The first sentence provides that "The recitation of language from the TRM in this Agreement is not intended to incorporate such language into this agreement." The TRM is an essential element of the proposed contractual relationship as is illustrated by the extensive inclusion of its provisions defining critical contract terms in this and other articles, but it not definite at the time of execution.

Section 6.4 – This section provides that any disputes over the TRM or rates are deemed rate matters and not a contract dispute. The last five lines of

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the second paragraph provide that “a ‘knowing failure’ shall occur only in the event the United States Court of Appeals for the Ninth Circuit or, upon further review, the United States Supreme Court Rules against BPA on its position as to what the TRM means or requires and BPA thereafter persists in its prior position.” Taken to its logical conclusion, what this language could mean is that CRPUD would be required to suffer harm for the several years it would take to adjudicated its claim, stand the considerable expense of doing so and then still have no redress or remedy unless BPA continued its intentional infliction of this harm. This is a very tough situation, especially given that is not CRPUD’s policy or intention to litigate every disagreement.

Section 7.1 – This section deals with the establishment of CRPUD’s Contract High Water Mark (CHWM). The language in this section refers to the manner which the CHWM is defined in Section 4.1. Section 4.1 is blank in the version that is under review. The exhibits are critical components of the Contract. Exhibits A, B, and C set, respectively, CRPUD’s: (i) net requirements and resources; (ii) high water marks and contract demand quantities; and (iii) purchase obligations. These exhibits are currently blank.

Section 7.2 – This section identifies CRPUD’s Rate Period High Water Mark (RHWM). The language in this section refers to the manner which the CHWM is defined in Section 4.2. Section 4.2 is blank in the version that is under review. As noted above, Exhibits A, B, and C are currently blank.

Section 9.1 – This section involves the manner which BPA will be obligated to serve amounts above CRPUD’s RHWM. In Section 9.1.2 through Section 9.1.4, the Contract addresses choices that CRPUD makes regarding how it will serve its load above the RHWM and has BPA unilaterally amending the exhibit to the Contract.

Section 12 – This section (including 12.1 and 12.2) involves the manner which billing credits will be handled if CRPUD develops its own generation resources and CRPUD’s access to residential; exchange benefits under the Northwest Power Act. This Section appears to purport to amend Sections 6(h) and 5(c) of the Northwest Power Act or to affect a waiver of CRPUD’s rights pursuant to those sections. The last line of Article 12.2, dealing with Residential Exchange Benefits, makes agreement to that section a material precondition to BPA offering and executing the Agreement.

Section 14.3 – This section requires CRPUD to waive any claims they might have against BPA for non-delivery of power, except for reimbursement of costs as described in Article 14.2.3. It also specifically provides that BPA would not be liable for third-party claims related to the delivery of power after it leaves the Scheduling Points of Receipt. While it probably is reasonable to waive the third-party claims, waiving all claims against BPA could cause CRPUD to incur costs over which it had no control or ability to mitigate.

Section 16 – This section deals with billing and payment terms. There are two concerns with this article. There is a fundamental inequity in the rate that CRPUD would pay on late payments versus the rate that BPA would pay

under the same circumstances. Section 16.3 is much higher than the rate BPA would pay on a refund to CRPUD (Section 16.5.3); roughly four percent higher. The language of Section 16.5.1 regarding disputed amounts is also problematic. As drafted, the language requires that even amounts disputed in good faith be paid by the due date of the invoice. These provisions are far from fair.

Section 22.2 – This section concerns the arbitration of disputes. The last paragraph of this section seems illogical. The language refers to non-binding arbitration being used to resolve disputes not resolved by binding arbitration. This seems backwards, as binding arbitration by its very nature would resolve any dispute.

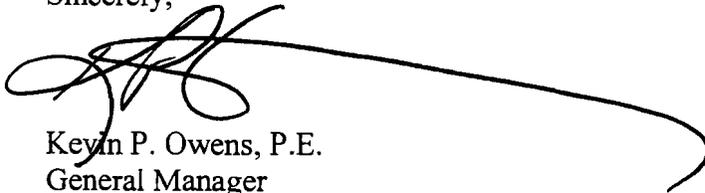
Section 22.4 – This article excludes specific performance as a remedy against BPA. The effect of this provision could be a serious problem if BPA is not performing some essential part of the contract, especially in this circumstance where BPA is our sole supplier and transmission provider.

Section 23.3.5 – There is a reference error in the sixth line of the last paragraph of this article. The reference should more properly be to the last “three” sentences.

CRPUD expects that BPA may address these issues at some point in its refinement of the contractual provisions and/or administration of the PSA. CRPUD requests the opportunity to participate in any such activities and receive the benefit of any changes that BPA makes in the PSA.

Please do not hesitate to contact me should you have any questions or desire further information.

Sincerely,



Kevin P. Owens, P.E.
General Manager

cc: Board of Directors, CRPUD
V. Koss, CRPUD