



November 26, 2008

Ms. R. Kirsten Watts, Customer Account Executive
909 First Avenue, Suite 380
Seattle, Washington 98104-3636

Re: Power Sales Agreement
Contract No. 09PB-13016 (Load Following) with City of Centralia Utilities

Dear Kirsten:

Enclosed please find two signed copies of the subject Agreement. Please return one fully executed copy for our files.

We are approving this Agreement as requested by the Bonneville Power Administration and in the time frame (prior to December 1) stipulated. However, there have been numerous changes and additions that we have requested that have not been incorporated with the explanation either (1) they would be considered at some future time, or (2) we had a previous opportunity to comment and failed to do so.

In the latter category are our continuing concerns over Attachment C to the Tiered Rate Methodology, as included in the November, 2008 edition TRM-12-A-02, and in particular the listing of our Yelm resource as having an adjusted annual average generation amount of 7.835 a MW. Our subscription contract, Exhibit C, had no energy included, consequently BPA used an averaging process to determine the average MW output (see footnote 6 to TRM Attachment C). Yelm is the largest nameplate plant for which this approach was used. There are a number of problems with the resulting 7.835 value:

1. It represents an average of gross plant output over the period of October, 2000 through September, 2005. Agreement Exhibit A determinations by BPA concluded that most of the data in this time period were suspect for various reasons, and instead chose to calculate monthly output for a critical water period based on available water considering the FERC restrictions in our license for low water periods. (Although this is an acceptable approach, the year chosen - October, 2000 through September, 2001 - does not represent a true critical water year, as that would be based on the output from Tacoma Power's Lagrande Dam upstream on the Nisqually River from Yelm. Tacoma has chosen to use '40/'41 as their critical water year. The Yelm output calculation should be revised accordingly. See below for additional detail.)
2. Because it is based on gross output, as a minimum, station service should have been subtracted from any gross plant output as has been done in Exhibit A to the Agreement to determine net plant output available to serve load.

3. The Exhibit A figure, using a year that we do not believe is the appropriate critical water year, is 7.114 aMW – less than the 7.835 value and indicative of the need to revise the attachment in the TRM.

We respectfully request your assistance in pursuing a revision to Attachment C of the TRM in accordance with the provision of Section 12.5 of the TRM (changes not considered to be a revision to the TRM), in concert with changes to the Agreement.

In addition to our concerns previously expressed regarding some of the contractual issues, following are the technical changes and additions we requested be made to the Agreement but were not incorporated:

1. Exhibit A has an unchecked box “DFS or SCS?” We understand this is unchecked because Centralia will receive grandfathered Generation Management Services (GMS), as explained in Exhibit D. This should be footnoted to explain why it is not checked – as it is, it appears to be an error or an oversight.
2. Per Exhibit D, City Light will be purchasing Generation Management Services (GMS). You indicated in your September 9, 2008 presentation to the Centralia City Council, slide 20, that the purchase of GMS “eliminates the need to purchase diurnal flattening service.” It is not readily apparent from Exhibit D, or from the BPA Power Products Catalog, that GMS covers diurnal flattening service. Exhibit D should be augmented to clarify what we are receiving in our Grandfathered GMS, including DFS and SCS.
3. Include GMS in the list of definitions in the contract so we officially know what it means.
4. Clarify Section 3.4.3.1 about how this relates to Exhibit D and GMS.
5. Consider a revision to Exhibit A to ensure it represents a critical water year on the Nisqually River consistent with Tacoma Power assumptions. Exhibit A as originally proposed with the draft contract was acceptable to the City, except that BPA had used incorrectly translated USGS data for one of the monthly calculations. In the process of making that correction, BPA staff concluded that the remainder of the particular water year chosen (2002/2003) also had drawbacks in terms of representative plant output, due to FERC restrictions in water flow in the Yelm Canal. Beginning last week, the decision was made to create a “virtual” Exhibit A using calculated data: determine what plant output would have been, using available USGS gauge data for the Nisqually River and Yelm canal, account for FERC restrictions on flow in the Nisqually, and calculate the likely output from the hydro plant. We concur with this process, but due to the short time available, have not had an opportunity to fully explore an appropriate critical water year. Tacoma’s use of 1940/1941 leads us to believe a more accurate calculation would follow from using that water year and back-calculating the plant output. Centralia will be pursuing this objective with the assumption that Exhibit A is subject to revision in 2009.
6. If we are to create a “virtual” hydro plant in Exhibit A to represent Yelm, it should be a valid model, including an availability figure to account for forced outages. Exhibit D to our existing power sales agreement contract has an implied

assumption that we will be experiencing some forced outages to be handled through the GMS services up "to 3,500 MWh during any Contract Year and 10,500 MWh during the remainder of the term of this service" (see Section 1(b)(2)). In addition, the 5(b)9(c) policy refers to an "assured capability exhibit" in the 1981 contracts. Assured capability recognizes the need to account for forced outages. Another validation is this excerpt from BPA's Power Products Catalog regarding the "Customer Resource Portfolio Declaration Standards." Presumably these are the parameters BPA uses to determine what to put in the Exhibits. The relevant excerpt states "the declared amounts [of firm peaking and energy resources] will be based on reasonable and prudent utility practices and will be consistent with resource data used by the customer historically for purposes of its BPA contracts and for other purposes." Also, "prudent utility practices for establishing firm hydro resource capabilities may include criteria other than critical period planning." (emphasis added) We recommend use of a 95% availability factor.

Finally, we are concerned that the contractual issues that were raised in our letter of November 11, 2008, (Bill Prentice of Ater Wynne to Thomas Miller, BPA Office of General Counsel, copy attached), have not been adequately or equitably addressed. The unresolved situation with some of the data in the Exhibits to the Agreement also puts us in a difficult position. We are executing the Agreement, however, with the understanding that given the press of time and the importance of meeting BPA's December 1, 2008, deadline for executing the Agreement, some issues such as several of the ones we have raised must necessarily be worked out next year. Given the complexity of the Agreement and the Tiered Rate Methodology and the mechanics of them working together it will require some adjustments by all parties in order to make it all work. We ask that the data in the Exhibits be as accurate as we can jointly make it, even if that takes some additional time this year and next, and that Centralia be treated equitably as we work through the complexities of this vital relationship.

Sincerely,



Harry E. Williams, P.E.
General Manager, Centralia City Light

Cc/ J.D. Fouts, City Manager w/ Enc.
Shannon Murphy-Olson, City Attorney w/ Enc.
Brad Ford, Finance Director w/ Enc.
Randi Leach, Utilities Financial Officer w/ Enc.
Deena Bilodeau, City Clerk w/ Enc.
W. Prentice, Ater Wynne LLP w/ Enc.
J. Piliaris, E&FS, LLC w/ Enc.
File: CCL-BPA-001 w/Enc.

HEW/ld

November 11, 2008

Thomas Miller, Esquire
Office of General Counsel
By Email

Dear Mr. Miller:

This firm represents Centralia City Light and I am writing to raise some concerns we have with the Load Following contract template recently presented to Centralia City Light. I would appreciate your prompt response to these concerns since, as I am sure you are well aware, the deadline for executing this agreement is December 1, 2008.

I will explain our concerns in the order in which they appear in the contract template:

Article 3.5.8 – it is not clear to us that every PURPA resource will require the purchase of DFS as this article seems to imply. Is this what is intended by the language of this article? This should be optional and depend upon the operational characteristics of the resource and the manner in which it is dispatched by Centralia.

Article 6.3 – 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.” If that is the case, then what is the purpose? We are rather surprised and confused by this statement since the included language clearly has a significant effect, both actually and potentially, on the rights and responsibilities of the parties to this contract. The TRM is an essential element of the proposed contractual relationship as is illustrated by this extensive inclusion of its provisions defining critical contract terms. For example in Article 8.1(2) in the last line: “The details of this calculation ... are established in the TRM.”

It does not require much imagination to see that a change in the TRM could easily change fundamental terms of the contract and potentially destroy the benefit of the bargain Centralia thought it had when it executed the agreement. We are unable to see any effective remedy for this infirmity in the contract, except perhaps an expensive legal battle over the enforcement of a contract of adhesion.

We would appreciate an explanation of the remedies we would have in the contract to protect our customers.

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Article 6.4 – the last five lines of the second paragraph provide that “a ‘knowing failure’ shall occur only in the event the United States Court of Appeal 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.” We take this to mean that Centralia 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 outrageous and inequitable language! It is not our policy or intention to litigate every disagreement. What threat could Centralia possibly pose to BPA that would justify the imposition of this onerous language?

We would like to see the entire second sentence of that paragraph removed.

Article 9.1 – there is an apparent conflict between this provision and the last sentence of Article 2.1 of Exhibit C in the last two lines before the chart. Article 9.1 appears to assume that the first 8,760 MWh of load above the RHWM are served by BPA and the language in Exhibit C clearly gives Centralia the choice of what resources it uses to serve that load.

We would appreciate a clarification of this conflict or an amendment to the language in Article 2.1 to conform with the language in Exhibit C.

Article 12 – this article appears to purport to amend sections 6(h) and 5(c) of the Northwest Power Act or to effect a waiver of Centralia’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. We would appreciate an explanation of the consideration Centralia would receive in exchange for these waivers as it is not apparent that Centralia would receive any value for giving up these valuable rights. We would also appreciate an explanation of BPA’s authority to demand Centralia agree to this.

Our preference would be to remove the entire article and failing that to be fairly compensated for foregoing our rights under the Northwest Power Act.

Article 14.3 – this article asks Centralia to waive any claims it 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. We are willing to waive the third party claims, but waiving all claims against BPA could very easily cause Centralia to incur costs over which it had no control or ability to mitigate.

We ask that the first sentence of this article be deleted.

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Article 16 – there are two concerns with this article. The rate we would pay on late payments, Article 16.3, is much higher than the rate BPA would pay on a refund to us, Article 16.5.3. There is no reason for this disparity and we ask that it be changed to be fair to both parties. We also ask that the language of Article 16.5.1 be changed. It now requires that even amounts disputed in good faith be paid by the due date of the invoice. It would be a considerable drain our resources to just pay disputed charges, especially if the amount of the mistake were significant. Especially considering the complexity of this contract and the TRM, it would be fairer to allow us to withhold any amounts disputed in good faith and then pay interest on the amount finally determined to be due, which is the same procedure for BPA when it owes a refund.

Article 22.2 – the last paragraph of this article is puzzling. It 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. We would appreciate either an explanation of or an amendment to this language.

Article 22.4 – please explain the logic behind excluding specific performance as a remedy against BPA, especially in this circumstance where BPA is our sole supplier and transmission provider. It does not strike us as an equitable provision.

We ask that this provision be removed.

Article 23.3.5 – there appears to be a scrivener's error in the sixth line of the last paragraph of this article. It appears the reference to "the last two sentences of the preceding paragraph" probably should be to the last "three" sentences.

We will be looking forward to your prompt response. Please do not hesitate to call or email me if you need any more information or would like to discuss these issues.

Sincerely,

Bill Prentice

