



Department of Energy

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

POWER SERVICES

November 9, 2009

In reply refer to: PS-6

William H. Prentice
Attorney
AterWynne LLP
1331 NW. Lovejoy Street, Suite 900
Portland, OR 97209-3280

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ATER WYNNE LLP

Dear Mr. Prentice,

Thank you for your September 30, 2009 letter on behalf of the Public Utility District No. 1 of Jefferson County (JPUD) and its request for service from BPA. You have provided a brief status of JPUD's status and efforts taken towards forming an electric utility and in meeting BPA's Standards for Service. As you are aware prospective utility customers must meet BPA's Standards for Service (SFS) indicating that JPUD is ready, willing and able to take power from BPA prior to actually receipt of service. One purpose of this letter is to respond to the information your letter provided and inform you of additional work needed to meet the SFS. As soon as JPUD meets the BPA SFS and signs a BPA power sales contract, JPUD will become eligible to purchase PF power. In addition this letter discusses service under the Regional Dialogue Contracts which require binding notice under BPA's Tiered Rate Methodology (TRM) for specific rate treatments and service under Subscription Contracts for PF service prior to Fiscal Year 2012.

STANDARDS FOR SERVICE

The following discusses each component of the SFS based on the information provided in your letter:

- 1. Legal formation of JPUD:* We understand from your letter that JPUD has been "in existence for several decades providing water and sewer service" and you believe it is in compliance with this requirement. BPA requests that it receive a letter from JPUD itself requesting service. Normally, BPA also requests that a potential customer provide a copy of its articles of incorporation and by-laws, and information on its organization and officers as a matter of record. When an election for formation is required, the certification of the election by the Secretary of State where the formation took place is required. Since JPUD has been organized and in existence for some time as a water and sewer service PUD, BPA will not need the above information but requests the ordinance or resolution evidencing action of the board of JPUD that authorizes actions for the provision of electric service.

2. *Ownership of Distribution System within a reasonable time:* BPA understands that JPUD is in the process of acquisition by negotiation of a retail distribution system from Puget Sound Energy (PSE) for the area that JPUD intends to serve and is making progress. From your letter negotiations for a purchase are ongoing and as an alternative JPUD has the right to institute a condemnation proceeding under Washington state law to obtain the system. You estimate that a purchase agreement negotiation may be concluded in 6 months or up to nine months if condemnation is necessary. BPA requires that a public utility customer own its distribution system and have a plan of service in place prior to BPA selling federal power to the utility. Having a retail system with points of delivery known to both parties is a key component of being ready and able to take power for resale to the public and must be in place before the commencement of power deliveries.
3. *General Utility Responsibility:* We generally understand that JPUD has the responsibility to provide water and sewer service within the area it serves in the State of Washington. For our records, please provide a state law authority citation and any relevant board action by ordinance or resolution which defines the responsibility of JPUD to provide electric service within its service area.
4. *Financial Ability to Pay:* Again we understand that JPUD has been providing service for water and sewer for some time and sets rates to do so. The BPA power sales contract contains a provision that obligates a customer to raise retail rates to assure cost recovery for BPA service. Additionally public utility and cooperative customers are required by statute to allow BPA to review retail rates if requested. Please provide us with the appropriate state law authority citation and the relevant ordinances and resolutions of the board that establish rates, and billing and metering systems for electric service.
5. *Ability to perform utility functions:* We understand that JPUD already has in place certain systems for billing and metering water and sewer services and you state that these are being expanded for electric service. Above we requested the actions of the board in this regard for our records. Additionally to meet BPA's SFS the utility customer has to have arrangements or measures in place to assure operation and maintenance of their distribution system. This can range for hiring additional staff and crews to perform such function or contracting with other utilities for maintenance functions. Your letter states that JPUD is exploring such arrangements. We understand that expansion of JPUD's billing and metering functions may not be a significant hurdle but showing the ability to maintain and operate the distribution system when acquired from PSE is an important component of demonstrating that JPUD is able and ready to take power from BPA.
6. *Power Purchases in wholesale amounts:* BPA is a wholesaler of federal power and generally does not sell to individual retail consumer load except for certain specific Section 5(d) loads of Direct Service Industry. BPA has defined wholesale quantities as sales of at least 1 annual average megawatt. JPUD estimates that its average load is expected to be some 39 average megawatts. With this amount of load JPUD meets this

standard of service. Since load information is important for several functions under BPA's contracts this information will need to be updated prior to service commencing.

Next Steps to meet the SFS: JPUD has taken several steps in meeting BPA's SFS and appears to be well positioned to become an eligible customer of BPA. It has already met or can meet with additional information several SFS requirements. However, JPUD also has to complete the significant step of acquiring a system and arranging for operations, maintenance and a plan of service. At this time BPA cannot consider JPUD as a qualified customer but will await the information and completion of the processes in which JPUD is engaged prior to making its determination. You stated another purpose in your letter of providing a binding notice which is addressed below.

SERVICE UNDER REGIONAL DIALOGUE CONTRACTS (FY 2012-2028)

As noted in the previous section once you have met the SFS and signed a BPA power sales contract you become eligible to purchase PF power from BPA. The binding notice required under BPA's Tiered Rate Methodology affects the rate or rates under which your power will be provided but in no way affects JPUD's eligibility to purchase power from BPA for service to its retail load. Your September 30, 2009 letter does not meet the definition of binding notice required under BPA's Tiered Rate Methodology (TRM).

The TRM establishes how CHWMs will be calculated for both existing and new customers. Under the TRM all public customers that become eligible to purchase PF power after December 1, 2008 will have their CHWMs calculated through the procedures for new publics under described in section 4.1.6. Your analysis that a binding notice for a CHWM will not be necessary in your circumstances is incorrect as the TRM in section 4.1.6.2 requires that a binding notice be given to BPA "by the earlier of three years before the date on which service to the New Public at Tier 1 Rates is to begin or July 1 of the Forecast Year to receive a CHWM for the next Rate Period." The TRM also provides that before the binding notice may be given a new public utility like JPUD is required to meet BPA's SFS. As demonstrated above JPUD has not yet met the SFS, including the requirement to own the distribution system needed to serve JPUD's retail consumers. Because of the minimum three year binding notice requirement, the earliest JPUD could receive a CHWM would be sometime in FY 2013, and only if such notice is prior to July 1, 2010.

Once JPUD has met the standards for service JPUD will be eligible to take actions that constitute a binding notice. As was noted in our face-to-face meeting with you September 22, 2009 an absolutely clear indicator that JPUD has met our binding notice would be the signing of a Regional Dialogue contract. In addition there are other actions that could be done after JPUD meets the SFS but prior to contract signature that would be considered binding. One example would be establishing a letter of credit that ensures that JPUD will make BPA financially whole in the event that a contract is not signed and BPA has incurred costs procuring power to serve JPUD that cannot otherwise be mitigated. The rates for PF power provided under a Regional Dialogue contract for utilities before they are eligible for a CHWM would be the subject of the

FY 2012-2013 rate case. These PF rates would apply to JPUD if it were to request firm power service prior receiving its CHWM.

SERVICE UNDER A SUBSCRIPTION CONTRACT (FY 2010-2011)

It is possible that JPUD could meet BPA's SFS and thus request a contract under section 5(b) of the Northwest Power Act for service from BPA prior to October 1, 2011. In that event, BPA would offer its current Subscription power sales contract, as it applies to sales of PF power in FY 2010 or FY 2011. The terms of service and rates for the Subscription contract differ from those of the Regional Dialogue contract and the TRM. The rate schedules applicable under the Subscription contract include a PF Targeted Adjustment Charge (TAC). I have included a copy of our latest WP 2010 wholesale power rate schedules for your reference. Depending on the circumstances at the time of the execution of the Subscription contract and requested service, the TAC charge could range from zero to an amount that recovers the increment between standard PF and the marginal cost faced by BPA.

Thank you for this opportunity to clarify the next steps required for JPUD to become eligible to purchase PF power from BPA. While JPUD has not yet met BPA's SFS and your letter is not a binding notice under the TRM, it is clear that JPUD is taking positive steps towards becoming a customer eligible to purchase power from BPA. To help JPUD work through the details of becoming a BPA customer I have appointed account executive Shannon Greene at (206) 220-6775. We at BPA look forward to continuing to work with you through the next steps of the process so that JPUD can bring the citizens of Jefferson County the benefits of federal power.

Sincerely



Scott A. Coe
Acting Vice President,
Northwest Requirements Marketing

Enclosure (2010 Rate Schedules)

September 30, 2009

Via Hand-Delivery

Mr. Steve Wright
Administrator
Bonneville Power Administration
905 NE 11th Avenue
Portland, OR 97232

Re: Public Utility District No. 1 of Jefferson County

Dear Mr. Wright:

This letter is being sent on behalf of Public Utility District No. 1 of Jefferson County (JPUD) in order to provide binding notice of its requirement to start receiving electric service from BPA to serve its retail load. In November 2008, the voters in Jefferson County, Washington, authorized JPUD to provide electric service. JPUD is pleased to inform you that the process to put that service in place is well underway. The timing of the commencement of service is still under negotiation. JPUD plans to start taking Subscription Service in the near term and anticipates executing a Load Following Contract pursuant to the terms of the Tiered Rate Methodology (TRM) before it goes into effect in October of 2011 (the start of BPA fiscal year 2012). The TRM requires JPUD to give a "binding notice" of its intent to start taking preference power. As indicated above, this notice is binding and should be treated as such. Our analysis, however, is that since the TRM will not be in effect for two years, and JPUD will have already been taking service, this requirement would not be necessary.

Bonneville Power Administration's (BPA) current standards for service were issued on January 13, 2000 (Policy). These standards are required by Section 5(b)(4) of the Northwest Power Act. There are six requirements in the Policy that must be met in BPA's determination of JPUD eligibility to purchase federal power. What follows is a brief analysis of JPUD's status with regards to the BPA Standards for Service.

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The purchaser must:

- Be legally formed in accordance with local, state, federal or tribal law;

As applied to Preference Customers, this standard “requires an applicant to demonstrate that all required steps under applicable local, state, Federal, or tribal laws have been taken to authorize its formation as a public body or cooperative.” (page 4) JPUD has been in existence for several decades providing water and sewer service, and is in compliance with this requirement;

- Own a distribution system and be ready, willing and able to take power from BPA within a reasonable period of time;

JPUD has the legal right to acquire Puget Sound Electric’s (Puget) facilities in its service territory as a result of the November 2008 election approving electric service. JPUD and its representatives are in active negotiations with Puget for the acquisition of Puget’s local facilities. The parties anticipate that an agreement can be reached, but, if not, then JPUD will file a condemnation action to determine the appropriate price of the Puget facilities and complete the purchase in that manner. The parties are working diligently to avoid the expense and disruption of a condemnation action.

The Policy provides that: “For newly forming public body and cooperative utilities, BPA must give the applicant a reasonable opportunity to achieve ownership, including time needed to finance the acquisition or construction of the necessary distribution. In general, public bodies have the power of eminent domain which allows them to acquire the distribution facilities of another utility through condemnation.” (page 5) It is JPUD’s good faith belief that an agreement will be reached in less than six months from the date of this letter, but, if a condemnation action is required, the transaction may not be concluded for an additional six to nine months.

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- Have a general utility responsibility within the service area;

By “utility responsibility,” the Policy means an obligation to serve and having the necessary systems and procedures in place to provide service and run the utility. The Policy clarifies the obligation to serve as follows: “any retail consumer may request and obtain service from the potential BPA customer, limited only by service area or geographic franchise allocation restrictions.” JPUD, of course, already has an exclusive service territory, understands its obligation to serve, and has been providing water and sewer service in its territory for decades.

General utility responsibility also includes: “hav[ing] obtained authorization to serve loads or areas prior to receiving Federal power from BPA for service to such loads or areas.” (pages 5-6) Washington law governing PUDs and the November 2008 election provide this authorization.

- Have the financial ability to pay BPA for the federal power it purchases;

This element of the Policy requires that “an applicant have the authority to collect money for the services it renders to its retail consumers – the ability to bill – and the applicant’s authority to sue and be sued.” In addition, it is required that “there is administrative staff that performs a billing and collection function.” (page 6) JPUD has had this authority for decades, and is actively putting the additional systems and procedures in place to handle electric service.

- Have adequate utility operations and structures;

The policy requires “that a purchaser have the ability through the operational and organization structure to perform utility functions such as metering, billing, operation and maintenance on utility facilities.” (page 6) As discussed above, these systems are already in place for the sewer and water service, and are being augmented for the provision of electric service. JPUD is also exploring the

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possibility of entering into interim agreements with neighboring PUDs and contract service companies to provide certain operating and maintenance services to give it time to hire and train its own staff.

- Be able to purchase power in wholesale amounts;

JPUD's 2012 load is expected to be 39 aMW, which qualifies as a wholesale amount, especially since it will be a full requirements customer. The Policy only requires purchases of "Federal power in wholesale amounts of one megawatt or more." (page 6)

We would like to arrange a meeting with the appropriate BPA personnel as soon as is convenient to discuss our compliance, provide some supporting materials, and discuss the next steps. We are looking forward to working with the BPA team. Please let me know when would be the earliest convenient time to meet and discuss bringing Preference Power to Jefferson County citizens. JPUD realizes that we all have a lot of work to do. JPUD is confident, however, that it will successfully bring the citizens of Jefferson County the benefits of public power in a cooperative, smooth and efficient manner.

Sincerely,



William H. Prentice
*Of Attorneys for
Public Utility District No. 1 of Jefferson County*

c: Shannon K. Greene, BPA
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