



Public Utility District No. 1 of Klickitat County

GENERAL MANAGER'S REPORT TO THE BOARD For the **February 13, 2024** Meeting

AGENDA ITEMS:

- A. Reject all Bids and Rebid- Dock Crew Bid 2024 through 2025 - Multiple incomplete bids were received and we are requesting to rebid the contract to include bid requirement clarification in the second call for bids.
- B. Conservation Loan and Vendor Deposit Contingency - Vendors involved in low-income projects are increasingly adopting a policy where they necessitate upfront materials deposits on low-income rebate projects, replacing the acceptance of the traditional practice of accepting a purchase order from us for the project as commitment of payment. Anita will provide her thoughts on how she feels we can mitigate the risk.
- C. Call for Bid- EE Clouse Substation Expansion - KPUD has a reimbursable agreement with Bonneville Power Administration to transfer load from BPA's Goldendale Substation to EE Clouse Substation. This proposed call for bid is for construction of the improvements, to include Schedule A (Substation Construction) and Schedule B (Transmission Line Construction), for which award could be made in part or whole as deemed necessary.

NON-AGENDA ITEMS:

- 1. Senate Bill 5919 Update - This is our carbon dioxide authority bill. It was unanimously passed out of the Senate and is on the way to the House. Interesting enough, Commerce asked that the bill include PUD authority to sell retail, not just wholesale. Something to think about. Vote was 49 – 0. It is scheduled for a hearing in the House Environment and Energy Committee February 15. I expect the same level of support.
- 2. US Government Columbia River System Operations Settlement Agreement - The Public Power Council formally filed the necessary legal documents reserving all rights. The filing is challenging whether BPA exceeded its authority in signing onto the settlement. PPC is not challenging the agreement itself, and can't. This is because the settlement agreement itself is NOT part of the ninth district court process. This agreement is between the plaintiffs (six sovereigns) and the defendant (US Government). The agreement has been filed with the ninth district court and Judge Simmons will rule to

accept or not, but BPA is not a part of the litigation. It is only a part of the settlement agreement. We believe that this action likely supports the BPA Administrator.

3. Legislative Definition of "Customer" - Last meeting Commissioner Miller asked if how "Customer" is defined in CETA legislation. The definition is actually established in California legislation that Washington State CETA legislation references. Customer is defined as "account". There is no clarification that I found regarding how aggregation of accounts would be treated. It is definitely not individual people at a residence.

FOR IMMEDIATE RELEASE

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Public Power Council Challenges BPA's Actions in Ninth Circuit Court of Appeals

Portland, Oregon – February 7, 2024 - Today, the Public Power Council (PPC) announced it has filed a Petition for Review in the Ninth Circuit Court of Appeals regarding a recently announced U.S. Government agreement that PPC and its members believe inappropriately binds the Bonneville Power Administration (BPA) to significant actions and commitments that are outside BPA's Congressionally-authorized mission and related obligations. PPC is leading this petition for public power in the Pacific Northwest, underscoring its commitment as the largest regional trade organization advocating for the interests of non-profit, public power utilities serving millions of citizens in both rural and urban communities across six states that rely in whole or in part on critical energy and transmission services from BPA.

The U.S. government agreement and accompanying Memorandum of Understanding (MOU) executed under the signature of BPA Administrator John Hairston on December 13, 2023 has raised significant concerns within the public power community. Despite far-reaching implications of such an action, BPA held no public stakeholder process to consider the MOU or solicit input from ratepayers and others who could be affected by BPA's future commitments through the signing of that MOU.

PPC's petition seeks to address critical issues surrounding the lack of transparency and accountability in BPA's decision-making process. Under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) and the Administrative Procedure Act, PPC contends that BPA's actions warrant judicial review to ensure compliance with statutory and regulatory standards.

"At the heart of our petition is the principle of transparency and fairness in BPA's decision-making process and regulatory proceedings," said Scott Simms, CEO & Executive Director of PPC. "BPA's failure to publicly disclose and explain the MOU and its terms under this U.S. Government agreement underscores the need for judicial oversight to uphold the interests of public power utilities and the communities they serve."

The petition also requests review of any preliminary, procedural, or intermediate agency actions that contributed to BPA's decision to enter into the MOU. PPC emphasizes the importance of scrutinizing the entire decision-making process to safeguard the integrity of regulatory proceedings, to obtain certainty regarding the financial commitments made by BPA, and to ensure transparency for the region's many stakeholders, especially as future agreements are negotiated.

PPC has witnessed how the Ninth Circuit, which has original jurisdiction to review BPA's actions, can provide meaningful guidance that benefits the entire region. Prior PPC appeals of BPA decisions have resulted in favorable court rulings that rejected BPA contentions that it has broad and otherwise unregulated authority to make contracts and to enter into settlements, and that this authority permits it to bypass the requirements that Congress has imposed with regard to power contracts under the Northwest Power Act. Following those cases, BPA engaged in more collaborative and consensus-driven public processes, which led to lasting and durable resolutions of contentious issues related to the Residential Exchange and sales to the direct service industry customers.

PPC's filing comes amidst a backdrop of growing concerns over the implications of the U.S. government agreement and MOU. Since BPA did not conduct any public process, stakeholders have yet to see any meaningful explanation from BPA of why it signed the MOU or how it plans to follow through on its commitments without violating its statutory obligations. With at least one petition for review filed, BPA must prepare and file its administrative record with the Ninth Circuit and explain its position in legal pleadings.

"As advocates for public power utilities, we are committed to promoting transparency, accountability, and fairness in regulatory decisions that all Northwest citizens deserve," Simms said. "Through this petition, we seek to uphold the principles of the Northwest Power Act and to protect the interests and rights of our members and their communities."

PPC continues to support scientific, cost-effective mitigation for operations of the federal hydro system. The purpose of this challenge is consistent with the concerns expressed in the December 22, 2023 bipartisan letter from members of the Washington delegation. PPC also recognizes that some of BPA's policy goals in the MOU are laudable, including fish and wildlife restoration and the development of new renewable resources by utilities, tribes, and others; however, the achievement of these goals must be done in a manner consistent with BPA's enabling statutes, including the NW Power Act.

In addition to seeking judicial review, PPC asks the Court to award reasonable attorney's fees and costs under the Equal Access to Justice Act and other applicable laws.

PPC expects that additional appeals will be filed. The next steps include: 1) BPA will file an administrative record, 2) parties will file legal briefs, and 3) oral argument will be held before a three-judge panel.

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About the Public Power Council

The Public Power Council, established in 1966, is an association that represents over 100 consumer-owned electric utilities in the Pacific Northwest. PPC's mission is to preserve and protect the benefits of the Federal Columbia River Power System for consumer-owned utilities, and is a forum to identify, discuss and build consensus around energy and utility issues. For more information, please visit us on the web at www.ppcpdx.org.