



November 29, 2006

Stephen J. Wright, Administrator
Bonneville Power Administration
Public Affairs Office – DKC-7
P.O. Box 14428
Portland, OR 97293-4428

Dear Mr. Wright:

RE: Comments on ColumbiaGrid’s October 25, 2006, Draft for Public Comment, Planning and Expansion Functional Agreement

Thank you for the opportunity to comment on whether the Bonneville Power Administration (BPA) should sign an agreement with ColumbiaGrid in substantially the same form as the October 25, 2006, draft-for-public-comment Planning and Expansion Functional Agreement (“Proposed Agreement”). The Public Power Council (PPC) appreciates Bonneville’s concern for its customers’ participation in reviewing an agreement on a subject of importance to the region.

Our short answer is “Yes,” Bonneville should sign the agreement. We do, however, express one concern, regarding access to information, which we hope will be satisfactorily addressed in the implementation of the agreement.

Balancing Principles of Effectiveness. Public power representatives have participated in the development of the Proposed Agreement from its inception—and even before. The subject of transmission planning and expansion has been an element of every regional transmission effort for the last ten years.

Those efforts have demonstrated that there are tradeoffs that must be made between centralized and de-centralized authority to plan and execute expansion of the transmission system (including non-wires decisions). The need for some centralization stems from the regional nature of the transmission system, which crosses utility and state and national jurisdictional lines. The need for de-centralized authority stems from the value of maintaining direct responsibility and local oversight of utilities as they fulfill their legal obligations to serve their customers. The sound proposal is the one that carefully balances these trade-offs.

We think the Proposed Agreement manages these tradeoffs well, recognizing that one can always point to a “downside” of any feature that balances two important principles (and an alternative downside if the balance is shifted). BPA’s “Risk Rewards and Treatments” matrix, contained in its October 27, 2006, letter calling for comments, is particularly helpful in this regard, pointing out important questions and concise but incisive answers.

The proof, of course, will be in the performance. PPC is optimistic that regional planning and expansion of transmission will improve over the status quo. If it does not, PPC will be analyzing why.

Backstop Authority. Take, for example, the issue of “backstop” authority. During development of the planning and expansion agreement, parties discussed whether what is now in the Proposed Agreement provides strong enough authority to “get things built,” in the event that a utility declines to fund or construct transmission that ColumbiaGrid says should be constructed. There was some interest (though never insistence) that transmission owners be contractually bound to honor the decisions of ColumbiaGrid, which would have transformed the organization into a more coercive regional entity.

On the other hand, there is evidence that “strong” RTOs have a poor record in this country, thus far, of getting transmission actually built. (*See*, for example, the attached graphic “Transmission Added in 2004,” which shows the Northwest as far and away the leader that year in transmission completed and the highly-centralized Eastern RTOs completing almost nothing.) Thus, there were corresponding concerns that if ColumbiaGrid were to *gain* more authority, participating utilities and their customers might *lose* responsibility and influence that are critical to getting infrastructure built and getting it built with effective cost-controls. So if ColumbiaGrid does not perform as well as hoped, we will be analyzing whether the problem is too little or too much centralization—or some other factor.

In fact, though, we hope and expect that ColumbiGrid will perform well. We think that the Proposed Agreement has struck an appropriate balance on the “backstop” issue, by preserving transmission owners’ underlying authorities and responsibilities, but enabling other parties to use the ColumbiaGrid record to persuade the Federal Energy Regulatory Commission or other relevant bodies to exercise *their* authority over an unwilling utility, where applicable.

We are just as concerned that *willing* utilities be able to get going in a regionally coordinated plan as we are that an unwilling utility might hold up a plan. The balance struck in the Proposed Agreement should allow willing parties and ColumbiaGrid to proceed expeditiously in both planning and getting facilities in the ground (including non-wires solutions). This balance has been key, we think, in enabling ColumbiaGrid to have moved so far so fast over just a few short months.

Need for Access to Information. The “record,” as well as ColumbiaGrid’s judgments based on that record, will only be as good as the processes that inform them. These processes will be robust only if there is broad participation *and* broad access to information relevant to critical decisions, enabling stakeholders to have confidence that the decisions are based on sound information. It is in this connection that PPC expresses its strongest concern with the Proposed Agreement—how “confidential information” will be treated.

The planning and expansion activities of ColumbiaGrid are imbued with the public interest, and yet ColumbiaGrid itself is a private entity not itself subject to regulatory oversight. ColumbiaGrid’s members, however, *are* utilities, subject to statutory obligations and regulatory oversight—and subject to the public processes that give their customers and other stakeholders access to information needed for effective review and advocacy.

If ColumbiaGrid is to enhance the public-interest obligations of its members, it needs processes that mesh well with the purposes and processes applicable to those members. Laudably, the Proposed Agreement aspires to an “open and transparent” process, whereby draft plans are posted, (certain) information is provided, and stakeholders have the opportunity to review and comment.

The definition of “confidential information,” however, could (but does not have to) frustrate the stated goal. The Proposed Agreement defines “confidential information” as follows:

1.10 “Confidential Information” shall mean: all information, regardless of the manner in which it is furnished, marked as “Confidential Information” at the time of its furnishing; provided that Confidential Information shall not include information: (1) in the public domain or generally available or known to the public; (2) disclosed to a recipient by a Third Person who had a legal right to do so; (3) independently developed by a Party or known to such Party prior to its disclosure hereunder; (4) information that is normally disclosed by entities in the Western Interconnection without limitation; (5) disclosed in aggregate form; or (6) required to be disclosed without a protective order or confidentiality agreement by subpoena, law or other directive of a court, administrative agency or arbitration panel.

Thus, unless the information is specifically or generally already non-confidential, any information gains confidential status simply if so-designated by the person providing it. This is the kind of default mechanism that can be employed too liberally, as it is easier to stamp a document “confidential” than to think through the pros and cons of making it

more readily available. In section 16.1, “Parties,” *i.e., signatories to the agreement*¹, are instructed to use “good faith,” when designating information as confidential, and those same parties can arbitrate the issue. The “good faith” commandment is subjective and difficult to enforce, however, and in any event, it asks only for compliance with the definition, which, as noted, may allow a lot of relevant information to be classified as confidential.

The Proposed Agreement provides a possible route to addressing this issue:

4.6 Third Person Access to ColumbiaGrid Data and Analysis.

ColumbiaGrid shall develop, and revise as necessary, policies regarding the provision of planning data or analysis to Third Persons *subject to the appropriate treatment of Confidential Information*, information relating to Standards of Conduct matters, and CEII; provided that ColumbiaGrid shall make clear on its Website and in other distributions that such data and analysis is being provided as is and that any reliance by the user on such data or analysis is at its own risk and, specifically, shall make clear (and shall require Third Persons receiving such data or analysis from ColumbiaGrid to enter into separate contracts agreeing) that any such data or analysis is not warranted by ColumbiaGrid or any Planning Party and that neither ColumbiaGrid nor any Planning Party is responsible for any such data or analysis, for any errors or omissions in such data, or for any delay or failure to provide any such data or analysis to such Third Person. (*Emphasis added.*)

¹ One reason PPC is concerned about access to information is that PPC itself appears not to qualify to be a “Party” or “Funder” of the Agreement, with the voice and rights that such a status may bring. Section 1.34 defines a “Party” as a “signatory to this Agreement.” Under Section 1.42, a “Planning Party” is “any Party other than ColumbiaGrid.” Under section 19.18, “Each Planning Party, upon its execution and delivery of this Agreement, represents that such Planning Party is a Qualified Person.” Under section 1.44, a “Qualified Person,” is “(i) a Person that operates or proposes to operate an Electric System in the Pacific Northwest or (ii) a Person that has an obligation under state, provincial, or federal law to engage in transmission planning or expansion activities for the Pacific Northwest.” Since PPC does not fit under (i) or (ii), PPC does not appear to be a Qualified Person and so cannot be a Party (or Planning Party).

Provision is made, however, for a consortium of Planning Parties to join together as a “Funder.” Under Section 1.19 “Funder” means “each Planning Party; provided that a consortium of similarly situated Planning Parties, none of which operates a control area, may elect at the time they enter into this Agreement to be designated as a single Funder and shall thereby become jointly and severally liable for the Funding Cycle fixed payment amount (of \$50,000) pursuant to section 8.4 and the New Funder fee (of \$10,000) pursuant to section 8.8.3; provided further that each such Planning Party shall otherwise be a separate Planning Party under this Agreement.” Because PPC’s members include utilities that both do and don’t operate a control area, PPC does not appear to be eligible to become a Funder, even if all of its members become Planning Parties. Given the eligibility and stake of its members in the Agreement, PPC, as a “Third Person” would like to find a meaningful way to assist its members—hence its concern with access to information.

The policies referred to are not yet developed. In developing them, ColumbiaGrid will need to strike a careful balance. ColumbiaGrid will want to encourage utilities, generators, and transmission-builders to submit relevant information, and protecting sensitive information may help in that regard. On the other hand, ColumbiaGrid should want to provide as much information as possible to those who have a strong interest in ColumbiaGrid's decisions, including "Third Persons" (*i.e.*, non-signatories to the agreement) representing those who will ultimately pay for those decisions, if implemented. If it does not provide this information, the decisions will be neither as sound nor as trusted as if the information supporting the decisions is subject to genuine scrutiny. Further, forcing Third Persons to wait until a governmental regulatory process is underway runs the risk of controversies arising that potentially could have been resolved much earlier, and which could delay or even undo ColumbiaGrid's work.

The answer would seem to be first, that ColumbiaGrid should release as much information as possible as early as possible without jeopardizing the integrity of the process or the sensitive interests of parties providing the information. Second, ColumbiaGrid should explore the feasibility of enabling Third Persons to sign confidentiality agreements in order to review certain confidential information. These confidentiality agreements could contain narrow restrictions on who is able to review the information and financial liability for failure to adhere to them. Additionally (or alternatively), these policies might provide for a subset of Parties (signatories to the agreement) to allow a designated entity (such as PPC) access to the information under a confidentiality agreement.

PPC recognizes the complexity of this issue and is not making specific recommendations at this time. PPC would, however, appreciate the opportunity to participate in the development of these policies. PPC would also appreciate Bonneville's commitment to help ColumbiaGrid develop policies on access to information that are consistent with the broad interests of Bonneville's customers and consistent with the goal of expeditious planning and expansion.

Conclusion. PPC has reviewed the Proposed Agreement and believes that if implemented in a manner consistent with its goal to be open and transparent, it stands a promising chance to serve the region well. We recommend that Bonneville sign the agreement.

We look forward to continuing to work with you on transmission improvements.

Sincerely,



Marilyn Showalter
Executive Director