

Case Study
On the Formation of
Umpqua Indian Utility Cooperative
A Tribal Utility
Formed by the
Cow Creek Band of Umpqua Tribe of Indians

By

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Introduction and description of the UIUC accomplishment

On October 1, 2001, the Umpqua Indian Utility Cooperative, UIUC, began serving the wholesale electrical loads of the Cow Creek Band of Umpqua Tribe of Indians at their casino and truck stop developments near Canyonville, Oregon. About 2.5 megawatts of power purchased from the Bonneville Power Administration is distributed by UIUC.

About eight other tribal utilities operate in the United States. A few were started and developed by the U. S. Bureau of Indian Affairs and are now managed by tribal governments. A few were developed during a casino development project. A few were built from the ground up to serve tribal members on reservations. A few are “virtual utilities” that contract for power and serve administrative needs of existing service providers. UIUC is the first to acquire existing utility infrastructure and begin operation with a different power supplier. Many tribes are considering this option as they negotiate for allocations of federal hydro power or as they seek to lower their costs or attract other energy businesses.

Tribal background, goals and philosophies

The Cow Creek Band of Umpqua Tribe of Indians was not a federally recognized tribe until the 1990s. The Tribe always lived in the area off the central Oregon coast. In the 1800s Tribal members were disbursed by settling homesteaders. Seven families continued traditional ways, and came together over the years to meet, celebrate, and honor their traditions. These seven families eventually became integrated into the community, but always kept their identity. The Chairperson of the Tribe, Sue Shaffer, remembers the seven families coming together in her childhood family kitchen. Notes and records remain of these meetings, and that documentation assisted the Tribe in proving to the U. S. Department of Interior that the tribe has been a consistent Indian community since before the white settlers.

The Cow Creek consider themselves part of their community at large, and strive to remain a community asset for all people. They work with the local cities and county on numerous projects, and are proud of the fact that they are one of the area’s largest employers. The beautiful Seven Feathers Casino and Resort,

named after the seven families that kept their traditions alive, contains a beautiful hotel and a number of wonderful restaurants, and is a welcoming local center for entertainment and draws visitors from long distances for conferences and meetings.

The Tribal utility is one way the Tribe can continue to keep its costs down and to protect and exercise its sovereign status, while taking responsibility to self-provide critical electrical infrastructure. It is a way for the Tribe to diversify its business interests for the Tribal members and for the local community.

The Legal Context of Tribal Utility Formation and Regulation of Utilities on Indian Reservations

The Federal Power Marketing Administrations, including Bonneville Power Administration in the Pacific Northwest, and Western Area Power Administration in 15 other Western states, define Indian Tribes as “preference customers”¹ eligible to receive inexpensive, cost based, hydroelectric power from federally owned dams in the Western United States. Customers of both Bonneville and Western are considering the formation of tribal utilities to cut costs, and exercise their sovereignty.

Bonneville Power has the legal obligation to stand ready to serve all the fluctuating wholesale electrical needs of preference entities who apply for power². Therefore, Bonneville Power requires tribes to form utilities to be eligible to receive electrons and become customers. Western Area Power, on the other hand, determines who its customers will be every twenty years or so in “Power Marketing Plans”³ created and published through a Federal Register notice and comment process. These plans divide the limited power available to Western among applying preference entities in the complete discretion of the Administrator. Most of Western’s customers receive about 25% of their power from Western, and must find other wholesale sources for power to serve the remainder of their loads. Western, therefore, determined that tribes need not

1 Preference is given to public bodies and cooperatives (not for profit), not to investor owned (for profit) utilities under the Power Marketing Administrations’ authorizing legislation, *supra*.

2 Bonneville’s governing statutes include the Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839-839h; The Pacific Northwest Federal Transmission System Act of 1974, 16 U.S.C. 838-838k; The Flood Control Act of 1944, 16 U.S.C. 825s; The Bonneville Project Act of 1937, 16 U.S.C. 832-832m; and the Federal Power Act, 16 U.S.C. 824k(i).

3 Western Area Power Administration’s governing statutes include the Reclamation Act of 1902, 33 Stat. 814, 43 U.S.C. §§ 391 et seq.; the Flood Control Act of 1944, 16 U.S.C. §§ 825s; and the Department of Energy Organization Act of 1977, 42 U.S.C. § 7101 et seq., 91 Stat. 565, as well as other acts particular to specific river basins and dam projects within Western’s service area.

form utilities to become customers, but they could receive the benefit of their federal power allocation if Western delivered this low cost power to their current service providers, who could then lower the rate to tribally designated beneficiaries, or under some other delivery mechanism not deemed to be a prohibited resale of federal power.

The Cow Creek Band of Umpqua Tribe of Indians desired to form a utility in Bonneville's service territory. Cow Creek was served by an investor owned utility, who is not a Bonneville preference entity. Therefore the Tribe had to create a cooperative or public utility to receive the benefit of federally generated power.

A first step was determining the jurisdictional authorities for formation of a utility on tribal lands. There are three possibilities for jurisdiction of any particular reservation action: federal, state, or tribal. All utility actions within federal jurisdiction fall under regulation of the Federal Energy Regulatory Commission. For Cow Creek, any actions under state jurisdiction would be governed by the Oregon Public Utilities Commission. Any actions under tribal jurisdiction would be governed by the Tribal Constitution and Tribal laws. While a Tribal Constitution with very specific powers and authorities was in place, Tribal laws for utility formation, operation, and regulation did not exist. The drafting and Tribal Council approval of appropriate laws was a part of the utility formation process.

Under the Commerce Clause of United States Constitution, federal jurisdiction generally exists over state-to-state transactions, and state jurisdiction exists over transactions within a state, unless federal law preempts state law. Tribal jurisdiction exists within tribal reservation boundaries, unless federal jurisdiction exists, or unless Congress has granted states the right to regulate a matter or unless under a complex balancing of state and tribal interests, the state interest is shown to be greater.⁴ Because electricity is by nature interstate, since it flows across the entire electrical grid, the Federal Power Act⁵ defines the split between federal and state jurisdiction over electrical matters. Tribal jurisdiction is not specifically referenced in the Federal Power Act.⁶

4 *Worcester v. Georgia*, 31 U.S. 515 (1832) originally set forth the premise that states do not have jurisdiction on tribal lands. However, this rule has been limited by rulings in other cases, including *Montana*, 450 U.S. 544 (1981); *Cotton Petroleum Corporation v. New Mexico*, 490 U.S. 163 (1989); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Atkinson Trading Co. v. Navajo Nation*, 532 U.S. 645 (2001); and *Nevada v. Hicks*, 533 U.S. 353 (2001).

5 16 U.S.C. §§ 800, et seq.

6 However, FERC has determined that under the Federal Power Act, Tribal electrical business are not subject to FERC jurisdiction, see *Sovereign Power, Inc.* 84 FERC 61, 014, Docket No. ER98-2995-000, Order Disclaiming Jurisdiction, July 13, 1998.)

Under federal and state regulations, the particular facilities and utility actions taking place on the Cow Creek's existing utility system had been determined either to be federal or state jurisdictional. These facilities and actions are referenced in the many federal and state filings the serving utility must complete. For example, the Oregon PUC traditionally set retail power rates based on the infrastructure, utility costs and loads, including those on Tribal lands. The Federal Energy Regulatory Commission watches over all wholesale power contracts, and requires open-access transmission on all high-voltage electrical transmission facilities, and any facilities (even lower voltage facilities) serving wholesale loads. As a tribal entity we assumed all actions previously federal would stay federal, and other actions relegated to state jurisdiction would be analyzed under relevant law to determine whether or not the Tribe would have jurisdiction.

Tribes have inherent sovereign authority on their reservations to regulate entities doing business on tribal lands as an essential attribute of Indian sovereignty; it is a necessary instrument of self-government and territorial management.⁷ Case law has limited this sovereignty when actions are within reservations, but not on tribal lands, such as on fee owned lands within reservations⁸, however, this limitation did not apply to the Cow Creek's utility formation action since all the facilities and loads under question were on Tribal trust lands.

A state's authority to regulate on Indian lands is limited⁹. In litigation between Indians and non-Indians arising out of conduct on an Indian reservation, resolution of conflicts between the jurisdiction of state and tribal courts has depended, absent a governing act of Congress, on whether the state

⁷ See *Montana v. U.S.*, *infra.* and *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982).

⁸ There, absent a treaty or federal law, a tribe has no civil regulatory authority over non-members, with two exceptions:

- A tribe may regulate the activities of non-members who enter consensual relationships with a tribe or its members through commercial dealing, contracts, leases, or other arrangements
- A tribe may retain inherent power to exercise civil authority over the conduct of nonmembers when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

See *Montana v. U.S.*, *infra.* and *Big Horn Elec. Coop. v. Adams*, 219 F.3d 944 (9thCir 2000). See also *Nevada v. Hicks*, 533 U.S. 353 (2001) Land ownership is one factor to consider when determining whether a state also has jurisdiction.

While this ruling has not been interpreted by the Federal Courts as regards jurisdiction over electrical utility matters within a reservation a strong case is made that both exceptions apply. First, utility companies have consensual relationships on the reservation by providing service, and by real and personal property rights agreements with the tribe and tribal members. Second, one can not regulate or exercise authority over utilities serving some parcels of land but not others because the same wires serve power to both. A tribe's economic security, political integrity and health and welfare depend on basic infrastructure and services such as utility services.

⁹ See Note 4.

action infringed on the right of reservation Indians to make their own laws and be ruled by them.¹⁰ We determined, and the State of Oregon did not disagree¹¹, that any State law that conflicted with a Tribal law regarding utility matters on the Cow Creek Tribal trust lands would infringe the right of the Tribe to make laws and be ruled by them¹². With these rules in mind, and considering that all potential utility facilities exist on Tribal trust land, it was clear that the Tribe, not the State of Oregon had jurisdiction over utility activities on those lands.

BPA Context –Subscription and Standards for Service

All of Bonneville Power Administration's long-term contracts with its customers were to expire in 2001. Traditionally, Bonneville wholesale electric power rates have been considerably below market wholesale power rates¹³. However, in the late 1990s their costs had escalated and there was some concern that Bonneville rates would be higher than the market. Bonneville was at risk of losing its customer base and ability to repay its debt to the U.S. Treasury. Bonneville held public meetings, called "Subscription", throughout 1998 and 1999 to determine the terms and conditions under which its power would be sold, and to entice its customers to stay with them. Tribal entities participated in the Subscription process to assure tribal access to Bonneville power¹⁴. Bonneville also held a rate case¹⁵ to establish its rates for 2001-2006. While the Subscription process was ongoing, it became apparent that Bonneville rates would in fact likely be below market levels and there would be plenty of customers for Bonneville power. At the end of Subscription, a Record of Decision was published that gave all new customers a total of only 75 MW of

10 *Montana v. United States*, *id.*; *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997).)

11 At no time did the Cow Creek approach the State of Oregon to address the jurisdictional issue. To do so could have been seen as the tribe acquiescing to their authority. The existing service provider did, however, tell us that they informed the State Public Utility Commission of the actions of the Cow Creek Band of Umpqua, and the State accepted those actions as the proper jurisdiction of the Tribe.

12 However, since the state traditionally created its rate base with the Tribal facilities and loads included, we determined that Tribal actions would be taken with a consideration of the impacts to the existing service provider's loads and facilities that were being removed from their State governed rate base. The existing service provider was required to meet certain State obligations when any of their facilities are moved from their rate base. We wanted to properly accommodate the existing utility to assure that the transaction was not confrontational, but business-like.

13 Bonneville's rates are cost based, and the costs associated with hydropower do not include fuel costs.

14 Our appreciation goes out to the Spokane Tribe of Indians and the Columbia Intertribal Fish Commission for their participation in Subscription and their championing of tribal rights for all tribes in Bonneville's service territory.

15 Bonneville rates are set by formal hearing under 16 U.S.C. 839e.

power to apply for at its lowest preference power rates. Other customers needing power in addition to this 75 MW had to pay a higher market based rate.

The Subscription Record of Decision also set forth the requirements for new utilities. Many municipalities not served by Bonneville power were considering leasing the local utility facilities to serve their residents low cost federal power. If these municipalities would have been allowed to do so, Bonneville may have had more new customers than they could possibly serve with the existing federal resource.

Bonneville therefore did not change its policy to allow "virtual utilities" or those who did not own, operate and maintain their poles and wires and interconnection facilities. The "Standards for Service" adopted remained consistent with their previous policy of requiring their customers to be traditional utilities with the following characteristics: 1) be legally formed in accordance with local, state, Federal or tribal laws, 2) own a distribution system and be ready, willing and able to take power from BPA within a reasonable period of time, 3) have a general utility responsibility within the service area, 4) have the financial ability to pay BPA for the Federal power it purchases, 5) have adequate utility operations and structure, and 6) be able to purchase power in wholesale amounts.

Existing facilities and choice of the loads to serve

The Cow Creek do not have a "reservation". The term "reservation" is a historical federal term for U.S. territorial lands that were "reserved" from other uses, such as homesteading, either for specific federal, military, or Indian purposes. The Cow Creek Band of Umpqua Tribe of Indians was not a federally recognized tribe until long after lands were "reserved" for tribes and subsequently taken or parceled out by Congress. Instead, Cow Creek, upon its recognition in 199_, purchased properties for development in the general vicinity of Canyonville, Oregon. Since then, other properties have been acquired. Some are developed by the tribe, and some have existing businesses or homes that are leased out by the Tribe. Many of the lands are vacant.

To determine which loads should be included for utility service, the Tribe conducted an analysis of the existing large loads using information from their current service provider and from utility bills. There were at least five loads at the Seven Feathers Casino and Hotel complex. All the loads were Tribal, but separate meters monitored and separate bills came for each of the loads, making them separate loads. It was determined that these loads were sufficient and consistent enough to allow the Tribal utility to buy power in wholesale quantities

(at least 1 MW). The distribution facilities to these five loads were of manageable size and were all on Tribal property. It was also assumed that the Truck and Travel center under development, which was to have two large loads: the restaurant and the store, and a number of smaller loads: truck mechanics shops, a truck wash, and a number of offices, would be a good customer base for the Tribal utility. The Tribe determined that other tribally owned lands, while eligible for service, were too far from the initial service area for economic acquisition of facilities, and were not needed for service.

The Tribal utility service area now covers two main areas, the casino and hotel complex, and the Truck and Travel center across Interstate 5. When the utility formation was taking place, the Truck and Travel center was under extensive renovation, so new utility distribution facilities were constructed and interconnect to the older utility distribution facilities at the casino and hotel complex. As other development occurs, the Tribe will look at the development on a case-by-case basis to determine whether the Tribal utility will serve the load or whether to connect the load to other service provider's facilities.

Creation of Tribal legal and regulatory requirements

After the Standards for Service were published, the Cow Creek had a limited amount of time to meet the standards and apply to become a new Bonneville customer. Most of the standards could be met by creation and implementation of Tribal laws. The Tribal laws legally formed the utility and provided its management and operational and rate setting structure within the Tribal government. The laws assisted the Tribe in being able to acquire the existing distribution system. The laws created utility standards and a general utility responsibility for the service area. Lastly, the laws clarified sovereign immunity issues so Bonneville would have legal recourse against the Tribe if payments were not made for power, and so the utility would have legal authority to pursue claims against it. A detailed Tribal code was drafted, redrafted, and then approved by the Tribal Council. [A copy of the code is attached as Exhibit A to this case study].

Because the Tribal Council was fully supportive of the efforts to form the Umpqua Indian Utility Cooperative, or "UIUC", and the Tribal staff was engaged in the process with an attitude of cooperative determination, the internal issue of utility formation and issues of drafting and passing the Tribal legal code went very smoothly.

The more challenging issues were 1) whether the Tribe could either negotiate for or require its serving utility to sell them the utility facilities on Tribal

lands¹⁶, and if so, 2) whether the existing utility company would provide the intermediary transmission service between the wholesale Bonneville system 30+ miles away, and UIUC distribution utility service.

The existing serving utility has an internal policy that none of their facilities are for sale. Therefore, we did not have the option of negotiation for the facilities. A legal taking, or condemnation was the only option. The existing service provider was, however, cooperative and all activities were amicable. A company representative was interviewed by the Associated Press for a news article after UIUC was operational. The spokesperson stated that they understood the tribe's right to sovereignty, and conversely, the tribe understood their responsibility to their customers and shareholders.

Because the United States holds title to Indian lands and real property in trust for tribes, any condemnation of *real property* was required to be instituted by the United States Department of Justice on behalf of the Tribe. However, any acquisition of *personal property*¹⁷ was within Tribal jurisdiction. Whether property is real property or personal property is determined by the law of the place where the property is found, therefore, the Tribe passed a law stating that utility facilities which are not subject to real property agreements are deemed to be personal property. The utility facilities were not subject to any real property agreements.

Next, another Tribal code, this one establishing an eminent domain, or condemnation process for personal property on the reservation was established. The procedures and standards in the tribe's condemnation law are similar to the procedures and standards in federal condemnation law and procedure. The condemnation law grants the tribe the authority to condemn personal property under the Tribe's Constitution, and provides subject matter jurisdiction over condemnation cases in the previously established Tribal Court system. The law, however, is thereafter mostly a procedural law which instructs the tribe in filing procedures, and the tribal court clerk in responsive actions. Upon appropriate filing of the action and payment of estimated just compensation under Tribal

16 Often, when utilities build new lines to new homes or businesses, they require the new customer to pay for the installation of the lines. All Tribes should have regulations on their books that state that any such upgrades paid for by the Tribe are owned by the Tribe, and as a condition of using the lines the utility company is required to operate and maintain them. Other times, utility rules and policies (called line extension policies) allow the utility to add new facilities to their rate base without charging the customer, but simply including the cost of the new infrastructure in the existing rate base.

17 Real property is land and land rights. Personal property is a thing that can be owned. Infrastructure on land is sometimes considered real property and sometimes it is not. For example a house is usually real property and a "Tuff Shed" is usually personal property.

law, just as under Federal condemnation law, the facilities automatically become the property of the Tribe.

The only issue after transfer of the facilities was whether the check for estimated just compensation for the facilities, which was filed with the action, would be accepted by the previous owner of the facilities as just compensation. The value of the facilities was fairly easy to estimate and not controversial, as all the facilities were listed, and were identified as standard electrical distribution technology. They were fairly new facilities in good condition. The previous owner did not dispute the estimated just compensation in Tribal court, but cashed the check with its restrictive endorsement, completing the eminent domain action.

In addition to the facilities acquired, the Tribe hired an engineering company to design and build out additional distribution facilities to the Tribal utility loads at the new Truck and Travel center across Interstate 5 from the existing Casino and Hotel complex. The acquired distribution facilities, and the newly constructed facilities, most of which are underground, make up the distribution system owned by the Tribe. The system was transferred to the Umpqua Indian Utility Cooperative upon its creation.

With regard to the second question, whether the existing utility would agree to “wheel” the power between Bonneville’s system and the UIUC system, the issues was resolved under Federal law and policy. Because the UIUC system is a wholesale power provider, meaning they provide service to more than one load and purchase power in bulk from a wholesale provider, they are entitled to the open access use of the “transmission system” of the intermediate utility to serve their wholesale loads. Even though parts of that “transmission system” are a very low voltage of 12 KV and were previously considered State jurisdictional distribution before the formation of UIUC, it became “transmission” under Federal jurisdiction for purpose of open access wheeling of Bonneville power to a wholesale customer. Should the service provider have refused to provide wheeling, UIUC could have filed an action under the Federal Power Act and under FERC Order 888 rules¹⁸ with the Federal Energy Regulatory Commission to require the transmission service.

Economic analysis methods

The main Tribal goal in establishing UIUC was to create a cost savings for the Tribe. Therefore, early in the process, financial models were created to

¹⁸ 18 C.F.R. § 35.28.

compare the existing utility costs to new utility costs. At every step of the way, when financial assumptions were clarified, or if costs changed, the models for Income Projections and Proforma Cash flow Statements were run to make sure the financial goal was likely to be met.

Under the financial models, utility costs were measured by kilowatt hour¹⁹, a common method of measuring utility costs, and often the unit used to describe utility rates (the existing utility rate for the Cow Creek Tribal loads was an already low 4.85 cents/kwh). The costs per Kwh for both the existing service and the UIUC service were broken down into their components. The components included a demand charge²⁰, energy charges for high load hours, energy charges for low load hours²¹, load variance rate²², transmission charges²³, ancillary services charges²⁴, operation and maintenance charges, administrative charges, and debt service.

Throughout the utility formation process our assumptions for both Bonneville rates and the existing service provider's rates were just that-*assumptions*. While the existing utility retail rates were known, the company was petitioning for rate increases due to the massive confusion in the utility markets in 1999 and 2000. Bonneville's power rates are set for 5 year periods, and their rate case for the first part of our 10 year contract period was not completed until very soon before our contract had to be signed. Then, due to the severe drought affecting the Pacific Northwest hydroelectric capacity, and the energy market issues, Bonneville upwardly amended its rate filed before the Federal Energy Regulatory Commission. In addition to the amendment, the rate has three "Contract Rate Adjustment Clauses" which could raise the rates upon certain contingencies during the 5 year rate period. Bonneville's transmission rate case was also underway; making the delivery costs an unknown.

19 A kilowatt hour (Kwh) is enough electric power to keep ten 100-watt light bulbs (1 Kilowatt) on for one hour.

20 A demand charge is the portion of a wholesale rate that usually pays for the capital infrastructure of generators. This is a set fee per month, but can be estimated to cost a certain amount per Kwh.

21 Energy charges are the commonly the portion of a wholesale rates that pays for the fuels, etc. necessary for the creation of electricity. The energy charge is greater when more electricity is purchased. Electricity is priced differently if it is purchased on a heavy load hour or "on-peak" (when there is more call for electricity and more generators are running) and if it is purchased on a light load hour, or "off-peak" when there is less call for electricity and more generators are available.

22 This is part of the Bonneville power rate structure.

23 This is the payment to use both the Bonneville transmission system and the transmission system of the intermediate service provider. As is its custom under contracts called "General Transfer Agreements" Bonneville usually does the negotiating for all the transmission needs of its customers to serve federal power to the load. While UIUC does not have a traditional General Transfer Agreement, Bonneville negotiated wheeling service to our load on our behalf.

24 These are charges for power and actions needed to support the transmission system stability.

The Tribal Council, however, did not waiver in its support for the Tribal utility. Historically, the Bonneville rates have been well below the market rates, and Tribal leadership had faith that the rates would remain stable, or at least no more unstable than the alternative service providers. As a Tribal utility, the Tribe would have a greater voice in decisions and a new avenue to participate in those decisions. Right before the contracts were to be signed, the rates were finally set, showing a cost savings to the Tribe.

Meeting the Standards for Service

A question of timing arose during the utility formation process. Technically, if the existing service provider was not bound by state utility rules, and if the Tribe did not have any utility rules, the existing utility was totally unregulated. If the existing service provider wanted to play hard-ball, they could have decided to shut down all service to the Tribal facilities as a negotiating tool. To avoid this concern, the first action taken by the Tribal Council was to pass a Resolution requiring continuity of utility service by existing providers, except for emergencies, until the franchise for utility services was changed. Penalties for intentional service interruptions were set to enforce the rule. This rule allowed the Tribal Council to set the date for the switch-over of service to UIUC.

After passage of that Resolution, and later passage of the Tribal Utility Code and the Tribal Condemnation law, the Tribe appointed the Utility Board (who initially was the Tribal Council) and management for the utility, who then began making utility formation decisions. After the condemnation action was complete, an RFP was issued for maintenance and operational assistance of the new utility. During all this time, the existing service provider continued to provide service. After the maintenance contractor was chosen, and utility staff was in place, the utility was ready for operation.

Throughout the process, Cow Creek, and then UIUC kept in close touch with Bonneville. The Tribe had to be sure their actions would likely meet the Standards for Service, and that we would be offered contracts for power and transmission²⁵. Bonneville staff was very helpful in providing guidance regarding the Standards. UIUC worked with both Bonneville's Power Business Line, to assure the Standards for Service were met; and the Transmission Business Line,

²⁵ In the event we did not meet the Bonneville Standards for Service, we could have either postponed the in-service date or we could have purchased wholesale power elsewhere, probably from the existing service provider and therefore kept the lights on. However, the costs of doing this were unknown.

to assure that our facilities and meters were compatible to the Bonneville system, and acceptable under the Bonneville Transmission Tariff²⁶.

Six months prior to the earliest date the contracts could go into effect, Bonneville required all potential new customers to send them a Letter of Intent to purchase preference power from Bonneville, describing their utility formation activities. The Letters of Intent were taken on a first-come-first-served basis in order to receive a share of the available 75 MW. We were informed soon after our submission that we had made the cut, along with one other tribal utility and one municipal utility²⁷, and we would receive a share of the 75 MW. We were required within 3 months to sign a Contingent Power Sales Contract with Bonneville, and to finalize negotiations of a Transmission Contract. Negotiations were successfully completed and the Contingent contract and the Transmission contract were signed. Then, in order to show that all contingencies in our contract were removed, we had to prove that the Standards for Service were met.

Approximately three weeks prior to the first available in-service date, we sent our Bonneville Power Business Line Account Executive a binder of documentation demonstrating that we met the Standards for Service. UIUC showed that it was legally formed under tribal laws, that we owned a distribution system, that the tribal laws gave UIUC a general utility responsibility in the service area, that we had the financial ability to pay Bonneville for power and services with an established bank account and related accounting and billing systems, that we had a maintenance contract and hired appropriate utility staff, and that our loads were sufficient to purchase power in wholesale amounts. We also showed that we had signed a Network Integration Transmission Service Agreement with the Bonneville Transmission Business Line.

Bonneville agreed that we met the Standards and service was set to begin on October 1, 2001. On midnight of that day, service transitioned without as much as a flicker of lights in the casino.

Conclusion

UIUC has now joined a number of regional utility groups including the Oregon Rural Electric Cooperatives Association and the Oregon Electric Cooperatives Managers Association. The General Manager is a member of

²⁶ Bonneville's staff and management were very helpful in the utility formation process and we appreciate and acknowledge their assistance and guidance.

²⁷ The other tribal utility signed a Contingent Contract and is working toward meeting the Standards for Service. The municipal utility also condemned their local distribution system and is now an operational Bonneville customer.

Bonneville's "kitchen cabinet" a non-decision making advisory group to Bonneville Power Administration. UIUC will be eligible to become a member of RTO West, the new Regional Transmission Organization mandated by the Federal Energy Regulatory Commission to oversee the high-voltage power transmission system in the Western United States. The input of tribally owned utilities is important. The utility industry and the federal and state regulators are just now understanding that Indian tribes have sovereign rights on their lands and that many energy rights-of-way and energy generation facilities and hydroelectric facilities cross or impact Indian lands and cultural resources. To avoid issues with tribal governments, tribes should be part of up-front planning efforts and not just an afterthought. Tribal invitation to participate in utility industry efforts is the open door to cooperation and effective energy projects.