JOINT COMMENTS OF THE NT CUSTOMER GROUP REGARDING SELLER'S CHOICE, PREEMPTION AND COMPETITION, AND SHORT-TERM *DE MINIMIS*

These comments are submitted to the Bonneville Power Administration ("BPA") on behalf of the Eugene Water and Electric Board ("EWEB"), Northwest Requirements Utilities ("NRU"), PNGC Power, and Western Public Agencies Group ("WPAG") (collectively, the "NT Customer Group") regarding the following issues relating to the terms and conditions of the transmission service BPA provides to customers taking its Network Integration Transmission ("NT") Service:

(1) Seller's Choice;
(2) Preemption and Competition; and
(3) Short-Term *De Minimis*.

These comments are being submitted simultaneously in response to the BP-22/TC-22/EIM Phase III Workshop of May 19, 2020 and the Short-Term *De Minimis* Update Workshop of May 29, 2020.

A. Seller's Choice.

For the NT Customer Group, Seller's Choice was an important element of the TC-20 Settlement. It was our expectation that Seller's Choice would provide NT customers with a vital alternative to hourly firm to deliver Mid-C market purchases to their load on firm transmission. This was significant to the NT Customer Group for two reasons.

First, because, in accordance with the TC-20 Settlement, BPA would stop providing an unlimited hourly firm product, but instead limit its hourly firm offerings based on a short-term ATC evaluation. This meant that NT customers could no longer rely on the hourly firm product to ensure that their Mid-C market purchases would receive firm transmission service. Absent Seller's Choice, this new challenge was not something that NT customers could remedy by submitting longer term firm transmission service requests ("TSR(s)") due to the combination of (i) the requirement under the pro forma Open Access Transmission Tariff ("OATT" or "Tariff") that NT customers must identify the source Balancing Authority Area ("BAA") and delivery point to the BPA system when they submit a firm TSR, and (ii) the prevailing industry standard practice of Mid-C suppliers not being able to identify the specific source and delivery point for market purchases until the day ahead preschedule window.

The second reason that NT customers sought Seller's Choice in the TC-20 Settlement was to counterbalance the concession they made in the settlement for BPA to delay application of their pro forma preemption and competition rights to short-term firm, including for hourly firm, until certain processes were concluded at the Federal Energy Regulatory Commission ("FERC"). BPA's implementation of limited hourly firm increases the value of the preemption rights of NT customers under BPA's Tariff. The agreement of NT customers to temporarily forbear such rights in the TC-20 Settlement was and is a cost to them, and a benefit to BPA's other transmission customers. Seller's Choice was part of the consideration NT customers received in the TC-20

Settlement in return for this concession. And, at least with respect to Mid-C market purchases, Seller's Choice was a way for NT customers to mitigate its impacts.

In conclusion, Seller's Choice as implemented by BPA has provided an overall reasonable and limited tool to NT customers that balances the impacts of BPA's limitation of hourly firm on NT customers, the designated Network Resource submittal restrictions for NT customers under the *pro forma* OATT, the practicalities of Mid-C market purchases, and the concession made in the TC-20 Settlement by NT customers with respect to preemption and competition, with the reliability and planning benefits BPA sought through the settlement. Accordingly, we respectfully request that BPA keep these factors in mind in its continued evaluation of Seller's Choice and not forget that Seller's Choice was an important part of the overall exchange of trade-offs NT customers made and received in and to facilitate the settlement.

B. Preemption and Competition.

As discussed above, the pro forma right of NT customers to preempt competing TSRs has an elevated importance now that BPA has limited its hourly firm product. Pursuant to § 2.f of Attachment 1 to the TC-20 Settlement, BPA must "as soon as practicable . . . apply preemption and competition to daily and hourly firm, including redirects, if OATI implements NAESB standards to adopt FERC policy under *Entergy Services Inc.* 148 FERC ¶ 61,209." We note that FERC issued Order 676-I on February 4, 2020 adopting the revised NAESB standards for implementing the *Dynegy* policy for redirects that was incorporated into FERC's *Entergy Services Inc.* decision referenced in the TC-20 Settlement.[1] Under Order 676-I, public utilities subject to FERC's jurisdiction had 90 days to comply from the date Order 676-I was issued. Although BPA is not generally subject to FERC's jurisdiction, that time period has lapsed, and BPA has yet to address the implications of Order 676-I with customers. We respectfully request an update from BPA as to where OATI is in the process of implementing these standards now that they have been adopted by FERC. We also respectfully request details as to BPA's plan and timeline for applying, "as soon as practicable", preemption and competition to daily and hourly firm in accordance with its obligations under the TC-20 Settlement and its Tariff.

C. Short-Term *De Minimis.*

At the May 29th Short-Term *De Minimis* Update Workshop, BPA requested comments on two options for addressing the concerns raised by PTP customers regarding application of BPA's *de minimis* rule to short-term redirects. Under the first option, labeled as Alternative 1 in the presentation, BPA would maintain the status quo by (i) applying *de minimis* Test 1 to short-term redirects in the same way it is applied to original short-term requests (both NT and PTP original short-term requests), and (ii) not allowing short-term redirects to use *de minimis* Test 2. Under the second option, labeled as Alternative 4 in the presentation, BPA would decrease the threshold under *de minimis* Test 1 from 10% to 5% and allow short-term redirects to use *de minimis* Test 2 with a 3% threshold.

[1] Standards for Business Practices and Communication Protocols for Public Utilities, Order 676-I, 170 FERC ¶ 61,062 (2020).

BPA states that its proposal under Alternative 4 to reduce the *de minimis* Test 1 threshold from its current 10% to 5% is a "trade-off necessary due to the risk of adding a Test 2 criteria."[2] However, unlike the PTP product, the NT product does not allow NT customers to redirect their transmission on BPA's system. This means that whereas NT customers can make use of *de minimis* Test 1, they cannot take advantage of *de minimis* Test 2 because it is only available for redirects. Accordingly, from the perspective of NT customers, there is no "trade-off" under Alternative 4--i.e., there is no exchange of a benefit in return for another. Instead, under Alternative 4, the threshold for NT customers to use the *de minimis* rule under Test 1 would be cut in half so that PTP customers (and only PTP customers) would have increased flexibility under a revised *de minimis* Test 2. This is not a fair or equitable exchange for NT customers by any metric and it should be rejected.[3]

If BPA wants to accommodate the requests of PTP customers to allow them to use *de minimis* Test 2 for short-term redirects by changing Test 1 and Test 2, then it should limit those changes so that they apply only to the PTP product and continue to apply the current 10% threshold under Test 1 to NT customers. That would be fair and equitable under the circumstances.

We raise this issue together with our comments above regarding Seller's Choice and preemption and competition because we see it as part of an overall trend of BPA considering accommodations to meet the demands of its PTP customers that would come at the expense of its NT customers. This is neither an acceptable nor sustainable approach, but it is one to guard against in the future.

Thank you for the opportunity to comment.

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[2] Short-Term *De Minimis* Update at 28 (May 29, 2020).

[3] In addition, the harm to NT customers from a reduction to the *de minimis* threshold under Test 1 would be further exacerbated if BPA fails to deliver on its promise under the TC-20 Settlement to apply preemption and competition to daily and hourly firm, including redirects, as soon as practicable, following FERC's approval of the applicable NAESB standards.