

## SECURING THE BENEFITS OF THE FEDERAL SYSTEM

### **Contract High Water Mark (CHWM)** – (CHWM is zero sum game)

- 2010 CHWM values (utility non-federal resource capability, actual 2010 load, s forecast net requirements), and any adjustments to those values such as weather normalization, conservation, load and data anomalies, *force majeure* and bad behavior, would initially be established by Account Executive/utility discussions, with results posted on the BPA web site. BPA would respond to reasonable information requests regarding these values and adjustments. An all-hands meeting would be held for BPA to explain its determinations, and for customers to discuss and resolve any issues.
- Disputes over 2010 CHWM determinations of actual loads, non-federal resource capabilities, forecast net requirements and utility specific adjustments, such as weather normalization, load and data anomalies, conservation, *force majeure* and bad behavior, should be resolved by binding third party dispute process. To qualify for such process, the disputed issue must change the relevant value or adjustment by a quantity which equals or exceeds the lesser of 5% or 10 aMW. BPA will waive any improper delegation defenses and any contention that such disputes constitute “implementation of a rate.” Resort to the 9<sup>th</sup> Circuit will be comprehensively waived by all parties.
- The dispute process would be a single hearing open to all Tier 1 preference purchasers and would be presided over by a single independent decision maker with reasonable knowledge of the subject matter, and who will be involved in the CHWM process from an early stage. BPA and parties to the process would be bound by the decision.
- The decision standard for values or adjustments for which the TRM provides standards is whether the BPA proposed value (such as load amount, conservation adjustment, etc.) was determined in a manner reasonably consistent with the TRM. Where the TRM provides no standard (bad behavior or *force majeure*) the decision standard is whether the BPA proposed value or adjustment is reasonable. The neutral third party would provide his or her decision in writing, stating the basis in fact and law for the decision.

### **Forecast Net Requirement (FNR)** – (FNR is not a zero sum game)

- FNR values (utility non-federal resource capability, load forecast,) would initially be established Account Executive/utility discussions, with results posted on BPA web site. BPA should respond to reasonable information requests about these determinations. If requested, an all-hands meeting would be held for BPA to explain its determinations, and for customers to discuss and resolve any issues.

- Individual utility disputes over its load forecasts, non-federal resource capability and forecast net requirement would be subject to binding third party dispute resolution open to all Tier 1 purchasers. To qualify for this process, the disputed issue must change the relevant value or adjustment by a quantity which equals or exceeds the lesser of 5% or 10 aMW.
- The decision standard would be whether the BPA proposed forecast net requirement, forecast load or non-federal resource capability is reasonable. The neutral third party would provide his or her decision in writing, stating the basis in fact and law for the decision.

### **Tier 1 Resource Capability Determinations**

- BPA's Tier 1 resource capability used in RHWM can be initially based on the White Book, provided that those results are reasonably comparable to other available regional resource forecasts.
- BPA's initial determination would be posted on the BPA web site, and be subject to an all hands meeting if requested to discuss and resolve any issues.
- BPA's initial determination will be subject to binding third party dispute resolution only if 70% of the Tier 1 preference purchasers (utility count) request it.
- Standard for dispute process would be whether the BPA proposed Tier 1 resource capability determination is reasonable. The neutral third party would provide his or her decision in writing, stating the basis in fact and law for the decision.

### **TRM Revisions**

- It will be BPA's policy to revise the TRM as little as possible. However, it is recognized that some revisions will be needed over a 20 year period and the intent of the following paragraphs is establish the method for making them. Revisions are categorized as follows: (i) to address unintended consequences; (ii) to improve or enhance the TRM; and (iii) to address court orders or cost recovery. They are subject to the following procedures.

#### **Unintended Consequences**

- BPA may propose revisions to the TRM (changes to language or attachments) at any time to deal with unintended consequences arising after adoption of the TRM. Such revisions will be implemented unless they are objected to by Tier 1 preference purchasers totaling

both: (i) at least 70% of such purchasers (utility count); and (ii) Tier 1 preference purchasers representing at least 50% of the sum of the CHWMs of all such purchasers.

#### Improvements and Enhancements

- Improvements and enhancements to the TRM may be proposed by BPA, or by a group comprised of not less than 45% of the Tier 1 preference purchasers (utility count). Such improvements or enhancements will be implemented if they are approved by Tier 1 preference purchasers totaling: (i) both at least 70% of such purchasers (utility count); and (ii) Tier 1 preference purchasers representing at least 50% of the sum of the CHWMs of all such purchasers.

#### Cost Recovery and Court Orders

- BPA shall have the right to revise the TRM when doing so is necessary to comply with a court order or to ensure BPA's cost recovery. BPA will first exhaust means other than revising the TRM to comply with a court order or ensure cost recovery. If BPA reasonably determines that modification of the TRM is the only means practicable to comply with a court order or ensure cost recovery, BPA will propose only those revisions necessary to comply with the court order or ensure cost recovery, and shall seek to limit both the number and scope of such changes.
- The issue of whether the revision to the TRM proposed by BPA is unreasonably disproportionate to what is needed to comply with the court order or to ensure cost recovery, compared to the single alternative proposal offered by the Tier 1 preference purchasers, may be placed before a neutral third party for resolution. To do so, Tier 1 preference purchasers totaling both: (i) at least 70% of such purchasers (utility count); and (ii) Tier 1 preference purchasers representing at least 50% of the sum of the CHWMs of all such purchasers must request such a hearing.
- The neutral third party would be limited to selecting either the BPA or the preference customer proposal. The decision standard would be which proposal adequately addresses the court order compliance or cost recovery issue BPA seeks to address with the least alteration to the TRM. The neutral third party would provide his or her decision in writing, stating the basis in fact and law for the decision.
- The Administrator would have 30 days after the decision in such process to affirm or reject the decision of the neutral third party, and would in either event state his/her reasons in writing. If the Administrator affirms the neutral third party's decision, then BPA shall be bound thereby.

### **TRM Disputes In Rate Cases**

- Tier 1 preference purchasers may seek binding resolution by the ALJ of disputes arising in the rate case regarding whether BPA's proposed implementation or interpretation of the TRM conflicts with the TRM. A Tier 1 preference purchaser seeking dispute resolution will file a motion stating the basis for the objection at any time during the rate case, but no later than the date for filing parties' initial case. The dispute would be adjudicated in the manner directed by the ALJ.
- After the filing of the motion by a party, BPA may request that the ALJ also determine, in addition to the issue raised in the motion, whether the disputed implementation or interpretation is required to comply with a court order or to ensure cost recovery. If BPA does not make such a request, BPA will adopt and be bound by the ALJ's decision on the issues raised in the motion, as will the rate case parties.
- If BPA makes such a request, the ALJ will determine both the issue raised by the party's motion and whether the change is required to address a court order or ensure cost recovery. The ALJ would provide his or her decision in writing, stating the basis in fact and law for the decision.
- The ALJ determination of whether the implementation or interpretation is necessary to comply with a court order or ensure cost recovery may be objected to by BPA or any rate case party within 5 days of such decision. In such case, there will be a mini trial as generally described in section 13.2.2 (a) and (b) of the draft TRM (March 7 version), except the ALJ will not have rebuttal opportunity.
- The decision standard for disputes regarding the interpretation or implementation of the TRM is whether the BPA proposed implementation or interpretation reasonably conforms to the plain meaning of the TRM, without recourse to evidence from the TRM development process or the TRM Final Record of Decision. The decision standard for whether a BPA proposed implementation or interpretation is for compliance with court orders and ensuring cost recovery is whether it can be concluded, based on the evidence presented, that such implementation or interpretation is reasonably necessary to comply with a court order or ensure cost recovery.

### **Slice True-Up for Actual Costs**

- Slice customers should have such access to BPA's books as is reasonable and necessary in the judgment of a professional auditing firm to verify that the Slice True-Up contains only those costs that are permitted to be charged Slice customers.

- Results of such verification will be posted on BPA's website, and BPA would respond to reasonable information requests. If requested, an all-hands meeting would be held for BPA to explain its determinations, and for customers to discuss and resolve any issues.
- If the Slice customers believe that they are being charged excluded costs, the matter will be resolved by binding third party dispute resolution open to all Tier 1 purchasers.
- The decision standard will be whether the contested cost is excluded from the Slice rate by the TRM. The neutral third party would provide his or her decision in writing, stating the basis in fact and law for the decision.

### **Dispute Process and Contract Linkage**

- Process for disputes arising from CHWM, forecast net requirement and Tier 1 resource capability determinations will be appellate in nature (not AAA process), with the disputing party(ies) making a written submittal(s), BPA responding, and the disputing party(ies) making reply(ies). No testimony or cross examination unless request by the neutral third party. All parties will provide discovery, and if not provided upon request the neutral third party may order discovery.
- Process for disputes arising from the TRM in the rate case or a revision to the TRM will be determined by the ALJ or neutral third party respectively.
- The HWM contracts should state the dispute process outcomes that will bind BPA, and the conditions under which the TRM can be modified.
- The contract will state that BPA will not use the FRN to forbid, limit or restrict the right of Tier 1 preference purchasers to submit testimony and briefing in BPA section 7(i) rate proceedings on issues arising from the implementation of the TRM or the rates that are subject to it.